



**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  
R H  
(Anonymity direction made)

Applicant

versus

SHEFFIELD CITY COUNCIL

Respondent

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**ORDER**

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UPON HEARING Mr P. Haywood , Counsel for the applicant and Ms I. Mahmood, Counsel for the respondent on 17 January 2023;

AND UPON handing down judgment on 1 March 2023, pursuant to (i) the draft judgment being circulated to the parties under embargo terms on 23 February, (ii) the parties providing typographical and obvious corrections to the judgment by the time requested, (iii) the parties being notified that judgment would be handed down on 1 March 2023, with neither party to attend provided there was no consequential matters to be dealt with and UPON the parties agreeing a draft order and confirming that neither advocate would seek to attend.

**IT IS ORDERED THAT**

1. The Applicant's claim for judicial review is dismissed.
2. It is declared that the Applicant was born on 9<sup>th</sup> September 2002 for the reasons given in the judgment handed down on the 1 March 2023.
3. The Applicant is to pay the Respondent's costs, to be subject to detailed assessment if not agreed. Such costs are not to be enforced without the permission of the Upper Tribunal and an assessment of the Applicant's means pursuant to the Legal Aid, Sentencing and Punishment of Offenders Act 2012;
4. There be a detailed assessment of the Applicant's publicly funded costs.

5. An anonymity order is made in light of the applicant having made a protection claim in the following terms; Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Applicant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Applicant, likely to lead members of the public to identify the Applicant. Failure to comply with this order could amount to a contempt of court.
6. Neither party sought permission to appeal to the Court of Appeal and, having considered this issue of myself as I am required to do by rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008, I refuse to grant such permission as there are no properly arguable points of law raised on the facts of the case.

Signed:                      **Upper Tribunal Judge Reeds**  
Upper Tribunal Judge Reeds

Dated:                      1 March 2023

**The date on which this order was sent is given below**

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**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): *02 March 2023*

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 the 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 to appeal, 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 refusing permission to appeal to the Court of Appeal was sent (CPR Practice Direction 52D3.3).



Case No: JR-2022-LON-000990

**IN THE UPPER TRIBUNAL**  
**(IMMIGRATION AND ASYLUM CHAMBER)**

Field House,  
Breams Buildings  
London, EC4A 1WR

1 March 2023

**Before:**

**UPPER TRIBUNAL JUDGE REEDS**

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**Between:**

**THE KING**  
**on the application of**  
**R H (Anonymity direction made)**

**Applicant**

**- and -**

**SHEFFIELD CITY COUNCIL**

**Respondent**

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**Mr P. Haywood**  
(instructed by Bhatia Best Solicitors), for the Applicant

**Ms I Mahmood**  
(instructed by the local authority) for the Respondent.

Hearing date: 17 January 2023

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**J U D G M E N T**

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**Judge Reeds:**

**Introduction:**

1. The applicant, a national of Iran, claims that he was born on the 12<sup>th</sup> Huddad 1383 (Iranian Calendar) 1 June 2004 (Gregorian calendar) and was thus a child of 17 years of age when he entered the UK on 19 July 2021. The respondent, following an age assessment completed on 9 September 2021, and set out in a report dated 7

October 2021 has assigned to him a date of birth of 9 September 2002 on the basis of him being over the age of 18 at the time of the assessment and that he was assessed to be aged over 18 at the time he entered the United Kingdom.

2. This judicial review challenges the age assessment decision on the ground that the applicant is the age he claims to be and, as part of that challenge, that the age assessment was not *Merton* compliant, and that the interview was procedurally unfair and that the reliance of the age assessment upon the applicant's appearance and demeanour was unfair and irrational.
3. The primary issue to resolve these proceedings is the applicant's age, which is in dispute between the parties. There is no dispute between the parties that the applicant is now an adult. The applicant has sought a declaration as to his age to establish that the respondent is required to continue to provide support and accommodation to him as a "former relevant child" which arises under the Children Act 1989.

#### Anonymity:

4. Whilst an anonymity order had not been sought prior to the hearing, upon hearing Counsel on behalf of the applicant and his submission that an order should be made and that this was agreed by Ms Mahmood on behalf of the respondent, and in the light of the applicant having made a protection claim, I make an order for anonymity pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Applicant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Applicant, likely to lead members of the public to identify the Applicant. Failure to comply with this order could amount to a contempt of court.

#### The background:

5. The applicant arrived in the UK on 19 July 2021 as an unaccompanied asylum seeker claiming to be 17 years of age. His stated personal history is detailed as follows. The applicant is a national of Iran, of Kurdish ethnicity. He states that he is from a small village in the x area of the x Province of Iran. In Iran he lived with his parents and elder sister and that he has never been to school in Iran and does not read or write Kurdish Sorani. The applicant states from the age of 13 or 14 he helped his father with the family livestock. When he was out looking after the family's animals, he was approached by a man who asked him to look after an envelope containing documents and some money, relating he believed to his business of buying and selling livestock. The applicant was told that the papers that he had been asked to hide had been found and that he should not return home. The applicant went to stay with his uncle, and he was taken out of Iran to Turkey crossing the border with an agent. He subsequently travelled onwards to the UK, where he arrived on 19 July 2021.
6. On arrival in the United Kingdom he sought asylum. It is common ground that the applicant had no documentation with him. An assessment took place on his arrival on 19 July 2021, and the immigration officer and CIO recorded that in the

absence of documentary evidence and based on the applicant physical characteristics, demeanour and the IO's experience it was determined that the applicant was over 25 years of age or greater and he was registered on the system as such (see [H124]).

7. On 22 July 2021, an initial asylum questionnaire interview was conducted at Yarlswood [H135] where the applicant gave a date of birth of 1 June 2004 (12 Khordad 1383) ( see [H 136]).
8. Consequently he was referred to the local authority's children services. A brief enquiry into his age by two social workers was undertaken and they believed that the applicant may have been over 18 years of age but could not say if he was over 25 years of age (see [A1-A4] and [E89]).
9. The respondent local authority ("LA"), sought to undertake an assessment to assess his age. He was accompanied by an 'appropriate adult', and he was interviewed by the two social workers, who then produced the age assessment report following three sessions on the 2, 3 and on 9 September 2021. The formal report was dated 7 October 2021 and concluded that there was significant evidence to determine that the applicant was over 18. The assessing social workers estimated that the applicant's age was between 19 to 22 and having given the applicant the benefit of the doubt and taking into consideration the date of birth he had given, and applying the youngest age possible, they estimated his date of birth to be the 9 September 2022, giving him the age of 19 years from the date of the final assessment session. Thus assessing the applicant as being over the age of 18 when he first entered the United Kingdom on 19 July 2021.
10. It is that assessment, which the applicant seeks to challenge in these proceedings.
11. Following the completion of the age assessment, on the 8<sup>th</sup> October 2021 he was moved from the accommodation provided by children's services.
12. On 24 November 2021, the applicant sent a letter before action challenging the age assessment and seeking a response from the respondent within an abridged timescale of 48 hours. The respondent replied on 26 November 2021 maintaining its decision and providing the contemporaneous notes of the interviews.
13. On 7 January 2022, the applicant filed an application in a judicial review claim made in the Administrative Court. On 23 May 2022 HHJ Jackson sitting as a deputy High Court Judge granted permission in the judicial review claim and ordered that the claim be transferred to the Upper Tribunal.
14. There have been a number of case management hearings from September 2021 before Upper Tribunal Judge Mandalia and Upper Tribunal Judge Smith and directions were issued for the disclosure and filing of documents and for the listing of the matter which then came before me for a substantive hearing. The case was listed for a two day hearing commencing on the 17 January 2023 however Counsel for the applicant did not seek to cross examine the social worker who conducted the age assessment, and the proceedings were completed on the first day of the hearing.

The legal framework:

15. The law in this area is settled and has not been an issue between the parties. Both advocates have set out the law in their respective skeleton arguments. I therefore set out a summary of the relevant legal principles.
16. Where the age assessment of the local authority is in dispute it is for the Tribunal or the Court to reach its own assessment of age as a matter of fact by reference to all material and evidence in the case, applying the balance of probabilities standard of proof.
17. Neither party has the burden of proving its case. Rather, the Tribunal will reach its own conclusion on the matter of the Applicant's age, see **R (CJ) v Cardiff City Council** [2011] EWCA Civ 1590 where at [23], Pitchford LJ said:

*'The Court will decide whether, on a balance of probability, the claimant was or was not at the material time a child. The Court will not ask whether the local authority has established on a balance of probabilities that the claimant was an adult; nor will it ask whether the claimant has established on a balance of probabilities that he is a child.'*

18. Accordingly, the Tribunal is not, primarily, concerned with whether the Respondent's assessment of R's age was lawful. In **R (FZ) v London Borough of Croydon** [2011] EWCA Civ 59, the Court of Appeal observed:

*'... the core challenge is likely in most cases to be a challenge to the age which the local authority assessed the claimant to be. Thus most of these cases are now likely to require the Court to receive evidence to make its factual determination. It is therefore understandable that Mr Hadden, for the respondent local authority in the present appeal, submitted that orthodox judicial review challenges are likely to be subsumed in the Court's factual determination of the claimant's age. If the claimant succeeds on his factual case, the orthodox judicial review challenges fall away as unnecessary.'*

19. In **R (B) v Merton LBC [2003] EWHC 1689 (Admin)**, Stanley Burton J laid down guidance to be adopted by local authorities when undertaking an age assessment. This guidance was summarised in **VS v The Home Office [2014] EWHC 2483**:

- 1) *The purpose of an age assessment is to establish the chronological age of a young person.*
- 2) *The decision makers cannot determine age solely on the basis of the appearance of the applicant, except in clear cases.*
- 3) *Demeanour can be notoriously unreliable and by itself constituted only 'somewhat fragile material': NA v LB of Croydon [2009] EWHC 2357 (Admin) per Blake J at [28]. Demeanour will generally need to be viewed together with other things.*
- 4) *There should be 'no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child': see Merton per Stanley Burnton J at [37-38]. The*

*decision, therefore, needs to be based on particular facts concerning the particular person.*

- 5) *There is no burden of proof imposed on the applicant to prove his or her age in the course of the assessment: see Merton per Stanley Burnton J at [38], confirmed by R (CJ) v Cardiff CC [2011] EWCA Civ 1590.*
- 6) *Benefit of any doubt is always given to the unaccompanied asylum-seeking child since it is recognised that age assessment is not a scientific process: A and WK v London Borough of Croydon & Others [2009] EWHC 939 (Admin) per Collins J at [40]; see also [21] of A (AB) v Kent County Council [2020] EWHC 109 (Admin).*
- 7) *The two social workers who carry out the age assessment should be properly trained and experienced: A and WK per Collins J at [38].*
- 8) *The applicant should have an appropriate adult and should be informed of the right to have one, with the purpose of having an appropriate adult also being explained to him or her.*
- 9) *The applicant should be told the purpose of the assessment.*
- 10) *The decision ‘must be based on firm grounds and reasons’ [and] ‘must be fully set out and explained to the applicant’: A and WK per Collins J at [12].*
- 11) *The approach of the assessors must involve trying ‘to establish a rapport with the applicant and any questioning, while recognising the possibility of coaching, should be by means of open-ended and not leading questions.’ It is ‘equally important for the assessors to be aware of the customs and practices and any particular difficulties faced by the applicant in his home society’: A and WK per Collins J at [13].*
- 12) *It is ‘axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him’: R (FZ) v Croydon LBC [2011] EWCA Civ 59, [21]. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant ‘with their conclusions without first giving him the opportunity to deal with the adverse points.’*
- 13) *Assessments devoid of detail and/or reasons for the conclusion are not compliant with Merton guidelines; and the conclusions must be ‘expressed with sufficient detail to explain all the main adverse points which the fuller document showed had influenced the decision’ (FZ, at [22]).”*

20. **In R (AM) v Solihull Metropolitan Borough Council [2012] UKUT 000118** (IAC) the Vice President of the Upper Tribunal held, at [15],

*“In the present case the evidence is wide-ranging. It may therefore be appropriate to make some general observations about the impact of evidence of various sorts and from various sources in this type of case. First, we think that almost all evidence of physical characteristics is likely to be of very limited value. That is because, as pointed out by Kenneth Parker J in R (R) v Croydon [2011] EWHC 1473 (Admin)*

*there is no clear relationship between chronological age and physical maturity in respect of most measurable aspects of such maturity.”*

At [16] he added:

*“... Individuals who raise questions of the assessment of their age typically have a history, or claimed history, beginning with childhood and early youth in a country of relative poverty, continuing with a long and arduous journey that it is claimed to have taken place during their mid-teens, and concluding with the period living in a country of relative affluence such as the United Kingdom. So far as we are aware, no, no sufficient, work is being done to identify what effect such a history might have on their physical maturity at various dates. In particular (although we accept that we are relying more on instinct than anything else) physical maturity may be attained more slowly in conditions of poverty and malnutrition and that on arrival such person may look less physically mature than his chronological age might suggest. After his arrival it may be that physical changes take place more quickly than they would otherwise do, but it may be (or may not) be that a person with such a history is less physically mature than anybody might expect his age.”*

The vice president addressed the relevance of mental maturity and demeanour at [19]:

*“so far as mental development is concerned, it is very difficult indeed to see how any proper assessment can be made from a position of ignorance as to the individual’s age. Most assessments of mental development are, in essence, an assessment of whether the individual is at average, or below or above average, for his chronological age.”*

He continued:

*“so far as demeanour is concerned, it seems to us that there may be value to be obtained from observations of demeanour and interaction with others made over a long period of time by those who have opportunity to observe an individual going about his ordinary life. But we find it difficult to see that any useful observations of demeanour or social interaction or maturity can be made in the course of a short interview between an individual and a strange adult. They may of course be cultural difficulties in such interview but there are ordinary social difficulties as well.”*

21. The guidance given in Merton was approved by the Supreme Court in **R (A) v London Borough of Croydon [2009] UKSC 8** where the following was stated:

*“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 credibility and he will have to ask questions designed to test his credibility.”*

The evidence:

22. The parties produced an agreed bundle of documents for the hearing contained in one bundles running from A1 -I167 pages In addition a supplementary bundle of documents was filed shortly before the hearing which included the brief enquiry



as to age and case notes from the local authority. In a separate bundle the parties provided an agreed bundle of relevant authorities. There was also a schedule of agreed facts and issues submitted by the parties.

23. The applicant attended the hearing and gave evidence. Whilst Mr Haywood confirmed that there were no issues of vulnerability in respect of the applicant within the meaning of the Joint Presidential Guidance note number 2 of 2010: Child, Vulnerable Adult and Sensitive Applicant Guidance, the proceedings featured regular breaks and the applicant was addressed with concern to ensure that he understood and was comfortable with the proceedings.
24. There was no indication that he had any difficulty at any point in understanding the proceedings or that he had any problems. I am satisfied that if there had been they would have been brought to the Tribunal's notice. The applicant had the benefit of a Court interpreter when giving his evidence in the Kurdish Sorani language and by summarising for him the evidence of the witness that gave evidence before the Tribunal and also the closing submissions so that he could follow and understand the proceedings.
25. Mr Afzaal, social worker attended before the Tribunal and gave oral evidence. Mr Haywood on behalf of the applicant informed the Tribunal that he did not seek to cross examine the social worker Mr Banks who had prepared the age assessment as the points he wished to make could be made in his oral submissions.
26. I have also been provided with skeleton arguments from each of the advocates and their oral submissions at the conclusion of the evidence.
27. I further observe that the applicant is presently seeking international protection, so I do not make any findings of fact or observations on his claim. That will be matter to be considered by the Home Office by application of a different standard of proof which is to be applied in this matter.
28. When assessing the applicant's credibility, my assessment is being considered in the round, taking due account of the evidence presented with due allowance for the fact that many child asylum seekers will have problems in presenting a coherent account of their personal history and travel to this country.
29. The evidence given by each of the witnesses is recorded in the record of proceedings. I have carefully considered all of the evidence before the Tribunal, including the oral evidence of the witnesses that gave evidence. They were cross-examined and I have had the opportunity of observing them give their evidence. I also have regard to the other evidence before the Tribunal, but whose authors were not called to give evidence.
30. Although I have not provided a summary of the contents of the rest of the documentary evidence in the agreed bundle, that is not an indication of the level of consideration given to that evidence nor the weight accorded to it. I have carefully read all the evidence, whether specifically referred to and summarised in this decision or not.

Witnesses called for the applicant:

The applicant:

31. The applicant confirmed his two witness statements, dated 6 January 2022[D64-68], and 7 October 2022 [D69-78] and adopted them as his evidence in chief.
32. He states that he arrived in the UK on 19<sup>th</sup> July 2021 and applied for asylum. Upon arrival he was taken to a detention centre where he stayed for 3 nights and then accommodated. He said that he told the welfare officer and the refugee Council worker that he was 17 and not the age that they had given him. He stated that he was moved to children's services accommodation and lived there with other people his age and was taught how to cook, clean and wash his clothes and look after himself as he had no idea how to do these tasks or use any of the equipment.
33. As to the age assessment that took place he confirmed the 1<sup>st</sup> and 2<sup>nd</sup> meetings were on the 2<sup>nd</sup> and 3<sup>rd</sup> of September 2021 and the 3<sup>rd</sup> and final meeting was on 9 September 2021. Each meeting lasting approximately 2 hours with 2 social workers, and appropriate adult and an interpreter present.
34. He stated that during the assessment he got very upset and emotional. He said that he found the assessment to be "very scary as it was new to me, and I did not know what would happen to me after" (see paragraph 10). At the end of the assessment he state that the social workers told him that they did not believe his age stating, "I got very upset and broke down crying."
35. In his witness statement the applicant referred to one of the reasons given by the social workers which is that "I said I was first allowed to look after sheep on my own 2 to 3 years ago when I was 16. This was a miscommunication. I have been looking after sheep for 3 years in total, 2 of them years and my father when I was younger (13 – 14) and one year on my own, when I was older. I tried to explain that it was not what I had meant but they did not accept what I was saying and told me that 16+3 = 19. I do not therefore accept I told them that I had "looked after sheep to 3 years ago, when I was 16" or words that affect. If that is what they have recorded, they have unfortunately misunderstood what I was trying to tell them." (see paragraph 12).
36. The applicant stated that to the best of his recollection, he was not given an opportunity to respond or comment on their decision before it was finalised or to respond to the points made saying that he was an adult.
37. As to how he knows his date of birth, as stated in the Iranian calendar as 12<sup>th</sup> Khordad 1383 (1 June 2004), the applicant states "I was told this while I was in Home Office accommodation by another boy called S who used his phone and translated it for me. I do not know if I have any documents of my date of birth on it, I have never seen any, but I am unsure if my parents ever had any documents for me. My date of birth was not important when I was in Iran, we do not celebrate birthdays and I did not attend school. I have never had to give my date of birth in Iran, so I did not understand much about it."

38. The applicant further states “the first time I found out about my date of birth I was around 13 or 14 years old. I cannot remember very well, but I was told by one of my parents in a conversation around the dinner table.” The applicant stated, “the last time I was told my date of birth was by my father the day that I was leaving Iran, he said to me “son you need to know your date of birth” and he told me my date of birth again so that I would remember it.” ( See witness statement paragraphs 15 – 19).
39. In his second witness statement, the applicant set out further information concerning his background including where he lived in Iran, his family and his family relatives. He confirmed that he never attended school and was unable to read or write in his own language. He stated that he was a practising Muslim and would sometimes go to the village prayer room with his father but usually they would pray at home. He never attended Quran lessons as they did not have a mosque in the village.
40. As to his employment, he confirmed that he helped his father with the livestock, and they had sheep and goats. He started helping his father when he was around 13 or 14 years old but did not help every day. When he was around 15 he started to help his father every day. He stated “I was allowed to look after the livestock on my own when I turned 16 years old. I only did this on my own for a few months until I left Iran. I know that I was these ages because I calculated it from when I arrived in the UK. When I arrived, I was 17 and I know how many years I looked after the livestock because I counted them, my father would shave the sheep once a year and that is how I kept track of how many years I looked after the livestock. We did not use calendars. We counted a new year when it was time to shave the sheep. In total I looked after livestock in for 3 years, just over 2 years of my father and a few months by myself” (at paragraph 15;D 710.
41. In his statement he set out why he had left Iran between paragraphs 19 – 23 [D 72 – 73]. He stated that he never said goodbye to his parents and sister or saw them again and did not call his family because his uncle told him to switch off his mobile phone.
42. At paragraphs 24 – 29, he set out his journey to the UK. He stated that after he arrived at his uncle’s house he was taken to a city near the Iranian border and that the drive took approximately 5 hours. He went to the home of his uncle’s friend and spent the night there. The following morning they went to a village approximately a 1 ½ hours journey away then he was handed to an agent who took him across the border to Turkey. He stated he remember the day he left Iran as “ 5 Khordad” as he heard his uncle speaking on the phone. The agent took him to some stables in Turkey and he was later taken to Istanbul. He stayed in a flat for 3 weeks with some people and never left the apartment. He had no phone as he had given it to his uncle. After 3 weeks in Istanbul he was taken to a seaside town where he was put on a boat. The journey had taken 5 days and then he was rescued from the sea. He was arrested and taken to a camp where he was not allowed to leave. He did not tell the police that he was a child, and he told the police that he was 19. He was released from the camp after 12 to 13 days. The applicant states he borrowed a phone from another person and called a number that he had been given by one of the agents in case he was ever arrested. A man came to collect him and took into a place where there were 4 other people waiting.

At night-time he was put into the back of a lorry. He did not know what country was in but when the doors of the lorry were opened he was arrested but released after 4-5 hours. The applicant travelled by train and walked to a forest. He spent 10 days there and the agents then took around 30 people to another seaside town. He could not remember how long he walked for until he reached the sea but then got into a dinghy with others.

43. As to discrepancies with his date of birth, he records that The Home Office registered his date of birth as 1 September 1995. Following the age assessment his records were updated to 1 June 2002. The ARC states the date of birth as 1 September 2004. The applicant states he has never given any other date of birth other than 12<sup>th</sup> Khordad 1383 which on translation is 1 June 2004.
44. As to how the age assessment was conducted, the applicant states that he has addressed discrepancies in relation to the year that he was looking after sheep in his first witness statement at paragraph 12. He states that he believes the social workers misunderstood him and that he did not understand what they were asking him when they were trying to clarify that he was 19.
45. In evidence in chief, he was asked about other people who are working in the placement, and he was asked if he had been shown how to cook and undertake basic tasks. The applicant stated that he was shown how to cook and how to clean and use the washing machine. He was asked about the evidence of the social worker who stated that the applicant had used the translation app. The applicant stated, “it was not me; it was another male (at the placement).”
46. The applicant was cross-examined by Ms Mahmood. He was asked about the village in which he lived and that he had told the assessors that he did not interact with anyone else other than his family. The applicant agreed stating that he did not have any friends. When asked about his family and whether they had guests, he said that his father interacted with others but that he did not speak to them. He was asked about his witness statement and about spending time with his sister and whether he had spent time with anyone else, he confirmed that it was just his family; his parents as well. When asked about his family it was put to him that in the age assessment he said that the only other family he had was his uncle. He confirmed that he had said that and that he had not mentioned any other family members. It was put to him that in his recent statement he referred to having an uncle, his wife and 2 cousins ( their children). He was asked why he did not refer to his aunt and cousins when providing information to the assessors about his family members. The applicant stated that they had never asked him that question and that the assessors had only asked about his parents and no one else. He was asked why he did not mention his uncle’s wife and cousins, he stated that the assessors did not ask him about his uncle’s wife or the children’s names. When asked how old the cousins were he stated he did not know and that he spent very little time with them. He said they were older than him. The part of the witness statement where he referred to having a good relationship with his cousins was read to him. The applicant said that he did not have such a relationship with his cousins and that “I meant my family my parents and maternal uncle they have good relationship.”

47. He was asked about the information he gave to the assessors about village life and that he had attended the mosque in the village. He confirmed that that he was correct and had gone with his father. His 2<sup>nd</sup> witness statement was read to him in which he stated there was no mosque in the village. When asked to account for the difference the applicant stated that there was no mosque but there was a little room converted into a mosque. When it was suggested there was a difference between a prayer room and mosque, the applicant stated that he had said to the assessors a prayer room, but they translated it as a mosque.
48. He was asked about how he used his phone and the description given by Mr Afzaal. The applicant stated that the social worker had attended his address for 5 minutes talking to everyone and that “he did not know these things” and how he used a mobile phone. He said that the social worker was not talking for 5 minutes and after he finished he left the premises. The applicant did not accept that Mr Afzaal had seen him using the phone either for translation or navigation stating that he was illiterate and not able to use the mobile phone and that it was not him, but another individual called S. He stated that he had never ever used the translation app and that the social worker was mistaken. When asked to account for the mistake, the applicant stated it was because the social worker was not living with them to find out if he could do this. The applicant confirmed again that it was not him using the app but that it was someone else.
49. The applicant was asked about documents and that during the assessment he had suggested that he may have a passport or birth certificate (see E93]). The applicant stated that he had never said that to the assessors. He later stated that he did not have any documents at all and that in the age assessment they asked if his parents had documents. E93 was read to the applicant, and it was suggested to him that it referred to his documents and not his parents. The applicant stated that he did not know if his parents had them. When asked if there was a reason for his evidence changing, he stated that he thought the assessors had misunderstood what he was saying.
50. He was asked about the interpreter present and confirmed that he could understand the interpreter and that the interpreter could understand him. He stated that because he had never heard those questions he did not understand the questions. He agreed that he had been told that if he did not understand he should say so but stated that they (meaning the assessors) had probably noted it wrongly. When asked again about the recording in the assessment and to confirm his evidence he again confirmed that he was saying that they had recorded it wrongly.
51. He was asked about how he knew his date of birth and agreed that he had said that that his father had told him he needed to know his date of birth when he left. It was suggested to him that as he had documents (which he had referred to) that would have been a good time for his father to give him the document as he was leaving. The applicant said, “I do not know that.”
52. In cross-examination it was put to him that he was able to use a smart phone and was therefore not illiterate. When asked about his Facebook account he said he could use it. When asked about the screenshots [H 156] it was put to him that he provided little information on the social media account but had provided a date of birth [H161]. He stated that he had not set this up himself but that a person called

S had done so. He was asked how he was able to make sure that it was done correctly, and the applicant stated that S was literate and that he had told him the date in the Iranian calendar, and it was translated.

53. He was asked about the information provided to the assessors about the age he was when he looked after the sheep . It was put to him that on the information he had provided that he was being assessed in September 2021 and 2 to 3 years ago before that would be 2019 therefore he would be 16 in 2019 which gave him a date of birth different to that he claimed. The applicant stated that the social workers did not understand him. It was put to him that he was asked to repeat it on a number of occasions and the matter was discussed 3 times and he was asked whether he corrected the assessors? The applicant stated that the assessors asked him the question only once and the last time they told him that they had already decided he was over 18 and they did not allow him to make any comments about this. He said that regarding the work, the last time he had the job it was just before he was 16 and that he did not become 17. The information in the age assessment was read to the applicant where it was said that the applicant had no further comment to make. He stated that the assessors did not listen to him, and they told him that they had already decided his age. The witness statement of the social worker was read to him, and the applicant stated that the first time when they asked him they just took information from him and at the last meeting (“occasion”) they said for the following reasons we disagree with you on that he wanted to make a comment about it, but they said the decision had already been made by somebody “higher up” and therefore they could not change it. He said on 2 occasions the assessors did not say anything and on the last occasion they said they had already decided on everything. He stated that he tried to correct them on the last time, but they told in the decision had already been made.
54. The applicant was asked about his witness statement in which he had stated that he looked after the sheep for one year after he turned 16. The applicant stated that he did not finish the whole year. It was put to him that in the age assessment there was no reference to the applicant undertaking any work for one year and thus there was no risk of being misinterpreted, the applicant stated that he answered the questions that he had been asked and that he thought there was an error. It was suggested to him that he had changed his account to suit the timeline to fit in with his stated age. The applicant disputed this stating that he had told them that he did not finish the whole year.

#### Age Assessment 8 October 2021

55. I summarise the age assessment report written by Mr Banks, one of the two social workers who undertook the assessment, at [E86] to [E102] of the agreed bundle.
56. The age assessment was carried out over 3 dates; the 2<sup>nd</sup>, 3<sup>rd</sup> of September and 9th September 2021, which was a 3<sup>rd</sup> assessment and feedback session. The age assessment was carried out by two social workers. Also present at the age assessment was an appropriate adult. The qualifications and expertise of the assessors is set out in the assessment.

57. The applicant's language was confirmed to be Kurdish Sorani as the applicant's first language. The role of the interpreter was explained, and the applicant confirmed that he was able to understand the interpreter fully and was happy to have them present to interpret for him. It was made clear by the assessors that if at any time during the assessment he felt he was struggling to understand, or be understood, then he should say so and arrangements would be made for different interpreter to be present.
58. At the first session the purpose of the age assessment was also explained to the applicant so that he was fully aware of why and how they would be clarifying his age and the process of the assessment including the need to ask questions about family, childhood background, education and events to him leaving his home country and regarding his experiences during the journey to United Kingdom. It was acknowledged that it may be difficult to discuss and that breaks, or drinks could be taken whenever needed throughout the assessment.

59. First section " physical appearance/demeanour:

This records that he is of a stocky build and approximately 6 foot in height with a full head of black hair which is kept short. He had several creases on his forehead and around his eyes, associated with maturity. Considering what R shared around his history in his way of living during his life in Iran, it may have been expected that his skin appeared more weathered than noted during the assessment. There was evidence of shaved facial hair, which covered the full beard area. He had stubble visible on the day that assessment took place which appeared to be recently shaved. The applicant spoke with an authoritative tone and at times, became angry or frustrated at certain questions, for example asking about his birth certificate. He did not come across as visually nervous during assessment, although this does not negate that this will have been a difficult experience. He engaged well with assessing social workers, interpreter and appropriate adult. It was noted that it is not possible to ascertain a person's age based on physical appearance alone and the social workers were conscious of the guidance arising from the other legal judgements highlighting the physical appearance alone could never be effectively relied upon to determine chronological age and this has to be considered in line with his account and demeanour.

60. Interaction of the person during assessment:

The assessment process was explained to the applicant at the start of the first session, and he was advised that it was taking place to consider his claim that he is aged 17 and not aged 25 as the Home Office paperwork indicates and to determine whether he would be provided with services by the local authorities as a child. It is recorded that the applicant was "smiling and accommodating" as this was first explained him using a face to face interpreter during the first assessment session.

It is noted that the applicant asked the assessing social workers several times to "fix his age" referring to accepting his date of birth as being 17.

Introductions were undertaken prior to the start of the assessment to ensure that the applicant was aware of who everyone was in their role, an interpreter was present throughout the assessment with the applicant confirming that he

understood fully the interpretation of what was being said to him. He was made aware he could ask questions or ask for clarity at any point during the sessions. He answered the questions in a timely manner however, at points the applicant did raise his voice to become angry. It is the assessing social worker's opinion that this was due to the applicant's frustration in needing to complete the age assessment, has expressed several times "why do not you trust me" relating to his age being 17.

At times during assessment he appeared upset and became tearful. This was around certain subjects such as his birth family and life in his home country. He was encouraged to take a break. After the break it was clear he wished to continue with the session and wanted the assessment to be concluded and decision regarding his age reached. It is evident that he continued to find speaking about his departure from Iran difficult as his voice is affected as he spoke about his family that were in Iran.

61. Social history and family composition:

In this section a genogram was obtained; noting his mother was 50 years of age his father 55 years of age. He had one sister aged approximately aged 20.

The applicant was able to spell his own name, and this is recorded with the assistance of the interpreter.

He said that he originates from "X" village in Iran; a small rural village. He stated he did not have any friends or interacted anyone else in the village. He lived with his mother, father and older sister. He has only one other family member, an uncle who lives in a nearby village.

He reports having an isolated family life with little interaction from the families around them.

How he knows his age:

He stated that he 17 years old and was born on the 12<sup>th</sup> of the 3<sup>rd</sup> month 1383 and the Iranian calendar (translates to 1 June 2004 as the Gregorian calendar)

He said he knows his date of birth and his age as he was told by his parents.

He said that he was reminded very often of his date of birth. He remembers being reminded of his date of birth when he was 15.

He said the family did not celebrate birthdays.

He has no ID documentation with him. He stated he thinks he has a passport and birth certificate, but this documentation was looked after by his parents, and he is not sure of its location now.

62. Developmental considerations:

The applicant reported that he had an isolated childhood and socialised only with his sister and parents because his village was in the mountains and there were no



people around. He said that he and his sister preferred to play alone rather than with other children.

He would play games with his sister. When he was younger he played with a little car and his sister had a doll. He also played hide and seek. He would sometimes watch a small family television which had Popeye and Tom and Jerry films in the evening with violence, so he was not allowed to watch but there were some comedy films.

It is recorded “ R said that he started helping his father looking after the sheep when he was around 13 to 14 years old. He did this instead of going to school as there was not a school in his village nearby. He would attend to the sheep daily with his father. R shared that he had some other tasks around the home such as collecting firewood. R did not assist with the cooking or cleaning as this was tasks for his mother and sister. R enjoyed a varied diet of rice, soup and chicken. He stated that he was allowed to look after sheep on his own when he turned 16, which was 2 to 3 years ago from present day.”

He stated that he left his home country on 5 June 2021. He said he was looking after sheep and a man called x approached him. The man gave R 2 million in Iranian currency and some documents inside an envelope. He was asked to leave this envelope in his home, and someone would come and pick it up from him. R stated that these papers were against the Iranian government. He was advised by his father to leave his village as the security forces came looking for him at his home. The applicant stayed with his uncle for one night and then went to a city near the Iranian border. After this village, he was transported to Turkey by his uncle. He feared for his life.

It is recorded that the applicant became upset at times and speaking about his journey to the UK. A referral to the Red Cross family tracing service was explained and it was noted that this is something that he would like to pursue. It was noted and acknowledged that the current political climate in Iran is unstable and that the Iranian authorities continue to repress its people.

63. Education:

The applicant had shared that he never been to school or in an educational setting. There was not a school in his village or nearby. He cannot read or write in his own language. He is a practising Muslim attends Mosque regularly. He attended the Mosque in Iran but did not complete any Quran lessons. He is working on his English skills and keen to develop them.

64. Independent/self-care skills:

It is recorded that in his own country he was not taught to cook or clean as these were jobs for his sister. He had been supported by his parents and older sister in his home country however he did have responsibilities such as looking after the sheep and collecting firewood.

He is currently accommodated by the council living in semi-independent accommodation. He is heavily reliant on support staff in the placement and other

residents that he has made a connection with. He requires practical support with shopping for food, cooking and cleaning. He is appreciative of the support he gets from others and is very keen to continue living in this accommodation.

65. Health and medical assessment:

At the start of each assessment session, he indicated that he was fit and well and able to proceed with the assessment. It is recorded that he was not experiencing any ongoing health issues or request a medical treatment.

66. Information from documentation and other sources:

2 social workers met with the applicant at the apartments on 3 August 2021 to undertake a brief enquiry into his age. It is recorded at this stage the workers judged the applicant to be over the age of 18, however they did not reach a conclusion as to age as he was evidently over the age of 25.

The applicant's social worker Mr Afzaal also believes that the applicant is over 18 due to the same reasons as the assessing social worker.

G, a support worker from his accommodation states:

“in my own opinion R is under 18, from his mannerisms and body language you can tell he is younger: he is still in need of independent skills. He also needs support in activities such as cooking his own meals and cleaning his bedroom. R does not have any knowledge about safe cooking practices or what cleaning products to use. He needs staff to help him to do basic tasks such as make a meal and how to work the Hoover. R does not act like an adult as he is not able to do the tasks which are expected of a typical adult such as cooking or cleaning. We also need support to use public transport in the local area.”

The assessing social workers considered that “when considering the staff's visual observation of R in placement, it is important to note that R will have had different domestic experiences in his home country compared to a British citizen. The assessors are of the opinion that R's knowledge of cooking and cleaning is to be expected considering R reports that adult males in Iran often do not complete housework. R also reported in Iran, household chores are completed by women such as his sister and mother and he did not assist with these tasks. Therefore, it is to be expected that R would have limited knowledge of such activities regardless of his given age..”

67. Analysis of information gained:

The assessors have followed the guidance given on how to carry out an age assessment ( Merton LBC (2003) “where it was obvious that a person is under or over 18 years old there would normally be no need for an extended enquiry into their age. However the application could not provide any reliable document evidence to support their claim to be a minor, the determination of his age depends on the credibility of history given, his physical appearance and his behaviour factors which are all interconnected.”

The assessors also were mindful of the ADCS leading children's services October 2015 age assessment guidance.

“The conclusion of the assessment is that R's age and date of birth is not being accepted. The assessing social workers feel that there is a significant evidence to determine that R is over 18, this is outlined below.

In terms of R's physical appearance, whilst it is acknowledged that R's childhood differs drastically from that of a child in the United Kingdom, and therefore his physical appearance could present as older than his years, it is felt that there are a number of contributing factors to R's appearance deeming him to look visually over 18. This includes, the presence of a full facial beard (shaved), creases in the forehead and corners of his eyes features typically associated with people over the age of 18. This was the conclusive opinion of the assessing social workers and the 2 different social workers who undertook the brief enquiry to age.

His presentation during assessment sessions was perceived to be very confident, authoritarian, and direct. It is felt that these traits were more commonly associated with an adult demeanour rather than a child.

In addition, he made several comments which contradicted the date of birth is given. For example, R said that he was first allowed to look after the sheep on his own 2 to 3 years ago when he was 16. If R were 16, 2 to 3 years ago, this would make him at least 18 in the present day. During this part of the assessment, R was asked to repeat himself to ensure complete clarity and understanding. R stated that this was accurate information.

R has no formal documentation his person. He has no evidence that his date of birth as given is accurate.

It is recognised that this is a common occurrence of asylum seekers entering United Kingdom however without such documentation and in addition to the observations perusing mentioned, it is sufficient to determine R to be over 18.

In the 3<sup>rd</sup> assessment session, the above points were explained to R in terms in relation to his age. He was given the opportunity to add any additional information. He stated that he had given all the information truthfully and he did not wish to add anything else.

R stated that the information given about him being 16, 2 to 3 years ago was correct and that he had answered all the questions correctly.

R was asked if he understood why this would not make his date of birth accurate now, to which R had no further comments on this matter.

R expressly was not happy with the decision, and he was made aware of his rights to contact a solicitor.

The views of R's allocated social worker Mr Afzaal were gathered and he believed that R was over 18 for the same reasons as the assessing social workers.

The assessing social workers estimate that R's age is between the years of 19 to 22. To give R the benefit of the doubt and taking into consideration the date of birth as given, they stated that they applied the youngest age possible at this time and estimated his date of birth to be 9 September 2002, giving R an age of 19 years old from the date of the final assessment session.

The conclusion based on the assessment is 19 with the date of birth of 9 September 2002.

The evidence on behalf of the respondent:

68. Mr Afzaal confirmed his witness statement dated 26/9/22 at [D 84-85]. He is a social worker employed by the local authority and the children looked after service. Part of his job entails undertaking age assessments of young people who have been dispersed to his area and are claiming asylum.
69. He has worked as a social worker for this council since 2007 and since 2012 has worked exclusively with children from abroad, many of whom are asylum seekers. He has experience of many young people who have arrived in the United Kingdom and whose ages have been the subject of assessment. He became the applicant's social worker on 4 August 2021 when the applicant was treated as a looked after child at that stage.
70. He records visiting the applicant's placement on several occasions. The applicant appeared very reserved at all times and was not forthcoming with any personal information or any detailed information about his previous life prior to arriving in the placement.
71. He states that from his observations of the applicant, he believed that he was over 18 years of age and believed that he may well have been over the age of 25. As he is his allocated social worker, it was not appropriate to undertake an age assessment and he was referred to another worker to undertake.
72. He further states that an age assessment must consider many aspects and that physical appearance and demeanour are not the most important. However, the witness states "I remember that the applicant's physical appearance was not that of a person under the age of 18 years old. He appeared to me to have a physique which was much more mature. His skin was quite rough and was not that of a typical teenager that I would expect to see. In my observation and knowledge of him in the placement, the applicant appeared very adept at using technology and in particular his iPhone and was able to use a washing machine. He appeared able to cook and clean without any supervision." (See paragraphs 5 and 6 of witness statement).
73. The witness stated that "in my experience as a social worker I would usually give any benefit of the doubt to a young person if their age was within a year or so of 18 years of age. In the case of the applicant, there was no doubt in my mind at the time that he was well over the age of 18 years of age."
74. He stated that he visited the claimant on 13 September 2021 after he had been told the outcome of his age assessment, but he did not appear to be upset and presented

as he usually did (see paragraphs 6 and 7 of witness statement dated 26 September 2022).

75. In cross examination the witness was asked about the applicant's use of his phone and whether it was possible to distinguish someone's age between the ages of 17 or 19 by the use of their phone. He stated that whilst that could be right, a 16 year old might struggle but in his view it was the way in which the applicant used the phone translating the English language into his own language and the way in which he spoke into the phone. The witness stated that this was the way the applicant communicated with him, and he did not struggle to use the technology. He gave a further example about the way the applicant was asking questions about clarifying things, practical things and that he was a "mature person asking questions through the app."
76. The witness was asked if he had training in age assessment and he replied that he had been trained and had also been on a refresher course.
77. When asked if he had prepared his statement a year after the placement, he confirmed that was the position but that he prepared the statement as he had diary and he also looked at his notes.
78. The witness was asked questions about the placement of the applicant. The witness confirmed that it was a residential placement that was semi-supported and that the staff present supported rather than provided help. He accepted that child of 16 would also be in that kind of accommodation. He further stated that it was staffed 24/7 and there was a permanent staff presence. He accepted that they would see him on a daily basis and that included G who did shifts.
79. As to his own attendance, the witness stated that having looked at the notes he had seen the applicant on 4 occasions including the 4<sup>th</sup> visit on 13 September 2021 and that the visits were approximately 45 minutes. He was not in contact with him after 8 October 2021 as he had been assessed as being over 18 years of age.
80. The witness was asked about the child looked after reviews [A34] where a recommendation was made for a young person's adviser. The witness explained that these are general recommendations if the person is assessed as 18 but if over 18 a young person's adviser would not be recommended.
81. When asked about the views of G, the witness stated that he was a support worker and had been at the placement for a few weeks before being on sick leave. He referred to there being 3 shift workers in a day and that G was 1 of those shift workers. The witness stated that G was a support worker and was not trained. The opinion of G at [E99] of the age assessment was read to the witness. Mr Afzaal said that he had worked directly with G and that he had no qualifications for assessing age and that he had only worked at the placement for 3 weeks or maximum 4 weeks. The witness explained that children may not have an understanding of various implements when they come from abroad and they may ask standard questions as to how things work. It was suggested to him that he would not need to do this if he were not able to cook. The witness stated that he had observed the applicant cooking with no problems. He stated that he thought G's observations were based on the 1<sup>st</sup> couple of weeks using the gas cooker and

having to teach them to use it with safety because children coming from abroad did not use the same type of equipment and these were standard directions. It was for “safety reasons.” He said that in relation to cooking and cleaning the applicant was fully or able to cook and clean.

82. In re-examination, the witness was asked about the applicant’s use of his phone, and the way that he had seen him use the phone. He was asked how he accessed his phone and he said he would type on the phone but was not sure if the keyboard was in his language, but he was using the keyboard and typing into it.
83. The witness was asked from his observations of the applicant and using the phone did he agree with the applicant’s evidence that he was illiterate? The witness stated, no he was comfortable in using his phone and that he was comfortable with the use of a smart phone and used it very comfortably. He also used the navigation app taking him into the mosque and to the shops. Whilst the 1<sup>st</sup> time he had been shown, the next time he was using the navigation apps. He also stated that the applicant was good with money and there were no issues around this.
84. Mr Banks filed a witness statement on 23 September 2022 at [D81-83]. He was not required to give oral evidence or to be cross-examined on behalf of the applicant.
85. In his witness statement the worker sets out the history; that the applicant had been screened as an adult prior to his arrival in the local authority area. A brief enquiry into his age was undertaken by different social workers on 2 August 2021. They believed that he may have been over 18 years of age but could not say if he was over 25 years of age. He was therefore referred for an age assessment.
86. The social worker and his colleague met with the applicant on 3 occasions. The 1<sup>st</sup> 2 meetings were to gather the necessary information to inform the age assessment. The 3<sup>rd</sup> was to inform the applicant of the outcome of the age assessment.
87. The social worker confirms the contemporaneous notes were made by his colleague of the 1<sup>st</sup> 2 meetings. There are no handwritten or contemporaneous notes of the 3<sup>rd</sup> meeting. However a case note is available which briefly reports the applicant’s reaction when the outcome of the assessment was given to him on 9 September.
88. An appropriate adult was present throughout all 3 meetings, and this was the same person. In addition, an interpreter was provided to the applicant on all 3 occasions, and it was the same interpreter throughout.
89. The social worker states at paragraphs 8 -9 :

*“8. I am clear that the claimant stated to me, but he was 16 when he began looking after sheep on his own in Iran on his father’s farm. I stated this to him on at least 2 occasions in both meetings on 2<sup>nd</sup> September and the meeting on 3<sup>rd</sup> September. I recall saying to him, through the interpreter, that that would make him 19 years old now. I remember this clearly because it did seem to me that the claimant was clearly saying that he was now at least 19 years old.*”

9. I recall that I clarified this with him on several occasions because I knew how important that information was. On each occasion I repeated the same thing to the interpreter to ensure that she understood what I was saying. I believe that the interpreter understood me and trust that this was relayed accurately to the claimant in his own language. At no stage did I receive any indication from the claimant that he did not understand the interpreter..

10. I would also say that at no stage did the appropriate adult intervene in the process. The appropriate adult also did not raise any concerns following the conclusion of the process.

11. In both meetings on 2<sup>nd</sup> and 3<sup>rd</sup> of September the claimant was given the opportunity to clarify what he had said in relation to the age he was when he started looking after sheep. He did not seek to change what he had said.

12. At the meeting on 9 September, I recall again raising the issue of the sheep tendering with the claimant and clearly stating the claimant that that was the main reason for assessing him to be over the age of 18. I asked him if he had anything to add and he responded that he did not. During the meeting, the applicant and all other attendees save my colleague and I, were invited to leave the room for a short break was my colleague and I discussed our views and came to a final conclusion, which we then presented to the claimant. I am aware that the local authority suggested that there were inconsistencies in the claimant's history, I must confirm that this should only refer to one inconsistency.

13. The circumstances surrounding the tendering of sheep was raised on several occasions with the claimant to enable him to offer further clarity. I note that the claimant maintained his initial version of events on each occasion and did not seek to change what he had said.”

#### The submissions:

90. Both parties then made submissions , adopting and expanding upon their skeleton arguments. They are a matter of record and I confirm I have taken them into account in my analysis of the evidence. I am grateful to both advocates for the assistance they have both given during the case.
91. Ms Mahmood on behalf of the respondent relied upon her written submissions.
92. Dealing with the applicant's age assessment, it is submitted that the assessment was lawful, “Merton compliant” and consistent with the ADCS guidance. The age assessment detailed the discussions with the applicant across the three interviews and provided a reasoned decision.
93. Ms Mahmood submitted that in the age assessment the applicant gave consistently vague answers during the interviews offering little context of his background and his life in Iran. As a result the assessors had limited information to use in assessing his age. The information that was volunteered was therefore considered closely.
94. Whilst she accepted that the assessors identified only one point in the applicant's factual account that was said to be inconsistent with his claimed age, the point itself, relating to the age at which he began to care for his father's sheep on his own, was central to the issue of his age.

95. Dealing with the relevant part he had explained that he started helping his father tend to the sheep every day when he was around 13 or 14 years old. The assessment records that ‘*R stated that he was allowed to look after the sheep on his own when he turned 16, which was 2 to 3 years ago from present day*’ [E94]. The assessors go on to note that ‘*[d]uring this part of the assessment, R was asked to repeat himself to ensure complete clarity and understanding. R said that this was accurate information*’ [E101].

96. The applicant was provided with an opportunity to respond to the conclusions that were reached,

*During the third assessment session, it was explained to R the above points raised in terms in relation to his age. R was given the opportunity or add any additional information. R stated that he has given all the information truthfully and he does not wish to add anything else. R stated that the information given about him being 16, 2 or 3 years ago was correct and that he answered all the questions correctly. R was asked if he understood why this would not make his date of birth accurate now, to which R had no further comments on this matter. R verbally expressed that he was not happy with the decision, and he was made aware of his rights to contact a solicitor (sic). [E101].*

97. As to the contemporaneous notes they are in shorthand and clearly do not detail everything that was discussed. The following records of the conversation are recorded in the note:

*Did you use to look after sheep on your own-sometimes I was looking after sheep on my own without my dad. Sometimes I was doing it on my own. What age were you allowed to do that. After 16 my dad encouraged me to look after the sheep on my own.*

...

*Looking after the sheep you go on your own how many times did you go on your own-loads of time I used to go on my own- I don't know. It was the only thing I do. After 16 taking sheep to Iraq to sell them. On my own, group work -It WAS HALF AN HOUR my father used to help me. taking the sheep to Iraq how many months did you do before coming to the UK. I DON'T KNOW Exactly*

*Does he remember the year he started doing that 2 or 3 years ago when I was 16?*  
*(sic) (F21) (emphasis added)*

98. It is submitted that the findings in *Merton* state that a verbatim note of an age assessment interview is not necessary in law; however the note records the applicant’s statement that he was 16 two or three years ago. A full account of the conversations with the applicant are set out in the age assessment itself and is detailed above. The topic was discussed on three occasions with the applicant, and he was given a clear opportunity to address the issue during the third meeting; however, he did not do so. This evidence is a clear inconsistency that is central to the assessment of his age and undermines his assertion that he is 17.



99. The applicant has now provided an explanation in his witness statement which departs considerably from the account he gave during his interview at [D3].
100. However, contrary to the applicant's explanation, there is no mention in the record of the meetings of anything being done for one year. Moreover, his account of having offered the assessors an explanation to this issue which was rejected is in stark contrast with the record of the conversations within the assessment. The applicant was given an opportunity to respond to the conclusions the assessors had reached, but he stated that he had nothing further to add.
101. It is submitted that the same is confirmed in the statement of the social worker Mr Banks, one of the age assessors who conducted the assessment of the applicant's age. The statement offers a detailed account of the discussions that took place between the applicant and the assessors and resolves any outstanding questions as to what took place during the interviews that the contemporaneous notes do not record. Mr Banks confirms that it was clearly put to the applicant that his answers with respect to looking after his father's sheep were the main reason he was assessed as being over the age of 18, and he was asked if he had anything to add. He stated that he did not [D81-D83].
102. In her oral submissions, Ms Mahmood submitted that there was a key discrepancy identified in the age assessment which relates to what the applicant had said about tending to his father's sheep. Whilst the applicant denies what is stated, it is clearly recorded in the age assessment. There is a discrepancy between what is recorded and what the applicant states he said. Whilst there is not a contemporaneous note, there is a witness statement signed by the assessor, Mr Banks who sets out clearly what happened during the assessment. He confirms the following; what the applicant said during the age assessment and that it was accurately recorded, the applicant was asked to repeat himself, and in the 3<sup>rd</sup> interview the assessor set out the applicant's account to him stating that the timeline suggested that he was not a child at the material time. The applicant was asked if he wanted to add anything, and the applicant said that he did not. Therefore the applicant was given ample opportunity to provide an account and to correct any misunderstanding, but he did not do so. An appropriate adult was present who did not identify any issues with the interview itself.
103. In her oral submissions Ms Mahmood submitted that during the applicant's oral evidence he oscillated by suggesting that the assessors were not giving him the opportunity to change his account or they mis-recorded what he said. She invited the tribunal to dismiss those suggestions stating that the evidence was clear that the applicant had been given ample opportunity and there was no reason to suggest that either Mr Afzaal or Mr Banks were unreliable witnesses.
104. Ms Mahmood submitted that the applicant's account given since the assessment (concerning the issue of tending of the sheep) was considerably different from that in the age assessment. He suggested that he looked after his father's sheep for 2 years alongside his father by himself for one year. Within the age assessment there is no record of anything being said to have been done for a period of one year. Therefore the applicant's account had evolved across the statements provided. For example, in the 1<sup>st</sup> witness statement he said he looked after his father's sheep for one year. However in the 2<sup>nd</sup> witness statement it had changed to a few months.

She submitted there was no suggestion by the applicant that there was an issue with the interpreter present at the interview. Instead the applicant had sought to change his account to fit the timeline for his stated age.

105. Ms Mahmood submitted that in the decision of R (B) v LB Merton [2003] 4All ER 280 , a key reference point at paragraphs 28 and 29 noted that it would be naïve to assume that the applicant is unaware of the advantages of being thought to be a child.
106. As evidence from other sources, it is submitted that the applicant has also argued that the assessors failed to take into account the views of his support worker, G, who believed him to be under 18 on the basis that he lacked independent living skills. However, these views were addressed in the assessment and discounted after consideration on the basis of the information that the applicant provided. During the assessment, he shared that he was not taught to cook and clean when he was in Iran, and this is something he required support with at the accommodation [E97] The assessors considered that his background and upbringing would have led him to have limited knowledge of such life skills regardless of his age [E99]. It is submitted that this is an assessment they were entitled to make. It is further submitted that the assessors were entitled to discount G's comments. While references are made to the applicant's mannerisms and body language in G's comments, they are not explored any further in his comments.
107. The age assessment takes into account the views of the initial assessors who believed the applicant to be over 18. It also considers the views of the applicant's allocated social worker who was familiar with him and considered him to be over 18 for the same reasons as the assessors.
108. In her oral submissions Ms Mahmood submitted that social worker Mr Afzaal had given oral evidence and that he had spent longer with the applicant than the age assessors. She submitted contrary to the applicant's assertions; Mr Afzaal had the opportunity to observe the applicant over a longer period of time and it was clear that the support worker G was only present at the start of the placement and spent a few weeks before going on sick leave and not returning. In those circumstances the observations made by Mr Afzaal should be preferred. He was clear that the applicant had good life skills which was why he was placed in a semi-independent placement rather than residential and was adept at using a smartphone. He observed him typing on the phone to utilise a translation app. The applicant was also observed to go to the shop and use money and importantly no suggestion in Mr Afzaal's evidence that the applicant was being supported by another child. It is notable that the applicant arrived in the UK in July 2021 and that the observations of Mr Afzaal were from mid-August – September and were early on and therefore all the skills observed could not have been learned so quickly.
109. As to the Facebook evidence, the applicant had an account, but it only contained limited information including his claimed date of birth. He explained that away by saying that someone else had done it for him but as he had the ability to use a smart phone it was not beyond him to be able to do that himself.
110. As to his physical appearance, while observing that there were features of the applicant's physical appearance that would typically be associated with someone

over the age of 18, the assessors acknowledged that his age could not be ascertained on this factor alone. Consequently, his appearance was considered alongside his account and demeanour. The applicant was noted to be confident, authoritarian and direct, which were considered to be traits associated with an adult's demeanour [E89; E100].

111. In her oral submissions she submitted that the applicant gave a limited account of his life and little information about his history. He has since elaborated his account in a witness statement (dated 6/10/22) but there are a number of inconsistencies in his evidence which undermine his credibility.
112. The inconsistencies can be summarised as follows:
  - (1) As stated in the age assessment the applicant said that he only had one family member which was his uncle (see [E 93] ). However in his recent witness statement he refers to his uncle's wife and cousin. Thus this is indicative of someone unwilling to offer up information and providing it intermittently.
  - (2) There was a further inconsistency in cross examination. The applicant said that he had only one number in his phone. He further stated that the only person who contacted him on his phone was his father. He eventually accepted that his father had more than one number in his phone. However he was unable to explain how his father himself could display the number nor how the applicant himself could use the phone by reading the prompt. He said he could identify the number by 2 zero's. The applicant's response in evidence was not credible given that the applicant was not able to use a smart phone.
  - (3) He states that he was born and grew up in a village which is located in x province of Iran. There was no mosque. The villagers however used a prayer room that they built themselves.
  - (4) He states that he did not go to school and is illiterate. He spent his time in the village living in his small family home, working with his father to tend to their livestock, helping his mother and sister who did the housework as well as playing games and watching television with his sister. He states that he had a mobile phone which he would receive calls from his father on. It is not clear how the applicant was able to use these technologies whilst being illiterate.
  - (5) During his age assessment, he stated that he had only one family member, an uncle who later helped him to leave Iran. However, in his statement dated 6 October 2022, he adds that his uncle has a wife and two children who he visited roughly once a year **(D71)**.
  - (6) The applicant states that he looked after his father's livestock for three years, two of which were alongside his father. During his assessment, he stated that he then looked after the livestock alone for one year. However, in his recent statement, he notes that he only looked after the livestock by himself for a few months **(D72, para 15)**.
  - (7) He was led to leave Iran after he was asked to hide some money and papers in his home by x which he states he had done previously and suspected was

connected to x's business of buying and selling livestock (D73). The applicant has filed news information relating to the smuggling of livestock across the border between Iran and Iraq within the region that the applicant is from (I171-I177). The point is not developed in detail; however, the respondent submits that the evidence is of little assistance as it is not suggested that x was involved in the smuggling of livestock across the borders, nor that the money and documents he gave to the applicant were in connection with this. Indeed, it is not clear what documentation would be collated in the course of such activity.

(8) The applicant outlines that the Iranian authorities came to his home looking for him after he took the money and papers from x and states that he did not return home after he was told of this (D73). Instead, he was assisted by his uncle to leave Iran. He stated during his age assessment that he left Iran on 5 June 2021 (E95). However, in his statement he notes that the date was 5 Khordad which, in 2021, would have been the 26<sup>th</sup> of May 2021 (D74, para 25).

113. In summary, Ms Mahmood submitted that the account given by the applicant during the age assessment was the preferred account and an assessment as to his date of birth could be made in the light of that original count of when he began to look after his father's livestock. This was the best information available in assessing his age and that its elicitation had not been undermined by the subsequent account and explanation offered by the applicant.

The submissions on behalf of the applicant:

114. Mr Haywood also relied upon his skeleton argument dated 4 January 2023. The written submissions challenge the assessment conducted by the local authority. On the basis of the assessment, the social workers assessing the applicant's age concluded that he was not a minor and that he was most likely aged 19 - 22. Their reasons for doing so were that they did not think that the applicant's physical appearance was consistent with his age, and they believed that there were 'inconsistencies' in his evidence (it is in fact now conceded that there is only one 'inconsistency': see below). The applicant told the assessors that he was 17 years old, and that he was born on the 12th day of the third month of 1383 (12 Huddad 1383, in the Iranian calendar).

115. As regards the information in the age assessment, it is submitted that there is a dispute about what the applicant told the assessors. The assessors record him as saying that [section 4]: 'He was allowed to look after the sheep on his own when he turned 16, which was two to three years ago from [the] present day'. As explained in the applicant's first witness statement [D1/64-8]: (statement of 5th January 2022 [at §11]) (and put in the pre-action letter: numbered §2 in pre-action letter of 24th November 2021) [F1/103-8] the applicant says that this is a misunderstanding of what he was trying to say to the assessors. He does not accept that he told the assessors that he had 'looked after the sheep 2-3 years ago, when I was 16'.

116. The notes from the assessment have now been provided. [H1/119-23]. They do not make matters clear. The notes are not verbatim. They contain the following: 'after

13 and 14 I went with my dad to look after sheep' [p121] .... 'Did you look after sheep on your own- sometimes I was looking after sheep on my own without my dad. Sometimes I was doing it on my own .. What age were you allowed to do that. After 16 my dad encouraged me to look after the sheep on my own' [p122] There is also an entry in notes: 'does he remember the year he started doing that [looking after sheep] 2 or 3 years ago when I was 16?' [p122]

117. It is said in the (later) witness statement provided by Mr Banks [D4/81-3], one of the assessing social workers, that the matter was reportedly put and that attempts to clarify were made (witness statement at [§8-12]). It is not clear however from the (contemporaneous) notes what exactly was put to the applicant; nor therefore are his answers on the points recorded.
118. The applicant is clear that his evidence on this point has been misunderstood.
119. As to other evidence as to his age, the applicant was accommodated in self-contained accommodation in xx and said that: 'he is heavily reliant on support staff in this placement and the other residents that he has made a connection with. R requires practical support with shopping for food, cooking, and cleaning. R is appreciative of the support he gets from others and is very keen to continue living in this accommodation.'
120. His allocated social worker had stated, according to the assessors, that he believed the applicant to be aged over 18. However G, a support worker at the applicant's accommodation had, taken a contrary view, and believed him to be under 18 [section 8]: '... From his mannerisms and body language you can tell he is younger, he is still in need of independent skills. He needs support in activities such as cooking his own meals and cleaning his bedroom. R does not have any knowledge about safe cooking practises or what cleaning products to use. He needs staff to help him to do basic tasks such as making a meal and how to work the Hoover. R does not act like an adult since he is not able to do the tasks which are expected of a typical adult such as cooking or cleaning. He also needs support to use public transport in the local area' These observations were, however, in effect discounted by the assessors, so far as his ability to carry out cooking and cleaning were concerned, on the basis that he also reported that men in Iran 'often do not do housework,' and household chores were carried out by women [Section 8].
128. A pre-action letter was sent to the respondent on 24 November 2021 [F1/103-8]. Importantly, the pre-action letter took issue with the accuracy of what the assessors had recorded in relation to his account of having looked after the sheep: pre action letter at [§2]; 'The applicant advises that this was misunderstood as the applicant was trying to make clear that he had looked after sheep for three years, two of which were with his father and one year without his father when he was 16 years of age...' [p105].
129. So far as the age assessment is concerned (a) physical appearance, as emphasised in the guidance and case law, is a notoriously unreliable indicator of age when taken in isolation.

130. It is submitted that the assessors say that there were ‘several comments’ made by the applicant during the course of the assessment interviews that were inconsistent with his claimed age. It is now accepted now that there is only one issue (in relation to the applicant’s age when he was looking after the family’s sheep). The applicant says that his evidence in this regard was mis-recorded. There are no verbatim notes from the assessment interviews, and the available notes do not clearly provide the detail of all relevant exchanges that occurred. Given that it is not clear what exactly was put to the applicant (and how), and because there is clearly a dispute, about whether the assessors understood his evidence on the age at which he was looking after the sheep: this is clearly, it is submitted, a matter relied upon by the assessors that would be unsafe and unfair to hold against the applicant.
131. The assessors do not identify significant reasons for suggesting that the plausibility or credibility of his account could be undermined, and (even if he came from a society where young men were perhaps less accustomed to carrying out domestic tasks), he needed support with self-care skills.
132. In conclusion it is submitted that the age assessment conducted on behalf of the respondent over appointments on 2nd, 3rd and 9th September 2021 did not reliably establish the applicant’s age contended for by the respondent.
133. Mr Haywood made the following oral submissions;
134. The account given in terms of level of knowledge and background is plausible. His account as to how he left Iran and general circumstances he was living in is supported by the country materials (see skeleton argument at paragraphs 8 and 9). The background given as to sheep smuggling into Iraq and raids by the Iranian authorities can be seen in its context bearing in mind his cultural background and understanding that he has not been to school. Whilst he has not been formally educated that does not mean that he is unable to recognise numbers.
135. Mr Haywood submitted that there were features of the account and set out in the 2<sup>nd</sup> witness statement and whilst accepting they are approximate, it is possible to trace through when he left Iran and his arrival in the UK. The timeframe does link together and was not challenged in cross examination.
136. The assessors do not suggest that there are any significant or wide-ranging reasons for challenging his credibility and that the real issue is the point identified which relates to the tending of the sheep.
137. As to the issue of physical appearance and demeanour, the case law set out in the skeleton argument is clear and that such evidence is unreliable. He submitted that generally there was a margin of error of 5 years and the local authority say that is just over 18 and unless there was a specific factual basis for what he is said in his evidence, in its context it was a plausible account, and the tribunal should find in his favour.
138. Mr Haywood submitted that Counsel for the local authority had set out a number of points about credibility but that they did not undermine the credibility of the

issue which is his age and had no material bearing on the outcome even if those credibility points were made good.

139. Dealing with those inconsistencies, it is said that there is a reference to his uncle and that he failed to mention him earlier however it was not relevant to his credibility, and it was difficult to see how that was material. The applicant was asked about immediate family and referred to his uncle, it would be unlikely that he would not be married and would have a child. There was nothing to undermine his credibility on that point. As to the mosque and the prayer room the applicant account has an air of plausibility and a “ring of truth” and was not an inconsistency. As to the point made about the telephone, the applicant’s evidence was that he suggested he had one number used to communicate with his father and that he had “no credit” his evidence can be seen in the context that he was focusing on his family. The father would have multiple numbers and call multiple people. Just because somebody was not educated and was illiterate it would not mean they were incapable of recognising numbers. Mr Haywood submitted it was hard to see how this goes to the issue of the applicant’s age. The last point related to the issue of the use by the applicant of applications on the mobile telephone. He submitted that the applicant’s evidence was that this had been done by his friend. Even taken at its highest, someone accessing the application and speaking into the telephone was plausible.
140. Dealing with the approach of the age assessors, they did not identify a whole series of discrepancies and there is only one point relied upon. Mr Haywood submitted that there was an issue of fairness raised in the evidence and that the point was not put to the applicant. There was no contemporaneous note of the 3<sup>rd</sup> interview and therefore no record of what was said. When looking at the evidence of the social worker, a fundamental point of the applicant’s evidence is that he has been misunderstood. This is not a late elaboration ( see pre-action letter dated 24/11/21 at F 105 para 2) it states, “ it is in relation to the assertion that “R said that he was first allowed look after sheep on his own 2 to 3 years ago when he was 16”. The claimant advises that this was misunderstood as the claimant was trying to make clear that he had looked after sheep for 3 years, 2 of which with his father and one year without his father when he was 16 years of age.” Thus the applicant has been consistent in this regard.
141. There is no verbatim note. Whilst there is no legal obligation to provide one, the issue is that the note does not cover the point set out in the age assessment interview. It is only one issue highlighted and the assessment does not identify any other points, and the applicant evidence that it was a misunderstanding. He submitted that as there is no contemporaneous note it is not possible to see what happened in the assessment or test what happened. The evidence of the social worker (see witness statement) is a recollection one year later and the evidence cannot provide details as to what was put to the applicant, and it is not possible to know what points were made by the assessor or what clarifications were made with the applicant. He submitted that that was the reality of the contemporaneous note therefore the evidence was limited.
142. Mr Haywood submitted that if tracing through what the applicant had stated, he had repeatedly said that he was looking after the sheep alone at 16 and he clarified it himself as being for a “few months”. He submitted that the year might be

different for the calendar year ( see applicant's witness statement D72 were the applicant stated "we did not use calendars. We counted a new year when it was time to shave the sheep. In total I looked after livestock in for 3 years, just over 2 years of my father and a few months by myself"). Mr Haywood submitted it is possible therefore to see why the applicant had provided that clarification. He says he started looking after the sheep from 13 or 14 for 2 years with his father and when 16 he looked after the sheep himself. The possible difference is whether there was a misunderstanding about before 2 to 3 years or whether it was afterwards.

143. Mr Haywood referred to the notes exhibited at H119 and H120-121. Mr Haywood submitted that the sentence recorded "does he remember the year he started doing that 2 or 3 years ago when I was 16" provided no answer given that this is the closest the note comes to providing support. However there was no answer recorded, it was not clear who was saying what to whom or what the applicant had said. Consequently it was not possible to deal with the issue as to the misunderstanding on the basis of the contemporaneous note. The applicant's evidence is that he has consistently stated there has been a misunderstanding. In the notes applicant that he been looking after the sheep aged 13 to 14 this fits together with his account.
144. As to the witness statement of the social worker, Mr Haywood submitted that there were limits to what he could state one year later and that he had not said with any precision what had happened when seen in the context of the applicant's case that there was a misunderstanding. It would be important to look at the notes to see how the claim had been recorded but that was not possible. Mr Haywood referred to the witness statement at D82 where it was set out that " I am clear that the claimant stated to me, but he was 16 when he began looking after sheep on his own in Iran on his father's farm. I stated this to him on at least 2 occasions in both the meetings on 2 September and the meeting on 3 September. I recall saying to him, through the interpreter, that would make him 19 years old now. I remember this clearly because it did seem to me that the claimant was clearly saying that he was now at least 19 years old." However whilst the witness stated that he recalled saying to him through the interpreter that it would make him 19 years old, this is not recorded in the notes, and it is said without any explanation as to why it would make him 19. At paragraph 9 of the witness statement, the social worker states "I recall that I clarified this with him on several occasions because I knew how important that information was. On each occasion I repeated the same thing to the interpreter to ensure that she understood what I was saying. I believe that the interpreter understood me and trust that this was relayed accurately to the claimant in his own language. At no stage did I receive any indication from the claimant that he did not understand the interpreter." Mr Haywood submitted that the language used by the witness was careful and that whilst he had said that he "recalled" what had happened, the crucial point from the evidence is that the witness cannot be clear about how the applicant responded with any clarity and the notes do not help in providing any explanation. The witness was slightly guarded about the interpreter and there can be misunderstandings from evidence that has been interpreted. However whilst, if that was put in the first meeting there is no recorded answer in the notes.



145. In summary, he submitted that there were significant limitations in the evidence of the social worker, and he was recalling what had happened one year later and in the context of the applicant's account given consistently that there had been a misunderstanding. The notes do not assist in providing an answer. He submitted that the witness statement did not adequately explain the point made about his age and the language used was slightly guarded.
146. Mr Haywood turned to the evidence of Mr Afzaal, who had stated there were 4 occasions that he had seen the applicant and they were short visits. The witness accepted that the applicant might have been provided with help to begin with. The applicant's evidence was that he was taught to cook and to use the washing machine. At E 97, the age assessment records "R is currently accommodated by X living in semi-independent accommodation. He is heavily reliant on support staff in this placement and the other residents that he has made a connection with. R requires practical support was shopping for food, cooking and cleaning. R is appreciative of the support he gets from others and is very keen to continue living in this accommodation." Mr Haywood submitted that the evidence was that the support worker had left the placement after a few weeks but if he were there on 6 August 2021 it would have taken him up to the time of the age assessment and therefore the support worker would be in a good position to assess the applicant and his level of skills and age. The support worker was on the premises 24/7. This should be contrasted with the 4 visits made by the social worker. In fact it is likely there were 3 visits because the 4<sup>th</sup> visit was to discuss the age assessment therefore there were 3 statutory visits for approximately 45 minutes on each occasion. The applicant's evidence was that the meetings took place with all 3 young men living there. Mr Haywood submitted the witness accepted that at the early part of the placement the applicant was given a lot of help with looking at safety and appliances and this suggests that the support workers evidence who worked in the placement 24/7, had more information.
147. Mr Haywood therefore submitted that there was only one factual issue which related to the applicant's age and that taking everything into account, the applicant's age is that claimed by him. Taking all of the evidence before the Tribunal, it is submitted that the applicant has given credible evidence (when relating to an assessment of his age); and that his account as to his history and background is plausible (and see the country material referred to above).
148. On the basis of all of the evidence, the Tribunal should make a finding that the applicant was, as claimed by him, born on 12th Huddad 1383 in the Iranian calendar (1st June 2004 in the Gregorian calendar).
149. Taking all of the evidence before the Tribunal, it is submitted that the applicant has given credible evidence (when relating to an assessment of his age); and that his account as to his history and background is plausible (and see the country material referred to above). On the basis of all of the evidence, the Tribunal should make a finding that the applicant was, as claimed by him, born on 12th Huddad 1383 in the Iranian calendar (1st June 2004 in the Gregorian calendar).

## Discussion:

150. When beginning an analysis of the evidence and 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 the applicant's evidence. In that regard, I have considered his evidence and other sources of information including the evidence of other witnesses, the age assessment completed and have done so by taking into account the submissions of the advocates.
151. The central part of the submissions made on behalf of the applicant seek to challenge the age assessment carried out by the local authority on the basis that the assessment is unreliable, it was carried out unfairly and was thus not "Merton compliant" and as a consequence little or no weight should be attached to the age assessment in reaching a decision on the applicant's age.
152. There is particular criticism made of the content of the age assessment and the reference to the evidence recorded in that assessment which was deemed relevant to the assessment of his age. There is a dispute about what the applicant told the assessors during the assessment, and it is submitted this undermines the reliability and weight that should be attached to the assessment undertaken.
153. I therefore turn to consider the age assessment conducted by the local authority. In R (A) v London Borough of Croydon (Rev 1) [2009] UKSC, at [33] Baroness Hale observed:

"... The better the quality of the initial decision-making, the less likely it is that the Court will come to any different decision upon the evidence."
154. Whilst it is not the purpose of this judicial review to assess the legality of the age assessment, it is necessary to consider what weight should be attached to the assessment and the analysis that was undertaken. There is no statutorily prescribed way identifying how local authorities are obliged to carry out age assessments and the law proceeds on the basis that the most reliable means of assessing the age of the child or young person in the circumstances in which no documentary evidence is available is by a "Merton compliant" assessment (see R(B) v Merton London Borough Council [2003] EWHC 1698 (Admin) confirmed by the Court of Appeal in BF(Eritrea) [2020] 1 All ER 396 at [53]).
155. There are specific criticisms made of the assessment as set out in the skeleton argument and the submissions advanced on behalf of the applicant. For the respondent Ms Mahmood submits that this was a "Merton" compliant assessment and one that should have significant weight attached to it when assessing the overall evidence as to the applicant's age. I therefore shall consider and address the criticisms made in the context of the evidence.
156. The principal issue raised relates to the content of the assessment undertaken and there is a dispute about what the applicant told the assessors. During the assessment interviews the applicant was asked about his background, social history, family composition, how he knows his age and developmental considerations. In the latter, the applicant gives an account of how he had

undertaken the care of sheep on his own and the age at which he did so. The assessment records the following information:

“R said that he first started helping his father looking after the sheep when he was around 13 to 14 years old.”

The assessment also records the information given by the applicant that, “R stated he was allowed to look after the sheep on his own when he turned 16, which was 2 to 3 years ago from present day (see [E94]).

157. The assessors go on to state that “during this part of the assessment R was asked to repeat himself to ensure complete clarity and understanding. R said this was accurate information (see [E 101]).
158. As can be seen from the age assessment there are other points within that written assessment where the applicant is recorded as stating that he had given all the information truthfully, he did not wish to add anything and confirmed that the information given about being 16, 2 or 3 years ago was correct. It will be necessary to return to that evidence in due course.
159. The relevance of the evidence given by the applicant is set out in the analysis section of the age assessment where it is stated, “in addition, he made several comments which contradicted the date of birth given. For example, R said he was 1<sup>st</sup> allowed to look after the sheep on his own 2 to 3 years ago when he was 16. If R were 16, 2 to 3 years ago, this would make at least 18 in the present day. During this part of the assessment R was asked to repeat himself to ensure complete clarity and understanding. R stated this is accurate information.”
160. Whilst the assessment refers to “inconsistencies” it is common ground that in the assessment itself only one inconsistency was identified, and this related to the above evidence. I observe that there have been other inconsistencies that have been identified from the evidence given at the hearing which also forms part of the overall assessment of the applicant’s age.
161. It is the applicant’s case that the assessors misunderstood what he said. This is set out in the PAP letter issued on 24 November 2021 [F 103 – 8], where it is stated that “the applicant was trying to make it clear that he had looked after sheep for 3 years 2 of which were with his father and one year without his father when he was 16 years old.”
162. In his witness statement (5/1/22) he deals with the issue at paragraph 12 as follows:

“I have been looking after sheep for 3 years in total, 2 of those years with my father when I was young (13 – 14) and one year on my own. I tried to explain that it was not what I meant that they did not accept what I was saying and told me  $16+3 = 19$ . I do not accept that I told them that I looked after sheep for 2 to 3 years ago when I was 16.”

At paragraph 13 of the witness statement he states that he was not given an opportunity to respond or comment on the decision taken.

163. I therefore summarise the central features of the submissions advanced on behalf of the applicant:-
- (1) there is a clear dispute about what the applicant told the assessors and that his evidence on this point was misunderstood.
  - (2) The contemporaneous notes have been provided which are not verbatim and there are no notes of the 3<sup>rd</sup> session and therefore it is unclear what was put to the applicant.
  - (3) The evidence of the social worker set out in his witness statement was provided one year later and cannot reliably provide details of what had happened or what clarifications were made with the applicant and that this is a significant limitation to the evidence from the social worker.
  - (4) That this was an unfair and unreliable age assessment where the applicant was misunderstood, was given no opportunity to respond or put the assessors right upon any misunderstanding.
  - (5) The description given of his physical features and demeanour are an unreliable method of ascertaining his age.
164. I have considered those submissions in the context of the evidence.
165. It is common ground that the applicant did not provide any documentary evidence nor any supporting evidence to demonstrate his claimed age. Consequently the age assessors were required to consider the information volunteered by the applicant with care. On a careful reading of the information provided by the applicant, his responses were vague with little context and background. The evidence of Mr Afzaal is supportive of the assessors evidence and that the applicant was guarded about his life and was not forthcoming. The information concerning his family was one, I find, characterised as being from an isolated background, with little social interaction with others and that he only socialised with his family, he had no education and has not been to school. The information provided to the assessors is limited in its nature and I am satisfied that in this context, the nature of the information provided and the information that was given by the applicant was likely to be considered closely. This is a relevant factor when considering whether the assessors accurately recorded the information provided by the applicant.
166. The applicant maintains that there was a misunderstanding and that he did not say that he had looked after the sheep 2 to 3 years ago when he was 16 and that he tried to explain what he meant but that the assessors did not accept what he was saying (see witness statement paragraph 12).
167. In this context I take into account the evidence provided by the local authority as to how the age assessment was conducted (see [E 86-[E102]. It was carried out over 3 dates; 2, 3 and 9 September 2021. The sessions took place in the meeting area within the applicant supported accommodation building. It was described as being private and very welcoming allowing the applicant to take a break away from the room when required and having somewhere comfortable to sit. The age assessment was carried out by 2 social workers and both of them have set out their

experience and expertise in conducting age assessments and having attended relevant age assessment training. It is not suggested on behalf of the applicant that either of the 2 social workers did not have the expertise or knowledge to undertake such an age assessment.

168. Whilst the applicant states he was misunderstood during the evidence gathering, the evidence demonstrates that at each of the 3 meetings conducted for the purposes of the age assessment, a Kurdish Sorani interpreter was provided. It was the same interpreter for the 3 sessions that were held with the applicant. The assessment records that the applicant had confirmed his language as Kurdish Sorani and that he was able to understand the interpreter fully and was happy to have the interpreter present to interpret. It is also recorded that it was made clear to the applicant by the assessors that if at any time he was struggling to understand or be understood or there were any issues that he should say so. There are no references in the assessment to any concerns raised by either the interpreter present or the appropriate adult nor that the applicant raised any concerns that he could not understand interpreter or that the applicant had not been able to make himself understood. There is nothing on the face of the assessment to suggest that the interpretation of what the applicant had said was either wrongly written or misunderstood.
169. The applicant was supported by an appropriate adult, who was a senior children's adviser, who was independent of the local authority and whose role it was to ensure that the applicant was treated fairly. There is no evidence that any concerns were raised by the appropriate adult as to the fairness of the assessment or how it was conducted. This is of significance in my view when considering the evidence of the applicant on this issue. In his witness statement he states that he tried to provide an explanation which the social workers would not accept (see paragraph 12). This was explored in the oral evidence (in cross-examination), and it was put to the applicant that the age assessors had correctly recorded what he had said and that he had been given the opportunity to correct them. The applicant's evidence in response was as follows: " he asked me only once this question and the last time they told me the decision we have already decided you are over 18 and did not allow me to make any comments about this". Further in cross-examination the applicant was asked about what was recorded at [E101] and that the account he had given was not consistent with the date of birth he had provided, and he was asked in cross-examination why he did not correct the assessors at the time. The applicant's evidence was "because they did not listen to me they told me that they had already decided my age." The applicant was asked about the social worker's witness statement at [D 87;para11] where it was stated that the applicant was given the opportunity to clarify what he had said in relation to his age and looking after the sheep, but he did not seek to change what he said. The applicant's evidence was "the last meeting (occasion) they said for the following reasons we disagree with you. I wanted to make a comment about it, but they said we apologise but the decision is already made by somebody higher than us and we cannot change it. On 2 occasions they did not say anything on last occasion they said we have already decided on everything."
170. I have considered the applicant's evidence on this issue, and it was clear in cross-examination when the issue was explored that he claimed that the social worker

had told him the decision on his age had already been made and that someone “higher up” had already made the decision. He confirmed in his oral evidence “they said that.” I am satisfied that if the applicant had attempted to provide a comment or given an explanation but that he was told by the assessors that he could not do so because the decision had already been made by “someone higher up,” that this would likely to have been noted by the appropriate adult present. This would not be consistent with how an age assessment was likely to be conducted and would in the circumstances be likely to have caused some comment or interjection by the appropriate adult. The absence of this is significant and has the ability to undermine the applicant’s account of what happened at the assessment.

171. In contrast, the evidence in the age assessment is that after the applicant had stated he had been able to look after the sheep on his own when he turned 16, which was 2 to 3 years from the present day (at [E 94]), the assessors went on to note that “during this part of the assessment, R was asked to repeat himself to ensure complete clarity and understanding. R said this was accurate information” (see [E101]).
172. Further, it is recorded in the assessment that on the 3<sup>rd</sup> assessment session R was given the opportunity to add any additional information. It is recorded that R stated that he had given all the information truthfully and he did not wish to add anything else. R stated that the information given about him being 16, 2 or 3 years ago was correct and that he had answered all the questions correctly. R was asked if he understood why this would not make his date of birth accurate to which R said he had no further comment on the matter ( at [E101]).
173. The evidence in the assessment is therefore clear that the applicant had been made aware that he could ask questions or clarify information provided during the session, as set out in the introductory parts of the age assessment. After the information had been volunteered, the applicant was asked to repeat himself to ensure clarity of understanding and the assessment records that he had stated it was accurate and that the point had been expressly explained to the applicant in terms of his age and he was given the opportunity to add any additional information. He specifically stated that the information given about being 16, 2 or 3 years ago was correct.
174. When assessing that evidence it is submitted on behalf of the applicant that the contemporaneous notes disclosed are not verbatim, are unclear and there are no notes for the 3<sup>rd</sup> assessment session. It is therefore submitted that it is not clear from those contemporaneous notes what was exactly put to the applicant nor what answers were recorded.
175. The relevant notes are exhibited from pages [H 121]. It is common ground that there were contemporaneous notes for the first two sessions but there were no notes for the third session on 9 September 2021. I have carefully assessed the notes in the context of the evidence and the specific criticisms made of them.
176. In relation to the clarity of the notes, I make the observation that the notes are plainly written in shorthand. That can be seen from the sentences contained in the notes. The notes, of course, will not detail everything that was discussed. That

does not necessarily mean that the written assessment produced should be viewed as unreliable. There is also no legal obligation to provide verbatim notes.

177. Upon examination of the notes, there is consistency with the contents of the written assessment when viewed alongside the notes. By way of example, the notes at [H119] set out the information provided which is consistent with what is recorded at E90 concerning the assessment procedure and how it was explained. It is further recorded in the written report at E90 the applicant stating “fix my age” which is consistent with the notes at H119. There is also consistency in the notes at H119 concerning the issue of documents in Iran as set out in the written assessment at E93. The notes at H120 set out the information volunteered by the applicant concerning his family/home which is consistent with that recorded at E94. The information volunteered about his journey at H120 is consistent with the written assessment at E95. As to the assessment session on 3/9/21 references are made to education, that he did not go to school and there was no school in the village and the notes at H121 are consistent with the written assessment at E 94 and E96.
178. As to the recording of the information volunteered by the applicant relating to his tending of the sheep and his age, this is set out in the age assessment at E 94. The relevant parts of the notes are set out at H122 where it is recorded, “did you use to look after sheep on your own – sometimes I was looking after the sheep on my own without my dad. Sometimes I was doing it on my own. what age were you allowed to do that .After 16 my dad encouraged me to look after the sheep on my own.”
179. Later at H122, it records, “looking after the sheep you go on your own how many times did you go on your own-loads of time I used to go on my own-I do not know. It was the only thing I do. After 16 taking sheep to Iraq to sell them. On my own, group work-it WAS HALF AN HOUR my father used to help me. taking the sheep to Iraq how many months did you do before coming to the UK. I DON’T KNOW EXACTLY.  
  
Does he remember the year he started doing that 2 or 3 years ago when I was 16?”
180. When looking at those notes, they record the information given as to the age the applicant looked after the sheep with his father, ages 13-14 at H122 which is consistent with the information set out in the written age assessment. Furthermore, H122 records the age when he looked after the sheep on his own, namely age 16. The notes at H122 can also be read as providing some consistency with the written assessment at E 94 where it is recorded “does he remember the year he started doing that 2 or 3 years ago when I was 16”.
181. Whilst Mr Haywood submits that sentence does not support the evidence in the written age assessment, in my view it does when read in the context of the notes and the age assessment itself. The notes are plainly in shorthand, and it is not suggested that there was any significant delay between the sessions and the writing of the report.

182. In assessing the evidence, I also take into account that the other parts of the notes are accurately recorded in the age assessment as relates to other issues and there have been no other parts identified in the assessment by the applicant (prior to the hearing) where it is said that the age assessors had misunderstood the evidence or inaccurately recorded it.
183. I further take into account the evidence of the assessing social worker, who undertook the assessment along with his co-social worker. Mr Haywood submits that the witness statement was prepared one year later and that it could not accurately set out what had happened in the age assessment. He further submits that the statement is couched in careful terms and that the crucial point which can be made is that the witness cannot be clear about how the applicant responded with any clarity and the notes do not assist. He therefore submits the evidence of the social worker given later is significantly limited.
184. Ms Mahmood on behalf of the local authority submits the witness statement provides a detailed account of the discussions that took place and resolves the question of what had taken place during the interview where the contemporaneous notes have not provided a record.
185. Arrangements had been made for the social worker to attend the cross-examination however it was confirmed at the hearing by Counsel for the applicant that the witness was not required for cross-examination and that the points that he wished to make could be made by way of submissions. I have summarised those submissions earlier. The witness statement can be found at [D 81 – 83] and has been summarised in the evidence at an earlier stage in this decision.
186. Whilst it is correct that the witness statement filed by the social worker is not contemporaneous with the assessment, that does not mean that the evidence contained in the witness statement should be viewed as unreliable or unclear. The social worker concerned would have been able to reflect back on the assessment by reading the written assessment alongside the shorthand notes by way of an aide memoir and relying upon his own recollection of the assessment undertaken.
187. Contrary to the submissions made, the assessing social worker did state that he was clear about what the applicant had said and that he was 16 when he began looking after the sheep on his own and that this was stated to him on 2 occasions on the 2<sup>nd</sup> and 3<sup>rd</sup> of September 2021. That it would make him 19 years of age and that “I remember this clearly because it did seem to me that the claimant was clearly saying that he was at least 19 years old” (at paragraph 8). At paragraph 9, the social worker recalled that he clarified this with him on several occasions because “I knew how important the information was”. His evidence is that on each occasion he repeated the same thing to the interpreter to ensure the applicant understood what he was saying. The social worker also refers to having been given no indication from the applicant or the interpreter that he had any problems with understanding this. He later stated at paragraph 11 that at both meetings the applicant was given the opportunity to clarify what he said in relation to his age and when he started looking after the sheep but that the applicant did not seek to change what he said. At paragraph 12, he referred to the meeting on 9 September and that he raised the issue of the sheep and stated clearly to the applicant that this



was the main reason for assessing him to be over 18. He was asked if he had anything to add. He did not.

188. Having considered the content of the witness statement it is consistent with the content of the age assessment. What is significant in my view is that the information volunteered by the applicant is recorded in the assessment and as recalled by the social worker is not factually complex. The information volunteered was plainly identified by the social worker assessor as evidence highly relevant to his age and in the circumstances I am satisfied that it would be more likely than not this would have been information which was clarified with the applicant to ensure what he had said was accurate.
189. On the evidence, it is not the position that clarification was sought only once but that it took place on more than one occasion and that the applicant was given the opportunity to address this at the last meeting. The information provided by the applicant was clearly inconsistent with the date of birth given and was therefore central to the assessment of the applicant's age and against that background was likely to have been set out accurately.
190. In assessing this issue further I take into account the other evidence given by the applicant. He has provided an explanation for events in his witness statement at D66 as follows, " I have been looking after the sheep for 3 years in total, 2 of those years with my father when I was younger (13-14) and one year on my own, when I was older. I tried to explain that it was not and told me  $16+3 = 19$ ". Thus the account given is that he tried to explain that he spent one year on his own. However, as submitted by Ms Mahmood, there is no record in the assessment that identifies the chronology now provided which refers to him specifically stating that he spent one year on his own. In the 2<sup>nd</sup> witness statement at paragraph 15 he provides a further explanation stating, "I was allowed to look after the livestock on my own when I turned 16 years of age. I only did that for a few months until I left Iran." He refers to having looked after the livestock for 3 years, 2 years with his father and a few months by himself and reference is made to counting a new year by the shaving of the sheep.
191. Whilst Mr Haywood submits that there is no inconsistency in the evidence, and the applicant was providing an account of a year elapsing in the context of the sheep being sheared, I prefer the submission made by Ms Mahmood. The evidence given in the witness statements are inconsistent with each other and there is a clear reference to one year tending the sheep on his own and then a reference to there being only "a few months."
192. The factual explanations for either of those 2 statements were not set out in the assessment and had they either been volunteered as the applicant states he tried to do I find it more likely than not that the social worker would have recorded this, and it would have resulted in further questions being asked and it being probed further. I conclude that the applicant has not been consistent on this point, and this is a factor that I take into account in the overall assessment.
193. When considering the assessment there is a level of reliance on the applicant's physical features and/or physical maturity. The age assessment also took into account as part of the sea of evidence the applicant's physical presentation and his

demeanour. The age assessment records that the applicant has several creases on his forehead and around his eyes, associated with maturity. There was evidence of shaved facial hair, which cover the full beard area. His voice is broken and low pitched in tone. He was described as speaking “very confidently, keeping eye contact and using hand gestures whilst he spoke. He spoke with an authoritative tone and at times, became angry or frustrated certain questions, for example asking for his birth certificate. He did not come across as visually nervous during assessment although this does not negate that this would have been a difficult experience.

194. It is recorded in the analysis section that in terms of his physical appearance, it is acknowledged that his childhood differs drastically from that of a child in the UK, and therefore his physical appearance could present as older than his years. However it is recorded that “it is felt that there are a number of contributing factors to the applicant appearance deeming him to look visually over 18. This includes, the presence of a full facial beard (shaved), creases in the forehead and corners of the eyes features typically associated with people over the age of 18. It is recorded that “this was the conclusive opinion of the assessing social workers and the 2 different social workers who undertook the brief enquiry to age”. The evidence given by Mr Afzaal as to his opinion of his age and his physical appearance and demeanour is consistent with their observations.
195. As to his presentation during the assessment, it was stated “during the assessment sessions was perceived to be very confident, authoritarian and direct. It is felt that these traits more commonly associated with an adult demeanour rather than a child.”
196. It is right to observe that the age assessment acknowledged that it was not possible to ascertain a person’s age based on physical appearance alone, and that the social workers were conscious of the guidance arising from the Merton decision and other case law which highlights the physical appearance alone can never be effectively relied upon to determine chronological age. As stated such characteristics are likely to be of very limited value as there is no clear relationship between chronological age and physical maturity (I refer to R(on the application of AM ) v Solihull MBC [2012] UKUT 00118). Furthermore, the reliance upon physical appearance is an unreliable basis for assessment, as found in NA, R (on the application of) v London Borough of Croydon [2009] EWHC 2357 at [27].
197. Therefore as to his physical appearance, whilst the age assessors observed that there were features of the applicant physical appearance that would be typically associated with someone over the age of 18, the assessors rightly acknowledged age could not be ascertained on this factor alone. Consequently, his appearance was considered alongside his account and demeanour.
198. Having considered the age assessment, the applicant physical features were not considered in isolation, nor were they deemed to be conclusive when determining the applicant’s age. The respondent local authority was entitled to take them into account alongside the other evidence and did so appropriately.

199. I turn to other available evidence. The local authority also rely on the evidence of the allocated social worker Mr Afzaal. As set out in his evidence, and also in the age assessment he considered the applicant to be over 18 years of age.
200. The applicant places reliance upon the evidence given from a support worker (“G”) at the applicant’s placement whose opinion is set out in the age assessment at [E99] that the applicant was under 18 years of age.
201. Dealing with the evidence of the social worker, he has provided a written witness statement and also gave oral evidence on a number of issues. He gave evidence as to contact with applicant in the semi-supported environment. At [A 22]he confirms that he was the allocated social worker and whilst it is stated that there would be 6 weekly contact with the applicant [A 23] the evidence given is that he visited on 6 August 2021 [A 35], 10 August 2021, 23<sup>rd</sup> of August 2021 and the 4<sup>th</sup> visit on 13 September 2021 therefore were 4 visits in August and early September. His evidence was the visits were 45 minutes, but it could be longer or could be shorter.
202. During the evidence, the applicant asked about use of his phone in cross examination. The social workers evidence at D 85 paragraph 6 was that on his observation and knowledge of the applicant at the placement he appeared very adept at using technology and in particular his iPhone and was able to use the washing machine. He was described as appearing to be able to cook and clean without any supervision.
203. In cross examination by Mr Haywood it was put to him that it might not be possible to distinguish someone’s use of an iPhone as either a 17 or 19-year-old. The witness agreed stating a 16 year old might struggle but that it was the way that the applicant used the phone’s translation of the English language into his own language. He described how the applicant use the phone and that by speaking to the phone it would translate it. The Social worker’s evidence was that this was the way the applicant communicated with him, and that 16-year-olds would struggle to use the technology. He described him as a “mature person” being able to ask questions through the app on the phone.
204. In re-examination, the use of the phone was clarified further. The social worker stated that the applicant would speak into the phone, and it would return in the Kurdish Sorani language. He was asked how the applicant would access the phone and the witness stated that “yes he would type on his phone I am not sure if the keyboard is in his language, but he was using the keyboard and typing in.” The witness stated from his observations he would not agree with the description of the applicant being illiterate and described him as being “comfortable with using his phone; he used it very comfortably and also use the navigation if going into the mosque and to do the shopping. The first time he was shown and the next time he used it the navigation.” He also said that he was good with money with no issues.
205. In his evidence in chief the applicant was asked how he would use the translation app on his phone. The applicant stated “it was not me, it was another male S.” He stated that S was literate and was able to use the translation. He stated that there were 3 children and the staff and that the social worker saw all 3 of them together. In cross examination the applicant was asked about the evidence of Mr Afzaal,

and he stated “the social worker attended my address for 5 minutes talking to everyone here he does not know these things how I was with a mobile phone. He was not talking for 5 minutes after he finished 5 minutes left the premises”.

206. When asked again and it was put to him that the witness said that he saw the applicant using the phone, the applicant stated open “I do not know” then stated, “First of all I am illiterate and not able to use the maps it was S ”.
207. However when asked what app his friend used he stated, “I do not know that.”
208. When asked in cross examination focusing on the translation app, it was put to him that the social workers evidence had been clear that he would use the app on a number of occasions, and the applicant asked if the social worker was mistaken. The applicant replied “yes” stating “because he was not living with us in order to find out if I could do this.”
209. I have assessed the evidence of the social worker and that of the applicant. The evidence of the social worker in his witness statement [D85] is clear about the applicant being adept at using technology and in particular his iPhone. In his oral evidence, what he saw from his own observations was the applicant typing into his phone although not sure whether the keyboard was in the Sorani language or not. He also gave evidence on his own observations that the applicant was able to use the navigation app.
210. It has not been suggested to the witness that his observations were wrong or were in respect of another person. Having considered the responses of the applicant, I do not accept that the witness would have mistook the applicant for another person living at the premises given that there were 3 other people living there (on the applicant’s own evidence) and that the social worker would not mistake the applicant for another person. The social worker was expressly allocated the applicant as named social worker and was responsible for ascertaining evidence about him.
211. I also do not accept the assertion made in the applicant’s evidence that the social worker attended the address for 5 minutes talking to everyone else and then leaving the premises after 5 minutes and therefore was not able to know what the applicant’s iPhone use was like. This is contrary to the evidence given by the social worker that the visits were at least 45 minutes, sometimes longer sometimes shorter. This is in direct contradiction and not likely to have been a period of 5 minutes. The accepted evidence is that he visited on 4 occasions, and it is not likely that Mr Afzaal would mistake another person for the applicant, and I prefer the evidence of the social worker on this issue.
212. The witness refers to his own observations as to the applicant’s ability to cook and clean without supervision (see D 85 paragraph 6 on his observations). The social workers evidence was this was a semi-supported residential placement, there was a permanent staff presence see [A 37] where it is described as “24/7” where there were support workers who saw the applicant on a daily basis. One of the support workers has been identified as G in the evidence. Mr Haywood on behalf of the applicant places reliance on his evidence as support for the applicant’s claimed

date of birth and that G had formed the opinion that the applicant was under 18 years of age.

213. Mr Haywood submits that the support worker would have been in a good position to assess the applicant and his level of skills and age as he was on the premises 24/7 and that this should be contrasted with the 4 visits made by the social worker. In fact it was likely that there were 3 visits, as the 4<sup>th</sup> visit was to discuss the age assessment.
214. I have considered the weight which can be attached to this evidence as supportive evidence for the applicant. G was not called to give evidence and no witness statement has been provided by him. The evidence as to his recollection or opinion is given in the age assessment at [ E99]. It is recorded “ in my own opinion R is under 18, from his mannerisms and body language you can tell he is younger; he is still in need of independent skills. He needs support in activities such as cooking his own meals and cleaning his bedroom. R does not have any knowledge about safe cooking practices or what cleaning products to use. He needs staff to help him to do basic tasks such as make a meal and how to work the Hoover. R does not act like an adult, and he is not able to do the tasks which are expected of a typical adult such as cooking or cleaning. He also needs support to use public transport in the local area.”
215. I have had to assess his opinion or observations made against that of the social worker, Mr Afzaal. Whilst the support worker might have seen him on more occasions, it is not the case that G was present 24/7 as Mr Haywood submits, as the evidence provided is the day is split into 3 shifts and one worker would do one shift. The evidence from the social worker is that G was a support worker who had only been present for a few weeks before being on leave for illness. The social worker was clear in his evidence that G was a support worker and was not a trained social worker. His evidence was “I worked directly with G he had no qualifications or experience of age and only worked for 3 weeks or maybe 4 weeks.” G also gives no evidence as to his experiences in his role as a support worker, nor has he training in assessing age nor is there any suggestion that he has sought to challenge the applicant about his age . It is plainly not his role in the work he undertakes to assess or judge someone’s age. The support worker’s evidence also fails to address the contextual basis of the applicant’s home country and upbringing and while reference made to the applicant mannerisms and body language, they are not explained further in G’s reported evidence.
216. Mr Afzaal also gave an explanation in his evidence that children come to the placement from different experiences living abroad and that in the unit they ask standard questions of them to make sure for safety reasons that they able to use the electrical equipment. In his opinion he had seen the applicant cooking with no problems at all.
217. He stated that he thought that “G’s observations were based on the first couple of weeks” using a gas cooker and that having to teach children who had come from abroad how to use it safely and to give them standard directions. In his opinion the applicant did have life skills and was able to cook and clean which were commensurate with his age as being over 18.

218. I have considered the evidence given by the social worker and note that it is consistent with the case notes and observations made (see A41 described as “R can cook and clean and he is learning self-care skills “dated 10 August 2021). Also at [A34] dated 6 August 2021 it is recorded that R has good independent skills and he can cook and clean and travel independently. He is doing food shop and manages his own money.”
219. It was necessary during the hearing to seek clarification from the advocates as to the source of the evidence set out in the age assessment at [E97], which recorded that the applicant was heavily reliant on support staff in the placement and other residents that he had made a connection with and that he required practical support for shopping for food cooking and cleaning. That evidence could not come from the observations of the age assessors and neither advocate were able to identify with any precision where that information came from. It may have come from another support worker or reflect the observation of G which was set out later in the age assessment.
220. However in contrast it has been possible to hear the oral evidence of the applicant’s allocated social worker who visited on 4 occasions and his visits were of sufficient length to make an informed observation of the applicant’s life skills and conduct. The witness gave clear and detailed evidence and was, I find, a reliable and impressive witness and I accept his observations of the applicant as being reliably made. I attach weight to his evidence in this regard.
221. I note that where the evidence from G recorded at [E99] that the applicant is under 18 because he needs the help with tasks, the assessors make the point that “when considering the staff’s visual observations of the applicant in placement it is important to note he has different domestic experiences in his home country as compared to a British Citizen. The assessors conclude that “ Therefore it is expected that R would have limited knowledge of such activities regardless of his given age.” The assessors appear to be saying that if he does have limited knowledge it is not because of his age.
222. When considering the evidence, it is of note that the age assessment places some reliance on the observations made of the assessment of the applicant’s age by his allocated social worker who had formed the opinion that the applicant was over 18 (see [E 99]). In addition to that evidence, there is further evidence from Mr Afzaal provided at this hearing which stands as evidence independent from the assessors and is supportive of their own assessment. For the reasons given above, I am satisfied that the evidence that he gave was likely to be the more reliable evidence than that given by the applicant and also that his evidence should be given more weight than could be given to the observations of G given the length of time he was able to observe the applicant, the context in which he did so as allocated social worker and that there a number of limitations on the reliability of the evidence of G who has not provided evidence in a witness statement or provided any further explanation as to how he had formed such an opinion.
223. The tribunal has had the advantage of hearing the applicant give oral evidence and for that evidence to be the subject of careful cross-examination by Ms Mahmood. His evidence was unsatisfactory in a number of aspects and where he was challenged about inconsistencies in the account given to the assessors compared

with more recent accounts, his response was that either the interpreter had misunderstood him or that he had never said what was recorded in the assessment. As set out earlier in the evidence, there had been no other prior references to parts of the assessment where the applicant stated was either misunderstood or mis-translated. Consequently the explanations given for inconsistencies in his evidence have to be viewed against that background.

224. During the course of the oral evidence, a number of inconsistencies were apparent. They were relied upon by Ms Mahmood to demonstrate that there were inconsistencies in his account which undermined his credibility and his account of his age.
225. When addressing those points raised, I take into account the submissions made by Mr Haywood that whilst Counsel for the local authority had set out a number of credibility points, they did not undermine the credibility of the issue of his age and had no material bearing on the outcome even if those credibility points were made good. In his submissions he dealt with the inconsistencies that were raised as set out in his submissions.
226. In this context the primary focus is on the credibility of the applicant's evidence concerning his age, but the tribunal is permitted to have regard to credibility more generally provided the primary focus is not forgotten. I have therefore considered the applicant's evidence and the inconsistencies that have been identified. When assessing the applicant's credibility it has been considered "in the round" and the difficulties in providing evidence in support of his account. I have been careful not to proceed on any assumptions or view his evidence from a Western or UK perspective.
227. In the age assessment the assessors asked the applicant about his family circumstances and upbringing. He described this at [E93] and that he did not have any friends or interact with anyone else in the village and he lived with his parents and siblings. He claimed he had only one other family relative, his uncle. At [E94] the assessors record the information he provided as follows " R reports he had an isolated childhood and socialised only with his sister and parents."
228. Mr Haywood submits that while the applicant did say he only had an uncle at the time of the assessment, this was not an inconsistency as it would be unlikely that his uncle would not have a wife and child. The applicant's evidence on this issue is not in my view consistent nor credible. In cross-examination he was asked about his life in the village, and he stated he did not have any friends. As to his family relatives, he was asked to explain why he had told the assessors that he only had one other relative, his uncle, whereas in his recent witness statement (6/10/22) he referred to having not only an uncle but an aunt and two cousins (their children). When asked why he had not provided all that information to the assessors, the applicant replied, "they never asked me the question and only asked about my parents." However that is not reflected in the age assessment where the applicant was plainly asked about family relatives and would therefore have had the opportunity to provide all details . However the applicant expressly stated that he only had one family relative, his uncle.

229. When he was cross-examined about his cousins and what he knew about their ages, he claimed not to know stating that he had very little contact. However in his witness statement, he referred to having a good relationship with his cousins (paragraph 11). In this respect, the evidence of the applicant sought to distance himself from that evidence stating, “not with my cousins, I meant my family, my parents, maternal uncle had a good relationship.” However his statement was clear that it was he who had a good relationship with his cousins, and to that extent his evidence on this issue is not consistent.
230. A further inconsistency relates to his life in Iran. In the age assessment is stated that he attended the mosque regularly and further stated he attended the mosque in Iran (see [E 96]). However in his witness statement paragraph 14 he stated, “I would sometimes go to the village prayer room with my father but usually we would pray at home. I never attended Quran lessons and we did not have a mosque in the village. I have not read the Quran as I am illiterate.” Mr Haywood submits that the applicant’s evidence is plausible on this issue.
231. This was explored in cross-examination when he was asked to account for the difference in his evidence. He claimed that there was no mosque in the village but that there was a room connected to the mosque. It was suggested to the applicant in cross-examination that there was a difference between a prayer room and a mosque. The applicant response to this was “I just said a prayer room, but they translated it as a mosque.” When it was put to him that he had earlier stated in his evidence it was a prayer room converted to a mosque and asked to confirm which was correct, he replied “there is no mosque only a prayer room.” Again there is a clear discrepancy in the evidence given by the applicant. His evidence to the assessors was clear that there was a mosque in the village. The reference made to there being a mosque and the word used of “mosque” is used on 2 occasions. It has not been suggested prior to his oral evidence that there had been any problems with the interpreter, or his evidence being misunderstood on this issue and his evidence altered again in cross-examination.
232. As to the issue of documentation, the assessors sought to identify from the applicant whether he had any documents concerning his age. In cross-examination it was put to the applicant that he told the assessors an account which suggested he might have documents such as a passport or birth certificate. It is recorded at [E93] “ he states that he thinks he has a passport and birth certificate, but this documentation was looked after by his parents, and he is not sure of its location now”. The applicant and his oral evidence stated, “I have never said that.” In his witness statement he referred to having no documents and the applicant was asked to confirm which account was correct. The applicant evidence in cross-examination was that he did not know if he had any documents and then he stated, “in the age assessment they asked me if my parents had one I said I had not seen the documents of my parents.” However, the information gathered from the applicant concerning documents relevant to establishing his age did not refer to the documents as being those of his parents, for example the birth certificate but the applicant’s own documents. When the contents of [E93] was read to him he stated “I told them I had previously not seen them. I do not know if my parents have them.” His explanation was that he thought the social workers had misunderstood what he was saying during the assessment.



233. When undertaking an assessment of that evidence, it provides another explanation of the applicant stating that the social workers misunderstood him. They have not been raised before as any misunderstanding of that the evidence and it is plain that the information gathered from the applicant was not concerning documents relating to his parents but his own documents. This is a further inconsistency in his evidence and relevant to the documents that may be reasonably available to establish his age.
234. His general evidence as to the issue of interpretation was elicited during cross examination. He confirmed that there was interpreter present during the assessment, and it was suggested to him that this was to reduce the risk of misinterpretation of the information that he provided. His response in oral evidence to the inconsistencies outlined to him was as follows “because I never heard those questions before I did not understand the questions.” Ms Mahmood suggested to him that the assessors had told him that if he did not understand or misunderstood anything he was to say so. In this regard the applicant’s evidence changed again and he stated, “yes I asked whatever I said to them probably they noted it wrong.” The applicant’s evidence now was that where the assessors had recorded the information given about his documents and also about the use of phone was incorrect confirming that they had recorded it wrongly.
235. The evidence relating to his date of birth was also the subject cross-examination. In the witness statement [D 67, para 19] he said that before he left Iran his father told him that he needed to know his date of birth. The applicant agreed that this is correct and that he was told his date of birth. It was suggested to him that as he previously told the assessors that his parents had documents and if they had documents, it would have been a good time to give them to him when he was leaving to show that he was a child, the applicant was not able to provide any satisfactory response other than saying that he “did not know” and that he had never said that his parents had documents.
236. From that assessment of the evidence, there are a number of inconsistencies in the applicant’s evidence and contrary to the submissions made, they have relevance to the issue of age as there are parts of the evidence which are inconsistent with the evidence the applicant provided to the assessors which were around issues such as the description of his family and life in Iran, the level of his interaction with others and the issue of documentation about his age available in Iran. Those are areas which have relevance to the issue of his age and are identifiable as inconsistencies in the appellant’s account beyond that set out in the age assessment. The inconsistencies also go to the issue of whether the appellant’s account of what he said in the assessment about his age when he looked after the sheep was misunderstood and also go to the issue of whether the social workers did not provide him with any opportunity to clarify that evidence.
237. It is the task of the Tribunal to reach an assessment of the applicant’s age as informed by the evidence. In doing so, there is no hurdle which the applicant must overcome. It is common ground that the applicant is now an adult and that the issue to decide is whether the applicant was a child when he arrived in the UK on 19 July 2021.

238. There is no documentary evidence for a date of birth for the applicant. There is no supportive opinion evidence for the date of birth the applicant has given save for the observations of G who has not provided a witness statement, nor given evidence and the limitations as to the weight that can be attached to that evidence have been set out in the analysis earlier in the decision. There has been no explanatory evidence given by G as to he reached his opinion on the age of the applicant.
239. In the analysis set out above, and for the reasons given, I am satisfied that the age assessment conducted by the local authority was “ Merton compliant” and was one which was accurately reflected in the written document which was provided and detailed the discussions with the applicant and the information gathered across 3 interviews and overall this was an assessment that provided a reasoned decision and upon which the tribunal can attach significant weight. In reaching that decision, I am satisfied that the applicant was given the opportunity to provide evidence to the assessors and contrary to what is stated, it has not been demonstrated that there was a misunderstanding concerning the age at which he began to care for his father’s sheep on his own. The information provided by the applicant was limited in its contents and as a result the assessors had limited information for their use in assessing his age. I am satisfied that in the circumstances the information that was given was more likely than not to have been considered closely and I place weight and reliance upon the evidence of Mr Banks and as reflected in the age assessment that the applicant was given the opportunity to change or make any additions but did not do so. Whilst the assessment centres upon one point of the applicant’s factual account, the point itself which relates to the age by which he began to care for the sheep and the age he was when he left, was central to the issue of his age which demonstrated that on his own evidence he was over the age of 18 when he arrived in the UK and was inconsistent with the date of birth he gave. In addition, and as identified above there have been a number of other inconsistencies in the evidence given by the applicant to that given in the assessment.
240. The other relevant evidence set out in the assessment related to the views of the initial assessors who believed him to be over 18 and also the evidence from Mr Afzaal. He has provided additional oral evidence which upon analysis has been found to be reliable and evidence of weight which demonstrated the applicant’s ability to live in his placement, the adept use of his technology and the life skills that he had was additional evidence to support the age assessment that the applicant was over 18 years of age and was in direct contrast to the picture provided by the applicant’s evidence concerning his age, and his upbringing. Whilst the assessors also took into account his physical characteristics, and his demeanour in which he was described as “confident, authoritative and direct” and that such traits were to be considered as consistent with an adult’s demeanour, those features I am satisfied were not considered in isolation and were not conclusive in determining his age but are factors which they were entitled to take into account in the overall assessment. That evidence is also consistent with the view formed by the allocated social worker Mr Afzaal as recorded in his written statement.

241. Accordingly, having taken into account all of the and doing the best I can with that evidence, I find that the evidence considered in the round is supportive of the age as assessed by the local authority and is consistent with a date of birth of 9 September 2002.

Decision:

242. I find that the applicant was born on 9 September 2002, and I make a declaration to that effect.

243. I make an anonymity direction in the terms set out at the beginning of this judgment and in the accompanying order.

Signed: Upper Tribunal Judge Reeds  
Dated 1 March 2023

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