



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

JR-2022-LON-
001415

In the matter of an application for Judicial Review

The King on the application of
S
(by his litigation friend, the Official Solicitor)

Applicant

versus

LONDON BOROUGH OF BRENT

Respondent

ORDER

BEFORE Upper Tribunal Judge Kebede

HAVING considered all documents lodged and having heard from the parties' respective representatives, Ms A Benfield of counsel, instructed by Simpson Millar LLP Solicitors, for the Applicant, and Mr L Johnson of counsel, instructed by London Borough of Brent, for the Respondent, at a fact-finding hearing on 7 and 8 February 2023

AND UPON the parties agreeing that the Applicant was in the Respondent's care for in excess of 13 weeks before he turned 18 years of age

IT IS ORDERED AND DECLARED THAT:

- (1) For the reasons given in the attached judgment, S's date of birth is 1 January 2004.
- (2) On that basis, the Applicant's claim for judicial review is allowed.
- (3) The Applicant shall not be identified either directly or indirectly.

Costs

- (4) The Respondent shall pay 70% of the Applicant's reasonable costs of this claim on the standard basis, to be assessed if not agreed.
- (5) The Respondent shall make a payment on account of costs in the sum of half of the Applicant's bill of costs as drawn within 14 days of receipt of the same.
- (6) There shall be a detailed assessment of the Applicant's publicly funded costs.

Signed: S Kebede

Upper Tribunal Judge Kebede

Dated: **20 February 2023**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): *20 February 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 proceedings.

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

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



Case No: JR-2022-LON-001415

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breems Buildings
London, EC4A 1WR

20 February 2023

Before:

UPPER TRIBUNAL JUDGE KEBEDE

Between:

THE KING
on the application of

S
(By his litigation friend, the Official Solicitor)

Applicant

- and -

LONDON BOROUGH OF BRENT

Respondent

Ms A Benfield of Counsel, instructed by Simpson Millar LLP Solicitors, for the
applicant

Mr L Johnson of Counsel, instructed by London Borough of Brent, for the
respondent

Hearing date: 7 & 8 February 2023

J U D G M E N T

Judge Kebede:

1. The applicant, a national of Afghanistan, claims to be a minor and asserts that he was born in 2005 and was thus a child of 16 years of age when he entered the UK on 2 July 2021. Following an age assessment completed on 14 February 2022, the respondent produced an age assessment report dated 18 February 2022, followed by an addendum report dated 16 June 2022, in which a date of birth was assigned to the applicant of 17 July 1995, making him 27 years of age at the time of this hearing rather than his claimed age of 17 years.
2. The applicant challenges that age assessment by way of this judicial review claim, on the ground that the age assessment decision was wrong as a matter of precedent fact.

BACKGROUND

3. The applicant claims as follows. He lived with his parents and two younger sisters in a village called Khowaja in the Paghman district in Kabul Province, not far from Kabul. His grandmother lived nearby. He attended a school just outside the Paghman district for three years, from around the age of seven until aged 10. He left school because there was an explosion there and most children did not return after that, and instead he would go to the local mosque to study the Quran and to worship and his father would also teach him for a short while each day. His father worked as a cook for the Red Cross and then for an organisation called MSH, an international organisation. As a result of his father's work for an international organisation the Taliban captured both of them and held them hostage for two to three days and tortured them. The Taliban severed two of his father's fingers and the tip of one of his own fingers and they were left unconscious and thrown out of a car onto the street in front of their home. They were both treated in hospital. His father stopped working for MSH after that, as the Taliban had warned him to, and he had to sell the family home to provide funds for the family to live and to pay for their journey out of Afghanistan. They moved in to his grandmother's house and from that time the applicant remained indoors most of the time.
4. The applicant and his father left the country between one and two years after being abducted, leaving his mother, sisters and grandmother behind. Before leaving Kabul the applicant's father gave him a copy of his Taskera and told him that he was 15 years old at that time. He put the document into a plastic bag and put it into the waistband of his trousers and when he found it after arriving in the UK he noticed that he also had with it a letter from the Red Cross confirming his father's employment with them. He and his father travelled from Afghanistan with an agent, travelling to Iran and then to Turkey. At some stage when crossing the border into Turkey he became separated from his father and he continued his journey with the agent, to Greece and then to Germany, France and by sea to the UK, where he and others on the boat in which they were travelling were rescued from the English Channel.

5. The applicant arrived in the UK on 2 July 2021 and claimed asylum as an unaccompanied asylum seeking child. He was taken to Yarl's Wood Immigration Removal Centre where he was held for approximately four days, during which time he had a short telephone interview (screening interview) with the Home Office, on 5 July 2021, and his asylum claim was formally registered. A date of birth of 20 June 1996 was attributed to him by the Home Office and he was considered as an adult. He was then transferred to a hotel in Wembley for adult asylum seekers and instructed solicitors, Oliver and Hasani, in relation to his asylum claim. He remained in that accommodation until he was taken into the care of the London Borough of Brent ("Brent") in September 2021, following a referral made by Migrant Help. He was then accommodated by Brent in a shared house run by an organisation called Empowerhouse, together with other young people of his claimed age. He enrolled in college whilst living in that house and had been attending North West London college four days a week since January 2022, studying English and Maths. He made some friends there. He was unable to make any contact with his family in Afghanistan. He started attending a youth club run by Young Roots towards the end of 2021.
6. The applicant then underwent an age assessment by Brent. He met with social workers from Brent, and was interviewed on 11 October 2021, 25 October 2021 and 14 February 2022. They recorded his claimed date of birth as 20 June 2004, which appears to have been the date provided in the referral from Migrant Help. During the last meeting on 14 February 2022 he was told by the social workers that they did not accept his claimed age and that they believed him to be around 23 years of age. He was, however, also given a 'Notification of outcome of age assessment' confirming that he was considered to be a child. The full report was finalised on 18 February 2022, concluding that the applicant was between 23 to 25 years of age, and also concluding that he was aged between 20 and 25. The applicant remained in local authority care for some time, but on 15 April 2022 he was transferred back into adult accommodation. He continued studying at North West London College, with the help of his caseworker from Young Roots.
7. The applicant instructed his solicitors Simpson Millar on 9 May 2022, following a referral made to them by the Young Roots organisation. His solicitors lodged a judicial review claim on 19 May 2022 in the Administrative Court to protect his position before the time limit expired and sought a stay for the pre-action protocol process to be completed, serving their pre-action protocol letter on 27 May 2022 and subsequently producing a copy of the applicant's Taskera on 9 June 2022, together with an expert report from Dr Antonio Giustozzi dated 7 June 2022 verifying the Taskera. The respondent served an addendum decision on the applicant on 16 June 2022, concluding that the Taskera was unreliable and maintaining the position on the applicant's age, finding him to be between 20 and 25 years of age. The date of birth attributed to him in that report was 17 July 1995. The respondent's acknowledgement of service and summary grounds of defence were served on 28 June 2022 in which the respondent opposed the applicant's application to amend his claim. Matters were stayed in order for the applicant to appoint a litigation friend and to seek a response from Dr Giustozzi.

8. On 7 July 2022 HHJ Dight granted anonymity and permitted the applicant to amend his grounds of claim. On 8 July 2022 the Official Solicitor confirmed that she would act as the applicant's litigation friend.
9. On 20 July 2022, the applicant then served his amended judicial review claim form with a statement of facts and amended grounds, challenging the original and addendum age assessment reports and producing an addendum expert report from Dr Giustozzi dated 14 July 2022, as well as professional opinions from Laura Hewitt, Youth Development Worker at Young Roots and from Benjamin, Keyworker for Empowerhouse. It was asserted that the age assessment was wrong as a question of fact; that the age assessment was not *Merton* compliant or procedurally fair as there was no minded to process and other procedural flaws and the assessment report lacked adequate reasoning; and that the applicant was not being provided with age-appropriate support. The Administrative Court was invited to transfer the claim to the Upper Tribunal to conduct a fact-finding assessment of the applicant's age.
10. An application was also made on behalf of the applicant on 19 July 2022 for interim relief, as well as for an abridgment of time for the respondent to serve an amended acknowledgement of service and for the applicant to continue to be supported by the respondent. In regard to the latter, the application was granted by Mr Justice Cotter on 26 July 2022.
11. The respondent then served an amended acknowledgement of service and summary grounds of defence on 12 August 2022, standing by the age assessment and the conclusion that the applicant was an adult, requesting that permission be refused on public law grounds but accepting that there was a sufficient basis for permission to be granted on the precedent fact issue. The applicant's application for interim relief was opposed.
12. On 12 August 2022 Mr Justice Freedman made an order inviting the parties to make submissions on how the public law challenge should be dealt with and on 17 August 2022 the parties agreed that the applicant would no longer pursue his public law challenge as that matter was to be dealt with as part of the fact-finding hearing.
13. On 6 September 2022 Mr Justice Wall granted permission and refused interim relief. The case was then transferred to the Upper Tribunal where the applicant sought, in an application made on 15 September 2022, to renew his application for interim relief. His application for interim relief was refused by Upper Tribunal Judge Mandalia in an order issued on 7 October 2022, in which further directions were made for the onward conduct of the proceedings.
14. The matter was listed for a fact-finding hearing in the Upper Tribunal. Both parties filed and served supporting evidence and skeleton arguments. The applicant's solicitors made an application to rely upon additional evidence, including a further addendum expert report from Dr Giustozzi, outside the time limits set in Upper Tribunal Judge Mandalia's directions, which was opposed by the respondent but which was granted in an order issued by myself on 31 January 2023. The parties attended a

round table meeting but were unable to settle the proceedings, other than to narrow the issues to the extent of accepting that the applicant was a vulnerable witness and that relevant special measures were appropriate.

15. The matter then came before me for a fact-finding hearing.

DOCUMENTARY EVIDENCE

16. The applicant's solicitors produced a consolidated fact-finding hearing bundle of documents divided into sections A to M: tabs A and B comprising legal pleadings and applications, and orders and directions; tab C comprising witness statements for both parties; tabs D and E comprising instructions to relevant experts, expert reports from Dr Giustozzi and a psychological report; tab F comprising age assessment documents and decisions; tab G comprising letters in support of age; tab H comprising Home Office records; tab I comprising medical reports; tab J comprising social services records; tab K comprising the applicant's documentary evidence namely the Taskera and a Red Cross letter for his father; tab L comprising inter partes and key correspondence; and tab M comprising the additional evidence submitted before the hearing.
17. The following is a summary of the main parts of the documentary evidence, namely the age assessment reports and the written statements of the witnesses who did not attend the hearing to give live evidence. Although I have not provided a summary of the contents of the rest of the documentary evidence in the 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.

Respondent's Documents

Brent Age Assessment Report dated 18 February 2022

18. The report was signed by Monday Osagie, assessing social worker, and by Afzal Ahmed, Service Manager. The outcome of the assessment was that the applicant was an adult between 20 to 25 years old. The report stated that the initial interviews of 11 October and 25 October 2021 were assessed by Monday Osagie, the lead assessor, and Andrea Melzer, the second assessor and that at those interviews and the final interview on 14 February 2022 an appropriate adult was present, as well as a Dari interpreter.
19. Under the heading "Information supporting stated DOB and immigration information", the applicant is recorded as having stated that his father had told him that he was 15 years of age when he left Afghanistan, and he had been travelling for a year, so he was currently 16 years of age. He had had his Taskera for about seven years before he left Afghanistan but he had not needed it so did not know the date of birth written in it. The applicant gave details of his family in Afghanistan, namely his parents, two sisters and grandmother.

20. Under the heading “Physical Appearance, Demeanour”, the assessors described the applicant’s appearance, noting that he *“has a clean shaved facial hair both on his moustache and side beards”* and was claiming to have started shaving three to five months previously when he was in France. It was noted that he did not look tired and was bright in mood and chatty and appeared to be in good health, reporting that he had eaten before the interviews and had slept well at night. It was noted that he had a prominent Adam’s apple and that his voice had broken, indicating that he was not an adolescent.
21. Under the heading “Interaction of person during the assessment” the applicant was reported to have confirmed that he slept very well at night. The assessor note that the applicant had claimed to have left Afghanistan for two reasons. Firstly, because his father had been accused of working for a non-Muslim and he and his father had been abducted by the Taliban and tortured and had had some fingers cut off to ensure his father stopped working for the Red Cross. Mention was made of a letter the applicant produced from the Red Cross, dated 20 August 2013, sent to his father after the abduction incident. Secondly, for financial reasons, as his father had had to sell the family home and they had gone to stay with his grandmother since his father had been unable to work and earn money. He and his father had left Afghanistan a year and six months after his father left the Red Cross. The applicant claimed to have had no Facebook account in Afghanistan as he had no phone there, but he currently had an account set up with the help of a friend. His father had had a Facebook account but he did not know the name of the account.
22. Under the heading “Journey” the assessors recorded the applicant’s evidence of having left Kabul with his father for Iran by foot and car, and to have stayed in Iran for a month before being moved by the agent to Turkey, which took them about three months on foot. It was when he crossed the border into Turkey that he got separated from his father. He stayed in Turkey for a further month and then continued on to Greece with the agent, crossing the border into Greece by boat. They stayed in Greece for a month and then went to Germany hidden in a lorry but he was discovered in the lorry and arrested and put in a camp for two months. He tried to contact his father during that time but could not make contact and his mother did not have a phone. He then took a train to France and stayed in France for a month or two, then stayed in the jungle in France for about 25 days and then took a boat across the sea to the UK. He did not claim asylum in any of those countries because his father had told him to go to the UK.
23. Under the heading “Social history and family composition”, the applicant’s evidence about his family was recorded again, as was his claim about being tortured by the Taliban, his father having two fingers cut off and he himself having his index finger cut off.
24. Under the heading “Development” the applicant was recorded as having described his family circumstances and his home in Qarya-Ehojaa Town, his neighbourhood and his three best friends.

25. Under the heading “Education”, it was noted that the applicant stated that he had started school at the age of seven and had been in school for three years, leaving at the age of 10. He left the school after an incident where there was an explosion and the majority of the children, including himself, did not return there. The incident when he was abducted and his father had left the Red Cross had occurred about two to three years later. He gave details about his school, the subjects he studied and his friends.
26. Under the heading “Independence/ Self-Care Skills”, it was noted that the applicant stated that he did not require help with his personal hygiene but he was unable to cook properly.
27. Under the heading “Health and Medical Assessment”, the assessors noted the applicant’s confirmation that he was well and healthy but he did not sleep well at night because he worried about his family.
28. Under the heading “Information from Documents and Other Sources” the assessors recorded the views of Benjamin, Keyworker from Empowerhouse in relation to the applicant’s physical appearance, behavioural ability with peers and adults and social and independent skills and his view that the applicant was between 16 and 17 years of age.
29. Under the heading “Young Person’s comments” the applicant was recorded as having said that he had never worked in Afghanistan but then said that he worked for 20 days in a metal place near his home, that he had no relatives in the UK and had never been told that he had met with any relatives, that he had never told the Home Office that he had come to the UK to meet his paternal uncle, that it was about two to three years between his abduction and his father ceasing to work for the Red Cross.
30. In their conclusions, the assessors noted that the Home Office had assessed the applicant as an adult with a date of birth of 20 June 1996, making him 25 years of age. They noted that the applicant had given the Home Office a completely different account to that provided to them, namely that he had left Afghanistan because he had no relatives there and that he had come to the UK to live with his paternal uncle, and that he had worked as a metal worker in Afghanistan before coming to the UK. It was considered that the applicant’s demeanour during the assessment was consistent with that of an older person and that there were vague areas in his timeline such as what he did after leaving school for a period of two to three years before his abduction and travelling to the UK, and that the timeline did not fit with his claimed age. The assessors considered the Taskera held by the applicant but had doubts about its reliability since he had not mentioned it to the Home Office at his initial interview and had said that his ID was in Afghanistan and that he had come to the UK without any proof of his age. It was believed that the applicant was an adult with an estimated age of 23 to 25 years. Finally the assessment stated that the client’s age was an adult, between 20 to 25 years old.

Addendum Report from Brent dated 16 June 2022

31. In response to the production of an expert report from Dr Giustozzi verifying the Taskera, an assessing social worker and team manager Dettie Gould, and service manager Afzal Ahmed, provided an addendum report in which they maintained the previous decision on the applicant's age, although attributing a date of birth to him of 17 July 1995. The assessors noted that Dr Giustozzi had simply passed on the Taskera to his research contact Saleem Safi who had then met with an inspector Ameen Pakteen in Kabul to verify the document, yet there was no confirmation of who the inspector was or for which organisation he worked. The assessors also noted other concerns about the verification procedure and the qualifications of the research contact used by Dr Giustozzi.

Witness Statements of Afzal Ahmed, dated 23 September 2022 and 17 November 2022

32. In his first statement of 23 September 2022, Mr Ahmed provided reasons for opposing the applicant's application for interim relief. He confirmed that he was a service manager employed by Brent and was a qualified and experienced social worker, team manager, group manager and service manager, registered with Social Work England. He had been trained in the development of UASC teams with local authorities and had trained workers in those teams and been involved in developing internal policies and procedures for a number of local authorities working with UASCs. He had had regard to the concerns raised about the applicant's mental health and his struggles in adult accommodation but considered that that was not unique to him being a child and it was considered that he was considerably older than he was claiming to be.
33. In his second statement of 17 November 2022, Mr Ahmed set out his qualifications and experience again and noted that the applicant had been determined to be an adult in two separate assessments on 18 February 2022 and 16 June 2022. He referred to the documents relied upon by the applicant and to the conclusions reached about the reliability of the documents in light of inconsistencies between the accounts he had provided to the Home Office and to the age assessors. Mr Ahmed also referred to Dr Giustozzi's report and set out the concerns raised in the addendum age assessment report, noting the absence of any reasons as to why the applicant's solicitors had not approached the Afghan Embassy in the UK to verify the Taskera.

Applicant's Documents

Witness Statements of Victoria Pogge von Strandmann

34. In her three witness statements, dated 13 May 2022, 18 July 2022 and 25 August 2022, Ms Pogge von Strandmann, a partner at Simpson Millar LLP and the applicant's solicitor, set out her representations and concerns addressed to Brent throughout the age assessment process, including concerns about the applicant's mental health and the difficulties he faced in adult accommodation and the request for him to be transferred to more appropriate accommodation.

Witness Statements of Elizabeth Smith

35. In her statement dated 21 September 2022, Ms Smith, a solicitor at Simpson Millar, reiterated the concerns about the applicant's mental health and the difficulties he faced in adult accommodation, as well as his physical problems in terms of pains in his chest and diagnosis of gynaecomastia, and toothache.
36. In her second and most recent statement of 19 January 2023, Ms Smith explained about the steps taken to verify the applicant's Taskera and the contact made with the Afghan Embassy in the UK, as a response to the concerns raised by Afzal Ahmed in his second witness statement. She annexed to her statement emails sent to and received from the Afghan Embassy and she referred to Dr Giustozzi's views on the verification of documents by the Embassy in the UK, as well as his response to the concerns about his report.

Letter from Laura Hewitt of Young Roots, dated 12 May 2022

37. In her letter, Ms Hewitt stated that she was a youth development worker at Young Roots and had been working for that organisation in various capacities for three years as part of the youth services offered to young refugees and asylum seekers. She had over 12 years of experience working with children and young people in the fields of education, special education and youth work and was a qualified registered behaviour technician with experience working in the field of behaviour analysis. She had a foundation diploma in psychodynamic psychotherapy. She had known the applicant since he first came to the Young Roots youth club in October 2021 and, until the end of March 2022, was working with him at least once a week and sometimes twice a week at the youth activities as well as having occasional conversations on the telephone. Ms Hewitt stated that in her role at Young Roots she worked with a range of young people on a weekly basis including approximately 20 young people of varying ages between 15 and 25 from Afghanistan. Ms Hewitt said that most of the applicant's interactions and friendships at the weekly youth club were with people of confirmed ages of 16 and 17 and he had a particularly close bond with a boy of 16 years of age from Afghanistan. He always gravitated towards those who were around 16-18 and did not look out of place having fun with the 16 and 17 year olds. Ms Hewitt referred to the kind of activities in which the applicant preferred to engage. She said that he reacted to her as though she was a teacher and that his compliance and lack of ability to assert himself was different to the behaviour of an adult. He lacked the autonomy, initiative and proactive skills that she would expect of someone older. She strongly believed him to be his claimed age of 16/17 years.

Expert Reports of Dr Antonio Giustozzi

38. In his first report of 7 June 2022, Dr Giustozzi confirmed that he was a senior research fellow at RUSI (Royal United Services Institute) and held a PhD in International Relations from LSE, which he received in 1997. He listed his many publications and the periods spent in Afghanistan from April 2003 until June 2019. He confirmed that he had been provided with

a scanned colour copy of the applicant's Taskera and that the original was not required for verification purposes. He confirmed that he had passed the copy to his researcher Saleem Safi, a journalist and researcher who was based in Kunar and who had participated in projects with him in the past carrying out interviews with the police and the Taliban in the area. Mr Safi had sought to verify the Taskera with the Population Registration Authority in Kabul and on 6 June 2022 he met with Ameen Pakteen who worked there as an inspector. Mr Pakteen checked the Taskera against his records and confirmed that a match had been found and the document was genuine. Dr Giustozzi considered that the fact that the Taskera had a match in the official records meant that in all likelihood the applicant was the individual shown on the document. Although it was possible to buy fake Taskeras in Afghanistan, it would be very expensive and risky to falsify the records as well, since multiple individuals would have to be bribed to do so.

39. In his addendum report dated 14 July 2022 responding to Brent's concerns about his initial verification report, Dr Giustozzi explained that verification of a document was a different process to authentication, since authentication required the original document to be examined whereas verification involved checking the document against records of the issuing authorities. That did not require any specific skill from himself aside from the ability to organise the process through his researcher. Dr Giustozzi stated that he regularly conducted document verification reports and had completed over 160 verifications of Afghan IDs. In response to the concern as to the absence of verification for Mr Pakteen or his organisation, Dr Giustozzi said that security rules did not allow government officials to hand copies of their IDs over to outsiders. As for Brent's concern that there was no evidence found of an organisation called the 'Registration of Population', Dr Giustozzi said that that was same as the organisation named in the Landinfo report relied upon by the age assessors, the Population Registration Department. Dr Giustozzi said that there were local offices which issued IDs but there was one central location where all IDs were collected, namely the Population Registration Department, and it was easier to track IDs there. As for Brent's concern that only 42% of the population in Afghanistan had their birth registered and recorded, Dr Giustozzi said that obtaining an ID was different to registering a birth and did not require registration of birth, so it was irrelevant how many Afghans had registered their birth. Dr Giustozzi said that the procedure of issuing a Taskera involved several people and only Taskeras signed by all the officials in charge were inserted into the official records, so that recording a fake identity at the provincial and central level would involve bribing staff in the central PRD/PRA and would be very difficult and risky. Since Kabul was completely under the control of the de facto government of the Taliban and government offices were all open, there was no difficulty carrying out a verification. Dr Giustozzi said that Mr Safi was very familiar with the verification process and had verified many Taskeras, some of which he had found not to be genuine. He had no reason to manipulate the process.
40. In his second addendum report of 16 January 2023, Dr Giustozzi responded to Brent's concern as to why the applicant did not seek to

verify the Taskera at the Afghan Embassy in London and explained that the Afghan Embassy had no relations with the de facto government in Afghanistan and was not able to formally verify documents. Whilst the Embassy claimed to be able to authenticate Taskeras which had been attested by the Ministry of Foreign Affairs, the applicant's Taskera showed no signs of having been attested by the Ministry of Foreign Affairs. Taskeras did not need attestation to be valid.

Psychological Report from Alice Rogers

41. In her psychological report dated 19 December 2022, Ms Rogers confirmed that she was a health and care professionals council (HCPC) registered psychologist and had been working in the field of psychological assessment and intervention with children and adults since 2001. She had worked in mental health since 2001 and had worked as a senior clinician within the NHS for the last 10 years and currently worked in a specialist trauma team in Great Ormond Street Hospital. She had interviewed the applicant on 28 November 2022, on instructions from Simpson Millar Solicitors, in a three hour face-to-face interview, and concluded that he had many symptoms indicative of a diagnosis of PTSD but did not meet the full criteria for the diagnosis. He had extensive symptoms of anxiety and depression and he met the criteria for a mixed depressive and anxiety disorder. The age dispute was a factor which exacerbated and maintained his mental health difficulties and he was unhappy where he was living and felt lonely and cut off there. His experience of extensive trauma when held and tortured by the Taliban, and his exposure to war, as well as the journey to the UK and his separation from his family had also exacerbated his mental health difficulties.

THE HEARING: ORAL EVIDENCE

42. The applicant gave oral evidence before me, followed by his witnesses, Zire Milkurti, Bruce Hope and Jessica Costar. The respondent did not have any live witnesses.
43. It had already been agreed between the parties that the applicant was to be treated as a vulnerable witness and care was therefore taken to ensure that he had adequate breaks and felt as comfortable as possible during the hearing.

Witnesses for the Applicant

The Applicant

Witness statement

44. In his statement of 15 July 2022, the applicant stated that he did not know his date of birth but his father had told him that he was 15 years of age when he left Afghanistan and, since his journey to the UK took about a year, he estimated that he must have been 16 years old when he arrived here and that he was currently 17 years old. Whilst Brent had commented on the fact that he had claimed to be 16 yet presented a

- date of birth of 20 June 2004, that was not correct as he had only said that he believed himself to be 16 years old at the time. The applicant explained about his childhood growing up in Khowaja village and his attendance at school for about three years prior to the explosion, following which he studied the Quran at the mosque and was taught at home for 30 minutes to an hour each day by his father. For about a week or a bit more after he stopped attending school he used to watch what was going on at a metal working workshop near his home but it is not correct that he worked as a metal worker as was recorded in his Home Office screening interview. His father worked as a cook for the Red Cross and then for an international organisation called MSH and it was whilst his father was working for MSH that they were abducted by the Taliban, about a year or two before they left Afghanistan. They were held hostage for two to three days and tortured. The Taliban severed two of his father's fingers and severed the top of his index finger on his right hand and they were both left unconscious and thrown out of a car by the Taliban in front of their family home. They were both treated in hospital. The applicant said that his finger healed although he lost the tip, and his father lost both of his fingers. His father stopped working as he feared what the Taliban would do if he continued. He used his savings to support the family. The applicant said that the age assessment had wrongly recorded his account, as his father was not working for the Red Cross at the time they were abducted and the letter from the Red Cross was not sent after the abduction. After he and his father were released, he spent most of his time indoors and they then moved in with his grandmother when his father sold their house. After he left Afghanistan with his father he had no contact with his mother and sisters.
45. The applicant stated that he had never said that he had no family in Afghanistan and that he had come to the UK to join his paternal uncle. That was an error in the record of his screening interview. He did not know where his paternal uncle was and he did not know how to get in touch with him. His father gave him the Taskera when he left Afghanistan and the letter from the Red Cross about his father's employment must have been enclosed inside it by mistake. He kept it in a plastic bag tucked inside the waistband of his trousers. The applicant denied having said at his screening interview that his identity documents were in Kabul. He did not mention the Taskera as he was tired after his dangerous sea crossing. The applicant gave details of his journey to the UK. He said that he was taken hostage by a gang in Greece for around two days and was beaten up and he was subsequently attacked by a dog. The police came and arrested him and held him for about two days. He also burned his arm when he fell into a campfire made by the agents and still had a scar from that. He did not know which countries he travelled through between Greece and Germany. He was arrested in Germany and was taken to a camp for two months. He chose not to claim asylum in any of the countries through which he passed as his father had told him to claim asylum in the UK. He was rescued off the coast of England when crossing the Channel in a boat.
46. The applicant explained what happened after he arrived in the UK. He had not been able to contact his family and missed them a lot. He started to attend the Young Roots youth club at the end of 2021 but was not

currently attending it. He attended three age assessment meetings each of which lasted about three to four hours and he found the experience unpleasant and felt pressure from the age assessors to make him say things when he did not know the answer. He did not understand how the age assessors concluded that he was 23 years of age and he was not given any explanation as to how that conclusion was reached. The applicant stated that he found the move back to adult accommodation very stressful and he did not sleep well as he was worried about his family. He continued to attend his course at North West London College with the help of his caseworker Jessica at Young Roots. He had difficulty obtaining any money and Jessica managed to organise a bus pass for him so that he could get to college. The applicant said that he had been experiencing chest and tooth pains. He had not had a Facebook account in Afghanistan but had set up an account in the UK with the help of his friends. The account was not in his own name. He could not access the account as he did not know the password and had lost contact with the friend who had set it up.

47. In his second statement dated 18 November 2022, the applicant talked about the friends he had made in the UK and explained that he still found living in the adult accommodation very stressful. He spent most of the time in his room and was bored and lonely. He had trouble sleeping and experienced nightmares and flashbacks. He had had some initial support from the Helen Bamber Foundation which helped with techniques to cope with the nightmares and flashbacks but he did not want to go on to a second stage of therapy until the age case was resolved. He still had no contact with his family. He was still having problems with a lack of money. He had received a diagnosis for his chest pains which was a problem usually experienced when boys went through puberty. He still suffered from toothache. His friend had helped him set up a new Facebook account in August 2020 and the date of birth for the account was 20 June 2004. He also had an Instagram, Snapchat and Tiktok account.

Oral evidence

48. Ms Benfield sought to clarify part of the applicant's first statement, at [47], further to instructions previously received and asked him whether it was correct that he had tried to call his father's mobile telephone number when he became separated from his father, as stated in his statement. The applicant said that that was not correct and that he did not have his father's telephone number, only his Facebook. He had tried to get in touch with his father through Facebook not by telephone. The applicant confirmed that he had still not started further therapy and still had no contact with his family. Aside from that amendment, the applicant adopted both witness statements as his evidence in chief.
49. When cross-examined by Mr Johnson, the applicant confirmed that his evidence was that he had not tried to contact his father by telephone and that he had meant that he had tried to contact him through Facebook. He did not tell the age assessors that he had his father's mobile telephone number. The applicant confirmed that it was correct that he started his education at the age of seven, that his mother stayed at home and his

father worked as a chef for the Red Cross and that he had stayed at school until he was 10 years of age. He said that his father was still working for the Red Cross when he left school. His father went to work for MSH after he left the Red Cross, with a few months break in between. He worked for MSH for a while but then stopped when they were abducted by the Taliban. He then sold the family home and they moved to his grandmother's house, which was about a year to a year and a half after they were abducted. They lived with his grandma for about a year. It was whilst he was living at his grandmother's house that he would visit the metal work shop. It was not correct that he was a metal worker himself, as was recorded in the notes of the screening interview. Mr Johnson asked the applicant what happened to make them leave Afghanistan and he replied that it was the kidnapping by the Taliban. His father talked about leaving the country immediately after the abduction. Nothing further happened after the incident and it was not until three or four days before they left the country that his father told him they were leaving.

50. The applicant said that he and his father left home by themselves after his father spoke to someone on his mobile telephone and it was on their journey to Iran that they were joined by other people. It took about a month to get to Tehran, on foot and by car, and they were in Tehran for about a month. It took about three months to get to the Turkish border and it took some time to cross the border during which time the applicant said he became separated from his father. It was then another two months to get to Greece where he stayed for two or three days before travelling to Germany with the same group of people. They were hidden in the back of a lorry and it took about three to four days to get to Germany. The lorry was searched when they arrived in Germany and they were arrested and taken to a camp. The applicant said that he was interviewed by the German authorities and he told them his age. He stayed in a room in the camp with three other people who were around his age, of which one had joined them on the journey from Afghanistan. He was in the camp in Germany for one to two months. He was not allowed out of the camp initially but later on could come and go. The person from Afghanistan received a call from the agent on his mobile telephone who gave instructions for them to get to France. They went to Paris by train and stayed there for about a month and then went to the coast from where he was chosen to get on a small boat across the Channel to the UK. The applicant said when they left Afghanistan his father told him that he was 15 years old and he gave him his Taskera and told him to be careful not to lose it. He denied having told the Home Office in his screening interview that he had left his identity documents behind in Kabul. He said that his sisters also had Taskeras. They were kept in a box somewhere at home and were taken out when they were needed, such as for having vaccinations. His Taskera had had a photograph of him on it when he was much younger but his father had replaced the photograph before he left Afghanistan. It was the same Taskera but with a new photograph on it. The old photograph was also stamped. The applicant was then asked about his Facebook account. He confirmed that he had had a Facebook account set up by a friend when he was in France which had a date of birth for him of 6 July 2004, although he had just told his friend his age. He confirmed that the

account was deleted by accident and he set up another account in August last year with a date of birth of 20 June 2004.

51. When re-examined by Ms Benfield, the applicant said that he had tried to contact his father through Facebook and had typed his name and surname but could not find his account. With regard to his Taskera he did not know if the new photograph of him was attached to the old Taskera or if a new document was issued. With regard to his father's employment, the applicant said that he knew that his father was still working for the Red Cross at the time when he finished going to school as his father used to go to work.
52. In response to my questions seeking clarification, the applicant said that he knew that his father was working for the Red Cross at that time as it was the same job that he had been doing previously. He knew that his father had moved to a new company later as he told him that he had moved. Ms Benfield then showed the applicant the Red Cross letter he had produced as evidence of his father's employment and told him that according to the date in that letter he would have been eight years of age when his father left the Red Cross and therefore would still have been attending school. He said that was correct but then said that he could not remember the dates his father was working for the Red Cross.

Zire Milkurti

Witness statement

53. In her statement of 18 January 2023, Ms Milkurti stated that she was the homes and training manager at Empowerhouse, a semi-independent living service providing accommodation and support for residents aged 16-25 years old. She joined the company in September 2020 and had worked in management positions there since that time. She had more than 10 years' experience of working face-to-face with young people aged between 16-25 and she provided details of her qualifications and previous employment as a keyworker and support worker for young people. She stated that she had previous experience of working with asylum seekers, including from Afghanistan, and had been called as a witness and cross-examined in criminal hearings and asylum appeals in support of young people accommodated by her organisation. She had supported a small number of young people through age disputes and had provided witness statements, but had never been called to give live evidence at such hearings.
54. Ms Milkurti stated that Empowerhouse accommodated and supported 44 young people across seven locations and, in general, accommodated 16-18 year olds more than any other age group although there were those who remained with them until the age of 21/22 and sometimes 23/24. In her role she would oversee and assess the young peoples' behaviour and set up personalised plans to support them in independent living. She saw the applicant at least twice a week whilst he was accommodated by Empowerhouse.

55. Ms Milkurti said that she first met the applicant on 13 September 2021 and she travelled to meet him at his previous accommodation and brought him back to the Empowerhouse accommodation. He remained there until 23 April 2022 when he was transferred back to adult asylum-seeker accommodation and she had not had any contact with him since then. Ms Milkurti stated that when she first met the applicant she thought he was under the age of 18 because of his appearance and the way he presented himself, lacking in confidence or self-assurance. When he first arrived at the accommodation he was very unsettled and would often wake up in the night and she would spend time with him overnight when she was on shift, although there were language barriers which made communication difficult. Ms Milkurti said that the applicant had very few independent living skills when he first arrived and did not know how to cook, clean his room, fold clothes, take public transport or cross a road safely. He required extensive one-to-one support and had to be taught how to spend his money.
56. Ms Milkurti stated that the applicant was placed in his accommodation with four other young people aged between 16 and 18 when he first arrived and he got on quite well with them. He started attending college and was keen to learn. He made a friend at college who was on the same ESOL course as him, for 16 to 17 year olds. He also attended the youth group run by Young Roots and enjoyed their activities. Aside from those activities he would remain in his accommodation as he said that he found it scary leaving the placement. He had personal training sessions in his accommodation and he opened up a lot to his trainer, Benjamin. He had several appointments to attend such as doctors' appointments and required staff to go with him, which was an indication of his young age. Ms Milkurti said that she and her colleagues agreed that the applicant looked about 16 or 17 and she did not see how he could be assessed as being between 23 and 25 years of age. She genuinely believed that he was the age claimed.

Oral evidence

57. Ms Milkurti adopted her statement as her evidence and confirmed to Ms Benfield that she had not seen the applicant since he left Empowerhouse until today and was surprised at how he had grown in the past year.
58. In response to Mr Johnson's questions in cross-examination, Ms Milkurti confirmed that she had seen the applicant a minimum of twice a week from 13 September 2021 to April 2022, which included one-to-one sessions and seeing him when she was on duty. She said that she had not been trained in age assessment but she had had multiple training sessions on how to support children and asylum seekers and how to identify support needs. She had years of experience of working with young people. The support needs for each person were initially identified by and based upon their age and were then tailored to suit them individually. There was a pathway plan for each person which was based on a traffic light system in which red meant that support was always needed, amber meant support was needed in some areas and green meant less support was required. The applicant was very much within his age bracket.

Bruce Hope

Witness statement

59. In an undated letter, Mr Hope stated that he was the Curriculum Manager for the 16-18 ESOL study programmes at the College of North West London. He had been in EFL/ESOL management since 2006 and had been working with looked-after children and asylum seekers directly since 2016. Mr Hope said that the applicant joined their late-start programme in early January 2022 and immediately settled in and made friends. He was studious and keen to improve quickly and he worked hard. Mr Hope said that he did not have any concerns about the applicant's age. He had a young friendship group of 16-18 year olds who were not age disputed and he tended to join in more fun activities which was more usual for young learners.
60. In his statement of 18 November 2022, Mr Hope set out his work experience as in his previous letter, stating that in his current role he oversaw 200 students between the ages of 16 and 18 who were enrolled on the college's ESOL courses across both of the college's campuses. He had spent a lot of time in the past six to seven years working with learners like the applicant. His time was divided between management and classroom teaching. He spent 10 hours a week teaching students but also had oversight of the whole 16 to 18 ESOL department which meant that he was familiar with every student and the progress they were making even if he did not teach them all. He had got to know the applicant very well. He first met the applicant when he joined the college's late-start ESOL programme in January 2022 and was the main teacher for his class, teaching him face-to-face for 10 hours a week between January 2022 and July 2022. Mr Hope stated that, whilst the age of a young person was very hard to judge, he had no concerns about the applicant's claimed age and he could not see how he could be assessed as being between the ages of 23 and 25. The applicant had associated more broadly with other students who were of his claimed age and whose ages were not in dispute. Had he been older, he would be more inclined towards being solitary or associating with older students. Mr Hope said that whilst he was the applicant's class tutor for this academic year he still had interactions with him and oversight of his progress and to his knowledge none of his tutors had raised a concern about his claimed age.

Oral evidence

61. Mr Hope adopted his statement as his evidence before the Tribunal and confirmed that he maintained his view on the applicant's age. When cross-examined by Mr Johnson he stated that whilst he had not been the applicant's class teacher since July 2022 the applicant was still on one of his courses and he would see him pretty much every day in the college. Mr Hope said that the college's ESOL department was quite big and there were four curriculum managers. He was the curriculum manager for the 16-18 year old programme. The other programmes were from 19 plus, to any age. Mr Hope accepted it was fair to say that judging a young person's age was an imprecise science and he agreed with Mr Johnson that some 16 year olds could pass for being in their mid-20s whereas a

shy, withdrawn 25 year old could present as a 16 year old. In response to Ms Benfield's question as to why, bearing in mind such uncertainty, he could say that the applicant was likely to be 17, Mr Hope said that there were not very many reasons to doubt him. The college had a lot of young people passing through. The applicant was small, slight and looked quite young and he had met a lot of young people like him, although he was no expert. Mr Hope said that it was more like that he would not disbelieve the applicant whereas he had disbelieved others.

Jessica Costar

Witness statement

62. In her statement of 17 November 2022, Ms Costar stated that she worked as a casework manager at Young Roots and had held that role since 17 October 2022, having previously worked there as a senior caseworker for four years. She explained that Young Roots was a charity that specialised in supporting young asylum seekers and refugees between the ages of 11 and 25. Her first contact with the applicant was on 16 March 2022 and she provided him with one-to-one casework support, meeting with him once a month face to face, from that time until she commenced her new role as casework manager in October 2022. She had recorded 14 one-to-one casework sessions with the applicant, some face to face and some by telephone, each lasting around 30 to 60 minutes. She would also meet with the applicant after his therapy sessions with the Helen Bamber Foundation and would keep in contact with him between their casework sessions. She had also accompanied him to various GP appointments and meetings with his solicitor. Ms Costar stated that, based upon the contact she had had with the applicant over a period of 8 months she believed that he was his claimed age. His behaviour and interactions with her and other young people was consistent with that of other 17 year olds she had worked with from similar backgrounds.

Oral evidence

63. Ms Costar adopted her statement as her evidence in chief and confirmed that nothing had changed since she had signed it. When asked by Mr Johnson in cross-examination if she had had contact with the applicant since October 2022, Ms Costar said that she had bumped into him in the corridor at work and had said hello to him although she had not provided him with him support since that time. She confirmed that she was aware of the applicant's background as a result of having accompanied him to appointments with his solicitors and did not find it surprising that he would have limited life skills as a result of such a traditional background rather than on the basis of his age. Ms Costar confirmed that she worked with 11-25 year olds from all different backgrounds and that they varied a lot in terms of maturity. She had a lot of experience of working with young people and observing their behaviour and seeing certain patterns of behaviour for younger and older people. She had noticed the applicant's reliance, like others in their mid-teens, upon adults to do things for him, for example when she was sorting out his Aspen card. Older people would have kept calling her to ask if it had been sorted, whereas he just left it to her to do it. Ms Costar said that the applicant

had some English language ability and would ring her and ask her to get an interpreter if he wanted to ask her something. In response to Mr Johnson's enquiry as to whether the applicant's shyness could not be a result of having undergone trauma rather than being age-related, Ms Costar said that it could also be because he was younger and had less life experience and lacked confidence. She accepted that there was a range of people with different presentations but she said that there were different behaviours that could be attributed to young people.

THE HEARING: SUBMISSIONS

64. Both parties then made submissions before me.

The Respondent

65. Mr Johnson submitted that Brent maintained the position that the applicant was between 23 and 25 years of age. He accepted that the witnesses were all helpful and honest but noted that they all agreed that age assessment was an imprecise science and could go either way. The services they all provided were determined by need and not by age and therefore their views were of limited assistance to the court. The applicant would have limited life skills because of his traditional background and therefore the fact that he could not cook or do his washing was not determinative of his age. Mr Johnson submitted that Brent did not dispute the applicant's account of his background, his life in Afghanistan or his journey to the UK and, whilst there were some queries about the time spent travelling, nothing turned on that. There was no evidence to doubt that the applicant's father told him his age was 15, but the relevant question was whether that was accurate. Mr Johnson submitted that it was not and he went on to address the two pieces of evidence which could assist the applicant, namely the Taskera and his oral evidence.
66. With regard to the Taskera, Mr Johnson submitted that that was the high point of the applicant's evidence but it did not assist him in determining his age. Dr Giustozzi had distinguished, in his report, between verification and authentication and had concluded that the Taskera was the same as a copy help in Kabul, but that said nothing about its veracity. Mr Johnson submitted that the age assessors had rightly criticised the verification process in so far as there was no information or evidence about the journalist to whom Dr Giustozzi emailed the copy of the Taskera and neither was it known which office the document was taken to. That had to be considered in the context of the rampant use of fraud in relation to documents in Afghanistan.
67. As for the authenticity of the document, that was undermined by several factors. Firstly, the applicant had initially stated to the Home Office that his identification document was in Kabul, which suggested either that he had had the document sent to him after that interview or that he was lying to the Home Office and did not disclose the document when interviewed, both of which adversely affected his credibility. Secondly, he had given inconsistent evidence about how he obtained it, claiming initially to have been given it by his father when he left Afghanistan

having never seen it previously but then in oral evidence saying that he had had the document since an early age and that it had been kept in a box at home and previously had a younger photograph of him on it. From his own timeline of when he was abducted and moved to his grandma's house and his father took him to have a new photograph taken, the Taskera must have been obtained in or after 2019. The Landinfo report at section 1.1 said that children over seven years of age had to attend in person, yet the applicant's evidence was that his father went alone to get the Taskera after taking him to have his photograph taken. Further, the photograph in the Taskera was clearly not of a 13 year old, as it would have to be if the document was obtained in 2018 or 2019. The photograph attached to the Taskera showed him with facial hair yet the applicant said he only started shaving when he was in France. With regard to Ms Benfield's earlier suggestion that the information on the document showed that it was originally obtained in 2011 but that a duplicate was obtained in 2018, Mr Johnson said that that required a number of assumptions for which there was no supporting evidence. Mr Johnson said that it was also relevant that there was no explanation why the Taskera was not emailed to the Embassy in the UK for verification. For all those reasons the Taskera was not reliable as a document establishing the applicant's age.

68. As for the applicant's evidence in cross-examination, Mr Johnson submitted that that also raised questions about his age. His evidence was that his father was still working with the Red Cross when he left school and that he had attended school from the ages of seven to 10. The letter he had produced as confirmation of his father's employment with the Red Cross stated that his father left that employment in 2013. Mr Johnson submitted that, in light of that evidence, it was impossible to say that the appellant was born after 2003, and that would fit in with him being an adult born before 2003 and was consistent with an age of between 20 and 25 years old. Accordingly none of the evidence supported the applicant's claim to be the age he said he was.

The Applicant

69. Ms Benfield relied on her skeleton argument and submitted that it was more likely than not that the applicant was 17 years of age, with a year of birth of 2005. She relied upon the case of MVN v London Borough of Greenwich [2015] EWHC 1942 and the starting point being the credibility of the applicant's evidence concerning his age and in more general terms. She submitted that the applicant's account must be looked at in the round, having regard to his vulnerability, and that that account was broadly consistent. The applicant had been highly consistent in his account of his journey to the UK. The only real issue arising from the evidence was the question of the conflict between the account that he was 10 years of age when he stopped school and the letter from the Red Cross, but the applicant had clearly not understood the point being put to him in that regard and had quite possibly made a mistake or perhaps attended school at an earlier age. That could not be used as a reason to conclude that he was born before 2003 and Brent's case that it was, was overly simplistic. Several dates of birth had been given for the applicant, but none came from him as he made it clear that he did not know his

date of birth, only his age, and therefore that should not reflect adversely on his credibility. Ms Benfield submitted that little weight should be given to the screening interview, given that it was conducted over the telephone shortly after the applicant had arrived in the UK after a long journey and lasted only 14 minutes.

70. With regard to the Taskera, Ms Benfield submitted that the applicant's evidence had always been that he did not know when his father obtained it, only that it was given to him when they left Afghanistan. His evidence had not changed. There was nothing in the document that was inconsistent with the Landinfo report. On the contrary the Landinfo report supported the applicant's account as it confirmed that children under the age of seven were exempt from attending in person to obtain the document which was consistent with his father having obtained it for him when he was about six years of age, perhaps to facilitate him going to school. The Taskera was later updated, when the applicant was 13. Mr Johnson's submission that the photograph could not be that of a 13 year old should not be accepted, and reliance was placed upon [209] of AS, R (on the application of) v Kent County Council (age assessment; dental evidence) [2017] UKUT 446 in that respect. Ms Benfield submitted that the process followed by Dr Giustozzi to verify the Taskera should be accepted, given his standing as an expert, and considering that it was the same process previously used by the Home Office through RALON. The Taskera was checked against central records and was a document which the Tribunal could accord weight as confirming the applicant's case that he was born in 2005.
71. Ms Benfield submitted that the age assessment report was of little assistance in determining the applicant's age as it was procedurally defective and weak in its reasoning, it was not accompanied by any notes from the interviews or from the appropriate adult, and the applicant disputed parts of it as being an accurate record of what he had said. She submitted that there had been procedural unfairness as there was no 'minded to' process and the applicant had had no opportunity to address matters held against him, contrary to the guidance in HAM, R (On the Application Of) v London Borough of Brent [2022] EWHC 1924. Ms Benfield relied upon the medical evidence confirming the applicant's diagnosis of gynaecomastia which was a condition common in pubescent boys, a matter that had not been addressed by Brent but which supported his claim to be a teenager rather than an adult. Ms Benfield submitted further that the evidence of the three witnesses was valuable and carried weight, as stated in AM, R (on the application of) v Solihull Metropolitan Borough Council (AAJR) (Rev 1) [2012] UKUT 118. It was notable that there was no evidence from anyone raising concerns about the applicant's age when he was accommodated as a child and there had been no challenge to the opinions of the three witnesses. Ms Benfield submitted that the most probable conclusion from the evidence was that the applicant was not an adult and she asked me to make a declaration that he was born in 2005 and was 17 years of age.

THE LEGAL FRAMEWORK

72. The legislative framework within which this case is to be considered is well-established and there was no material disagreement between the parties on this. It is not, therefore necessary to set out relevant authorities at length. In brief, therefore, I set out the following principles.
73. Where the age assessment of the local authority is in dispute, it is for the court or Tribunal to reach its own assessment of age, as a matter of fact (R (A) v Croydon London Borough Council [2009] UKSC 8).
74. The various authorities make it clear that there is no burden of proof in such cases. In R (CJ) v Cardiff City Council [2011] EWCA Civ 1590 the Court held that the application of a legal burden of proof was an incorrect approach to adopt:

“[23] ...Where the issue is whether the claimant is a child for the purposes of the Children Act it seems to me that the application of a legal burden is not the correct approach. There is no hurdle which the claimant must overcome. 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”.

75. In R (on the application of AM) v Solihull Metropolitan Borough Council (AAJR) [2012] UKUT 00118 the Tribunal made general observations about the impact of evidence of various sorts and from various sources, concluding that

“[15] ...almost all evidence of physical characteristics is likely to be of very limited value”,

“ [19] ... 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”

and

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

76. At [21] of MVN v London Borough of Greenwich [2015] EWHC 1942, Picken J referred to the ADCS Age Assessment Guidance of October 2015:

“The **Merton** guidelines have also been reflected in the 'Practice Guidelines on Assessing Age' as developed for local authorities by the London Boroughs of Hillingdon and Croydon. That document sets out the relevant principles, as helpfully summarised by Miss Luh in her opening

skeleton argument, without objection from Miss Screeche-Powell, as follows:

(1) The assessment must be a holistic one and must start with an open mind, with no imposition on the child to prove his age to the assessing social workers.

(2) Physical appearance and demeanour are notoriously unreliable factors not determinative of age.

(3) Cultural, ethnic and racial context of the young person being assessed must be considered as these may reflect in their presentation as well as their descriptions of their lives.

(4) General credibility is not to be determinative of age. It is more likely that a young person who tells a consistent account of his life which supports his claimed age will be the age he claims to be. Conversely, young people may lie for reasons unrelated to age but related to their claims for protection or the reasons they had to leave their country of origin.

(5) The child should be afforded the benefit of the doubt where evidence can tip one way or the other.”

and went on to say at [27] that:

“It would, therefore, appear that the primary focus is on the credibility of the person's evidence concerning his or her age, but that it is permissible to have regard to credibility more generally provided that, in looking at credibility more generally, the primary focus to which I have referred is not forgotten.”

77. In the recent case of HAM, R (On the Application Of) v London Borough of Brent [2022] EWHC 1924, Mr Justice Swift referred to the leading case in age assessment, B, R (on the application of) v London Borough of Merton [2003] EWHC 1689, and said as follows:

“10. Overall, several important matters can be taken from the judgment in *Merton*. *First*, when it is necessary to determine whether a person is a child (i.e. under 18 years old) for the purposes of the 1989 Act, there is no burden of proof, and so no assumption either way. Rather, the assessment required must be undertaken on its own terms. *Second*, the assessment decision must be made based on reasonable enquiry – the local authority must take the steps reasonable in the case in hand to obtain the information needed to take the decision it is required to take. What this requires will depend on the circumstances of the case. Stanley Burnton J recognised that there may be occasions when a decision that meets the requirement for fairness can be taken based on evidence of appearance and demeanour alone (see his judgment at paragraph 27). However, he also recognised that such occasions are likely to be rare, and that when the person being assessed might appear to be of an age close to 18 (say between 16-20), fairness might ordinarily require the decision-maker to make further enquiries, either through an interview with the person to obtain his history, or otherwise (see his judgment at paragraph 28).

11. *Third*, when such an interview or other form of enquiry was undertaken it must be undertaken fairly. One matter was emphasised. If the person's

credibility was an issue that should be made clear and should be dealt with head on during the investigation process. In cases where the local authority was minded to conclude the person claiming to be a child was lying, that provisional view and the reasons for it should be explained to him and he should have an opportunity to respond before a final decision was taken.

12. *Fourth*, that although there may be a range of things that a public authority might do to ensure the procedure followed was fair, those matters would not be requirements of fairness in every case. This category included matters such as whether the assessment be conducted by one social worker or two; whether a medical opinion or information from other professionals such as resident social workers or teachers may be appropriate; whether the assessment should be completed during a single interview or be undertaken over a more extended period; whether there should be verbatim notes of interviews; whether when an interpreter was required it was necessary for him to be present in person rather than by phone or video call.

13. The judgment in *Merton* did not rule out the possibility that on the facts of other cases some or other of these measures might be requirements of fairness. However, it is equally clear that Stanley Burnton J did not equate the legal requirement for any fair procedure with any sort of checklist. Fairness in this context, as in any other, is a matter of substance not simple form.”

DISCUSSION

78. This is a case where the applicant claims to know his age, and consequently his year of birth, but not his actual date of birth. He relies upon his own account of how he knows his age, namely from his father telling him that he was 15 years old at the time he left Afghanistan, together with supporting documentation in the form of his Taskera, and the testimony of three witnesses, his former college teacher and two youth workers, who have provided their opinion on his age. There are several dates of birth which appear in the documentary evidence, in particular the Home Office GCID notes, including 13 December 2004 and 26 June 2004, but I agree with Ms Benfield that there is nothing to suggest those dates came from the applicant himself and therefore nothing adverse to his credibility arises from that.
79. However there are other matters which raise credibility concerns, as Mr Johnson submitted. Whilst the applicant’s account of his background in Afghanistan and his journey to the UK has not been disputed, there are credibility and other issues arising out of the documentation upon which he relies, which go directly to the question of his age. I emphasise at this point that when assessing the applicant’s credibility, I have had particular regard to the *Joint Presidential Guidance Note No. 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance*, and my assessment has been considered in the round, viewing the evidence holistically and giving due allowance for the applicant’s accepted vulnerability, past traumatic experiences and his background. I have taken into account the opinion of Alice Rogers in her psychological report in which she referred to the impact of the applicant’s mental health on his recollection of

events and time-lines, his ability to form a coherent narrative and his ability to focus during his various interviews.

80. As Mr Johnson submitted, there are problems with the Taskera, and I have to agree with him that the verification of the document by Dr Giustozzi does not assist in that respect. The Taskera states, next to "*Date of birth and age*", *According to information in the archives, the bearer is determined to be 13 [thirteen] years old in the year 1397 (2018)*". The applicant's evidence before me was that his Taskera was issued previously with a photograph on it in which he looked much younger and that his father had the photograph replaced with a more recent one shortly before he left Afghanistan. He stated that he had seen the previous photograph, which was from his childhood, and that that old photograph had a stamp on it. However the Taskera produced states that it was issued in 2018 and it is clear from the stamp on the document that the entire document was issued at that time, rather than a new photograph replacing an old one. I have to agree with Mr Johnson that the photograph on the Taskera is clearly not someone of 13 years of age, as is stated in the main body of the document. I fully acknowledge, as found in AS, R (on the application of) v Kent County Council that photographs can be notoriously unreliable as evidence of age. However, as Mr Johnson said, the photograph shows the applicant with a moustache and beard, whereas his own evidence was that he never had a beard before reaching France (age assessment report section 11) and only started shaving shortly before arriving in the UK (age assessment report section 6 and medical notes dated 3 October 2022 at tab I, page 7) which, even according to his own evidence would have been when he was 16 years of age. Although the Landinfo report, at section 2.1.1, refers to the possibility of photographs subsequently being inserted into a Taskera where there was previously none, due to the bearer being a young child at the time of the issue of the original Taskera, that does not assist in providing an explanation for the discrepancy between the age recorded in the applicant's Taskera and the accompanying photograph.
81. Further, as Mr Johnson submitted, it is relevant to consider the reliability of the applicant's own evidence about the Taskera and how and when it was given to him. According to the evidence recorded in the screening interview, he had no identity documents in the UK and his identity document was in Kabul. The applicant now denies having said that. Ms Benfield asked me to consider that the record of that interview was likely to be inaccurate, considering the limited duration of the interview and the fact that it took place shortly after the applicant's arrival in the UK and after a long journey when he was in no fit state to be interviewed and would have had little understanding of the purpose of the interview. However, whilst I accept that the interview took place in less than ideal circumstances and I fully understand that caution should be exercised as to the weight to be given to evidence provided under such conditions, the applicant has offered no explanation as to an alternative answer to the question. Indeed, the subsequent Home Office records, dated July and August 2021, at Tab H, confirm that there continued to be an absence of evidence of his identity at that time. The applicant's own account, in his statement at [44], was that the Taskera was in the waistband of his trousers which were taken off him when he arrived and

were returned to him when he left Yarl's Wood and that he had not mentioned it because it was not on him at the time and he was tired and confused. It seems to me to be unlikely the applicant would have failed to mention the Taskera if he was indeed in possession of it at the time he was asked about identity documents, when his own evidence at [40] of his statement was that his father had stressed the importance of his Taskera as proof of his identity and had given it to him for precisely that purpose. It seems to me that the evidence recorded at section 1.7 of the interview, that his ID card was in Kabul at the time, when considered with the photograph on the document, is consistent with the document having been sent to him at some subsequent time after his arrival in the UK and therefore the applicant's own evidence as to how the document was issued and obtained raises doubts about the document's provenance.

82. None of those concerns are answered by Dr Giustozzi's report, which as he made clear was a verification rather than authentication process. Although his verification process confirmed that the document matched the copy held in the central records in Kabul, no information was provided directly from those carrying out the verification process in Afghanistan and there was a distinct lack of detail, particularly in his first report, of the process undertaken to reach that conclusion. Whilst Dr Giustozzi stated at [8] of that report that falsifying records was expensive and risky, he did not exclude the possibility and confirmed that it was possible to buy false taskeras. Although his addendum report provided more detail, that was by way of a general explanation of the process and there was still no information coming directly from those involved in the verification process. It is also relevant that Dr Giustozzi's second addendum report, at tab M6, stated that a Taskera which had been attested by the Ministry of Foreign Affairs was much more unlikely to be a fake, whereas the applicant's Taskera had not been attested. Accordingly, whilst Dr Giustozzi's standing as an expert is not in any doubt, there are nevertheless real concerns about the applicant's Taskera which have simply not been addressed by his report and which lead me to concur with Mr Johnson that the Taskera is not reliable as a document establishing the applicant's age.
83. The other area of concern arising out of the documentation was the inconsistency between the applicant's oral evidence and the Red Cross letter confirming his father's employment. It was the applicant's evidence that his father was still working for the Red Cross at the time he ceased attending school and that it was at a later point in time that his father moved to another organisation for his employment. There was some detailed questioning on this point, by Ms Benfield and Mr Johnson and by myself to ensure that the applicant had had every opportunity to clarify the matter and he clearly expressed his recollection of his father leaving the Red Cross and moving jobs subsequent to him leaving school. The applicant's evidence was also that he attended school from ages seven to 10, although he said at [19] of his statement that that was based upon being told by his parents that he attended school for about three years and that the normal starting age was seven. As Mr Johnson submitted, the implication from that evidence, when taken together with the date provided in the Red Cross letter for his father having ceased employment with them, 5 August 2013, was that he must have been

born in or before 2003, thus making him no younger than 19 years of age at the current time. Ms Benfield submitted that it was possible that the applicant had made a mistake about his age when he started or left school, that he could have started school at the age of six and left at age nine, or that he had a false memory of the timing of his father's departure from the Red Cross, and that that could not be used as a reason to find that he was born before 2003. Whilst I take account of the fact that the memory of events as a young child may well not be entirely reliable, the applicant appeared quite certain of the sequence of events. It is not for me to manipulate or interpret the applicant's evidence in other ways so as to make it fit within his timeline and I have to make my decision on the basis of the evidence before me. Having said that, I also agree that that in itself should not be determinative of the applicant being older than claimed and I accept that he may have been slightly under 10 years of age when he left school, considering the basis upon which he provided that age as stated above. It is nevertheless a matter which serves to undermine his claimed age and it adds further concerns to those raised by the Taskera.

84. Aside from the discrepancies arising out of those documents and the applicant's oral evidence, the respondent's case rests upon the age assessment reports prepared by Brent and the statements from Afzal Ahmed. There was no live testimony from any witnesses on behalf of Brent. It is of course common practice that the age assessors do not attend the hearing to give evidence, but it was open to Brent to produce witnesses attesting to the applicant's behaviour in the seven months in which he remained under their care. As Ms Benfield submitted, the absence of such evidence in itself carries some weight in the applicant's favour. I do not consider the age assessment reports, or Mr Ahmad's statements, to be of particular assistance. With regard to the latter, Mr Ahmad did not say anything further about his own view of the applicant's age, but merely endorsed the assessment already made and commented on the applicant's documents and Dr Giustozzi's expert report, and the lack of evidence in relation to the applicant's mental health.
85. As for the main age assessment report itself, that document is poorly drafted, consists of numerous grammatical errors and leads me to wonder if it was in fact not intended as a final document. The applicant challenges several parts of the assessment in terms of an accurate record of what he had said, including the record of his father having been abducted at a time when he worked for the Red Cross when in fact he was working for MSH at that time. Unfortunately the respondent has not provided the social workers' notes of the age assessment interviews, nor the notes from the appropriate adult, and it is therefore not possible to compare the report to the recording of the applicant's evidence taken. I note myself that the age assessment report contains contradictory information, for example recording at section 6 that the applicant said he slept well with no nightmares, yet at [12] recording that he did not sleep well at night and worried about his family. I note also that the report provides differing information as to the conclusion on the applicant's age, concluding initially that he was aged between 23 to 25 years of age, but then subsequently that he was 20 to 25 years of age. I therefore have concerns as to the accuracy and reliability of the information recorded in

the report and cannot have sufficient confidence in the report itself to be able to accept that the discrepancies arising during the age assessment can be attributed to the applicant himself.

86. In addition, the report offers very little by way of reasons for the conclusion reached on the applicant's age. Aside from the reference at section 6, on physical appearance and demeanour, to his prominent Adam's apple and to his voice having broken, sections 1 to 15 simply record the applicant's evidence. The only reasons for the conclusion reached are given in section 16. Yet those reasons are difficult to comprehend. They appear to be based on discrepancies in his account of whether he had family left in Afghanistan and why he came to the UK, doubts about the Taskera given his failure to present it on arrival in the UK, and discrepancies in his account of the timing between stopping school and the abduction and between the abduction and his father leaving the Red Cross. Yet the assessor fails to explain why the discrepancies suggest the applicant was the age they concluded. The only matter relevant to age appears to be the applicant's demeanour, which the assessor stated was consistent with that of an older young person. However no explanation was offered as to why that was the case.
87. With regard to the addendum age assessment report, that simply addresses Dr Giustozzi's verification of the applicant's Taskera and provides no further reasoning in regard to the conclusions on the applicant's age. As Ms Benfield submitted, neither of the authors of the report, Dettie Gould or Afzal Ahmed, have any known expertise in verifying Afghan documents and, as such, their response to Dr Giustozzi's report takes matter no further and is of little assistance to me. In addition the report provides further differing information as to the conclusion on the applicant's age, attributing a date of birth to him of 17 July 1995, which is inconsistent with the stated assessed age of 23 to 25 years. Again, that raises concerns about the reliability of the age assessment report.
88. I turn to the other evidence upon which the applicant relies as supporting his claimed age, consisting of supporting letters and statements from his college, accommodation and youth support group. The authors of those letters and statements are Laura Hewitt and Jessica Costar from Young Roots, Zire Milkurti from Empowerhouse and Bruce Hope from the College of North West London. I consider those to be significantly more weighty than the age assessment report, considering in particular that they are based upon observations over a period of time and in a relevant context rather than in an isolated and time-limited interview. That is consistent with what was said by the Upper Tribunal in *R (AM) v Solihull*, at [20], namely that "*A person such as a teacher or even a family member, who can point to consistent attitudes, and a number of supporting instances over a considerable period of time, is likely to carry weight that observations made in the artificial surroundings of an interview cannot carry.*" All of these witnesses provide reasons for concluding that the applicant is a young person of the age claimed and all are persuasive. The witnesses were all impressive witnesses.

89. Ms Hewitt, who did not appear as a witness, is a youth development worker at Young Roots and worked with the applicant at least once a week in youth activities at the Young Roots youth club, from October 2021 until March 2022, and noted that he gravitated towards those of around 16-18 years and involved himself in activities consistent with his claimed age. She believed him to be his claimed age of 16/17. Jessica Costar worked with the applicant in her former role as a senior caseworker at Young Roots, from March to October 2022, providing him with casework support, and believed his appearance and behaviour were consistent with someone of his claimed age of 17, given his shyness and need for support. Zire Milkurti knew the applicant from his placement in accommodation provided through Empowerhouse where she worked as the homes and training manager. She would see him at least twice a week whilst he was accommodated by Empowerhouse, from September 2021 to April 2022. She believed that the applicant was under 18 when she first met him in September 2021 because of his appearance, his shyness and his lack of confidence, as well as his lack of independent living skills for which he initially required on-to-one support. She considered him to be under 18 at the time of the age assessment and did not see how he could be assessed as being 23 to 25 years of age. Mr Hope taught the applicant in his ESOL class from January to July 2022 and continued to see him at college in his role as curriculum manager for the 16-18 ESOL course. He did not see how the applicant could be age assessed as between 23 and 25 years old. He noted that the applicant kept a young friendship group of 16-18 year olds at college and that he involved himself in activities for younger students. Mr Hope agreed that people matured at different rates and that a 25 year old who was shy and withdrawn could present as a 16 year old but he said that he thought that the applicant was 17 as there was no reason to disbelieve him.
90. The applicant also relies upon, and derives support from, his medical diagnosis of gynaecomastia, diagnosed following his experience of chest pains and a lump on his left side. His medical records, at Tab I, in particular at I27, suggest that the condition had been ongoing for the past one to two years. In a letter dated 28 July 2022 from the Breast Unit in the Royal Free Hospital London, the applicant's condition was confirmed as a benign condition which did not require further treatment. Information attached to the first witness statement of Elizabeth Smith, at Tab C, pages 52 to 57, confirmed that gynaecomastia was a common condition that caused boys' and men's breasts to swell and could cause pain and tenderness of the breast tissue. It was most common in teenage boys and older men and could be caused by an imbalance between the sex hormones testosterone and oestrogen, frequently occurring during puberty. Ms Benfield submitted that that was further evidence which supported the applicant's account of his age, and I accept that as further relevant and persuasive evidence to be considered in the round.
91. Drawing all of this together, I am not persuaded by Brent's assessment that the applicant is so much older than the age he claims to be. Indeed the conclusion reached as to his age is not consistent, and varies from 20 to 26 years of age, as stated above. As I have said, the age assessment reports are not particularly helpful and there is a significant lack of reasoning for the conclusions reached by the assessors. The opinions of

the applicant's witnesses, taken together with his medical condition, are far more weighty, for the reasons already given. Having said that, there are particular concerns with the documentary evidence relied upon by the applicant and there is the matter of his oral evidence, when taken together with the Red Cross letter, suggesting that he would have been born closer to 2003.

92. It is for me to provide an age and date of birth for the applicant. In circumstances where I do not accept the age attributed by the respondent but also have concerns as to the age claimed by the applicant, the relevant question is what is a proper basis for reaching a conclusion on the applicant's age and date of birth. It seems to me that a date of birth between 2003 and 2004 would accommodate the concerns arising out of the Red Cross letter and the applicant's oral evidence about his father's employment at the time he ceased his schooling, accepting that he may have left school a few months before turning 10 years of age. Such a date of birth would be more consistent with the applicant's appearance in the photograph attached to the Taskera and would also be consistent with his condition of gynaecomastia which had been ongoing for the year or two preceding the diagnosis. Furthermore, it would not be inconsistent with the evidence of the witnesses who, whilst finding that the applicant could be the age he claimed, also provided some scope for him falling into the latter part of the 16-18 age group at the time he was under their care.
93. I turn finally to the public law challenge in this judicial review claim. As mentioned above it was previously agreed that the applicant would no longer pursue his public law challenge as that matter was to be dealt with as part of the fact-finding hearing and would be subsumed within the factual determination and the assessment of weight to be given to the age assessment decision. Indeed, Ms Benfield has addressed that matter as part of her submissions on the weight to be given to the age assessment. I have identified issues above affecting the weight to be attached to the assessment although I do not go so far as to conclude that it was completed on a procedurally unfair or unlawful basis. An appropriate adult was present at the assessment interviews and, although there was no separate, formal 'minded-to' meeting, it is clear from the assessment decision at section 14 that the applicant was offered an opportunity to provide comments. In sum, therefore, whilst there are flaws in the age assessment decision, as I have set out above, I find nothing unlawful or procedurally unfair in either the process or the decision made, even though I have not ultimately accepted the age and date of birth the assessors attributed to the applicant. Furthermore, I find no merit in Ms Benfield's further submission that the applicant was not provided with an adequate opportunity to respond to issues which Mr Johnson relied upon in his submissions. On the contrary the applicant was provided with every opportunity to clarify issues of concern and it was entirely open to Mr Johnson to rely upon the matters that he did.

DECISION

94. Accordingly, taking all the evidence before me into account and doing the best I can with that evidence, I am satisfied that the balance of the

evidence is supportive of the applicant having entered the UK at the age of 17 and being 19 years of age at the date of the hearing, and is consistent with an assigned date of birth of 1 January 2004. I therefore make a declaration to that effect.