



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

In the matter of an application for Judicial Review

The King (on the application of IZ)

Applicant

Versus

LONDON BOROUGH OF SOUTHWARK

Respondent

ORDER

BEFORE Upper Tribunal Judge Hanson

HAVING considered all documents lodged and having heard Ms Antonia Benfield of counsel, instructed by Wilsons Solicitors, for the applicant and Mr Jack Anderson of counsel, instructed by GLD, for the respondent, at a hearing on 16 and 17 May 2023

IT IS DECLARED THAT:

- (1) The Applicant's date of birth is 26 December 1997 such that he was an adult of 22 years of age upon entry to the UK on 21 January 2020.

IT IS HEREBY ORDERED THAT:

- (1) The application for judicial review is dismissed in accordance with the judgment attached.
- (2) The Applicant (IZ) and his witness (KA) are granted anonymity. No one shall publish or reveal any information, including the name or address of IZ or KA likely to lead members of the public to identify them. Failure to comply with this order could amount to contempt of court.
- (3) The order for interim relief made on 21 October 2022 is hereby discharged.
- (4) The Applicant shall pay the Respondent's costs of the claim on a standard basis to be the subject of a detailed assessment if not agreed; these costs shall not be enforced without the permission of the Upper Tribunal and subject to an assessment of the Applicant's ability to pay under section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- (5) There shall be a detailed assessment of the Applicant's publicly funded costs.

Signed: C J Hanson
Upper Tribunal Judge Hanson

Dated: 5 July 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): **05/07/2023**

Solicitors: Wilson Solicitors
LLP Ref No. ZAD10.3/SFA
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-001690

IN THE UPPER TRIBUNAL

(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London,
EC4A 1WR

Judgment handed down remotely
Manchester Civil Justice Centre
10.00am on the 5 July 2023

Before:

UPPER TRIBUNAL JUDGE HANSON

Between:

**THE KING
on the application of IZ
(anonymity direction made)**

Applicant

- and -

LONDON BOROUGH OF SOUTHWARK

Respondent

Ms Antonia Benfield
(instructed by Wilsons Solicitors), for the applicant

Mr Jack Anderson
(instructed by the Government Legal Department) for the respondent

Hearing date: 16 & 17 May 2023

J U D G M E N T

Judge Hanson:

The Applicant IZ and his witness KA are granted anonymity. No-one shall publish or reveal any information, including the name or address of IZ or KA likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.

IT IS DECLARED THAT:

- (1) The Applicant's date of birth is 26 December 1997 such that he was an adult of 22 years of age upon entry to the UK on 21 January 2020.

IT IS HEREBY ORDERED THAT:

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

Background

1. The statement of agreed facts reads:
 1. IZ is an asylum-seeking Afghan national of Pashtun ethnicity from Kunduz province who claims to have been born on 26 December 2003 such that on his claimed age, he is presently 19 years old.
 2. IZ claims to have fled Afghanistan after his escape from a Taliban training camp where he was beaten and tortured. IZ claims after his escape, IZ's maternal uncle arranged for him to leave Afghanistan. IZ travelled through several countries before arriving in France, where he spent three or four months in the Calais 'jungle' before travelling to the UK by lorry.
 3. Southwark social care records show that IZ entered the UK on 21 January 2020 as an unaccompanied asylum seeker and claimed asylum at Lunar House on 22 January. He reports that he informed the Home Office that he was born on 05/10/1382 in the Afghan calendar. On 2 January 2020, the Home Office made a safeguarding referral to Croydon LAC team which recorded the Applicant's claimed date of birth as 26.12.2002, and noted his age was disputed but had not been assessed. After spending an initial night in the care of Croydon Council, IZ was then referred to Southwark

Council under the Pan London Rota for unaccompanied asylum seeking children and was placed in the Defendant's care on 23 January 2020, moving to a placement in Waltham Forest with support from Elliot Leigh TLC. The 'CLA IRO Review' of 13 February 2020 notes that he shared that placement with two other young people and received support in the form of 10 hours per week of keywork support, and 24 hour staffing.

4. On 23 January 2020 the Respondent produced a 'CLA Care Plan' which noted the following: "An age assessment to be completed on [IZ] as requested by the Home Office and a determination made in respect of [IZ's] age".
5. On 4 February 2020, IZ had a LAC health assessment in which Dr Hamilton recorded "headaches, flashbacks, poor sleeping and poor appetite perhaps indicative of emotional distress".
6. On 12 March 2020 the Respondent completed a 'Children's Social Care Assessment' with IZ.
7. On 21 April 2020 a 'Pathway Plan and Needs Assessment' was completed by the Respondent. This noted IZ's ARC had not yet been received.
8. On 11 August 2020, IZ moved to a new placement in Bromley (Pontefract Road) where he was supported by PurplePebbles.
9. On 25 May 2021, IZ started a 9-week therapeutic boxing programme provided by In Your Corner and attended an introductory meeting with psychologist Dr Kathy Adcock.
10. On 5 and 10 August 2021, two social workers employed by the Respondent (Zahraa Adam and Norah Mibuuro) met with IZ. Different appropriate adults and different interpreters attended each meeting. The social workers disputed IZ's age considering him to be "an adult in his 20's", assessing him to be "in the average of this [20-25 years old] bracket at 23 years old" and attributing a date of birth of 26 December 1997 to him.
11. On 6 May 2022, IZ had a Home Office substantive asylum interview.
12. On 22 June 2022, IZ was provided with a letter confirming the outcome of the Respondent's age assessment.
13. On 23 June 2022, the Respondent referred IZ to the National Asylum Support Service (NASS) noting he was required to leave his local authority placement by 30 June 2022.
14. On 30 June 2022, the Respondent closed IZ's case.
15. On 30 June or 1 July 2022, IZ left his placement at Pontefract Road and was then sleeping rough and sofa surfing for a period of approximately one month, before moving into a friend's shared house in Bromley.
16. On 12 August 2022, IZ instructed Wilson Solicitors LLP to represent him in respect of his community care/public law matters.
17. On 17 August 2022, a subject access request was made to the Respondent's disclosure team seeking documents relating to IZ. No disclosure of the Applicant's records was received until 30 October 2022 and 4 November 2022, after judicial review proceedings were issued, in response to the initial case management directions of the Upper Tribunal.
18. On 24 August 2022, IZ's solicitor wrote to the Respondent requesting urgent reconsideration of its decision on IZ's age and urgent reinstatement of leaving care support including accommodation.
19. On 1 September 2022, the Respondent replied declining to accept that the age assessment was unlawful or to reconsider it and declining the provision of any support.
20. On 13 September 2022, IZ's solicitor sent a letter before claim to the Respondent challenging the lawfulness of the age assessment and again requesting leaving care support be urgently reinstated.
21. On 16 September 2022, the Respondent replied to the pre-action correspondence repudiating the claim. On this date, the Respondent

- provided for the first time a final copy of the age assessment.
22. The Applicant's social care records record that on 20 September 2022, the Respondent made a decision to provide care leaver services including accommodation to IZ, which was approved in anticipation of the same being ordered by the court and pending the outcome of the judicial review proceedings.
 23. On 21 September 2022, the Defendant confirmed by email that the age assessment report previously disclosed had been withdrawn and the assessment served on IZ's solicitors on 16 September 2022 was the final version. The Defendant confirmed that it had not waived legal privilege in respect of comments included in the earlier version of the report handed to IZ on 22 June 2022. On the same day, a notice of issue of legal aid was served on the Respondent.
 24. On 22 September 2022, IZ issued this claim for judicial review in the Administrative Court (CO/3488/2022) with an application for urgent consideration and interim relief.
 25. On 26 September 2022, the Honourable Mrs Justice Stacey granted anonymity, refused the Claimant's application for abridged time for service of the Acknowledgement of Service and gave directions for consideration of the applications for interim relief and permission.
 26. On 19 October 2022, the Respondent filed and served an acknowledgment of service and summary grounds of defence.
 27. In an order dated 21 October and served on 24 October 2022, Paul Bowen KC sitting as Deputy Judge of the High Court granted permission and expedition. Interim relief was granted to the extent that the Respondent was to assess the Claimant's needs for accommodation and other support, and thereafter provide such accommodation and support as the Claimant is entitled to, as if he is aged 18 and born on 26 December 2003, until further order. The claim was transferred to UTIAC for a fact-finding hearing to determine IZ's age.
 28. On 27 October 2022, the Tribunal confirmed transfer of the claim from the Administrative Court and case management directions were set by the Upper Tribunal Lawyer.
 29. On 9 November 2022, the Respondent reinstated leaving care support for IZ, providing him with accommodation in the Croydon area.
 30. On 18 November 2022, the Applicant informed the Respondent that he had submitted Subject Access Requests for his personal data to France, Italy, Greece, Croatia, and Slovenia. None of these countries have disclosed any records held for the Applicant.
 31. On 20 December 2022, IZ's representatives submitted a Subject Access Request to the Home Office for IZ's records.
 32. A case management review hearing was listed on 13 February 2023.
2. The round table meeting provided for in the case management directions failed to produce agreement between the parties resulting in a contested hearing on the above stated dates.
 3. The issues to be determined by the Tribunal have been agreed in the following terms:
 1. The primary issue for the Tribunal to determine is whether the Claimant is his claimed age and to determine IZ's age and date of birth.
 2. The Tribunal should determine the credibility of IZ's account of his age and date of birth.
 3. In respect of the Respondent's age assessment, the Tribunal should determine whether the age assessment carried out by the Respondent was Merton compliant in accordance with R (B) v London Borough of

- Merton [2003] 4 All ER 280 and what weight should be given to it.
4. The Tribunal should determine the weight to be placed on the evidence of third parties in the determination of age.
 5. Costs.

The legal landscape

4. I remind myself that whether a person is a child for the purposes of section 20 of the Childrens Act 1989 is a question of fact based upon an assessment of the evidence.
5. I also remind myself that it is necessary to determine issues by application of the balance of probabilities test without resorting to the concept of discharging of the burden of proof, meaning I am required to decide whether, on the balance of probability, IZ was or is not at the material time a child.
6. The starting point has to be the credibility of the evidence placed before the Tribunal.

The evidence

7. In support of IZ's claimed date of birth of 26 December 2003 I have read his witness statements and had the benefit of seeing and hearing him give oral evidence. In addition, his witness KA has filed a statement and gave oral evidence. A document described as an observation report from Pat Richards, his key worker with Purple Pebbles, has also been provided together with letters of support, disclosed social care, immigration, and judicial review documents, in the case bundles.
8. On behalf of the London Borough of Southwark ('Southwark') I have been provided with an age assessment conducted by two social workers employed by Southwark, Ms Zahraa Adam and Ms Norah Mibuuroo who considered IZ to be an adult in his 20s and who assigned to him a date of birth of 26 December 1997.
9. This is not a case in which there is any documentary evidence as to IZ's age nor any evidence from a person who claims to have known him in Afghanistan or before the last stage of his journey before crossing from France to the UK.
10. IZ has raised as an issue that there was no challenge to his age and that he was accepted as a minor and that he only later discovered that this was an issue, but it is clear that the Home Office, to whom IZ would have been referred when he arrived in the United Kingdom, did not accept his claimed age. This is supported by the entry in the Home Office Safeguarding Referral form dated 22 January 2020 addressed to Croydon Social Services Looked After Children Team in which it is written:

Name: [IZ]

Claimed age:

17

Claimed date of birth: 26-Dec-

2002 Assessed date of birth:

N/A Nationality: Afghanistan

Religion: Islam

Age-disputed:

Yes

11. It is also clearly recorded on the Home Office application card that IZ's age is disputed. Whilst it is appreciated that matters may not have occurred as quickly as all parties would have preferred, the process was impacted by the lockdown arising from the COVID-19 pandemic. It is not made out any delay arising therefrom was unlawful.
12. In his witness statement dated 21 September 2022 IZ claims not to understand why Southwark decided to assess his age given the Home Office had not disputed his date of birth when he arrived in the UK and the date of birth given to him by the Home Office, 26 December 2002, was subsequently used and recorded by Southwark Social Services in his documentation. As noted above, IZ's claimed date has never been accepted by the Home Office as being his true date of birth. I make a finding that IZ has always been an individual who requires leave to enter or remain in the UK in relation to whom the local authority, Southwark, and the Home Office had insufficient evidence of his age on arrival in the UK.
13. A person who enters the United Kingdom as an asylum seeker or migrant who claims to be a child will be asked for any documentary evidence to help establish their age when they are first encountered. IZ had no such evidence. The request for such evidence is important to establish an individual's identity and to ensure that those who are children are provided with appropriate services and to ensure that adults are not provided with services for which they are not eligible or suitable. The fact a date of birth given previously by IZ and recorded in later documentation, before sufficient evidence had been obtained to establish IZ's age, does not support a claim it was accepted IZ was the age he claimed to be. IZ's claimed date of birth has always been contested.
14. IZ entered the United Kingdom with the assistance of an agent. It is known some agents give individuals dates of birth for them to repeat to the authorities on arrival in the UK, which indicate they are a minor, to enable them to access services and reduce the risk of being returned to their home or another country.
15. There was some discussion during the course of the hearing as to the 26 December 2002 date of birth. IZ claims that when he entered the UK he gave the date of birth in the Afghan calendar which he claims was converted to 26 December 2002 not 2003. IZ blames the Home Office for the error in translating the date to that in the Gregorian calendar. However, at [4] of IZ's witness statement he refers to being told by a social worker that his accurate date of birth is 26 December 2003 not 26 December 2002 and that the age assessment said that IZ changed his date of birth to 2003, which he claims was incorrect.
16. Mr Anderson in his closing submissions referred to IZ denying there had been any discussion of the Afghan dates in the age assessment, despite it being clearly recorded that there was.
17. IZ deals with his knowledge of his age and date of birth from [16] of his witness statement in which he writes:

Knowledge of my age and date of birth

16. The social workers say they do not understand why I do not know my age.

This is very common in Afghanistan, where people do not celebrate their birthdays and tend to have an approximate knowledge of their age as I did. However, I have been able to tell them my date of birth, which I learnt as a child from my father's notebook, as I explain below. After I arrived in the UK there was some confusion about the year in which I was born, but as I explain below this happened through no fault of my own.

17. As I explained to the social workers, when I arrived in the UK I gave 05/10/1382 as my date of birth because that was the date I had read in my father's personal notebook at home. My mother kept the notebook at home after my father passed away. I remember that my sister and older brother's dates of birth were also recorded there, but I cannot remember what they are.
 18. As the assessors themselves note in the report, 05/10/1382 in the Afghan calendar converts to 26/12/2003 in the Gregorian calendar. However, when the Home Office registered my details they recorded my date of birth as 26/12/2002 and used it on my official documents, therefore that is the date I always used before. At some point my social worker at the time told me 2002 was wrong, and my correct date of birth is 26/12/2003, which I did not know. They told me to start using 26/12/2003, which added to the confusion. I have been unable to open a bank account, because of the different dates being used by the Home Office and social services.
 19. I understand from my solicitor that social services say I do not know how old I was at important times in my life, and therefore they think I lied about my age. I fail to understand why they said this. Whilst we do not keep diaries/calendars in Afghanistan to mark specific dates, I remember being told my age at specific points in my life in Afghanistan.
 20. As I explained during my age assessment, I remember my mother telling me how old I was when I was growing up. She would not specifically mention when I was born, but she would mention how old I was when other people asked about it, for example she would say I was 6 or 7 years old, and I remember her telling me I was 7 when my permanent teeth started growing.
 21. When I left Afghanistan I was 14 years old. I stopped going to Madrassa just before I left Afghanistan, and studied there for about five years, having started around the age of 9.1 That is how I know how old I was when I left Afghanistan. I also told the social workers I was 14 when I was beaten and went to hospital just before I left Afghanistan.
 22. I do not see any reason why my parents would give my age as younger than I actually am, in my culture parents are proud to have older, not younger children.
 23. As I mentioned during the assessment, I recall that my journey to the UK took approximately 1.5-2 years. I remember two Ramadans passed during my journey to the UK. That is how I knew that I would have been approximately 16 at the time I arrived in the UK. I told the assessors that I was between 16-17 at the time of the meetings: that is because I was 14 when I left Afghanistan, it took me 1.5-2 years to travel to the UK, and I'd been here for a year and a half by the time I was assessed, as I explained.
 24. As I said above, I did not know what the Gregorian calendar was until after I arrived in the UK, and even now I find it difficult to use it, especially to calculate dates in the past. I am aware that two different dates of birth have been used by the Home Office and social services after converting my date of birth from the Afghan calendar, but I do not know how to do the conversion myself.
18. The comment about the lack of attention to the detail of an individual's age in Afghanistan is not a new issue as the Tribunal is well aware that in Afghanistan birthdays are not often celebrated and that more emphasis

is placed upon events, such as the birth of a new child, a wedding, or death, although documents will be required when an individual is registered at school.

19. This attitude to age is also reflected in the Landinfo report dated 22 May 2019, found in the Supplementary Bundle, describing procedures for the issuing of Afghan passports and the Taskira ID document. I find the submission made on IZ's behalf that less weight should be placed upon this document as it had been amended since originally drawn up in 2010 is without merit, as the fact there have been a number of amendments indicates a desire to keep the report current. Insufficient evidence was provided by IZ to undermine the findings of the report.
20. Against the country information relating to the lack of interest in relation to an individual's age in Afghanistan, absent specific reasons, is IZ's claim that his mother would tell him on a regular basis how old he was. There was nothing in IZ's evidence to indicate why such information would be imparted to him, especially as he claims this was when he was a child when it was not made out there was any specific event or reason requiring the same to be known. I find this casts doubt upon IZ's claim which is contrary to the known country material as reflected in the Landinfo report.
21. IZ also claims that when his adult teeth came through he was told by his mother that he was seven years of age. Even if such a statement was made by his mother, although again the background country information has to be considered, aspects of dental development have been the subject of disputes before the courts. Whilst it is not disputed that human teeth develop as an individual progresses through childhood into adulthood the extent to which the stages of such development are indicative of age, and even the extent to which it can be assessed by dental examination, is highly debatable. See *R (on the application of AS) v Kent County Council (age assessment; dental evidence)* [2017] UKUT 446.
22. Ms Benfield in her submission stated that IZ's account is simple, understated, not exaggerated, and should be accepted as credible, as he consistently explained that he knows his date of birth from this having been recorded by his father in a notebook that also bore the date of birth of his older brother and younger sister.
23. It is important to consider that evidence as a whole, as with all other evidence. Mr Anderson refers to IZ claiming that he knew he left Afghanistan when he was 14 years of age. He stated he started at the Madrassa at around the age of nine, two years after he was told his age when his teeth came through, and studied there for five years. It was submitted it was relevant that IZ associated his date of birth with the events that occurred rather than his claim to have seen it written in his father's notebook.
24. I find merit in the submission that there are discrepancies in IZ's evidence. In his Asylum Interview dated 6 May 2022 IZ was asked how old he was when he started to attend the Madrassa to which he claims "*I did not know exactly but I was about seven years old. More or less*". It was put to IZ that in a witness statement he had claimed that he was five years old when he attended the Madrassa, which IZ claimed was incorrect and that he stated he studied there for 5 to 6 years and that this is what may have been written. That is not the case.

25. Whether IZ started at the Madrassa aged 5, 7, or 9, is material. He was fairly consistent in claiming that he had studied at the Madrassa for five years and it was accepted he arrived in the UK on 21 January 2020. If he entered the Madrassa aged 7 in 2010, with five years of study to 2015 the Applicant will have been 12 years of age. If he entered the Madrassa aged 5 with five years of study, he will have finished in 2013 when he was aged 10. If he entered aged 9, after five years of study he will have been aged 14.
26. IZ blamed the discrepancies on others, namely claiming that the wrong figures had been written down but there is merit in Mr Anderson's submission that, whilst accepting that mistakes are sometimes made in recording information, it was highly unlikely that the discrepancies noted are the fault of others, especially as IZ was referred to one specific claim he sought to renege from notwithstanding having signed the declaration of truth confirming that the content of his witness statement was true.
27. Support was given to the submission in relation to the lack of credibility and inconsistency in this aspect of the evidence by the reference by IZ to the fact that he started attending the Madrassa after getting his adult teeth when he was 7. That chronology completely undermines the claim to have started studying at the Madrassa when he was 5, although IZ claimed this was incorrect.
28. In relation to his Taskira, IZ claimed he had such a document and that it had been with him until he reached Croatia when he claims it was burned.
29. Issue was taken about IZ's claim that his Taskira had his date of birth on it. Although Mr Anderson submitted that the country information indicated this was not the case, the Landinfo report, as highlighted by Ms Benfield, indicated that some Taskira did have the date of birth of the individual appearing on it, ordinarily in a case where a birth certificate had been provided. It is not implausible, therefore, that IZ's Taskira may have had his date of birth on it although nowhere in his evidence does he refer to his father having produced a birth certificate when he went to register his son's details, referring continually to a notebook that he claims his father kept.
30. I do not find IZ's claim that he could not read the information on the Taskira credible. Although some documents are handwritten, and I did not see the original of the document as IZ claimed to have lost it, he also claimed that he can read and write.
31. As noted, above it is more common in Afghanistan, where a person's actual age is not considered of importance or celebrated as it is in the UK, to associate events by reference to specific points such as Ramadan, or special family events. Mr Anderson referred to IZ claiming his father died 4 1/2 years ago in his witness statement although sought to correct that later by claiming that he believes that to be a reference to his brother. Mr Anderson accepted the 4 1/2 years in the statement may be referred to the date from the statement but that claim is undermined by the fact that the same evidence appears in statements dated 15 May 2020 and 27 January 2021.
32. I found IZ's oral evidence unconvincing when asked about specific events. When he was asked in oral evidence to try and be more specific as to when they occurred I gained the impression, as submitted by Mr

- Anderson, that IZ was being evasive. Another possible explanation is that because the claimed events never occurred IZ could not provide a chronology.
33. Of particular importance in relation to this evidence was when IZ was asked to give an indication of when an alleged event occurred in relation to Ramadan. IZ is a practising Muslim who attended a Madrassa. Madrassa study the Koran and Islamic subjects which would have included reference to the holy month of Ramadan. IZ was not asked to specifically provide a date for when Ramadan occurred in the relevant year but whether the event he was mentioning occurred before or after Ramadan. I found his answers to be evasive and not at all convincing.
 34. I do not accept that IZ's evidence in relation to his age is determinative. I accept the submission that the chronology he provides is vague and inconsistent.
 35. It is important therefore to consider the remaining evidence holistically.
 36. IZ also relied upon the witness statement of KA who attended to give oral evidence. His witness statement is dated 13 January 2023.
 37. KA states he is 16 years of age and was born in Afghanistan. He gives his date of birth as 6 June 2006. He arrived in the UK in June 2020 and was granted refugee status. KA states he met IZ in the Calais jungle in 2019 and they knew each other for a couple of months before IZ left for the UK in January 2020. KA remained in Calais until June 2020. KA states could not remember what his first impression of IZ was, as he was with one group of people and he was with another group, some younger some older. He describes IZ as seeming like a normal boy of his age. KA states they began eating their meals together and spent time together but that he did not ask IZ how old he was and IZ did not ask him. KA correctly states at [8] of his statement that they do not talk about age in Afghan culture.
 38. KA states he formed the impression IZ was the same age as he was because of the way he spoke, acted, talked to him and never thought he was older. He states they did not talk about their lives or of their families in Afghanistan when in Calais as the focus was on how to cross the English Channel to get to the UK. KA states they talked about football and cricket but mostly focused on crossing the Channel.
 39. KA stated he had never heard anybody question how old IZ is and that he was treated as a teenager as he himself was.
 40. KA confirmed that he now lives in Sutton and is studying at Croydon College and lives near IZ and that they are now able to meet often.
 41. From [32] of his witness statement KA speaks about the impact of the age assessment on IZ, that he was distressed that social services did not believe he was a minor and had assessed him to be older, and that KA disagrees with the outcome of the age assessment.
 42. I accept that KA and those in camps in Calais would focus upon their eventual aim and desire to be able to secure entry to the UK and that as it was not in accordance with Afghan culture to discuss age, I find that aspect of his evidence credible. What is relevant to the weight that can be given to this evidence, so far as it refers to the core issue of IZ's age, is that KA accepted in his written and oral evidence that IZ had not told him his age, that he knew nothing of IZ's background or of IZ until they met in Calais, and that what he says reflects a subjective assessment of what he believes IZ's age to be. Liking football or cricket or discussing mutual interests which are not age-specific does not advance the matter

any further. KA has no professional training or expertise in assessing age and the question of whether his subjective impression of the age of IZ, his friend, is accurate depends upon an objective assessment of the evidence as a whole by me.

43. I will record an observation at this stage that having had the benefit of seeing IZ and KA sitting together in the Tribunal, IZ looks considerably older than KA. As KA's date of birth is 6 June 2006 that makes him nearly 17 years of age at the date of the hearing.
44. Two witness statements have been filed by IZ's solicitor, Serena Fasso of Wilson Solicitors LLP. That dated 1 December 2022 is written in response to a meeting on 11 November 2022 to inspect IZ's social media accounts with the assistance of a Pashto interpreter. IZ has accounts with Facebook, Snapchat, Instagram and Tiktok via apps installed on his mobile phone. The statement also confirms that a Subject Access Request had been made for IZ's personal data to France, Italy, Greece, Croatia and Slovenia, countries IZ passed through on his way to the UK, with a response only having been received from Greece. The contents of the statement, which provides factual information, is noted.
45. In relation to IZ's journey to the UK, he was questioned about his claim not to have received any support on his way to the UK which was contradicted in his oral evidence when he confirmed he had received some support, undermining the credibility of that part of his earlier claim.
46. Serena Fasso's statement dated 22 September 2022 sets out the background of how Wilson Solicitors became involved following an introduction by the South London Refugee Association on 10 August 2022. The firm was formally instructed by IZ on 12 August 2022. The statement details telephone and email communication and the background to the judicial review claim. The section dealing with IZ's current circumstances is as they were at that time.
47. I have also seen a letter written by Aurelija Goncalves dated 21 September 2022. The author has worked for LSEC Bromley for five years and teaches an ESOL Adults and Study Programme for 16 to 18 year groups. The author was IZ's tutor in the academic year 2021 - 2022. Although the author states that students need to be in the age group of 16 to 18 at the start of the year to be eligible to study, if they turn 19 during the course they could stay in the programme. It is therefore likely IZ will have been admitted to study as without a conclusive age assessment, which there was not in this case, or a positive judicial finding in relation to his age, IZ will have been treated on the same basis as he was when provided with local authority support from Southwark, i.e. as a minor.
48. The author of the letter refers to the fact that based upon IZ's behaviour, attitude to learning, interaction with teachers and peers, it suggests he is a typical teenager more likely to be 18 than 24 years of age. The author describes IZ as a teenager/young adult. The observations supporting that opinion are as follows:
 - IZ gets on very well with his peers (age group 16-18). He does not seem more mature than his peers.
 - The way he talks to his peers (joking, hugging each other, teasing each other, getting upset about immature comments) is similar to how I have seen teenagers typically interact, rather than adults.

- The way he spends his free time (sleeping a lot, watching YouTube all day, hanging out with friends, being lazy) is also typical for teenagers.
 - His attendance and punctuality were not great (he would oversleep, feel tired or not be in a mood to come to college). Based on my experience of teaching teenagers and adults, the reasons IZ gives for missing classes are more typical of an 18 than a 24- year-old.
 - He would say teenager typical comments (e.g. 'Miss, I'm tired.', 'I'm hungry.', 'Can we go home now?', 'No homework, please!' etc.) and sometimes he would put his head down on the table to rest and express his tiredness and sleepiness.
 - In ESOL classes we cover topics such as travelling, free time activities, family, education, relationships, traditions, favourite things. IZ's opinion, experiences he shared and answers to various questions also suggest he is not as mature as a typical 24-year-old would be.
49. The author refers to the term "typical teenager" but does not indicate in the correspondence any particular expertise in age assessment and appears to have assessed IZ's age, or her opinion of the same, by reference to the way others would behave and the way IZ interacts with them.
50. The author appears to accept that the term "typical teenager" can refer to different aspects of behaviour and personality, as is recorded in the correspondence, rather than being anything specific to the individual concerned. It is known that males can mature at different ages and often later than females and it is relevant that IZ is a national of Afghanistan who has travelled the UK and who, as he entered the UK in 2021, is likely to have very little understanding or experience of life and interaction with peers other than in very limited environment/situation. It may be IZ acts as he does in the same way as others because he is trying to be like them and fit in rather than it reflecting his age.
51. Although I accept the letter reflects the subjective view of the author I do not find it is determinative of the issue of IZ's age and the weight that can be given to it is somewhat limited for the reasons set out above.
52. I have also been able to consider an email addressed to IZ's social worker dated 4 August 2021 written by Dr Cathy Adcock, a Clinical Psychologist and Director, in response to a request by the social worker for any contribution to an age assessment of IZ. The email states:

Firstly, I am a bit confused as to the rationale and timing of this assessment as [IZ's] date of birth as given in your referral was 26.12.02 suggesting he is 18 years old at this point in time?

As an organisation who have had a low total number of contact hours with [IZ], who have only come to know him recently, and who do not regularly work with asylum-seeking children and young people, In Your Corner are not able to give a view or observations on his age.

However, we would like to highlight the potential role of [IZ's] mental health and vulnerability in any assessment process. We can share more information with you about his mental health, only with his consent.

Given that the age assessment is potentially very stressful, we are concerned

that we have not been able to contact [IZ] in the last two weeks. This is a significant change in his behaviour. We are concerned that this may mean that he is more vulnerable at this time.

As we haven't been able to contact him, we have been unable to assess any mental health risk. As [IZ's] Lead Professional, please ensure that you consider mental health risk in your work with him at this time.

53. There is also within the bundle an email received from Purple Pebbles headed "Observation of individual who is undergoing an age assessment" following a formal request by Southwark for completion of observations on an individual who the author is involved with in a professional capacity.
54. A submission was made by Mr Anderson that little weight should be placed upon such observations by Pat Richards, who is described as a Key Worker, as a previous witness statement from this individual had been withdrawn and it agreed that no reliance would place upon the same. I do not accept the fact that the earlier witness statement was withdrawn, as it was written without the authority of Pat Richards senior manager, potentially devalues the record of observations made in the more contemporaneous, authorised, document.
55. Ms Benfield has pointed out, in a post hearing email, a typographical error at [23] of her written closing remarks in which it is stated Ms Richards was providing an observation report at the time of the age assessment on 10 August 2020, when IZ had been in the Respondent's care for around 8 months. It was actually August 2021 when she provided the report (and when IZ was age assessed), when IZ would have been in Southwark's care for around 18 months, and she had been working with him for a year, since August 2020. This amendment has not been challenged by Mr Anderson.
56. Ms Richards states she and IZ met when he moved into a shared house in Bromley on a weekly basis. In relation to physical appearance and demeanour it is written:

"IZ is tall, slim build has no facial hair. IZ makes eye contact when engaging with key work sessions, he engages well and although language is a barrier when we do not have a translator he is patient and will use his phone to communicate but can sometimes be easily distracted.

IZ is a quiet and pleasant young man, he has good social interaction skills that he likes to keep himself to himself.

IZ is always polite when interacting with adults. He engages well with other young person within the accommodation who is also from Afghanistan, he is also polite to the other residents but is not as confident to engage in conversations with them.

IZ is not confident when attending initially appointments with professionals. If he is facing any unfamiliar settings, then he will always ask for support.

IZ interacts at the level of a teenager.

57. Following other observations under the headings of Social History, Developmental Consideration, Education, Independence/Self-care skills, Health and Medical Assessment, and Documentary Information, the author is asked their view on the applicants age and what age bracket they feel they are best suited to, for which an example is given of age brackets 15 – 18 or 20 – 25 to which the author writes “I believe that IZ presents as an 18 year old”.
58. The document records the view of Pat Richards placing IZ as an adult where he claimed at that point to be a child. It is also of note that despite an indication of the range of possible ages the author was asked to indicate, she provided a very specific age notwithstanding lack of evidence of professional training in this area. What I do accept in relation to this evidence is that it is an observational report provided at a time IZ is said to have been in the care of Southwark for 18 months. I accept Ms Benfield’s submission that the opinion should carry some weight, but I do not find it determinative of the issue I am required to consider.
59. Ms Benfield also raises the issue of a lack of professional concern as to IZ’s age in her closing submissions and that this tribunal cannot focus on what it does not have and can only seek to answer the specific questions asked of it by reference to the evidence that has been made available. The fact of the matter is that IZ was referred to the care of the local authority when he was claiming to be a minor in accordance with established practice and that appropriate steps were taken to accommodate him within such care arrangement until his actual age could be assessed.
60. As there is no evidence from other sources of a professional nature from those with whom IZ has been engaged during his time in care, the main document relied upon by Southwark is the age assessment.
61. This document is challenged on IZ’s behalf by a number of submissions. It is submitted that the age assessment, although lengthy, contains very little by way of weighty reasons to dispute IZ’s claimed age or in support of the finding to be up to 23 years of age at the time of assessment, born on 26 December 1997.
62. Ms Benfield’s submissions contain specific challenges to the reasons given by the social workers as to why the assessment was carried out.
63. The age assessment document records that IZ was referred for a Merton compliant age assessment for two reasons (a) that at the point of entry he claimed his date of birth was 2002 and since changed it to 2003 and (b) that “significant doubts about his age were highlighted by professionals involved in his care. It was submitted by Ms Benfield that the issue of age and date of birth did not amount to significant doubts about IZ being a child as both the dates of birth will have made him a child and the issue of conversion is explained above, and it is argued that the reasons given at (b) are simply untrue.
64. What cannot be disputed, however, is that the Home Office did not accept IZ’s age when he entered the UK and that an age assessment was required. That document now exists, and it is the question of what weight can be given to that document that requires consideration.
65. The pleadings specifically challenging this aspect of the evidence are to be found in the Claim form at [55-71].
66. The obligation upon a local authority undertaking an age assessment is

to undertake what is referred to as a Merton compliant interview process. In *R (B) v Merton London Borough Council* [2003] ECHW 1698 (Admin) it was found:

- The assessment does not require anything approaching a trial and judicialisation of the process is to be avoided.
 - The matter can be determined informally provided that there are minimum standards of enquiry and fairness.
 - Except in clear cases, age cannot be determined solely from appearance.
 - The decision maker should explain to the young person the purpose of the interview.
 - Questions should elicit background, family and educational circumstances and history, and ethnic and cultural matters may be relevant.
 - The decision-maker may have to assess the applicant's credibility. Questions of the burden of proof do not apply.
 - The local authority should make its own decision and not simply adopt a decision made, for instance, by the Home Office, if there has been a referral.
 - If the decision-maker forms of view that the young person may be lying, that may lead to that view.
 - Adverse provisional conclusions should be put to the young person, so that they may have the opportunity to deal with them and rectify misunderstandings.
 - The local authority is obliged to give reasons for its decision, although these need not be long or elaborate.
67. It is settled law that the most reliable means of assessing the age of the child or young person in circumstances where no documentary evidence is available is by a Merton compliant assessment – see *BF (Eritrea) v Secretary of State the Home Department* [2019] EWCA Civ 872.
68. It is also settled law that whilst Merton identifies relevant operating principles, it does not establish a checklist and that the issue is one of fairness of the assessment. In *R (SB) v Royal Borough of Kensington and Chelsea* [2022] EWHC 308 (Admin) it was found that local authority should not be hobbled by tribunals taking a highly technical approach to challenges, demanding that every box is ticked, but instead should allow flexibility and practical procedures to be deployed.
69. The relevant requirements were summarised in *R (HAM) v London Borough of Brent* [2022] EWHC 1924 (Admin) as follow:
- a) When it is necessary to determine whether a person is a child (i.e., under 18 years old) for the purposes of its duties under the 1989 Act, there is no burden of proof, and so no assumption that a person is a child or an adult, at [10];
 - b) It is likely to be rare that a fair assessment would be based on physical appearance and demeanour alone, [10]. However, there will be cases where physical appearance and demeanour will suffice, [32].
 - c) An age assessment must be fair in function and substance, not merely form, [14]. What is fair will depend on the circumstances of the case.

- d) An assessment may, depending on the facts of the case, be unfair if an appropriate adult is not present, [20].
 - e) Where further enquiry as to a young person's age entails interviews, these interviews must be undertaken fairly. What is necessary for this purpose must take account of the circumstances of the person, [32].
 - f) While the question of whether a process was fair is a matter for the Tribunal, it is for the social workers to justify why such steps were taken or not taken, [34].
70. Turning to the age assessment itself, it is a basic requirement that the assessment is undertaken by trained social workers. Accepted practice is that the assessment must be carried out by two trained social workers. In this case Zahraa Adam is described as a qualified Senior Social Worker who holds the BA in Social Work gained in 2013 and a Postgraduate Diploma in Advance Social Work Practice attained in 2019 and is a qualified Practice Educator. She has considerable experience working within an Unaccompanied Asylum Seeking Minors team including conducting age assessments as a Senior Practitioner and lead assessor. Norah Mibuuro is a qualified Senior Social Worker who has obtained a BA in Social Work in 2006, a Masters of Science degree in Mental Health Social Work with Children and Adults in 2012 who has worked in Child Protection, Looked after Children, Referral and Assessment and Unaccompanied Asylum Seeking Minors teams in different Local Authorities and is employed by Southwark in the Care Leaver team working with young people aged from 16 to 25. I find the requirement for suitably qualified social workers to undertake the assessment made out on these facts.
71. A second basic requirement is that interpreter must be provided if it is necessary, capable of speaking a language and dialect the child or young person understands. It is recorded in the age assessment that in addition to an appropriate adult an interpreter was provided with no issue being raised of a lack of ability of IZ to understand the interpreter. No issue was also raised in relation to the presence of the independent appropriate adult or indication of material concerns being raised by them during or after the age assessment process. I acknowledge IZ in his witness statement of 21 September 2022 wrote;
10. There were two different appropriate adults present during the interviews. It was explained to me that they were there to help me. The person present during the first meeting did not say anything. At the second meeting there was a different person, a lady of Turkish origin I think. I remember that she reproached the lead social worker. She told Zahraa she needed to speak to me respectfully, and told her to stop being rude. She was trying to protect me. I remember Zahraa angrily dropped her pen, lost her patience, and told the appropriate adult "*you can write anything you want*" meaning the appropriate adult could complain about her if she wanted to.

I do not find this statement supported by any other evidence and have noted the statements from the social workers in relation to assessment

meetings and IZ's interaction with them.

72. In relation to the ADCS guidance, it is asserted on IZ's behalf that the guidance was not followed which it is argued fundamentally undermines the assessment as this is relevant to the issue of procedural fairness.
73. It is accepted that the guidance is not a statement of law although it is accepted the authors of the guidance possess considerable experience in the field of age assessment.
74. The Merton guidelines are reflected in the Guidance which sets out the relevant legal principles:
 - (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.

See *MVN v London Borough of Greenwich* [2015] EWHC 1942 at [21].

75. The grounds for judicial review assert that the assessment is devoid of adequate reasons for the decisions reached. The analysis of the information obtained during the course of the age assessment process is set out in the document itself.
76. It has not been made out it was unfair for those conducting the age assessment to begin with initial observations in relation to IZ's physical presentation, including his behavioural presentation. The initial impression of IZ's age was as a young man in his 20s and that in no circumstances could he possibly be any younger than 20 years of age. It is not disputed, and indeed was found in Merton, that whilst it is accepted there can be clear cases where it is obvious that a person is under or over 18, meaning there is no need for prolonged enquiry, as a general rule an assessed age cannot be determined solely on the basis of appearance. The social workers assessing IZ's did not undertake the assessment on this basis alone. It is specifically recorded in the outcome of the age assessment document that IZ did not qualify for the remit of being subjected to an age assessment because his physical appearance was significant enough to assess him as an adult based solely on physical appearance. It is written that since IZ has consistently contested his age he was subject to a full Merton compliant age assessment and was given every possible opportunity to verify his age but had not been able to prove that his age was likely to be as stated.

77. The reasons for that conclusion and the conclusion as to his true age are given as:

- a. the appearance of IZ.
- b. his structure against stages of the male anatomy's development
- c. evidence of several signs of ageing
- d. puberty related factors like hair, being mindful of specific ethnic puberty related stages
- e. male anatomy and stages of bone development
- f. consideration whether refugee related traumas could influence physical appearance when completing the analysis
- g. behaviour and demeanour during the assessment process
- h. examination consideration of how IZ came to the knowledge of his claimed date of birth and age
- i. credibility of claimed documents by specific reference to the Tazkirah
- j. IZ's social history including life in Afghanistan, quality of his care and upbringing and family network, including details concerning the remainder members of IZ's family in Afghanistan.
- k. Developmental considerations.
- l. IZ's educational attainment.
- m. IZ's independent life skills and ability to manage alone.
- n. IZ's journey to the UK and circumstances that led him here.

78. A reading of the age assessment as a whole, including the notes of the interviews, does not support the claim that the reasons given in the age assessment are weak. A reader of the decision is clearly able to understand not only the conclusion reached but also the reasons why, by reference to the material gained before and during the assessment process.

79. An issue that arose which it is said undermines the conclusions in relation to physical appearance relates to the sources relied upon by the age assessors when addressing IZ's physical appearance. It is the case that the initial impression in relation to IZ's was gained from being able to meet him and observe him. The challenge to the conclusion as to age is based upon the source material referred to in the assessment. Ms Benfield submitted:

- a. First, in relation to bone structure where assessors noted they "have compared the various development of his structure like his defined jawline broad and wide shoulders and thick wide neck consisting of a large protruding larynx" concluding that "the assessors cannot correlate these features with that of a teenager when they match easily with the anatomy of a fully grown adult developed man" [105]. The external link provided to support this analysis is <https://naturalhistory.si.edu/education/teaching-resources/written-bone/skeleton-keys/young-or-old> from the Smithsonian National Museum of National History Teaching Resources children recorded as having been prepared for "Grades K to 12" Grade K being elementary school kindergarten which children start at age 5, spanning up to Grade 12 (age 18). The article broadly addresses age markers in skeletons. Put simply, there is nothing in the article that supports the point that the assessors make about the development of jawline, shoulders, neck or larynx. The only reference more specifically to teenagers is that "[t]he tibia completes growth at

- about age 16 or 17 in girls and 18 to 19 and boys”, not a physical characteristic in the event that the assessors reference.
- b. The Second point made by the assessors is that “the width of the shoulders developing wider than his hip bones is highly suggestive of an adult anatomy and not a post pubescent adolescent” [105]. The article relied upon to support this is [https://design.tutsplus.com/articles/human - anatomy - fundamentals - advanced - body - proportions -- vector -19869](https://design.tutsplus.com/articles/human-anatomy-fundamentals-advanced-body-proportions--vector-19869). The website “tutsplus.com” is a resource to “*learn creative skills*” and this article in question forms part of a “*human anatomy fundamentals*” drawing course aimed for illustrators.
 - c. It was on the basis of this two pieces of analysis and sources that the assessors apparently conclude that they “cannot accept that structural body presented by IZ is a teenage boy”[105].
 - d. Considering IZ’s “*signs of ageing*” [105 - 106] the assessors referred to [https://medcraveonline.com/FRCIJ/methods - of - skeletal-age estimation - used - by - forensic anthropologists - in adults - a - review.html](https://medcraveonline.com/FRCIJ/methods-of-skeletal-age-estimation-used-by-forensic-anthropologists-in-adults-a-review.html) after noting that IZ’s “*skin texture is poor, rough, with indents and built up residue that is not resilient to external factors any more*”. That article however provides the following abstract and nowhere in the article is skin let alone skin texture; wrinkles or skin ageing referred to.

Abstract

Reconstruction of biological profile of unknown individuals would be incomplete without age determination. Forensic anthropologists use skeletal indicators involved in processes of bone resorption, deposition and remodelling which are time related to estimate age of the individual. Estimating age in adults remains a challenging task to the forensic anthropologists because of the complexity and individual variations seen in the ageing process and the gamut of environmental factors influencing the same. Age provided by anthropologists is determined as age range rather than a specific age. It is been noticed that age range determined for younger individuals is narrower than for older individuals. This paper reviews most commonly use skeletal age estimation methods by forensic anthropologists.

- e. Further addressing “*facial wrinkles and lines*” [106] and the suggestion that “[w]rinkles and creases are observed on IZ’s face from his forehead, eyes, mouth and neck regions, indicating advanced ageing has occurred” [106] relies on the article [https://doctorlib/anatomy/classic - human - anatomy - motion/5.html](https://doctorlib/anatomy/classic-human-anatomy-motion/5.html) which is titled “Classic Human Anatomy in Motion: The Artists Guide to the Dynamics of Figure Drawing, Chapter 4. Facial Muscles and Expressions”. The author of this information is not clear but the website appears to be a compilation of online courses that include yoga, Chinese medicine and dietetics among a vast array of topics.
- f. The assessors conclude that they “cannot accept this amount of wrinkles belonging to someone anywhere under early 20s” [106] citing: <https://www.gilmorehealth.com/wrinkles> in support of this. That article addresses different forms of treatment for wrinkles including Botox, antiwrinkle creams and facelift, among others. It does not address the age range at which wrinkles appear; support

that there is a threshold of the level of wrinkles a person under or over their early 20s should have.

80. It is important when considering what weight may be placed upon an assessment to have regard to the source of any conclusions that have been arrived at. The first of the issues set out at (a) above refers to the website being a teaching resource but does not identify or refer to any material that shows the content in relation thereto concerning the structural development of a fully grown adult developed man, as opposed to a teenager, are wrong or that the findings based upon the same are outside the range of those that were available to the assessors. It is not made out that the information contained within the teaching resource is inaccurate. It cannot be disputed that a male's body proportions will change with age as it goes through its various growth stages. In relation to the larynx, for example, as a person goes through puberty the larynx grows, the vocal cords lengthen and thicken and so the voice of the male deepens.
81. It is known that due to the action of testosterone males may develop a more prominent brow, heavier jaw, higher facial width to height ratio, and a more prominent chin.
82. It is not irrational to say that the development of broad and wide shoulders, thick neck, and defined jawline are signs of ageing as the body continues to grow and develop. These are matters that were identified as a result of the opportunity to observe IZ. I do not find it made out that the conclusion the physical appearance of IZ's anatomy is indicative of an adult is a finding outside the range of findings reasonably available to the age assessors, nor a conclusion infected by unfairness.
83. In relation to point (b) above, namely the assessment of the width of IZ's shoulders being wider than his hips suggesting an adult anatomy; much has been written on the issue of body shape. The fact the website appears to relate to guidance on a drawing course does not mean the information contained therein is inaccurate as it is reasonable to assume that those drawing pictures of individuals will want to make sure they accurately reflect the subject under consideration.
84. The widening of the shoulders occurs as part of the male puberty process when expansion of the rib cage is caused by the effects of testosterone. The conclusion of the assessors that the width of IZ's shoulders, developing wider than his hip bones, is highly suggestive of an adult anatomy and not that of a post pubescent adolescent has not been shown to be finding outside the range of those reasonably available to the assessors.
85. In relation to (c) it is not made out that it was unfair or irrational for the assessors to conclude as they did in relation to IZ's physical presentation and anatomy.
86. In relation to (d), comments regarding signs of ageing, the Medcrave website describes itself as a collection of many perspectives and disciplines which publish in journals and e-books original research and case studies, think pieces, editorial essays, and more. Their stated aim is to make original scientific content freely available to researchers, journalists, and interested readers around the world. It appears therefore to be an open source medical research site.
87. The specific site in question is written by an individual from the Department of Paediatric Dentistry, Assange Memorial Dental Collagen

Hospitals, India who is described as a Senior Lecturer. It is not clear from that article that the specific comment relating to IZ's signs of ageing, particular skin texture, is supported by that publication.

88. As noted at [e] facial wrinkles and lines were further addressed later in [106] relying on a different website. The Doctor.lib.info website appears to be a medical library containing articles on a number of different medical issues including anatomy. Again it is not made out that the observations referred to in the specific link to that website in relation to human anatomy, as interpreted by the age assessors, are inaccurate and the fact the website refers to yoga and other medicines and other topics does not limit the weight that can be placed upon the same. In relation to the specific article relied upon by the age assessors, there is a detailed examination of joints and joint movement, muscle and tendon characteristics, facial muscles and expressions, muscles of the neck and torso, muscles of the arm and hand, muscles of the leg and foot, body types, surface landmarks, and soft tissue characteristics, structures and planes of the figure, gestures and actions drawing, finding movement within the stationary figure, rhythmic movement, and sequential movement. The challenge fails to establish reliance upon this site to be unfair or that the conclusions arrived at in relation to IZ's facial presentation, by reference to facial wrinkles and lines, is outside the range of those reasonably available to the assessors, or that the relationship between the same and the assessed age is in any way irrational.
89. The challenge at (f) refers the conclusion of the assessors that they could not accept that the number of wrinkles IZ has belong to anybody under the age of 20 relying on a stated website. The decision makers took into account not only the appearance but factors that may contribute to an individual's presentation such as social, historical, and other, as noted in the decision.
90. The article referred to is said to address different forms of treatment for wrinkles but did not address the age range at which wrinkles appear or support the claim there was a threshold for the level of wrinkles that the person would have over or under the age of 20. It cannot be disputed that wrinkles occur naturally as part of the ageing process when skin becomes less elastic and more fragile with decreased production of natural oils. There are however a number of other contributing factors such as exposure to ultraviolet light, smoking, or repeated facial expressions such as squinting or smiling.
91. Wrinkles in younger people will be uncommon as the skin of this age group is enough elasticity and collagen during the teenage years to prevent wrinkles. It must be accepted that if an individual is exposed to some environmental pollution, certain medication, or habitual facial expressions, that wrinkles could appear or relate to the decline of collagen production. The statement by the assessors that wrinkles shown on IZ's face could not be accepted as belonging to somebody anywhere under the early 20s may be taking the statement too far when it may depend upon a number of circumstances including the environment which the individual lives and their lifestyle. I find the material does not undermine the assessment that IZ has facial wrinkles and lines which suggest a person who is not a minor but somebody who is considerably older.
92. There is also a challenge to the assessment that IZ displayed adult-like behaviour

at

[109] which is said to have failed to consider that at the time of the assessment IZ was a few months away from his 18th birthday, and that this is not a factor open to the decision-makers.

93. The age assessment was undertaken on the 5 and 10 August 2021. IZ would have been short of his 18th birthday if it was accepted that his date of birth was as he claims, namely 2003. The observation of the assessors, whose experience in this area is considerable, was that the behaviour of IZ was not compatible with an individual of this age even taking into account environmental and other relevant evidence. With a date of birth of 1997 IZ will have been 24 years of age. It has not been made out the conclusions arising from the assessment of IZ's behaviour and demeanour in relation to the age assessment is outside the range of findings reasonably open to the age assessors on the evidence.
94. Ms Benfield submitted it was an unfair and erroneous conclusion to hold against IZ the fact he did not know his age which is without consideration of this being common in Afghanistan. The claim relating to the inclusion of the date of birth not being recorded in the Taskera is referred to above. To an extent this aspect of the findings may be based upon a flawed misunderstanding of the content of the Taskera. If so little weight can be placed upon that aspect but that does not undermine the other reasons set out by the age assessors in relation to IZ's evidence generally.
95. There is reference in the assessment to consideration of IZ's social history, including life in Afghanistan, quality of care, upbringing, and family networks, and I find no merit in the assertion the assessors erred in relation to family background, social media, and understanding of the evidence in relation to IZ's life in the UK.
96. Another point taken in relation to procedural fairness is the claim that three factors were not put to IZ during the 'minded to' process.
97. At [27-28] of Ms Benfield's skeleton argument it is written:

27. Minded to process: the assessors failed to put relevant matters to IZ in the course of the minded to process, depriving him of a fair opportunity to address these matters at a stage at which the decision was only provisional. As noted above, there are no social worker notes from the 10 August 2021 meeting which was said to have been the minded to and outcome meeting however the age assessment report sets out "adverse points and responses from client" at [C99-C102]. At least three material matters which were held against IZ's credibility were not put to him: a. That IZ's inability to provide his age or the month of his father's death went against his credibility; b. That the timeline constructed by the assessors around IZ's brother's age at the time of their father's death led them to the conclusion that IZ was 1 to 22 years of age; c. That he had changed his date of birth from 2002 to 2003 to obtain a further year in the R's care.

28. These were material matters held against IZ's credibility which were not put to him for comment. The failure to do so renders the age assessment procedurally unfair. As Swift J observed in an analogous case of R (HAM) v London Borough of Brent [2022] EWHC 1924 (Admin) where the Judge held that matters thought to go to credibility that fed into the local authority's assessment on age "[f]or that reason, [...] should, in fairness, have been put to the Claimant" [§51].

98. In his skeleton argument dated 10 May 2023 Mr Anderson accepts that

the three points identified by Ms Benfield in her skeleton argument were not put to IZ, arguing that the 'minded to' process did not require that every single point be raised and that, in any event, IZ had an opportunity to comment on the majority of the points that were considered to tell against him.

99. I accept the submission that a 'minded to' process was undertaken. The age assessment records at the end of the questioning stage IZ was advised that the assessors were going to review their notes and analyse the information and that after the break they would present any adverse points to him and advise him where the assessment is heading to enable him to reflect on their position and have the opportunity to respond to that analysis. The 'minded to' process is set out from page 33 of the age assessment in the following terms:

Minded to

The person should be given an opportunity during the assessment to answer any adverse points the decision-maker is minded to hold against them.

Adverse points and responses from client

We have reached the end of the questioning stage of the assessment; we have collected enough evidence to indicate where the assessment is heading and what we are 'minded to' believe at this point in time. We are going to share these with you in order to give you the opportunity to respond to any adverse points put to you and for you to make any comments on our views about what we are minded to believe. This is not the final outcome of the assessment but the direction of where the assessment is headed based on the evidence gathered throughout the process thus far. We are going to sum up our analysis and give you the opportunity to comment.

As we explained to you several times, both my colleague and I have been working with migrant children for several years now, we do not only do age assessments and our jobs include the day-to-day care planning of unaccompanied asylum seekers too, we see them in their natural environments, engaging activities with them in their natural life, we see them throughout their developmental spectrum, in education, with their peers, within their placement, from a very young age and we see them grow all the way into the leaving care service at 21 years old. So, it is important for you to know we do not compare you with indigenous English young people, but people from your own ethnic and cultural background.

We also consider a significant number of variables when we are

comparing and assessing development and age. We consider geographical factors like the specific country someone is from and we even pay attention to regional provinces and tribal comparisons. We also look at environmental factors, like the climate in that area and living circumstances like way of life, any physical laborious work they may have experienced or growing up in a war zone. We then look at biological factors like what science tells us about the human body and compare to our own experiences of working with Afghan boys and their unique biological DNA. We also think about life experiences of migrants, like attachment styles, abandonment, and loss. We pay careful consideration to the impact of the journey to the UK, the survival mechanism of migrants, experiences of torture and trauma both before and during the journey and how these experiences can make someone behave more confident, more resilient, more adult like because their experiences have forced them to live like adults. We then draw evidence from all the important information you give us, and we compare it with other sources we have collected and with all the above observations and considerations. At this point in time, we are significantly struggling with placing you under the age of 20 when you present a significantly older than the age you are claiming. We will explain to you the reasons that has led us to this thinking.

Do you understand what we are basing our analysis off and why we are minded to believe the points we are about to explain? IZ said yes.

1. Physical appearance

Your physical appearance is developed beyond any other 17 year old Afghan boy we have experienced. You have significant and several signs of ageing that match someone in their mid-20s and not someone as young as you are claiming to be. For example, your body is fully developed, like your Adam's apple is bulging out of your neck, your structure is defined and built, like your shoulders are wide and your torso is broad, you have several facial wrinkles and lines, you have a full thick consistent stubble which you have deliberately shaved to the skin surface despite our request not to shave at our second meeting, you still did it. There is nothing about your appearance that suggests you are a young person, you physically present as an adult man. Do you have any comments about what we are minded to believe? IZ replied "if I showed you younger boys with beards". It is not just about beards, we know Afghan boys develop hair much quicker in

puberty, but there are several other significant ageing factors on you too. IZ I'm exercising and active, that's why I'm developing". Exercising does not make facial wrinkles come or make your Adam's apple grow to that size. IZ made no further comment.

2. Your behaviour and demeanour is very mature, you are very confident, extremely composed, you can control your emotions, you're not triggered. You engage well with us like adults, you make jokes and enjoy good humour. There were no signs that you were struggling to keep up with us. Your behaviour and the way you interact is adult like and does not suggest you are a young person. Do you have any response to what we are minded to believe? IZ said no and continued smiling.

3. You do not actually know your age and you cannot tell us your age at any time of your lifespan, you could not tell us how old you were in France before you came to the UK. You seem fixated with the number 14 but do not really have any context to it and you do not really know your age. Do you have any comments? IZ said "I didn't say my mum said I'm 14. I told you when I started school". Your basing your entire age based on an estimation of your journey. You never knew your age growing up and you told us your age was estimated based off your development and that's not fact. IZ made no further comments.

4. You spoke about a Tazkira but gave false information about it and could not give any substantial details how and when you obtained it. It is highly unlikely that you obtained it as young as 5-10 years old and this is not typical in your country as you would have no reason to get it. We have already established you fabricated information about your date of birth on there which you tried to rectify today which leads us to believe that you have done some research or spoken to someone since the last time we saw you. In addition, a Tazkirah is not a reliable source of information because you can put any information on their and it can be made easily without any authenticity. IZ replied "my father recorded the age when I was born and this is the date on the Tazkirah". Again, the details you provided were fabricated and again, we cannot rely on Tazkira's. IZ replied "I told you the dates not legible".

5. You have no concept of the ages of your siblings, and you are unable to estimate them despite telling us the years between you. We find this strange considering you guessed all our ages. IZ laughed and made no comment.

6. During your developmental stages, you did not know any of your ages, including your age in Ramadan last year. How can you not know this and still be insistent on your age now. It leads us to believe you have no genuine claims to the age you are

claiming and that's why you cannot even give your age over basic timelines. Your using the original date of birth that you gave on arrival on all your social media, which is 2002 and your already 18 now. IZ replied "I gave you every dates. So you're saying I am lying". You have fabricated information yes. It's quite clear.

7. You describe your journey in extensive details and you were fingerprinted all over Europe and never once supported as a child. It leads us to believe you claimed adult ages of that they also saw you as an adult because of your significant development. IZ replied "not all the countries have the same laws, and before they arrange these things we would leave".

8. They have not provided any additional information for us reconsider our position and you have not rectified the adverse points we have put to you. Is there anything else you want to add before we conclude and give you the final outcome? IZ said no.

100. It is not disputed that the 'minded to' process is an important aspect of the age assessment process. It provides the individual being assessed with an opportunity to comment on the proposed conclusions arrived at by the assessors having considered not only the replies given in response to questions, but also other relevant sources of information considered by those undertaking the assessment.
101. The three items of concern in relation to the 'minded to' process are not relevant to the conclusions in relation to IZ's physical appearance and demeanour. The items are all relevant to the assessment of IZ's date of birth. In relation to this it is written in the age assessment:

IZ's age assessment began by deciphering how and when he came to the knowledge of his claimed date of birth and age. It became quite clear within the first few minutes of the assessment that IZ would provide a confused account of his age. He avoided the assessor's initial question about his age and instead provided a prolonged story about how his father had written his date of birth as 1382 but when he came to the UK, it gave the wrong date 1381 and when he tried to rectify this, but it was not changed. The assessors are aware 1381 converts to 2002 and 1382 converts to 2003, meaning IZ will be either 18 years old or 17 years old at present (http://www.elonat.com/jantari_concerter.php). When probed further about what his actual age whilst, IZ said he did not know because they had not calculated it as he does not know the current year. The assessors struggled to accept this considering he had now been in the UK for over a year, living as a minor and yet he was claiming not to know his age. IZ went on to explain that he was advised by professionals based on the date of birth of 1381 (2002) that he was 17 years old, but because this date of birth was wrong in the first instance, this was not his age, he was actually younger. He eventually told the assessors he was 17 years old at present, despite his official records from the Home Office showing him as having turned 18 already. IZ then went on to provide his claimed date of birth in the Afghan calendar as

05/10/1382 and said he thinks the month is called Jedi, which the assessors have converted to 29/12/03. When exploring further where he got this date of birth from, IZ claimed he saw it written down in his father's notebook but also claimed he had a Tazkirah document which was burnt on his journey in Bosnia. He went on to explain that he knew he was 14 years old before he left Afghanistan, he travelled for approximately one and half to two years and he had been here for over a year but he could not calculate his exact age because they did not know exactly the times of his journey. The assessors struggled to correlate IZ's version of events and the description he was supplying appeared incoherent. He appeared to have no real connection to his claimed age was simply going off the basis that he was 14 years old when he left Afghanistan but with no real basis for that age either.

101. In relation to family members the assessors wrote:

The assessors then went on to explore the remainder of his family members and IZ could not give the assessors any of the ages despite claiming they were all three years between each other. When the assessors converted IZ's date of birth to gain some clarity about his siblings ages, IZ could not confirm or validate any of the questions put to him about his date conversion and replied "I don't know" to the entire conversation. It became clear he had no genuine connection to his claimed date of birth nor the agency had claimed. When discussing his siblings, he told the assessors his brother was taken by the Taliban five or six years before his father passed away and he was between the ages of 10 and 15. If his brother was 10 to 15 years old, five or six years before his father passed away, then this gives IZ an age range of 7 to 12 years, approximately 11 years ago when his brother had left. Making him quite clearly between 18 and 22 years old now, going by the bare minimum years that we have accounted for since his journey. IZ went on to talk about his mother, sister and uncle who looked after them and describe the dynamics within his family. No further age-related information was provided at this stage.

102. It is accepted that the specific point about the construction of IZ's age by reference to the family issues was not put to him during the 'minded to' process but did form part of the concerns set out in the overall assessment. If these points were going to be taken against IZ they should have been put to him to enable him to respond to the same, but they were not. As noted by Mr Justice Swift in *R (HAM) v London Borough of Brent* [2022] EWHC 1924 (Admin) at [51] the point being made was the fairness of the procedure and not whether the conclusion was correct.

103. I have considered a further point raised at [55] of the judgment of Mr Justice Swift in *R (HAM) v London Borough of Brent* [2022] EWHC 1924 (Admin) which he identified that the error in the minded to process in that case could not be classified as an error of the most serious nature and that the process of establishing whether that individual was a child, especially in light of the fact that it was established that a number of the findings by the defendant in that appeal relating to the age of the claimant were not challenged, should be determined by the Upper Tribunal in light of the established practice that whether a person is a

child for the purposes of the obligation under the 1989 Act as a matter of jurisdictional fact which can only be definitively determined at a fact finding hearing before the Upper Tribunal. It is that fact-finding exercise which is being undertaken by me today. I do not find it is appropriate, notwithstanding the accepted issues in relation to the 'minded to' process, to find that the age assessment should be quashed. Even if one takes out the paragraph of the age assessment set out at the end of page 45 and the first paragraph of page 46, in which the issues not put to IZ are set out, the remainder of the age assessment clearly supports the conclusion in relation to IZ age, and are factors not undermined by procedural unfairness. For this reason I find any procedural errors not to be of a serious material nature.

104. Dealing with other matters arising from Ms Benefield skeleton argument, impugning the process and the integrity of the age assessment, they relate to a lack of notes from appropriate adults, an allegation of no notes from either assessing social work of the second age assessment session on 10 August 2022 (which is factually incorrect as Ms Adams notes of the second day are included in the agreed bundle), delay in serving the outcome of the age assessment, or reasons for undertaking the age assessment which I have commented upon above. I find none of the above have been shown to establish procedural unfairness sufficient to undermine the age assessment.
105. In relation to the procedural fairness points I have commented upon the 'minded to' process above. I find no merit in the claim the assessors failed to take account of the trauma suffered by IZ either in Afghanistan or during his journey to the United Kingdom. There is clear reference in the age assessment to consideration being given as to how the potential trauma might affect IZ's responses and times when he struggled with his emotions due to sensitive topics being discussed. Discussion about mental health issues, noting of signs of distress, express consideration being given to the possible impact of trauma, and lack of sufficient material in [29] of the skeleton argument as how any trauma is said to be relevant or impact upon the age assessment on the facts of this matter.
106. I find no merit in the claim the age assessors failed to address third-party opinions that they were provided with. It is recorded that requests were made for opinions of individuals that worked with IZ. IZ's case is that there was third party material available at the time of the age assessment but that it was not considered by the assessors and only in fact came to light after proceedings were issued upon review of the Respondent's social care disclosure. Sources of information provided in support of IZ's claim in the bundles have been specifically taken into account as part of this judgment.
107. I find no merit in the assertion the age assessors failed to build a rapport or conduct the assessment in a child friendly matter. It is clear those undertaking the age assessment have considerable experience in this area of work and a reading of the documents provided in the agreed bundle as a whole show time was spent getting to know IZ and develop a rapport with him rather than just asking questions. I have not been referred to any evidence to show the appropriate adult raised this as an issue during the assessment process.
108. I therefore conclude that, with the exception of the provision of the age assessment which was not properly put to IZ during the minded to

process, that weight can be placed upon the age assessment, the remaining parts of which have not been shown not to be Merton compliant. I do not find that the failure to put the three issues that were not put to IZ to be sufficiently serious to warrant a finding that the age assessment should be quashed or that no weight should be placed upon the same.

109. Returning to the three specific questions the Tribunal has been asked to consider I find as follows:
110. I find that the age assessment carried out by the respondent, with the exception of one issue referred to above, was Merton compliant and that, with the exception of the issue identified above, considerable weight can be given to it.
111. In relation to the evidence of third parties relied upon by IZ I find, as set out above, that weight that can be given to those so far as they reflect the subjective view of the authors of those documents but I do not find that the weight that can be given to those exceeds the weight that can be given to the Merton compliant aspects of the age assessment.
112. I find in addition to the pleadings, that I have had the opportunity during the course of the hearing to see and observe IZ who came across as an adult male older than his claimed age. I do not find IZ's account of his age and date of birth to be credible as his assertions are not supported by sufficient evidence to enable me to give such claims greater weight than that relied upon by the respondent for the reasons set out above.
113. IZ's claim date of birth the 26 December 2023 would make it 19 years of age at the date of the hearing. I do not find that IZ was born on that date or is that of that age.
114. The age assessment undertaken by the respondent assessed IZ as having been born on the 26 December 1997 which will have made him 25 years of age at the date of the hearing. I find that evidence determinative.
115. I accept that the expression 'age assessment' is that, namely an estimate of IZ's age, and that there is an accepted margin of error in any assessment, but having taken all relevant factors into account I find that it is more likely than not, apply the balance of probabilities test, that IZ was born on 26 December 1997, and I make a declaration to that effect.
116. At the date of his entry to the UK on 21 January 2020 he will have been an adult.

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