

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

**Claim No. JR/7871/2018**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**B E T W E E N:**

**The QUEEN on the application of  
MRA  
ANONYMITY DIRECTION MADE**

**Claimant**

**-and-**

**SURREY COUNTY COUNCIL**

**Defendant**

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**ORDER**

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UPON considering written submissions from both parties and upon hearing from Ms Hafesji for the Claimant and Mr Paget for the Defendant

UPON undertaking a fact-finding hearing between 23-25 April 2019 and handing down judgment on 14 May 2019

**IT IS DECLARED:-**

1. The Claimant was born on 23 June 2003.

**AND IT IS ORDERED:-**

2. The claim for judicial review is allowed.
3. The Defendant shall pay the Claimant's costs in the case, to be assessed if not agreed.
4. The Defendant shall make a payment on account in respect of the Claimant's costs in the sum of £42,500 by 28 May 2019.

5. Insofar as is necessary, there is to be an assessment of the Claimant's publicly funded costs.

#### REASONS

6. There was only one issue raised at the handing down of judgment hearing: the Defendant objected to the size of the costs to be paid on account. The Claimant suggested this should be £60,000 as this would reflect about 70% of the costs incurred. The Defendant submitted that the total figure claimed is way too high and that the payment on account should be £30,000, as a standard age assessment case would normally involve costs at around £40,000. I accept that this case has features atypical of many age assessments in particular, the Claimant has been in the UK for three years and there is a complex history for a number of reasons. Doing the best I can in all the circumstances £42,500 is an appropriate figure to be paid on account.

*UTJ Plimmer*

**Upper Tribunal Judge Plimmer**

**Dated 14 May 2019**



Upper Tribunal  
(Immigration and Asylum Chamber)

Claim Number: JR/7871/2018

Heard at Field House  
On 23-25 April 2019

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**THE QUEEN ON THE APPLICATION OF  
MRA  
ANONYMITY DIRECTION MADE**

Claimant

**and**

**SURREY COUNTY COUNCIL**

Defendant

Ms K Hafesji for the Claimant, instructed by Osbornes Solicitors LLP  
Mr M Paget for the Defendant, instructed by Surrey County Council

**JUDGMENT**

**Introduction**

1. In this claim the Claimant ('MRA') asserts he is a child, born on 2 Tir 1382 in the Persian calendar, which equates to 23 June 2003 in the Gregorian calendar ('the 2003 dob'). The Defendant contends that this is not his real date of birth, but that he is three years older than this, and was born on 22 June 2000 ('the 2000 dob'). MRA therefore claims that he is currently 15, whilst the Defendant claims that he is 18. The parties both contend that my task in assessing MRA's age is a binary one, i.e. between the 2000 dob and the 2003 dob.

2. At the beginning of the hearing it was agreed that irrespective of his age, MRA should be treated as a vulnerable witness. He has attempted suicide in the past and has been detained under the Mental Health Act 1983 ('the 1983 Act') for a significant period in 2017. Many of those who are close to him have expressed concerns regarding his mental health since his arrival in the United Kingdom ('UK') in March 2016, albeit this appears to have improved and been relatively stable in recent months. In a psychiatric report dated 29 August 2018, Dr Rajpal concluded that MRA is fit to give evidence. He noted that MRA was diagnosed with severe depression and post-traumatic stress disorder ('PTSD') when he was sectioned under the 1983 Act, and that MRA reported continuing symptoms of nightmares, flashbacks, hyperarousal and avoidance that are consistent with PTSD. There are also references in the documentary evidence to MRA possibly being on the autistic spectrum disorder, but no firm diagnosis has been reached on this.

3. Throughout the hearing, and with the agreement of both Counsel, adjustments were made in the light of MRA's vulnerability and I confirm that I have treated him as a vulnerable witness.

### **Background**

4. The background is set out in summary only and seeks to reflect a chronology agreed by the parties.

5. MRA is a citizen of Iran. He lived in Tehran with his mother, who was a teacher, his father, who was a member of the Iranian Revolution Guard Corps, and two brothers (his elder brother is approximately 10 years older than him and his younger brother was less than a year old at the time the family left Iran). MRA claims that they were forced to leave Iran after his father helped a number of Afghan refugees to escape. MRA also claims that when attempting to leave Iran (unlawfully) by lorry in October/November 2015, he was separated from his family members. He believes that the lorry in which his family were travelling was stopped, and that his family were returned to Iran. He suspects that they have been detained or killed, but does not know what has actually become of them.

6. MRA claims to have travelled overland from Turkey until his arrival in the UK on 17 March 2016 on his own (if correct this would have involved many months of travelling under the control of an agent). It is undisputed that when he first arrived in the UK, MRA was arrested by the police and then placed immediately into the Defendant's care. He provided the 2003 dob to both agencies. That made him 12 at the time. This appears to have been at least initially accepted by the Defendant, when MRA was placed in his first foster placement in Twickenham Gardens. This placement broke down on 19 April 2016, after which MRA was provided with a short emergency placement before being moved to a second foster placement, with Mr and Mrs Turner in Croydon. MRA only stayed there for two nights, because the couple had two dogs in the home and MRA felt uncomfortable living there for reasons relating to his then Islamic faith and upbringing. On 20 April 2016 MRA missed his first appointment with the Home Office because of the breakdown of his placement. At that stage the Home Office recorded MRA's age by reference to the 2003 dob.

7. On 22 April 2016, MRA was collected at night by three men who transported him to Brodworth House, residential accommodation in Manchester. MRA claims that residing in an institution made him extremely distressed. MRA absconded and was stopped by the police and hospitalised on 23 April 2016. The police called MRA's social worker. After being returned to Brodworth House, MRA attempted suicide by tying a ligature around his neck on 25 April 2015. MRA was hospitalised from this point to 28 April 2016, when he was moved to his third foster placement. It was around this time that MRA informed his social worker that he was 15 years old. This was the first time he relied upon the 2000 dob. MRA claims that he changed his age in the hope that this would assist in the process of being moved to a different placement, that he believed would be more suitable for him. This change in claimed age was accepted by the Defendant without any further formal inquiry or assessment until the June 2018 age assessment (the subject of this judicial review challenge).

8. On 28 April 2016 MRA was moved to another foster placement in Croydon with Mr Nazemi. He remained here until April 2017.

9. On 26 May 2016 MRA missed a second screening appointment with the Home Office because of complications consequent on the earlier placement breakdown. At this point the Home Office recorded MRA's age by reference to the 2000 dob, which has remained the position to date.

10. On 1 July 2016 MRA attended a screening interview for his asylum claim. He provided the interviewing officer with the 2000 dob. In a witness statement dated 16 November 2016, prepared with the assistance of immigration solicitors, MRA placed reliance upon the 2000 dob. MRA was interviewed regarding his asylum claim on 9 December 2016. On 19 December 2016 his immigration solicitors made detailed representations regarding MRA's asylum claim. These referred to the 2000 dob. MRA claims that during his interactions with the Home Office regarding his asylum claim he "*kept quiet about the lie*" regarding his age.

11. Between September 2016 and April 2017, the social care notes record ongoing concerns regarding MRA's placement with Mr Nazemi. MRA's mental health declined and he began to abscond from 4 April 2017. At around this time, MRA was hospitalised. On 11 April 2017, MRA was moved to a residential placement in Croydon. Shortly after this, MRA was again hospitalised on various occasions. Whilst at Bethlem Hospital on 19 April 2017, he told Dr Hayes that he was 14.

12. On 4 May 2017, MRA was sectioned under the 1983 Act whilst detained by the police. He remained in custody until 7 May 2017, when he was moved to the Priory Clinic in Manchester ('the Priory'). The Defendant contacted MRA's immigration solicitors to raise the deterioration in MRA's mental health. MRA was further sectioned under section 3 of the 1983 Act on 3 June 2017. This was confirmed by a Mental Health Review Tribunal. MRA was discharged from the Priory on 28 September 2017, with a diagnosis of severe

depressive episodes, psychotic episodes, and PTSD. He was discharged on Quetiapine and Sertraline.

13. Upon his discharge on 25 September 2017, MRA was moved to residential accommodation in Stoke, Trent Valley House. He contacted the Defendant on 28 September 2017 to clarify that the Priory incorrectly recorded his age. MRA was unhappy to be at a residential unit and ran away frequently to stay in London. After a review on 27 November 2017 Dr Latif, a consultant child and adolescent psychiatrist, noted in a letter dated 18 December 2017 that MRA was not taking his medication and it was important that he did so. MRA resumed his absconding from the residential unit and did not return after 1 December 2017. MRA started to receive help from the Refugee Council and an advocate from CORAM, Mr Cisse from about December 2017.

14. Between January and April 2018, MRA reports that he was 'sofa-surfing' in London. He refused placements suggested by the Defendant. He claims that he stayed with his friend, Farshad, or with Farshad's brother, and slept on the floor of a restaurant where Farshad worked.

15. MRA instructed Osbornes Solicitors (who continue to act for him in relation to his 'community care' issues) in February 2018. He confirmed to them that the 2003 dob is correct and the 2000 dob is false. Upon the involvement of Osbornes in March 2018, the Defendant agreed to carry out an age assessment.

16. The assessment was carried out by MRA's social worker, Mr Russell over the course of four meetings (27 March 2018, 11 April 2018, 24 April 2018, 23 May 2018). On 10 May 2018 MRA moved to a foster placement in Ilford with Mr and Mrs Hamid.

17. MRA's application for asylum was refused by the Secretary of State for the Home Department for reasons set out in a decision dated 17 May 2018. He has a pending appeal against this decision to the First-tier Tribunal, the hearing of which has been adjourned pending the outcome of these proceedings.

18. The age assessment decision is dated 8 June 2018. This concluded that MRA was 17 years old and the 2000 dob is the correct one.

19. On 30 September 2018 MRA was baptised at the Holy Trinity Brompton Church ('HTB'). On 4 February 2019, MRA moved to foster parents located by Ms Alyson Frazier of the charity 'Play for Progress'. They are Reverend and Mrs Maclure, who live in Isleworth with their three children. MRA remains living with the Maclure family and by all accounts has settled in well into this foster placement.

20. The application for judicial review of the age assessment was lodged on 12 September 2018. This, together with the application for urgent consideration and interim relief was considered by Mrs Justice Yip. In an order dated 23 November 2018 she granted both permission and interim relief. The application was then transferred to the

Upper Tribunal. There have been various case management directions, and the matter now comes before me.

## Evidence

21. MRA's solicitors have provided six comprehensive bundles of documentary evidence. These have been meticulously prepared and I am grateful to those involved in compiling them. Apart from the witnesses and the Defendant's age assessment (and accompanying notes), the other documentary evidence in this case includes the following, inter alia: medical evidence from CAMHS, MRA's GP, discharge summaries from hospitals and a psychiatric report prepared by Dr Rajpal; MRA's social care records; MRA's asylum claim documentation; correspondence between the parties.

22. Over the first two days of the hearing I heard oral evidence from MRA and witnesses in support of the 2003 dob. They were each cross-examined by Mr Paget. These witnesses include the following:

- Ms Finlay-Hall - a Drama and Movement Therapist with 20 years of experience of working with a wide range of young people and adults, including refugee communities and those who have experienced complex trauma. She worked with MRA on several occasions since April 2018 and has attended residential trips with him, together with Dr Macdonald and Ms Frazier, in their capacity as facilitators for programmes by 'Play for Progress'. This is a Croydon-based charity that delivers therapeutic and educational activities to traumatised and socially isolated unaccompanied minor refugees.
- Mr Hawes - who attended the age assessment with MRA as his appropriate adult.
- Mrs Maclure - has been MRA's foster parent together with her husband Reverend Maclure since 4 February 2019.
- Reverend Maclure
- Dr Macdonald - the co-founder and programme director of Play for Progress, a Croydon-based charity. She also has experience of working as a doctor in accident and emergency. She has worked with MRA since 2017, when he began attending Play for Progress.
- Ms Frazier - the co-founder and programme director of Play for Progress, who has known MRA since the end of 2017.
- Mr Cisse - MRA's advocate from CORAM since December 2017.
- Ms MacDonald - a member of the Iranian Christian Fellowship, a member of HTB and a mentor to MRA since September 2018.

23. On the first day of the hearing MRA gave detailed evidence from 1.45 to 4.15, with the assistance of an interpreter. I am satisfied he understood the interpreter and the interpreter understood him. I am satisfied he was fully aware that he was welcome to ask for a break in the proceedings when he wanted one. He took two breaks. His chair was positioned in a manner that was most comfortable for him.

24. On the second day of the hearing I heard evidence from three witnesses on behalf of the Defendant:

- Ms Gouveia-Schofield - had oversight of MRA on behalf of the Defendant from March 2017 to August 2018. She was the only social worker and the only person working for the Defendant to give oral evidence.
- Mr Nazemi was MRA's foster carer between April 2016 and April 2017.
- Mr Goodwin - is the safeguarding officer at HTB. He met MRA once after a concern was raised by a youth team leader in March 2018 that MRA was claiming to be 14 and might be older.

## Submissions

25. On the third and final day of the hearing I heard very helpful closing submissions from both Counsel. They each relied upon detailed and comprehensive skeleton arguments, as well as written closing submissions. At the end of the submissions, I reserved my decision, which I now provide with reasons.

26. For the avoidance of doubt, in making my decision I have taken into account all of the evidence and submissions, including that not specifically discussed or referred to or specifically listed in this judgment. I focus on the more important evidence relied on during the course of the hearing and in submissions in more detail below, when making my findings.

## Legal framework

27. The legal framework is not in dispute and can therefore be stated briefly. In these proceedings, the task of the Upper Tribunal is to resolve for itself, as a matter of fact, the issue of age - R(A) v Croydon LBC [2009] 1 WLR 2557. Put simply there is a right and a wrong answer and it is for the Tribunal to provide it. I must, in essence, act in an inquisitorial manner and determine for myself, on the balance of probabilities, whether MRA was or was not a child at the date of the age assessment, as well as his actual date of birth - R(AE) v London Borough of Croydon [2012] EWCA Civ 547. There is no burden of proof in the proceedings and although there is no formal 'benefit of the doubt principle', the evidence should not be viewed without sympathy, given that on any view MRA arrived unaccompanied, after a lengthy journey and without original identity documents - R(CJ) v Cardiff CC [2011] EWCA Civ 1590.

28. In cases such as this one, where documentary evidence relevant to MRA's age is lacking, the "*starting point*" for the Tribunal's task of determining age will be the credibility of that individual's own evidence: see AE (supra), per Aikens LJ at [44]. The Tribunal's "*primary focus*" should be the credibility of an individual's evidence concerning his age. However, "*it is permissible to have regard to credibility more generally provided that, in looking at credibility more generally, the primary focus...is not forgotten*": see R (MVN) v London Borough of Greenwich [2015] A.C.D. 141, per Picken J at [27].

## Approach to the evidence

29. I have considered and had regard to all the evidence before me. This is not simply to decide whether to prefer the 2000 dob or the 2003 dob. Rather, I have considered all the



evidence in the round in order to decide what MRA's date of birth is more than not likely to be. Although this was presented as a binary choice between two dates, I have considered all the evidence to determine for myself MRA's date of birth. I must determine the weight to be attached to MRA's evidence, with the primary focus being the credibility of his evidence as to his age. I accept Mr Paget's submission that the credibility of MRA's account of his age is key in this case.

30. In making findings on MRA's age I have taken into account the witness and documentary evidence in support of MRA's claimed age and the witness and documentary evidence that undermines his claim. In so doing, I must also determine the weight to be attached to the age assessment. Having considered all the evidence in the round I must reach my own decision on MRA's age at the date of the age assessment and his date of birth.

## Findings

### *MRA's evidence*

31. Having heard MRA give oral evidence during the course of sustained cross-examination and having considered this alongside all the evidence (including the evidence provided by all the witnesses and the documentary evidence) in the round, I have reached the decision that his evidence before me has been largely credible and broadly consistent. I now turn to his evidence, and the evidence which is either supportive of it or capable of undermining it, in chronological order below when making my findings.

32. It is undisputed that upon his arrival in the UK alone on 17 March 2016, MRA was arrested by the police and very shortly after this placed into the Defendant's care. Although there was a minor error in the date of birth first recorded (which was probably related to initial difficulties in the Persian calendar translation), from 17 March 2016, MRA provided the Persian calendar version of the 2003 dob. This is set out in the first placement request record of that date and maintained in subsequent social care records to late April 2016. I accept Ms Hafesji's submission that there is no credible evidence to support the Defendant's suggestion in the age assessment decision that MRA was told to lie about his age when he arrived in the UK. This suggestion is entirely contradicted by the contemporaneous records taken by the assessing social worker and the appropriate adult. I note that as at 20 April 2016 the Home Office recorded MRA's age by reference to the 2003 dob, albeit that changed to the 2000 dob subsequently.

33. It is important to place the reliability of MRA's early assertion as to his age in context. I accept MRA's evidence that he was brought up in a family and cultural context in which he was told his date of birth, by reference to the Persian calendar, from an early age. Ages are recorded in Iran and I accept MRA's evidence that he referred to and relied upon the 2003 dob for school and extra-curricular purposes for as long as he can remember.

34. I also accept that at least for the first month after his arrival in the UK, MRA consistently and vociferously maintained the 2003 dob. This is consistent with the review

notes for 7 April 2016, which include the following: “[MRA] has expressed his concern and upset that people are challenging his age. He told us that he is telling the truth about how old he thinks he is. He was advised that an age assessment will be undertaken.”

35. MRA was initially placed in two foster placements in Greater London in quick succession, but both of these were unsuccessful. The reasons for this are less relevant to an analysis of MRA’s age, than the impact upon him. Unfortunately the Defendant appears to have labelled MRA as a person who actually (rather than allegedly) used violence against the daughter of the first foster carer when criminal charges were not pursued. Ms Gouveia-Schofield was very reluctant to accept that her statement was misleading in this respect and failed to clearly acknowledge that it was an unproven allegation without more. In addition, the Defendant’s social care notes appear to describe the second foster carer, Mrs Turner as being concerned that MRA was difficult and appeared older than his claimed age. Mrs Turner has clarified in a witness statement that she said no such thing and emphasised that she believed MRA’s behaviour and appearance was consistent with being a 12-year-old. She described him as being very upset, frightened, and crying about being moved to Manchester. It is clear from his own evidence and the social care notes, that right from the beginning, MRA was very concerned to be placed in accommodation with a family he got along with in the London area. He has been consistently resistant to a residential placement throughout his time in the UK.

36. Significantly, MRA maintained the 2003 dob during the course of his first two foster placements and it was only after he spent a few days in Manchester that he said that he was 15 and not 12/13. For the avoidance of doubt, it is not disputed that MRA referred to himself as 13 in March / April 2016 because it is customary in Iran to describe oneself as 13 i.e. in the 13<sup>th</sup> year, when 12 years old. I was provided with two witness statements from academics to confirm this. Mr Paget confirmed that the Respondent did not dispute this evidence, as did Ms Gouveia-Schofield.

37. MRA was moved to Brodworth House in Manchester on 22 April 2016 in very difficult circumstances. These have been described by Mrs Turner in her statement and were not disputed by the Defendant. MRA did not wish to leave London and did not wish to reside in an institution. I accept his evidence that he was scared, lonely and very upset at the time. I also accept that shortly after this, he attempted suicide by hanging and was hospitalised.

38. The circumstances in which MRA changed his age from 12/13 to 15 in April 2016 are for obvious reasons important. There are no clear social care notes setting out the context in which MRA gave the 2000 dob. This was a significant event and MRA’s disclosure occurred at a time when he was on any view a vulnerable young person without an advocate or solicitor and deeply unhappy, yet there has been no cogent explanation from the Defendant for the absence of any notes.

39. Mr Paget invited me to find that MRA did not have a good reason to lie regarding the 2000 dob and I should reject his explanation for changing his age. When pressed by Mr Paget, MRA accepted that he lied when he gave the 2000 dob in April 2016 and

maintained that lie until April 2017, including during the early critical stages of his asylum claim. That MRA lied regarding his age is not in dispute. He relied upon two different dates of birth at different times. That in itself reflects adversely on his credibility but when asked why he lied when he relied on the 2000 dob, MRA was steadfast in his evidence. His explanation is plausible and credible for the comprehensive reasons provided by Ms Hafesji at [19] to [25] of her closing written submissions.

40. MRA was adamant that he felt “forced” to change his “real date of birth”. He explained that he was very unhappy about his accommodation and thought that by increasing his age, his options would improve. He explained that he believed this to be the case based on what he was told by his social worker at the time i.e. if he was older than his claimed age he may have different accommodation options available for him. There is support for MRA’s understanding in social care notes created by Julie Wilby on 14 April 2016. This includes the following: “if [MRA] is in agreement that he is older than 16 (year 11) semi-independent placement can be requested.” MRA’s evidence that he was told by his social worker that there is a link between an older age and being able to access other types of accommodation is also consistent with the social care notes for 21 April 2016. This records the following on the part of Ms Olunlade, MRA’s social worker at the time: “I told him if he was older say about 16 years old he may consider semi independent placement. [MRA] like this idea and questioned the reason he could not be place within a semi independent placement...”. This is reinforced by a social care note made by Emma Atic-Lee on the same day, which records a conversation the author had with Ms Olunlade, which states as follows:

“...Grace also added that [MRA] has said that he believes he must be older than 12 and more likely to be 15-16 - he is hoping that this would open the possibility of him being offered semi-independent placement. As we have not as yet been able to complete full age assessment this is difficult to accept from [MRA].

Stephen Russell contacted Karen Jackson and Karen informed that placement had not been identified as yet. She did say that should the age assessment show that [MRA] could be in Year 12 at school that would open further options regarding accommodation...”

41. Mr Paget invited MRA to accept that there was no reason to claim that he was 15 at the time because it was only if he had attained the age of 16 that his accommodation options would be different, and in any event the claimed lie did not lead to the semi-independent accommodation he then wished to have. I accept MRA’s evidence that he understood his social worker as saying that if he was a bit older or to quote Ms Olunlade’s note “about 16”, things might be different. I accept that MRA did not properly appreciate the exact requirements and was merely trying to improve his circumstances in a clumsy and misguided manner, at a time when on any view he was vulnerable, lonely, upset and depressed.

42. MRA’s evidence was that he changed his age to the 2000 dob, when he was in hospital. As he put it during cross-examination his “condition was bad” at the time. When asked if there was any reason to dispute MRA’s evidence in this respect Ms Gouveia-Schofield confirmed that she did not have any. She was asked to confirm if it was plausible that a young person in MRA’s circumstances might interpret his social worker’s

reference to needing to be a certain age in order to access the accommodation he wanted, in such a manner to cause him to change the age that he had maintained consistently for over five weeks to an older age. Ms Gouveia-Schofield declined to provide any meaningful response to this apart from to emphasise that she was not involved in MRA's care at that stage. As Ms Hafesji observed, the Defendant did not tender any witness with direct involvement with MRA in April 2016. I accept that MRA has provided a plausible reason to claim that he was 15 when he was in fact 12 in April 2016. His reasoning is consistent with what he later said when hospitalised in April 2017. I address this in more detail below. The Defendant invited me to find that the 2000 dob disclosure took place between 25 and 28 April 2016 and it is unclear whether it took place whilst in hospital or on the way back to London. Doing the best I can, and given the unexplained absence of any notes on the part of the Defendant, I accept the 2000 dob disclosure happened as MRA claimed, in late April 2016 when he was hospitalised in Manchester, but before MRA went to live with Mr Nazemi. Ms Gouveia-Schofield accepted and I find that there is no good reason to dispute MRA's clear evidence in this respect. I also accept MRA's explanation for 'changing' his age at this point.

43. On 28 April 2016 MRA was moved to his new foster placement with Mr Nazemi in Greater London. Although the change in age did not lead to semi-independent accommodation, it did (at least in the eyes of MRA) lead to him not being in residential care and being placed with a foster carer in the London area. I accept that MRA genuinely believed that if he disclosed that which he believed was his true age whilst he lived with Mr Nazemi, he risked being returned to residential care in Manchester. I also accept that this is a material reason why he maintained the 2000 dob for a substantial period of time, after his return to a foster placement in London.

44. I acknowledge that MRA gave the 2000 dob to a number of different recipients when he resided with Mr Nazemi between April 2016 and April 2017. Mr Paget drew attention to various categories of recipients, and asked me to find it implausible that MRA would continue to lie to such a wide variety of recipients over such a lengthy period, for no obvious benefit, if his age was any other than consistent with the 2000 dob. Mr Paget focussed his attention upon the date of birth recorded for the purposes of the asylum claim, which I now turn to.

45. The aspect of MRA's evidence that I have found most concerning was his failure to disclose what he maintained to be his true age to his immigration solicitors. MRA did not make his asylum claim until 1 July 2016. The Defendant accepts that any delay is not properly attributable to MRA. The social work records from shortly after MRA's arrival describe the Home Office having been notified of MRA and of steps being taken to make an asylum claim. It is clear that from shortly after his arrival MRA disclosed that he was afraid to return to Iran for broadly the same reasons he has maintained since. The asylum record sheet states that as early as 22 March 2016, an asylum appointment was booked for 20 April 2016, but MRA was unable to attend interviews for reasons relating to placement breakdowns.

46. MRA's immigration solicitors were instructed on 9 August 2016. They assisted him in preparing a detailed asylum statement dated 16 November 2016. In it MRA described himself as 16 and gave the 2000 dob. When interviewed regarding his asylum claim on 9 December 2016 MRA was accompanied by his solicitor. His immigration solicitors made detailed written representations regarding MRA's asylum claim on 19 December 2016. There was no attempt to clarify MRA's date of birth by MRA or his immigration solicitors at this time. However, I accept Ms Hafesji's submission that little was done on the part of the Defendant to be pro-active in assisting MRA with his asylum claim or in providing clearly relevant detailed information to his immigration solicitors, at this stage. The matter was left mostly to Mr Nazemi. There is scant evidence that he was pro-active beyond finding a solicitor. I accept Ms Hafesji's submission that Mr Nazemi was unlikely to have properly supported MRA through his asylum claim when the social care notes make it clear that he believed MRA was at least 20 at the time and was fabricating his mental health problems. This means that the immigration solicitors do not appear to have been told by anyone, at the time when MRA's asylum statement was made or for the purposes of the interview or written representations (November to December 2016), detailed information regarding two important aspects of MRA's history: he initially claimed to be much younger and he presented at times with a fragile mental health including a suicide attempt in April 2016. The Defendant's first recorded contact with the immigration solicitors in the agreed chronology is 30 May 2017, when the deterioration in MRA's mental health following his sectioning was raised. By this time the Home Office had already been provided with all the relevant information for the purposes of the asylum claim, and a decision on the claim was merely awaited. After December 2016 very little happened in relation to MRA's asylum claim, until his claim was refused in the decision dated 17 May 2018.

47. It follows from the chronology concerning his asylum claim that MRA had obvious opportunities to disclose his claimed true date of birth to his immigration solicitors between July and December 2016. MRA explained and I accept that this remained a very difficult time for him and he was petrified about returning to the Manchester residential placement. He nonetheless described his maintenance of the 2000 dob to have regularly "*played on his mind*". He described this as "*like a tumour on my brain*" and said there was a "*pain inside of me...contributed to me being unwell*". This evidence is consistent with the record made in the social care notes for 20 April 2017: "*[MRA] said that he feels really guilty as he had been lying to people and said that he is 14 years old and not 16. He further stated that he had been advised when he was in Manchester to say this and he did and stuck to it but now realises he needs to tell the truth*" and the actual in-patient record confirmed by Dr Hayes for 19 April 2017 which includes a reference to MRA having reported being told that: "*if he was 15 or 16 he could come down to London, but if he was younger he would have to stay in Manchester, so he reports he lied about his age, saying he was 15 when he was 13, as he thought London was better than Manchester*".

48. I accept that MRA felt deeply uncomfortable about maintaining the 2000 dob but was very confused and afraid of the consequences for him if he reverted to the 2003 dob. In addition to this, MRA was not assisted by the Defendant or Mr Nazemi in ensuring his immigration solicitors had all the relevant information they should have had during this

vital period (August to December 2016). I accept MRA's evidence that he felt guilty and upset about maintaining a date of birth that was contrary to the 2003 dob to his immigration solicitors, the Home Office and other agencies during this period. I accept he felt powerless and scared. I accept that he has therefore been able to credibly explain why he omitted to tell his immigration solicitors and other agencies about the 2003 dob, until his disclosure in April 2017.

49. MRA continued to rely upon the 2003 dob after he was transferred on 4 May 2017 to the Priory in Manchester. Whilst at the Priory, MRA disclosed to staff that his true age was the one he gave upon arrival i.e. the 2003 dob. The Priory discharge letter summarises MRA's circumstances in Iran and gives ages that would be consistent with the 2000 dob but makes the following clear "*of note [MRA] claims to be younger than the age assigned to him by social services*". During the course of the age assessment interview MRA highlighted that he gave his "*real age*" to the Priory. I accept his evidence that by this he meant the 2003 dob. In addition, although Dr Rajpal recorded the 2000 dob in his report, at 5.6 he states: "*He reported that his social worker has got his date of birth wrong and his is currently 15 years old rather than 18*".

50. On the day of his discharge from the Priory on 28 September 2017, MRA contacted the Defendant to inform his social worker that his age had been incorrectly recorded. The social care notes record MRA as being "*very upset*" that the doctors at the Priory gave him a wrong date of birth. I accept that from this point MRA maintained the 2003 dob as much as he felt able to do so. On 11 November 2017 he gave the police the 2003 dob. Each of the witnesses called on behalf of MRA provided evidence that they have always known his age by reference to the 2003 dob. The practical reality was however different. MRA's official record was changed in late April 2016 and for all formal purposes he was assigned the 2000 dob. The fact that MRA's GP, 'Off the Record', the Priory and Dr Rajpal all recorded MRA's date of birth as the 2000 dob provides me with little assistance in these circumstances. As I indicated to Mr Paget during the hearing, save for the 'Off the Record' notes for October 2016, there is nothing from the body of those documents to indicate that MRA gave the 2000 dob, as opposed to this merely reflecting the official record. Rather, some of the documents I have referred to above support MRA's claim that he tried to give what he claimed to be his 'true' dob. Mr Paget invited me to note that the history recorded by 'Off the Record', a youth counselling charity in Croydon, in October 2016 provides a summary of MRA's background by referring to ages consistent with the 2000 dob. MRA however wholly accepted that around this time he was consistently maintaining to everyone (including 'Off the Record') that he was 15 and this is merely reflective of his misguided approach to his age at this time. For the avoidance of doubt, Mr Paget applied to recall MRA on the third day of the hearing, prior to closing submissions, to ask him questions about what he said to 'Off the Record'. I refused that application because it was made way too late and in any event could be addressed in submissions.

51. In order for MRA's education record to be consistent with the 2003 dob he would have had to skip three school years in Iran. MRA plausibly explained that his mother was a teacher and he and his family were ambitious regarding his education. The Defendant has not directly disputed the plausibility of this claim and has not sought to adduce any

country background information on Iran to undermine it. Mr Paget focussed his criticism of this aspect of MRA's evidence upon his failure to make it clear in his asylum statement or when summarising his education to medical professionals that he skipped three years. I accept MRA's explanation that at the relevant times he was only asked for a summary of his education. The account of his educational history in Iran in his asylum statement and in the psychiatric report are brief. Although not relied upon by Mr Paget, MRA's claim that he has been ambitious and worked hard at school in Iran may at first glance appear to be inconsistent with his educational record in the UK. He has not been in education for some time. The reasons for this are complicated and interconnected. MRA has suffered a significant mental illness over a sustained period. The lead up to this and its aftermath have clearly impacted upon his education. I acknowledge that MRA has at times refused placements. However, as Mrs Maclure observed the most recent refusal occurred at a very difficult time for MRA and he simply did not have the necessary mindset to press ahead with it. MRA's ambitions to continue his education have been difficult to achieve in the UK, when he has prioritised other basic issues in his life such as his mental health and accommodation. There was considerable credible evidence that notwithstanding these matters and the failure to take up education options, MRA has demonstrated the ability and ambition to pursue his education. This was the evidence of both Mr Nazemi, his foster carer for the year to April 2017 and Mr Cisse, his advocate from December 2017. When all the evidence is considered in the round, I accept that it is more likely than not that MRA skipped three school years in Iran.

52. I now turn to more general aspects of MRA's credibility relied upon by the Defendant. Mr Paget invited me to find that MRA has provided scant information about his personal history in Iran and his escape from that country. When his mental health history and young age (on any view) leaving Iran unaccompanied are taken into account, MRA's description of his life in Iran and the circumstances in which he left Iran, together with his limited contact with family in Iran whilst in the UK, is relatively comprehensive and has been broadly consistent. This consistency has been maintained over the course of his three years in the UK and in relation to different agencies and individuals. I acknowledge that there has been some uncertainty about contact with family members in Iran. However, the Applicant has been broadly consistent that he only had limited contact with his family via 'facebook messenger'. If, as MRA claims, his family members were caught illegally exiting Iran, it is entirely plausible that they would have been detained and contact would have been very difficult. I note that the Secretary of State has rejected MRA's asylum claim and the credibility of his claim will be determined by the First-tier Tribunal. The evidence before that Tribunal will have a very different emphasis. However, the evidence before me relevant to MRA's asylum claim, seems credible and plausible in the context of Iran, notwithstanding the Secretary of State's observations to the contrary in his decision letter.

#### *Other witnesses*

53. I have already touched upon the evidence provided by the other witnesses above. I need only summarise my assessment of their evidence. Mr Paget invited me to find that the 'observational' evidence provided by these witnesses was inherently vague and

subjective. I have attached weight to the evidence provided by all of MRA's witnesses who have extensive experience of working or interacting with children of all ages and know MRA well. In my view this applies to all the witnesses save for Mr Hawes. They provided credible evidence of value obtained from observations of MRA's interaction with others over long and varying periods of time. They have had the opportunity to observe MRA when he was going about his ordinary life in a natural setting and in environments comfortable to him. They have been able to point to consistent attitudes, and a number of supporting instances over a considerable period of time, entirely supportive of the 2003 dob. Significantly, they were prepared to acknowledge that MRA has at times demonstrated characteristics tending to support maturity and an older age than claimed, but overall presented with the 2003 dob.

54. Mr Paget also invited me to find that MRA demonstrated a bold, mature and confident outlook more reflective of an older child, on many occasions. I acknowledge that there have been examples of this but they are very much outweighed by many more examples of a timid child acting consistently with the 2003 dob, who has regularly sought out the support of adults in whom he placed trust.

55. The witnesses were all very confident that MRA is much more likely to be 15 than 18. They gave cogent reasons for this. However it is the detailed observations from these witnesses and the telling examples they gave that have provided me with most assistance, rather than their own assessments of MRA's age.

56. The evidence from the witnesses involved in 'Play for Progress' was striking because they were each able to draw on specific examples. Their evidence was consistent with Mrs Hamid's witness statement in so far as they agreed that without appropriate support and when placed in an environment he is not comfortable in, MRA displays behaviour that can be difficult to manage. They were however able to draw on many more examples to support MRA acting consistently with the 2003 dob and in a manner more reflective of other young people his age, when placed in group situations.

57. Mrs Maclure provided very helpful and straightforward evidence. Although she has been MRA's foster carer for just over two months, and therefore significantly shorter time than Mr Nazemi or Mrs Hamid, she provided a very full picture of MRA's interactions with others. I accept that she is in a good position to do so. Unlike his previous foster placements, MRA has spent a great deal of time at home with the Maclure family and is comfortable and happy with them. They demonstrated trust in him and in turn he trusts them. The entire family do many activities together including Church on a Sunday, games, football, running and dog walking. I entirely accept Mrs Maclure's detailed observations and examples in support of her observation that MRA behaved in a manner more consistent with a 'young' 15-year-old rather than an older teenager. Mrs Maclure's evidence was consistent with the evidence provided by her husband Reverend Maclure. I accept Mr Cisse's evidence that MRA did not wish to attend college because he considered that would be "*too adult*" and he just wanted to "*fit in*" to a school. This was consistent with the evidence provided by the Maclures.



58. I was particularly impressed with the candid and revealing evidence provided by Ms Macdonald, MRA's 'godmother' at HTB. Although they only met in September 2018, I accept her evidence that they quickly formed a close and trusting relationship. It must have assisted that they were able to speak openly and freely in Farsi, and shared a deep interest in Christianity. Ms Macdonald acknowledged that MRA displayed a number of mature behaviours but when he let his guard down to those he trusted, he came across as an emotional and needy younger person who consistently sought consolation and advice from adults including herself. She also explained that generally speaking, in Iranian culture children were generally expected to be more reserved and private, and this would explain some of MRA's behaviours.

59. Mrs Hamid's description of MRA when she acted as his foster-parent is strikingly different to the account provided by the Maclures. It seems that MRA did not get along with Mrs Hamid and did not trust her. She experienced MRA mainly when his guard was up. For the reasons I have provided above this did not necessarily reflect his whole character or his genuine attitude to important issues or other people, which have been more revealing when he is in an environment he is comfortable in and amongst people he trusts.

60. I have attached very little weight to the evidence provided by the Defendant's three witnesses who gave oral evidence. Ms Gouveia-Schofield was the only social worker who gave evidence. Her statement and oral evidence predominantly focussed on the more negative sides of MRA's behaviour and did not strive in any meaningful manner to provide a rounded picture of MRA. She provided unclear and contradictory evidence for the reasons outlined in Ms Hafesji's closing written submissions at [26] to [29]. In addition, she was either unwilling or unable to accept that the delay in carrying out an age assessment of MRA was regrettable (see below) and there was contradictory evidence from her on the need for an age assessment at all.

61. It remains entirely unclear why the Defendant relied upon Mr Nazemi's evidence when he did not support the Defendant's position that the 2000 dob should be accepted. In his evidence he made it clear that he believed MRA to be between 23 and 27, some five to nine years more than the 2000 dob. His reasoning for this and the extent to which he has been able to reliably account for his time with MRA was entirely unsatisfactory for the reasons set out in Ms Hafesji's closing written submissions at [30] to [33].

62. Mr Goodwin accepted that he only met MRA once and based his assessment of MRA's age entirely upon his appearance and demeanour, and MRA's demeanour as reported to him by another member of the Church. I attach very little weight to his assessment of MRA's age.

63. Ms Dumanski is a social worker employed by the Priory. Her statement was not disputed but her view on MRA's age was based on appearance and what she had been told by others.

*Age assessment*

64. It is noteworthy that although there were several notes made regarding the need for an age assessment from April 2016, this did not take place until June 2018. Ms Gouveia-Schofield sought to explain this by indicating that the Defendant was more focussed upon MRA's mental health. Unfortunately, there was no clear recognition on the part of Ms Gouveia-Schofield that it was important both for MRA's mental health and other reasons relating to identity, the services provided to MRA and his asylum claim, to have the issue of his age fairly and comprehensively resolved promptly. MRA should have been given a far earlier formal opportunity to explore crucial matters relevant to his age. The social care notes record numerous instances from April 2016 when the Defendant initially made it clear that an age assessment should be carried out before then maintaining that it was unnecessary. There were also numerous requests for the matter of age to be properly resolved - see in particular the note from 20 November 2017 in which Mr Russell records that the difference in ages provided are significant and MRA's residential unit (at the time this was Trent Valley House) feels strong that MRA should be given an age assessment. Yet, I was provided with no cogent explanation for the failure to undertake an age assessment until Osbornes were instructed in 2018.

65. I have considered the statements and written evidence provided by Mr Mercer and Mr Russell together with the Defendant's age assessment itself. In my judgment the age assessment is significantly flawed as it failed to take into account highly material matters, particularly the role played by the significant deterioration in MRA's mental health and his detailed evidence as to how he knew his age and why he changed it - see the reasons identified in the judicial review grounds at [46] to [77]. These have not been adequately addressed in the Defendant's summary grounds, which merely deny these matters at [13]-[14]. I also accept Ms Hafesji's submission that Mr Russell inaccurately and unfairly suggested that MRA acknowledged during the age assessment process that he had been coached or advised to give an age prior to coming to the UK, when the contemporaneous notes provide no support for this whatsoever. Those notes confirm MRA acknowledging that he was advised to give a different name only. For the reasons provided at [41] to [45] of the grounds, the age assessment contains a mistake of fact on a material issue that has caused unfairness. The Defendant has merely denied this without more. In addition, although Mr Russell was MRA's allocated social worker, he did not have his trust and confidence, and the relationship was a difficult one. This, together with the failure to hold a 'minded to' meeting renders the age assessment process procedurally unfair for the reasons provided in the judicial review grounds at [37] to [38]. The social workers involved in this age assessment do not appear to have much experience of age assessments. Whilst some age assessments may prove decisive, this is not one. In all the circumstances I am not prepared to give weight to the age assessment or to the views expressed by Mr Mercer and Mr Russell.

*Other evidence*

66. In assessing MRA's age, both parties acknowledged that there can, in adolescents, be considerable differences in physical maturity, height, weight, behavioural maturity and

educational ability, so that those characteristics taken by themselves are not a reliable indicator of a person's exact age. As the Upper Tribunal (Mr CMG Ockelton, Vice-President and UTJ Lane) observed in R (AM) v Solihull MBC CO/2467/2011 "*almost all evidence of physical characteristics is likely to be of very limited value*" given that "*there is no clear relationship between chronological age and physical maturity in respect of most measurable aspects of such maturity*". Reliance on physical appearance and demeanour are notoriously unreliable indicators of a teenager's age. This applies to height measurements as well. During the course of cross-examination of MRA, Mr Paget relied upon a height chart that recorded MRA's height in November 2016. I attach little weight to this. Mr Paget accepted the height chart reflected boys' heights in the UK, and made no reference to any evidence relating to height or physical appearance, during his closing submissions.

67. In any event, assuming there was no increase in MRA's height does not necessarily mean that he is younger or older than claimed. That a young person may experience growth spurts at different times is uncontroversial. MRA looks relatively physically mature, but so do many 15-year-olds.

### **Conclusion**

68. Drawing all of this together, and doing the best I can on the basis of the evidence available and the analysis of it that I have carried out, I reach the clear and firm conclusion that MRA's date of birth is that which he initially claimed upon arrival in the UK and then continued to rely upon from the end of April 2017 to date i.e. the 2003 dob. I make a declaration that MRA was born on 23 June 2003. That means that he was 12 when he arrived in the UK, 14 at the date of the age assessment and 15 now.

### **Observations**

69. I decline to make the observations requested by Ms Hafesji during the course of her closing submissions. The Defendant will no doubt reflect on the findings I have set out above, with a view to improving their general approach to age disputed children in the future, as well as to MRA. In addition, given what has happened over the last three years, the Defendant will need to be pro-active in re-building a relationship of trust and confidence with MRA. I am confident that with the support of his foster parents and the Defendant, MRA should be able to return to education that respects his wishes and feelings. This is likely to be pivotal to securing MRA's best interests, and urgent consideration should be given to prioritising this.

### **Costs**

70. The issue of costs, and any other applications, will be heard by me on Tuesday 14 May 2019 at 9.45am only if no agreement is reached; the parties to provide written submissions limited to three sides of A4 by 12 noon on Wednesday 8 May 2019.

**Direction regarding anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Claimant and to the Defendant. Failure to comply with this direction could lead to contempt of court proceedings.

*UTJ Plimmer*  
8 May 2019  
Upper Tribunal Judge Plimmer

Dated: