

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

In the matter of an application for Judicial Review

JR/986/2021 (JR-2021-LON-001660)

Phoenix House,
Thornbury,
Bradford
BD3 7BH,

Between:

THE QUEEN
on the application of

S
(Anonymity direction made)

- and -

KENT COUNTY COUNCIL

Applicant

Respondent

NOTICE OF ORDER:

Before Upper Tribunal Judge Reeds:

HAVING considered all the documents lodged

AND UPON hearing Mr J. Hitchens of Counsel for the applicant instructed by Lawstop Solicitors and Mr L. Parkhill instructed by Invicta Law, for the respondent at a hearing at Field House, London on 10-13 May and 16 May 2022

AND UPON handing down the reserved judgment at Bradford IAC on 6th July 2022, pursuant to (i) the draft judgment being circulated to the parties under embargo terms on 17 June 2022, (ii) both parties providing typographical and obvious corrections to the judgment by the time requested, (iii) the parties being notified that judgment would be handed down on 6 July 2022, with neither party to attend provided there was no consequential matters to be dealt with and UPON the parties agreeing a draft order and confirming that neither advocate would seek to attend.

IT IS ORDERED that :

- (1) The Claim for judicial review is allowed
- (2) The Respondent's age assessment of the Applicant dated 29 January 2021 is quashed
- (3) It is declared that the Applicant was born on 20 December 2002 for the reasons given in the judgment handed down on the 6 July 2022.

Anonymity

- (4) I make an anonymity order in light of the applicant having made a protection claim in the following terms; The publication or communication of any information likely to identify the Applicant as a party to these proceedings is prohibited save for any communication to:
 - (a) Any employee, officer or contractor of the Respondent discharging a social care function;
 - (b) Any lawyer engaged by the Applicant or Respondent;
 - (c) Any officer, employee or contractor of the Secretary State to the Home Department discharging any function related to immigration; or
 - (d) Any support worker or charity engaged in supporting or advising the Applicant

Costs

- (5) The Respondent shall pay the Applicant's costs of the claim on the standard basis to be assessed unless agreed.

Permission to appeal

- (6) Neither party sought permission to appeal to the Court of Appeal and, having considered this issue of myself as I am required to do by rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008, I refuse to grant such permission as there are no properly arguable points of law raised on the facts of the case.

Signed: Upper Tribunal Judge Reeds

Dated: 6 July 2022

The date on which the 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): 6 July 2022

Solicitors
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of the proceedings.

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

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

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In the matter of an application for Judicial Review

Field House,
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London, EC4A 1WR

Between:

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- and -

KENT COUNTY COUNCIL

Applicant

Respondent

Before:

UPPER TRIBUNAL JUDGE REEDS

Mr J Hitchens of Counsel, instructed by Lawstop Solicitors, for the
applicant
Mr L Parkhill of Counsel, instructed by Invicta Law, for the respondent

Hearing date: 10 May – 13 May and 16 May 2022

J U D G M E N T

Upper Tribunal Judge Reeds:

Introduction:

1. The applicant, a national of Sudan and from Southern Dafur, claims that he was born on 20 December 2002 and was thus a child of 17 years of age when he entered the UK on 14 August 2020. The respondent, following an age assessment completed on 29 January 2021, has assigned to him a date of birth of 20 December 2000 on the basis of him being 20 years of age at the time of the assessment and that he was assessed to be aged over 18 at the time he entered the United Kingdom.
2. This judicial review challenges the age assessment decision of 29 January 2021 on the ground that the applicant is the age he claims to be and, as part of that challenge, that the age assessment was not *Merton* compliant, and that the interview was procedurally unfair and that the reliance of the age assessment upon the applicant's appearance and demeanour was unfair and irrational.
3. The primary issue to resolve these proceedings as the applicant's age, which is in dispute between the parties. As set out above a two-year margin of dispute arises between the parties as to the applicant's age. There is no dispute between the parties that the applicant is now an adult. The applicant has sought a declaration as to his age to establish that the respondent is required to continue to provide support and accommodation to him as a "former relevant child" which arises under the Children Act 1989.
4. In the light of the applicant having made a protection claim, I make an order for anonymity pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless the Upper Tribunal or a Court directs otherwise, the publication or communication of any information likely to identify the Applicant as a party to these proceedings is prohibited save for any communication to:
 - a. Any employee, officer or contractor of the Respondent discharging a social care function;
 - b. Any lawyer engaged by the Applicant or Respondent;
 - c. Any officer, employee or contractor of the Secretary State to the Home Department discharging any function related to immigration; or
 - d. Any support worker or charity engaged in supporting or advising the Applicant

The background:

5. The applicant arrived in the UK on 14 August 2020 as an unaccompanied asylum seeker claiming to be 17 years of age. His stated personal history is detailed as follows. The applicant is a member of the Burgo ethnic group which spans the Ouaddi region of eastern Chad and nearby areas of Sudan, including the South Darfur region which is where the applicant states he was born. He lived in his village with his parents and siblings until he left Sudan in or about the autumn of 2016. The applicant states that he left Sudan at that time following a serious conflict having broken out in the region. One day in the autumn, the village where he lived was raided by militia which resulted in the killing of a lot of people. At the time of the raid on his village he was with his uncle and the left together as a result of the conflict. They travelled from Sudan to Libya where he worked on a farm in Libya until he was taken to Italy in 2017. He then travelled to France where he remained between 2017 and 2020 before travelling across the channel to the United Kingdom where he arrived by boat on 14 August 2020.
6. On arrival in the United Kingdom he sought asylum and was accommodated from 17 August 2020 by the respondent under section 20 of the Children Act 1989.
7. The respondent, Kent County Council ("LA"), sought to undertake an assessment to assess his age. He was accompanied by an 'appropriate adult', and he was interviewed by the same two social workers, Agatha Boamah and Elga Batala, who then produced the age assessment report on 29 January 2021. The report concluded that he was aged between 19 and 23 years but recommended the lower age of 20, giving him a date of birth of 20 December 2000.
8. It is that assessment, which the applicant seeks to challenge in these proceedings.
9. Following the completion of the age assessment, the provision of support and accommodation from Kent under section 20 of the Children Act 1989 was due to be terminated .
10. On 6 April 2021 the applicant filed an application in a judicial review claim made in the Administrative Court. On 6 April 2021 Mrs Justice Eady ordered expedition and that an anonymity order be made in respect of S.

11. On 8 June 2021 Richard Clayton QC sitting as a deputy High Court Judge granted permission in the judicial review claim and ordered that the claim be transferred to the Upper Tribunal.
12. There have been a number of case management hearings from September 2021 before Upper Tribunal Judge Smith and directions were issued for the disclosure and filing of documents and for the listing of the matter which then came before me for a substantive hearing. The case was listed for a four-day hearing commencing on the 10 May 2022. As a result of the unavailability of the Court interpreter, the proceedings were completed on the 16th May 2022.

The legal framework:

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

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

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

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

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

- 1) *The purpose of an age assessment is to establish the chronological age of a young person*
- 2) *The decision makers cannot determine age solely on the basis of the appearance of the applicant, except in clear cases.*
- 3) *Demeanour can be notoriously unreliable and by itself constituted only 'somewhat fragile material': NA v LB of Croydon [2009] EWHC 2357 (Admin) per Blake J at [28]. Demeanour will generally need to be viewed together with other things.*
- 4) *There should be 'no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child': see Merton per Stanley Burnton J at [37-38]. The decision, therefore, needs to be based on particular facts concerning the particular person.*
- 5) *There is no burden of proof imposed on the applicant to prove his or her age in the course of the assessment: see Merton per Stanley Burnton J at [38], confirmed by R (CJ) v Cardiff CC [2011] EWCA Civ 1590.*
- 6) *Benefit of any doubt is always given to the unaccompanied asylum-seeking child since it is recognised that age assessment is not a scientific process: A and WK v London Borough of Croydon & Others [2009] EWHC 939 (Admin) per Collins J at [40]; see also [21] of A (AB) v Kent County Council [2020] EWHC 109 (Admin).*
- 7) *The two social workers who carry out the age assessment should be properly trained and experienced: A and WK per Collins J at [38].*
- 8) *The applicant should have an appropriate adult and should be informed of the right to have one, with the purpose of having an appropriate adult also being explained to him or her.*
- 9) *The applicant should be told the purpose of the assessment.*
- 10) *The decision 'must be based on firm grounds and reasons' [and] 'must be fully set out and explained to the applicant': A and WK per Collins J at [12].*

- 11) *The approach of the assessors must involve trying 'to establish a rapport with the applicant and any questioning, while recognising the possibility of coaching, should be by means of open-ended and not leading questions.' It is 'equally important for the assessors to be aware of the customs and practices and any particular difficulties faced by the applicant in his home society': A and WK per Collins J at [13].*
- 12) *It is 'axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him': R (FZ) v Croydon LBC [2011] EWCA Civ 59, [21]. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant 'with their conclusions without first giving him the opportunity to deal with the adverse points.'*
- 13) *Assessments devoid of detail and/or reasons for the conclusion are not compliant with Merton guidelines; and the conclusions must be 'expressed with sufficient detail to explain all the main adverse points which the fuller document showed had influenced the decision' (FZ, at [22])."*

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

"In the present case the evidence is wide-ranging. It may therefore be appropriate to make some general observations about the impact of evidence of various sorts and from various sources in this type of case. First, we think that almost all evidence of physical characteristics is likely to be of very limited value. That is because, as pointed out by Kenneth Parker J in R (R) v Croydon [2011] EWHC 1473 (Admin) there is no clear relationship between chronological age and physical maturity in respect of most measurable aspects of such maturity."

At [16] he added:

".... Individuals who raise questions of the assessment of their age typically have a history, or claimed history, beginning with childhood and early youth in a country of relative poverty, continuing with a long and arduous journey that it is claimed to have taken place during their mid-teens, and concluding with the period living in a country of relative affluence such as the United Kingdom. So far as we are aware, no, no sufficient, work is being done to identify what effect such a history might have on their physical maturity at various dates. In particular (although we accept that we are relying more on instinct than anything else) physical maturity may be attained more slowly in conditions of poverty and malnutrition and that on arrival such person may look

less physically mature than his chronological age might suggest. After his arrival it may be that physical changes take place more quickly than they would otherwise do, but it may be (or may not) be that a person with such a history is less physically mature than anybody might expect his age."

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

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

He continued:

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

19. The views of social workers gleaned from formal interactions with an applicant are unlikely to mitigate this difficulty:

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

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

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

21. The observations in R (AM) were cited approvingly by the Administrative Court in **GE (Eritrea), R (on the application of) v Secretary of State for the Home Department & Anor** [2015] EWHC 1406 (Admin) (at [74]). In the earlier decision of **NA v LB of Croydon [2009] EWHC 2357** (Admin) Blake J indicated, at [27], that physical appearance alone was a notoriously unreliable basis for assessment of chronological age. This was endorsed in VS (at [78]). In R (AM) the following was also stated:

“There may be value to be obtained from observations of demeanour and interaction with others made over a long period of time by those who have opportunity to observe an individual going about his ordinary life. ... It [is] difficult to see that any useful observations of demeanour or social interaction or maturity can be made in the course of a short interview between an individual and a strange adult.”

The evidence:

22. The parties produced an agreed bundle of documents for the hearing contained in 2 bundles running from 1 -852 pages. In addition a supplementary bundle of documents was filed shortly before the hearing which included interparty correspondence and email exchanges between applicant and respondent and correspondence concerning a subject access request and other documents (Eurodac search). Documents that were not placed in the bundle included a third witness statement of the applicant and copy medical records. In a separate bundle the parties provided an agreed bundle of relevant authorities.
23. The applicant attended the hearing and gave evidence. The applicant was treated as a vulnerable participant within the meaning of the Joint Presidential Guidance note number 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance and the proceedings featured regular breaks and was addressed with concern to ensure that he understood and was comfortable with the proceedings. The applicant was accompanied throughout by his support worker. There was no indication that he had any difficulty at any point in understanding the proceedings or that he had any problems. I am satisfied that if there had been they would have been brought to the Tribunal’s notice. I shall return to this later in my decision. The applicant had the benefit of a Court interpreter when giving his evidence and in summarising for him the evidence of the witnesses that gave evidence before the Tribunal so that he could follow and understand the proceedings.
24. Ms Agartha Boamah and Ms Elga Batala who were the age assessors in this matter attended before the Tribunal and gave oral evidence. Oral evidence was also given by JC for the applicant. Other written witness evidence was provided by Ms

Okonkwor, [209] who was the allocated social worker for the applicant. She was not required to attend the hearing for cross-examination. RP filed a statement on 7 September 2021 [268] on behalf of the applicant but did not give evidence before the Tribunal.

25. I have also been provided with skeleton arguments from each of the advocates including their written submissions that were submitted on the final day of the hearing.
26. I further observe that the applicant is presently seeking international protection, so I do not make any findings of fact or observations on his claim. That will be matter to be considered by the Home Office by application of a different standard of proof which is to be applied in this matter.
27. When assessing the applicant's credibility, I have had particular regard to the Joint Presidential Guidance Note (referred to above) and my assessment is being considered in the round, taking due account of the evidence presented with due allowance for the fact that many child asylum seekers and victims of trafficking will have problems in presenting a coherent account of their personal history and travel to this country.
28. The evidence given by each of the witnesses is recorded in the record of proceedings. I have carefully considered all of the evidence before the Tribunal, including the oral evidence of the witnesses that gave evidence. They were cross-examined and I have had the opportunity of observing them give their evidence. I also have regard to the other witness statements and evidence before the Tribunal, but whose authors were not called to give evidence.
29. Although I have not provided a summary of the contents of the rest of the documentary evidence in the agreed bundle, that is not an indication of the level of consideration given to that evidence nor the weight accorded to it. I have carefully read all the evidence, whether specifically referred to and summarised in this decision or not.

Witnesses called for the applicant:

The applicant:

30. The applicant confirmed his three witness statements, dated 31 March 2021 [141], 1 September 2021 [255] and 6 May 2022 (not in the bundle) and adopted them as his evidence in chief. His also adopted in evidence his SEF statement dated 6 November 2020 [393].

31. In his first statement he set out that he does not understand English very well and speaks Burgo the language of his tribe. He also speaks Sudanese Arabic but does not understand any other dialects. Sometimes words are similar.
32. As to his experience of the assessment he stated that he had his 1st meeting in mid-October. There were lots of meetings between October and January and he often became confused and irritated because he struggled to understand what was going on. Throughout the meetings that took place he stated that he met with a number of different interpreters and often struggled to understand what they were saying to him. He explained that in Arabic there are lots of different dialects and accents and it meant that he could not understand everyone, and they could not understand him (para 9).
33. He referred to the assessment meetings which were cancelled on a number of occasions and that this did not help his anxiety and stress levels, and he became even more confused because the process was never explained to him in a way he understood. He stated that he tried on a number of occasions to say that he did not understand what the interpreter was saying to him. On one occasion interpreter even told that him did not understand what he was saying.
34. When he was having these meetings there were times that the food was unsuitable for him, and it meant that he could not eat it. He tried to explain it to the interpreter but was not sure he understood. He stated he was hungry, and it was hard for him to engage in what was going on.
35. As to the assessment process, he stated that he felt the assessors did not understand or have any regard for how he was feeling as had to leave his family where he grew up and under attack from the government. He said this was a very scary experience and that it was sometimes hard to talk about. He thought that that they did not care about him, and they had already made their minds of up. He referred to one of the assessors who did not think it was likely that his uncle would have let him travel in a separate truck without him. That is not true as they were running away from the government who were killing people and taking over villages. He stated that if they did not do what the people said they would have just been left on the side of the road without any help. That was the reason why he and his uncle were separated into different trucks. It was not a choice they made.
36. As to the events on 15 January 2021, he stated at paragraph 36, this meeting did happen, and it is correct that he did not feel comfortable enough to engage with this meeting. The reason for

this is once again that the interpreter was not speaking either Sudanese Arabic or Burgo.

37. In his second witness statement he again referred to the issue of the interpreters during the assessment. He understood some of what they said and asked him, mainly when they were using the more commonly known Arabic phrases that were used across different dialects. It was when they used language specific to their dialect that he did not understand [256]. He explained that he complained about the interpreter not speaking his dialect during the conversations, as well as at the end. He did not understand more than 50% of the questions he was asked. He stated that he could not have informed them that he did not understand earlier than he did because each interpreter used the commonly known greeting phrase, which is used across dialects. The assessors asked him straight after this commonly used greeting was said whether he understood the interpreter. At this point, he confirmed that he did. It was only when he began deep conversation that he realised they did not speak his dialect and he did not fully understand.
38. As to his mental health he explained that he told the assessors he had issues sleeping and had taken medication to help him sleep on a regular basis and that he suffered very badly with flashbacks and nightmares, which caused him severe stress and anxiety. However the assessors made no comments about this or asked any further questions about this. He was now working with the Helen Bamber foundation because of the trauma and did not believe that the assessors took into consideration his mental health issues.
39. In response to the evidence as to his behaviour and engagement, he stated at [258] that he strongly disputed the allegation that he was disengaged and did not cooperate. He explained that during the general conversation of more basic issues he was able to understand and communicate with the Arabic interpreter. It was only when the questions become more specific and detailed that he needed to speak with someone who spoke his dialect otherwise he was not able to properly understand the questions and provide answers. He stated he was very worried and scared about answering incorrectly a question he did not understand.
40. As to the assertion made that that it is unlikely that someone of his age would be left on the streets and would instead have been taken to a children's home, he stated that this is a clear example where the interpreter did not fully understand him. He stated that he explained to the interpreter that every Friday an organisation came and collected them and took them to a place where they could have a shower, clean clothes and have shelter for the weekend. Another example related to the lorry and the

assessors not believing that his uncle would have left him on my own if he were 13. He explained to the interpreter he had left Sudan during autumn with his paternal uncle, and he was 13 years old at the time. They were put in separate cars by the drivers. They had no option but to trust the advice of the lorry driver, even though his uncle did not want to leave him alone it was the best thing to do in the circumstances. This is another example where the interpreter did not fully understand him.

41. In general terms he stated that he underwent the process as best he could and that he wanted to cooperate and engage with the process. He had never tried to prevent any questions being asked or to stop any process taking place.
42. In his 2nd witness statement he set out that he arrived in the UK on 14 August 2020 and told officials that he was 17 years old, and his date of birth was 20 December 2002.
43. In terms of personal background he stated he was born on 20 December 2002 in Darfur. He stated he had not seen his family since he left Sudan in 2016 and had only spoken to his mother once since he left over the phone during Ramadan in 2020.
44. As regards his education, he stated that he attended an Islamic school in his village and at the school they were only taught about the Quran. In the village, whenever someone turned 5 years old they would begin going to the Islamic school which was at the mosque. He attended every day of the week except Thursday which was the only day that the Islamic schools not open. He went to the school for about 8 years and only stopped going to school because he fled Sudan when he was 13 years old.
45. The applicant stated that he left Sudan in 2016 in the autumn and ran away with his uncle. They left because at that time a serious conflict has broken out in the region. One day in the autumn the village where he lived was raided by militia and they were killing a lot of people. It was very scary. At the time the raid on the village began he was with his uncle. They were terrified for their lives and believed if they did not run away they would be killed. He did not see family again.
46. As to his journey to the UK the appellant explained at[262] that on the day he and his uncle ran from the village they had to walk to a very big forest and walked to a place called Kas and went there because there was a big camp. They stayed there for 3 to 4 hours could not risk staying any longer as they were scared the militia would come and raid Kas. They travelled in a car with a group of people they met from Kas to a town on the border with Chad and Libya. They only stayed for one day. In this town people would come and buy cattle and sheep. His uncle spoke to one of

those men who agree to take them to Libya by car. The man said they must travel into separate cars as it gave them the best chance of at least one of them surviving and being able to make the journey to safety. There was a high chance of bombs on the road or the militia stopping traffic.

47. He explained that it took more than one week to reach Libya and once in Libya he arrived in a town called Kufra. He was taken to a farm where there was lots of cattle; lots of other people were there from Sudan, Eritrea and Syria. He stated he asked the owner of the farm on multiple occasions where his uncle was and was told that he was at a place nearby. His uncle was never brought to the farm. He remembered being very afraid there and he had no watch or any way of telling the time and did not know how long he was there for. It felt like a long time, but he could not estimate whether it was days weeks or months.
48. He was taken by the owner of the farm to Tripoli. He was told that he was being taken to meet his brother and that his brother would take him to an organisation. Eventually when he was taken to meet the farm owners brother. He was taken to a place where there were other Yemeni and Syrian people. He was told that he could travel with them to Italy. The applicant stated that he got taken to these people in 2017 but he could not remember the month, but it was very cold and there was a lot of rain.
49. The appellant stated that he travelled to Italy with a group of Yemeni and Syrian people in a small boat which took 12 to 14 hours to reach Italy. Once he reached Italy he was taken to an island called Lampedusa, but he did not know how long he was on the island for. After a while he was taken from Lampedusa to another island by ferry on arrival to a 2nd island he did not know the name of he was taken by bus to Milan.
50. He stayed in Milan for around 1 to 1 ½ months in 2017 and was placed with an Italian family. Whilst living with the family met a group of people who were also from Darfur. The group lived in a camp, and they were planning to travel to France, and he decided to go with them. It was 2017 when they travelled to France, but he did not remember the specific month.
51. When living in France lived on the streets a lot of the time. He lived in France until August 2020 when he travelled to the UK. He stated he was 17 years old when he arrived in the UK.
52. As regards his current circumstances he moved to long-term accommodation on 5 August 2021 and was currently attending college. He had been referred to the Helen Bamber foundation due to his poor mental health as suffers from very severe flashbacks and nightmares which cause him a lot of stress and

anxiety. He has been having sessions every Wednesday since June 2021.

53. The third witness statement dated 6 May 2021 deals with the applicant's social media accounts. It has not featured in the evidence before the Tribunal.
54. In his oral evidence the appellant confirmed that he was following up his mental health treatment with the Helen Bamber foundation, he was taking medication but was not undertaking any other treatment. In terms of education he was attending college studying English and maths. When asked how all his friends were he said they were all the same age and that started from 17, 18 and 19 years.
55. The appellant was cross-examined by Mr Parkhill. He was asked about when he was in Libya where he said he stayed for one year [396] but had said to the age assessors that he spent approximately 6 months there. The applicant stated that it was a misunderstanding on the part of the interpreter and that it was not his fault. He said that he did not have anything to know what time of the year or month he had no watch and no means of knowing what the time was so all he knew was that when he came to Libya it was the rainy season and that he waited until the next rainy season and that to him it was one year. He said it was difficult for him to know how long he was there as he did not know the time. He did not know how long he had stayed there he only knew the time by the sun. It was suggested to him that he had told the assessors not once but twice that he was in Libya for 6 months. The applicant stated that it was a misunderstanding between the interpreter and that he had never said that. He stated that he had requested an interpreter that they had sent an Iraqi person who spoke a different language and that he did not know what he said.
56. The applicant was asked about the time that he was in Libya on the farm and why in the witness statement he said the farmer took him to Tripoli [396] but that he told the assessors that it was the farmer's brother who took him? The applicant stated that he had spoken to the farm owner and wanted to see some Sudanese at a coffee shop; all the workers were aware it was a conversation that he had with the owner. He did not take him to Tripoli instead he put him back in a lorry with others and took him to his brother's farm instead of to Tripoli [749]. The applicant gave the explanation that he believed that the interpreter had a difficulty understanding him and there was a confusion as there were 2 farms that he was taken from one farm to another farm. He stated he could have explained that there were 2 farms, but they did not ask him. The applicant stated that the evidence had been recorded wrongly and the owner of the farm drove him to

Tripoli to the brothers farm. The applicant stated that the owner of the farm said he would take him to Tripoli and that was where his brother had a farm and that he would help him find his uncle and Sudanese people. The applicant said that it was not all wrong but part of it was incorrect and that he did not say that he would take him for a short break and that was wrong. The farm owner said, "my brother will find your uncle in Tripoli if he cannot find some Sudanese people and you will be able to trace and find your uncle."

57. The applicant was asked questions about his journey from Italy by reference to page 732 and by reference to his witness statement at [397]. He was asked why the witness statement that he travelled by foot to France but told the assessors that he travelled by train? He explained that they took the train to Menton where there was a station and when the police searched the train he got off in Menton and walked to the next stop not very far away and this is the distance he said he walked in France. From Menton he walked to the next stop and then caught another train and entered France. He said he did not really know where Menton was that you could see Italian and French police. He explained that there were 2 stops in the same town and he took a train from Ventimiglia to Menton and in Menton he got off and walked in the same city.
58. The applicant was asked about leaving Libya and that he had told the assessors he left Libya in June. He said he could not recall exactly when, June or July, but that 2017 was correct. When asked how old he was when he left Libya he said he was 13 years old that he did not know how long he stayed in Libya 6 months or one year he did not know how long he was there. He said he did not know the date that he arrived in France. He was reminded about his SEF [345] where he said he stayed in Libya for one year, Italy one month in France since 2017 October. The applicant explained that he did not know the month and the interpreter said that it meant " you were in France in October." When asked how old he was when he first arrived in France he said it was the same year and he was still 13 years old. He said that he left Sudan in the autumn of 2016, and he was 12 or 13 at that time.
59. He was asked if he had given the French authorities his date of birth. The applicant stated that they had never asked his date of birth and the police came to LaChapelle in a minibus and arrested them, fingerprinted them in the minibus and if they found a document in the pocket from one person they recorded this information from that document in other people's names and did not ask any further details. He stated that he was fingerprinted in LaChapelle approximately 3 or 4 times as they said it was illegal to be there. He said he was not sure how many times he was fingerprinted in Calais but estimated 4 to 5 times.

The applicant stated that the police had come many times and unless they were taken up to the office they were not asked their date of birth and when he was fingerprinted they were not too far from the police station. He could not explain why the police kept taking their fingerprints stating that they did not have an interpreter present.

60. He was asked about whether he was in contact with charities in France and the applicant stated there were many charities including Care 4 Calais who gave them clothes and the Red Cross helped them with food there was also another Catholic charity that gave them food. He stated that when dealing with charities they did not ask him for any details or his age they just brought food and clothes regardless of their information. The applicant said that he had been given details for a charity for young people called 115 where you could stay overnight, have breakfast and then leave the next day. He was asked if he had told the charity that he was 14 years of age. The applicant said he did not. In his evidence he stated that there were people living in the jungle and cooking there and that he had chatted with them and socialised with them, and he became separated from the group and the charity had not helped him and he liked to be with the group. When asked if anyone had expressed concern that he was a child the applicant stated that it was very difficult for him to do this because he spoke a different language and there was no interpreter provided.
61. He was asked if he had sought asylum in France. The applicant stated that it was difficult to know because the police had stopped and fingerprinted him and let him go with no papers. He explained that the police would come with a minibus and would separate them. He stated that he did not always live on the street and that he did not know the cities and the place that he stayed and did not remember the name. He also referred to a camp called 115 where he would go sometimes but he could not stay there because of the food and the language barriers. He said he was living on the streets but there was also a deserted house in Calais which they called "Oshan" and sometimes they stayed in the house. There was also Care 4 Calais and they brought food every other day for them to cook. When asked to give a rough estimate of the days and nights and he stayed with the 115 charity, the applicant said he had stayed sometimes but he did not know how many days it depended on his needs. He said he would go to a Catholic charity, and they would telephone the organisation and they would go to a particular bus stop, and they would be picked up and taken to the particular accommodation for the night. He could not give an estimate of how often he stayed it would depend on the weather. He explained that the charity would wash and take their clothes and he did not have a pattern of travelling to the place as it depended on his needs.

The applicant stated that there were 2 different organisations that he was referring to in the one he was referring to was "Sentamia" close to Calais and that was the one that he return to the same day. He said that he did stay with the charity 115 on and off. The charity where he did not stay was in a town called "Sentamia," but he did not know the name of the charity they just called it "Sentamia."

62. The applicant was asked how long he had lived in the Calais area. He stated that most of the time he spent in France was in Calais and he did not stay long in LaChapelle. Other than staying in "Oshan" and in the 115 camp he stated he also stayed in the forest. The applicant was asked to look at an email and the supplementary bundle dated 12 April, which stated that that he was unable to clarify the type of accommodation facility he was in but only knew that he was provided with hotel accommodation in Calais for a period of one and ½ years. The applicant stated that he was not in a hotel and that every month they would take them to other accommodation where they spent some time and then they would return again.
63. The applicant was asked about his life in Sudan and that he had said he had left the Quran school in 2011 [741]. He agreed that that would be in 2011 - 2012. When asked if he were 8 years old in 2011 the applicant said that he did not know his age at that time but that the time a person would go to the school would be between the ages of 5 and 8 years old. When asked if he stopped attending school when he was 8, he said he stopped school when the problems came in 2011 and 2012. The applicant was asked about his witness statement at page 261 where he said he went to the school for 8 years and only stopped going because he fled Sudan when he was 13 and that this was different from what he had said about stopping school in 2011. The applicant stated that there were 2 events happening in the village there was an attack and the statement referred to 2 events. The 1st event happened in 2011 when people were displaced, and the teachers never came back and therefore there was no school because of no teachers. He clarified that in the area there were no teachers that people stayed at home and learned. He stated that there was no mistake between the witness statement which said that he had left school when he was 13 because there were 2 events that school stopped in 2011 because it was not possible and then he studied at home with his mother until he left Sudan.
64. The applicant was asked about the last time he had contact with his family. He agreed that he had stated "last Ramadan in May 2020 when in Calais France [378]. It was put to him that he told the assessors at [727] that he had not contacted his family since he left Sudan. The applicant explained that he had spoken to them in Ramadan 2020 and that it must have been an interpreter

not telling them the correct information. The applicant stated the question he was asked for the witness statement preparation was “when was the last time you saw your family?” They did not ask how many times I had been in contact with them. He stated that the answer to the question was “last time I spoke to my mother was Ramadan 2020”.

65. The applicant was asked questions about how he knew his date of birth by reference to the information that he had given to the assessors at [731]. The applicant stated that it was not only this but on Thursdays at the qur’anic study the Sheik would teach them numbers and maths would write down your name in Arabic and date of birth as well. He stated, “Thursdays we do not recite the Quran just learn maths.” It was put to him that he had told the assessors he was told about his date of birth, and it just happened by chance sometimes when they did not do well in lessons (p 731). The applicant stated that that was right, and that the sheik would do this on Thursdays that he would teach them other information such as date of birth names in Arabic. He explained that if a child were born they would go to the sheik and register their date of birth. He described something called “Silaya” an event where a child or new-born would be named done by the sheik that they would gather there and give the name. He stated that on the day children would not go to the Kalwa to recite the Koran there would be a ceremony. He was asked how old he was when having lessons about writing as date of birth? The applicant stated that “we do not have ages as to when you start learning I would learn the information. We had a piece of wood where we would write things down right in charcoal and would use it to learn the information after the sheik. When asked how often they had such lessons, he stated “well there was no certain pattern for this. On Thursdays we do not recite the Koran and we go to the marketplace and the sheik is the time to teach our names and right numbers. The applicant stated that he did not know how many times the sheik and told him to write down his date of birth because it was not a regular pattern it depended on the sheik it was not daily or weekly. He was asked why he had not given this explanation to the assessors when they asked him about lessons? He explained that if they had asked in particular questions he would have answered in this way. They had asked questions about the Kalwa but did not ask about particular things. He also thought the interpreter may not have interpreted the question to him properly. The applicant stated the assessors and not asked him detailed questions as he had been asked now.
66. When asked if he knew his date of birth he said he did and that he learned it from his family and the sheik. He said his mother had told him his date of birth because she had studied in the same Kalwa and when the sheik had made a comparison

between him and a young boy and that he had recited the Koran better he stated, "this was an indication he was younger than me and I learned my date of birth and the sheik and my mother from that session." He explained that every time they were taught maths and numbers they would ask him to write his name and date of birth and his father's name and mother's name. When asked if the lessons at which he was taught his date of birth and stopped in 2011, the applicant stated they stopped but he would not say in 2011 exactly he could not give the exact time and said he believed it could be between 2011 and 2012; it was the autumn and farming time.

67. The applicant was asked to explain that if the date of birth was so unimportant where he had lived why did he continue to learn the information about his date of birth from the lessons? He stated that they were told that they should not be ignorant of important information and that they would need to write their full name and date of birth and it was important to know them in the event of an attack and was separated they would know the name of the village and their relatives.
68. When he was asked why he had not told the assessors the information that he volunteered during the hearing about his lessons, the applicant stated that he had always answered questions according to way the interpreter had put the questions. He stated that he had always complained about the interpreter and the way the questions had been put in that he had not helped him understand and that the questions were being interpreted differently from today at the hearing. He said that if the interpreter had spoken like the present interpreter he could answer the questions. He confirmed that he did learn his date of birth in Sudan.
69. RP provided a witness statement dated 7/9/21 at 268]-[271]. She is employed as an operations leader at a Youth Academy and manages the logistical delivery of the programs but also has regular contact and supports the young people holistically with issues that arise on site and in classrooms. She has worked directly with the applicant since he joined in April 2021 and interacted with him on site during every program. The Saturday programme runs every Saturday of term time, the week-long May half term programme and the 4 weeks throughout some of the year. As well as observing his interactions with the rest of his peers, she states that the applicant comes to her and asks for additional support as well as sourcing him sports equipment and supporting his interest in football.
70. The youth Academy runs ESOL programs for newly arrived UASC people aged 13 - 18 and running a holiday programme since 2017. The work is delivered by a range of educational and

advocacy professionals who specialise in working with young people who are new to the UK. She estimates that to date they have worked with young people arriving from more than 15 countries, often within the 1st days or weeks of their arrival in the UK.

71. As to her experience with the applicant, she states that he started attending the Saturday supplementary programme on 24 April 2021 and that he has engaged consistently on a weekly basis since then. He also attended the four-week summer programme. His stated age is 18 years old, and his physical appearance and social interactions lead her to believe he is somewhere between 17 - 18 years old.
72. She states that his physical appearance is clearly that of a teenager. The way in which he carries himself emphasises this. He interacts well with both facilitators and peers and has developed friendships with the boys who are 16 - 17 years old, similar ages to him. As he has come out of his shell over the months he has become playful with peers and facilitators in the classroom, while supporting his friends when they are struggling. He takes his learning very seriously and is clearly invested in finishing his secondary education. He has mentioned multiple times that he wishes that the programme ran every day.
73. It is noted that it is clear that the applicant regards her as the authority in the classroom and looks up to her and that he is generally deferential to the staff running the program in a way that highlights his stated age. His passion for playing football with friends also supports this. The witness states that she is aware that the age assessment process is complex but based on their extensive experience working with newly arrived young people, the team believes the applicant is between 17 and 18 years of age.
74. JC provided a witness statement filed on 7/9/21 at [272]. She is employed as a senior caseworker at X which is a charity and organisation that supports vulnerable young refugees and asylum seekers. They provide practical and emotional support to ensure their needs and voices are heard in accessing mainstream services. The staff team is experienced and proactive with backgrounds in youth work, counselling, academic research and human rights. As to her specific experience and qualifications, it is stated that she has over 8 years' experience working with vulnerable young people and believes that she has developed an excellent knowledge of the needs of young people, particularly vulnerable migrant children.
75. At paragraph 6 of the witness statement she sets out her previous employment working as a housing support worker,

supporting homeless young people between 16 to 25 in supported accommodation and also working as a gender-based violence caseworker working with young people who have experienced domestic or sexual abuse, and many had experienced trauma and she supported them to access services around health, education and housing. She has also worked at a community project facilitating a peer support group for young refugees and asylum seekers aged between 18 – 25 organising activities and providing practical and emotional support.

76. The applicant was referred to the organisation in March 2021 and she has met with him for one-to-one appointments, face-to-face over 10 times to support various things such as registering for the GP, enrolling at college and support with accommodation issues. She has also seen him play football which he has attended weekly since March 2021. She speaks to him at least once a week.
77. The witness expressed her view about his age at paragraphs 10 – 12 of the witness statement as follows: “S’s behaviour, demeanour and appearance are all consistent with him being 18 years old and the date of birth of 20 December 2002. The way he presents himself and in the clothes he wears is typical of the young teenager he is.
78. She states that in their first official meeting together, she explained to the applicant her role and the sorts of things she could assist him with. She explained her working hours and the rules of contact, confidentiality, safeguarding et cetera. She described him at this first meeting as being shy at first and he found it difficult to maintain eye contact. She stated that this was what she had found to be normal behaviour in young people. However as they talked more he talked about his love of football and wanted to play and expressed interest be with other young people his age. She stated, “I observed him at one of the football sessions and noticed despite the language barrier how he engaged with the young people as he played football and how comfortable he felt.”
79. She stated that the applicant often relied heavily on adults for support, and she had noticed this with people that helped him at the Academy and the organisation and tended to notice this with the younger teams that they worked with. She stated “I have found that with 15 to 18-year-olds they often reach out for more support and guidance compared to the older children we work with. S often reaches up support and guidance.”
80. In her oral evidence she confirmed that she continued to work with S and since she filed her statement in September 2021 a lot had happened. He had moved to Home Office accommodation

just before she had written her statement in September 2021 and described his mental health as being bad and he had been affected by the move. Where he had previously lived he been able to access activities but due to the move he was now isolated, and this had impacted on his mental health. He has had therapy with the Helen Bamber foundation and also attended college which she stated had helped him in enrol.

81. In terms of her contact with him, she stated that she had been seeing him once or twice a week and had built up quite a strong relationship over 1 ½ years with him. She thought that things were still difficult for S when therapy came to an end and so she had referred him again through the GPs surgery.
82. In evidence in chief she was asked if she had been given the opportunity to review the age assessment? She stated that she had and when asked if there was anything in that statement to change her view as his age she stated “no, nothing at all.” She confirmed that she had had contact for a long period of time with S and maintained her view of his age.
83. In cross-examination she was asked about her previous experience set out in her statement were she described working with the homeless between 2013 – 2015. She was asked if that was specific work with UASC’s. She stated that it was not and that there was a mixture in the accommodation; some were UASC’ and non-UASC’s and not all were refugees. She estimated that one third were unaccompanied minors.
84. When asked if she had any training in conducting age assessments, she confirmed that she did not receive any training about gauging somebody’s age. She further confirmed that it was not her role to judge someone’s age. In her evidence she stated that at the organisation she worked if there was someone who accessed services whose older they have to follow safeguarding procedures and they have to follow that through. The current organisation she works with concerns those aged between 14 and 25. Whilst she needed to make sure they were not beyond 25, she agreed that it was not part of her role to judge the ages of those within the age ranges.
85. The witness was asked about the young people that she worked with and whether they were all UASC’s? She confirmed that she worked with refugees but not all were unaccompanied minors and it included work with families. When looking at the countries of those she works with, she identified working with young people from a number of countries, from Eritrea, Afghanistan, Chad, Ethiopia and Sudan noting that those were the “main countries.” In her evidence she confirmed that she did not have any particular expertise of people from Sudan but works with a

range of countries. It was suggested to that this was because the physical manifestations of age all are different. The witness agreed and stated that this depended on the trauma that they had been through. She stated, "I have a lot of training in other roles having worked in domestic abuse and training and I can see that trauma impacts on someone's appearance."

86. It was suggested to her that behaviour in an emotional sense can be separated from their chronological age for example they could be more mature or less mature than their chronological age and that the way someone presents on maturity can vary and that it is not tied to their chronological age. She agreed with that statement.
87. It was put to her that someone who is 15 and because of their experiences could present in terms of maturity different to someone who has had trauma. The witness stated, "there are still things that are noticeably different -in both settings you can still see there are different characteristics and behaviour." She was asked what characteristics or differences would be in existence between the ages of 14 and 20?
88. She stated that "I am thinking of adolescent changes and some behaviour; some behaviour goes on into their 20s like interactions with group settings. We have lots of activities for young people and see how they interact with each other. When they are older they hang out with each other and not the younger ones and we observe that."
89. It was put to her that it was understandable that older people would not like to spend time with significantly younger people but that it was not likely that someone who was 18 would not socialise with someone who was 17. She agreed with that, and that 19-year-olds and a 17-year-old would socialise together and gave the example as "football".
90. It was suggested that if there was a 19-year-old and a 17 year old playing games and mixing what would there be to differentiate between them on their interactions? The witness stated it would be very difficult due to the closeness of the ages. She was asked that taking into account the margin of error did she think it possible that the applicant might be older than he claimed to be? She answered emphatically "no." She was asked why she could be so certain? She said it was because of her interactions and experiences and her work and she believed he is the age that he said he is.
91. When asked if she thought it was possible that he could be a year older she stated, "no having witnessed him interacting with other young people and his friends he attended a youth academy

which had the group specifically for 13 to 18-year-olds and S built up a rapport with a lot of the staff there with him.”

Age Assessment 29 January 2021

92. I summarise the salient parts of the decision under challenge, namely the age assessment report written by Ms Boamah, one of the two social workers who undertook the assessment, at [D154] to [175] of the agreed bundle.
93. The assessment process was to start on 14 October 2020. This was not effective as the interpreter went to the wrong centre and did not speak the applicant’s language. On 16 October 2020, a further meeting had to be cancelled as there was no appropriate adult. On 12 November 2020, an assessment meeting took place, but the interpreter could not speak the applicant’s dialect and on 16 November 2020 the meeting again was cancelled due to no accompanying adult being available. On 24 November 2020, the meeting did not go ahead as the interpreter went to the wrong address and on 26 November 2020 meeting had been cancelled as there was no appropriate adult available. It is recorded that on 2 December 2020 the meeting did not go ahead following the applicant expressing concerns about the interpreter.
94. On 21 December 2020 and 23 December 2020 2 effective assessment meetings took place. On 15 January 2021, the “minded to meeting” was not completed and on 29 January 2021 a meeting was held to notify the applicant of the outcome of the assessment.
95. The analysis of the information obtained is summarised at [174]. It was noted that the applicant did not produce any documentary evidence such as a birth certificate or an identity card to verify his claimed age or date of birth.
96. In view of the information that had been gathered during the interview to help inform this assessment at time it was stated that the applicant did not provide much specific information for chronological purposes. In the alternative the assessors have had to consider what weight to give his evidence on age. The assessors also considered his physical appearance, behaviour and presentation of information to aid the decision-making process.
97. The age assessors considered that the applicants physical presentation, demeanour and interaction with the assessors was not consistent with their experience of working with 17 year old people from many different countries. Whilst the assessors acknowledged the applicants account of taking cattle grazing, which involves strenuous physical activities as well as working on

the farm in Libya, he presents with the physique of a young adult who was completed puberty.

98. It was stated that overall demeanour in interaction with the assessors during the interviews strongly indicated that he was disengaged throughout the whole assessment process. The assessors felt that the applicant attempted to sabotage the assessment process as he came up with so many excuses and claimed not to understand the previous interpreters used for the purpose of the age assessment. The assessors believed that the applicant may have hoped that the assessment would not go ahead if he brought barriers.
99. The assessors considered that there were a number of discrepancies raised during the interviews, which the assessors intended to put to the applicant, but he refused to stay for the assessment to be completed. For example, his narrative of how long he stayed in each country does not add up. He told the assessors he only spent 6 months in Libya but told his allocated social worker 8 to 12 months. He spent 1 ½ years in Libya.
100. The assessment stated that the information provided by the applicant for chronological purposes suggested that he has been involved in activities which would be expected in somebody older around 19 - 23 based on his narrative of his journey. The EURODAC results show that S was fingerprinted in France and sought asylum but when this was put to him he denied seeking asylum in France.
101. When assessing his physical appearance combined with his level of maturity the assessors considered that this indicated that he is functioning above the age he claims. His general demeanour and attitude seemed more consistent with someone older than 17.
102. It is recorded that the assessors observation of the applicant is such that he did not come across as vulnerable or childlike during the assessment. On the contrary he behaved and carried himself with maturity seen in people much older than his claimed age. It is further recorded that this view is shared by his allocated social worker who also observed him since his arrival in the UK.
103. At the conclusion of the age assessment the assessors consider that the applicant was within the age range of 19 - 23 with his most likely age being 20 for the reasons stated below:
 - (1) his physical appearance combined with his level of maturity indicated that he is functioning above the age he claims.
 - (2) his general demeanour and attitude seems more consistent with someone older than 17. The applicant had a confident

demeanour during the assessment which made it clear to the assessors from the beginning that he did not want to engage which comes with maturity.

(3) his account of events was inconsistent, having offered contradictory stories and

(4) he spoke in a way showing that he has intelligence and maturity consistent with an older adolescent.

104. Having considered the information above, the assessors stated they were “ mindful and are aware that age assessment is not an exact science to determine age. Notwithstanding, his physical development in relation to his appearance, coupled with his observed overall interactions engagement, even allowing for life issues that he reports, is in our view, more likely those of young adult and post puberty.”
105. Having considered all the factors above, it is the view of the assessors that the applicant is older than the claimed age of 17. The assessors consider that the applicant is more likely within the age range of 19 - 23, which is consistent with the above information gathered from him and other professionals. They therefore concluded that his most likely age is 20 years with the date of birth of 20 December 2000.

The evidence on behalf of the respondent:

106. Ms Elga Batala confirmed her witness statement dated 1/9/21 at [p221]. She set out her experience and her qualifications. She has worked as a social worker for the past 11 years and gained experience working in the assessment and safeguarding team, Court and supporting UASC team. She has also been involved in completing age assessment with various local authorities and working with children with varying cultural backgrounds and needs.
107. She first met the applicant on 20 October 2020 as an introduction to his age assessment. In her witness statement she exhibits the age assessment 20 Jan 2021 at exhibit EB1, and assessors notes at AB 2.
108. As to the process undertaken with S, Ms Batala states that the age assessment process has not been straightforward. Some issues arose when S disclosed the assessors that he claimed not to understand the Sudanese Arabic interpreter engaged to support the assessment process. The disclosure was only made to the assessors during the 2nd assessment interview and at a point in which the assessors are challenged an adverse finding in terms of the information provided by S to the assessors which did

not correspond with the information he had provided previously. The assessment process was restarted using a Burgo interpreter.

109. In response to the claim that the assessors failed to consider his trauma/background/history, Ms Batala states that when S told the assessors of his health worries, the assessors advised him speak to his GP about his insomnia, and experience of recurring nightmare issues. The assessors also spoke to his key worker. The assessors were empathetic towards S and all meetings were conducted in a holistic, warm and nurturing way.
110. The evidence of Ms Batala is that S challenged the assessment process by exhibiting behaviour that frustrated the progress of the assessment. During the minded to meeting, S walked away from the session, is that of providing information to counter the provisional outcome of the age assessment.
111. It is Ms Batala's evidence that S was given every opportunity to address the discrepancies. Instead of cooperating and engaging with the assessors, to be sure that they had all the information before them in order to make an informed decision, he chose to end the "minded to" session.
112. It is recorded at paragraph 8 [223] that he was adamant he would not speak and engage with the assessment any further. S decided to walk away and refused to cooperate with the assessors in the minded to meeting process (on 15 January 2021).
113. It is her evidence that from the start, the assessors had noticed that when he was questioned about his age, his body language changed. He thought that if the assessors did not complete his assessment, the local authority would have no choice but to accept his age.
114. Ms Batala was cross-examined about paragraph 5 of her witness statement and issues concerning the ability of the appellant to understand the interpreters. She stated that usually the language of the interpreter for someone from Sudan would have been Sudanese Arabic. She understood that Burgo was a dialect. However, she stated that the local authority had assessed him when he had an initial meeting to ensure that he could understand the interpreter.
115. She was asked if her evidence was to the effect that the appellant understood the interpreters but pretended not to do so. She stated that each time they brought in interpreter he did not say that he did not understand the interpreter. In cross-examination she accepted that it was possible that the interpreter and the applicant could have spoken different dialects

and yet had not understood each other fully. As to the interpreters that were used, she stated the 1st interpreter was from Sudan and had been born in Sudan and came to the UK as a teenager. The 2nd interpreter was also from Sudan. She referred to a lady who was from Egypt. She referred in cross-examination to a meeting with the applicant and in interpreter and 5 minutes after starting the applicant said he was leaving, and he did not want to stay when asked why the interpreter said he did not want to go ahead because they did not understand each other however Ms Batala stated that they were still talking. She accepted in cross-examination that this was not referred to in her witness statement as it was information revealed outside of the meeting and therefore it would not be recorded.

116. As to the interpreter booked on 12 November 2020 [p45] she stated that the interpreter spoke Arabic from Sudan. She said that she had checked with all of the interpreters because the applicant had said that sometimes he did not understand the interpreter. As to the interpreter booked on 14 October 2020 RB, she stated that he was from Sudan and that she had checked this with him. She agreed that she had not recorded in the notes that the interpreter spoke Sudanese Arabic and was from Sudan because it was not important to record. She did not know if the interpreter spoke Burgo, but she stated that he was born in Sudan and that he came to the UK subsequently, but she did not know how long he lived in Sudan, or the age moved to the UK. In cross-examination she accepted the different parts of Sudan had different dialects and accents and therefore it was possible that even if born in Sudan it was possible that the appellant would not necessarily understand that particular interpreter.
117. Ms Batala was questioned about where she had said that he had exhibited behaviour that frustrated the progress of the assessment. She said others were involved as well and they explained that they were not happy with being aged assessed and therefore they stayed outside. It was suggested to her that the applicant was not happy with the unit and that had nothing to do with frustrating the age assessment. Ms Batala did not agree and stated that he was not happy for the age assessors to come once or twice a week and this was the reason he was protesting. It was suggested to her in cross-examination that this was not behaviour which is inconsistent with being a child not wanting to go to meetings and talk about traumatic circumstances. Ms Batala was directed to the witness statement where the applicant and said "I am not in the mood mentally I cannot talk about it" [160]. She was asked about the events that he said occurred between 2011- 2013 and whether she checked what was happening in Sudan at that time. Ms Batala stated that she undertook a Google search on in the Internet, but she could not remember exactly as she had done a number of searches. Mr

Hitchings informed the witness that a genocide had taken place and asked if she had conducted research into the scale of the killings and targets? She said that she could not recall. When asked why she had not mentioned information that she had read in the assessment she said that it was relevant, he had mentioned issues in Sudan in 2011 and his family having to flee the reason was that he was not happy, and the family lived in different camps and the village was set on fire. She stated that she understood that he may have a traumatic background and that he did not want to talk about it.

118. She was asked why she had said that he did not engage in the assessment? Ms Batala stated that she had said that he had frustrated the assessment towards the end. The last meeting he did not want to talk about his age or date of birth, and he walked away when they started talking about his date of birth and he got frustrated and therefore it was not about the war but his date of birth. It was put to her that she had not referred to the events in Sudan at this time. Ms Batala stated that it was important, but it did not affect someone's age although she accepted that any trauma or events in Sudan could possibly have affected his demeanour. She stated "it is possible it could affect his presentation at no point did we feel it was because of the trauma he was behaving towards the process of the age assessment. Each time he said he could not sleep, we thought let us leave it, we will come back this afternoon. Then we did 30 minutes instead of one full hour trying to meet him halfway and ask him if he is okay he would say yes then halfway through he said he had a headache, and we would stop the meeting because we could not go on".
119. It was suggested to her that the applicant had told the assessors that they had been shooting in the village but that she had no idea that a genocide had taken place. Ms Batala stated that it had not been phrased as a genocide that the village was attacked and that the article that she had read on the Internet did not report it as a genocide. She was asked questions about what had been happening in Sudan at that time and about Darfur that stated she was not aware of the politics fully. She knew peacemakers were in Darfur and that there were camps in Chad, and she knew about the displacement of the population.
120. Ms Batala was asked again about the recorded quotation at page 161 and that in the assessment they were explaining what the applicant and said that one day something that happened in the village and as a result he and his uncle had to leave. It was suggested to her by reference to page 741 that the event was after the house burnt down and at the time the applicant would have been a young child, and this would have been a traumatic event for him. Ms Batala agreed that it would have been and

accepted that being asked about that event may well have caused him to disengage.

121. Ms Batala was referred to page 742 where he said he was not in the mood because he was upset. She said that she had given a break because he was “teary” when he spoke of the issues and when he could not sleep on 2 occasions she recalled him being “in tears” and that at the meeting on 23 December he got upset. It was put to her that she had said he was frustrating the process because he wanted to protest against the age assessment. Ms Batala stated that when the applicant was asked about his age he would walk away, and he would not engage in questions about his age. She said that “despite my colleagues, interpreters and the appropriate adult the managers and the key worker managing to try to speak to him and trying to clarify his age he was not having it. He was frustrating and we could not fully understand why he was not eager to speak to us to give him support.” When asked why she described him as being “not eager”? She stated that they understood age assessments were difficult and different processes, but he said a number of occasions he did not want the meeting and we accepted it and he walked away.
122. Mr Hitchens asked Ms Batala questions about the applicant’s background and references to him working on a farm in Libya and not being paid. She stated that she remembered this and agreed that working without pay was modern slavery and that his claim that he had been trafficked from Sudan to Libya. She was asked if she had made a referral to the NRM? She stated that it would be the social worker to do this and not her but did not know when asked if the SW had in fact made such a referral. She accepted that she did not check if a referral had been made and there was nothing in the notes. But she agreed that it was not acceptable to fail to make a referral to the NRM. She was asked to identify the assessment where it had been said that the assessors considered his traumatic life experiences that he was in modern slavery and that this would have been reasons for his disengagement? Ms Batala stated that they did not hold it against him.
123. Ms Batala was questioned about the “minded to meeting” and it was suggested to her that the applicant’s overall demeanour strongly indicated that he was disengaged through the whole assessment process, and she was asked whether she still maintained that she did not hold it against him that he had disengaged? Ms Batala stated that that was not necessarily the position and that “if taking anything as a whole then there was not much engagement we did not hold it against him because we did not have the information.”

124. Ms Batala confirmed that she knew that the applicant was unhappy at Appledore and that he wanted to move back to the previous place he was at. She said that at Appledore he was not much interested in the activities of the centre which was for adolescents. She accepted that it would be quite normal for different children to like different things but that it could be an indication that he was no longer a teenager and was going into adult hood. When asked to explain, she stated that when looking at his participation in activities he had not been interested in playing football, playing on play stations and engaging in discussions with others. It was put to her that she was wrong in her evidence about playing football with others as that had been set in the notes at page 720. This was one of the factors that she had wrongly taken into account when reaching the conclusion that he did not engage. Ms Batala stated that he was not interested in other activities with younger people such as play stations.
125. Ms Batala in her evidence accepted that when conducting the assessment had been quite a difficult period for the applicant and that he did not want to be in the centre and that this had affected how he had got on with staff. She agreed that it was not unusual for teenagers to exhibit challenging behaviour. She further accepted that it was possible that in that in his state of mind it might affect the way he interacted with her in the assessment. It was put to her that it was not right to say that he only disengaged when the assessors spoke about his age. She replied, "we got a shift in his behaviour when asking him about dates." She accepted that he did not engage when he was asked about leaving Sudan and on the 2 occasions he was "teary" when talking about his traumatic experiences fleeing Sudan and the 2nd time explaining that in Libya they would start shooting. She stated that he would walk away from meetings and asked dates about age for example in France. Ms Batala accepted that he was frustrated by the slow progress of the age assessment but that they had explained that if he walked away they would have to arrange another meeting. She stated that she understood that he was frustrated but they were also frustrated.
126. Ms Batala was taken through the chronology of the assessment and the number of sessions that did not go ahead through no fault of the applicant. She accepted that the 1st effective meeting was 2 months after the process had started and it was not until 21 December that the 1st meeting properly took place. Ms Batala accepted in her evidence that if the applicant were already frustrated this would be a time where he would be anxious and quite angry. She also accepted that it was likely to affect how we felt about the process itself. She was asked if she had taken that into account in her assessment and Ms Batala stated, "we acknowledged this." It was suggested to her in cross

examination that it would be unfair against that background to say that he had tried to sabotage the assessment. Ms Batala agreed stating "I think it should be said not cooperating rather than sabotaging." She agreed that "sabotaging " was a strong word "and that "non-cooperation would be better." She was asked in hindsight should she have thought more as to why he might not have been cooperating. She stated, "we acknowledged this in our analysis."

127. Ms Batala was asked whether physical appearance was a poor indicator of age? She stated "no not necessarily you cannot determine age by looking at their faces but there is a margin of error. She was asked about her statement where she described him wearing a mask (p158). Ms Batala stated that she thought this was an error and that she recalled him wearing a mask on one day but that he would have removed it. As to his physical appearance they had seen him about 15 times.
128. Ms Batala was asked about the assessment(p174) by reference to his physical presentation, demeanour and interaction and that he presented with the physique of a young adult who had completed puberty. She stated that whether a male had attained puberty would depend on a number of factors. She was asked if she had checked the average age of young men completing puberty? She did not have information as to the average age. She was asked if she knew whether it was normal to have completed puberty before the age of 17 or 18? She stated that she thought a 17-year-old would still be growing and it was possible for an 18-year-old to have completed puberty. She stated that it was not just based on his age but his appearance. When asked what that showed for the purpose of the assessment she stated, "it showed that he was young adult." She was asked that on that basis (that he completed puberty) she had therefore decided that he was 18? Ms Batala that it was not only that, but it was a factor that he was a young adult. It was suggested to Ms Batala in cross examination that his body had been through a number of important physical changes including working on a farm, journeying across Europe and that this would change his body including his muscle development. Ms Batala in her evidence stated that it would not necessarily impact on his development. She was asked that if he were street homeless whether this would affect the lines on his face? She stated that as she understood his history in France that he had clothes and healthy meals and accommodation, and he would not therefore be on the street. It was suggested to her that her view that his journey and experiences before entering the UK did not affect his development indicated a lack of insight. Ms Batala he had been potentially supported by the French authorities but accepted that his experiences in Libya would have had an effect on him; he was not sleeping and had insomnia and that had an impact upon him.

129. Ms Batala was cross-examined about the timeline and by reference to page 175 (the age assessment). She stated that he said he left Sudan in 2016 and therefore was 13 years old but turning 14 late in 2016 and that he had claimed that the age he left Sudan was 13 to 14 and if an addition of 4 years were made it would make him 20 years old. By reference to page 741 (handwritten notes) he stated he left Sudan in the autumn of 2016 therefore when he left he was 13 turning 14 between July – January. If he was 13 in December 2016 he was consistent. Ms Batala did not agree. It was suggested to her that if he were 13 in 2016 in the autumn when he left Sudan 4 years later he would have been 17? Ms Batala disagreed stating that he had said that his uncle and told him that he was 12 when he had left.
130. Ms Batala was asked if she had contacted the authorities in France? She stated that when she had made contact she was told that they would not have any information. She accepted that it was not known where he was apprehended. She accepted that she had experience of dealing with asylum seekers who travel through France and that she was aware of the difficulties existing with the relationship between the French police and asylum seekers and that many are scared of the police. She also accepted that the conditions were difficult in the jungle. She further accepted that the appellant is a young person and scared of the French police that it was understandable that he might not cooperate with them. She further accepted that someone who had undergone the circumstances in Libya he would be even more scared.
131. The second social worker to give evidence was Ms Boamah. She adopted her witness statement dated 28/8/21 as her evidence in chief [148-208]. In that witness statement she set out her qualifications and experience including working with unaccompanied asylum seeking children (UASC) and working with children from different cultural backgrounds.
132. She first met the applicant on 14 October 2020 as the lead assessor. She stated that it was their opinion that the applicant raised an issue with the interpreter after hearing the adverse points against him and this was his way of trying to derail the assessment process. At paragraph 7, she stated that in determining the correct language they drew from information they had from the Home Office and the children's services at the point of arrival. Despite managing to understand him during statutory meetings, issues of interpretation were raised only after the initial age assessment interviews had started.
133. At paragraph 11 she stated that once he had disclosed that he was unable to understand, the process was recommended by securing a Burgo interpreter. It was the assessor's view that the

applicant raised the issue of the interpreter after 2 meetings as a mechanism of controlling the flow of the age assessment. It is recorded at paragraph 12 that when the assessor started to put "minded to" points to him he told the appropriate adult that he could not understand the interpreter and it was only after these adverse points were put to him that the assessors also notice a change in his demeanour and interaction towards them. He became less engaged and started to refuse to answer the assessor's questions.

134. Ms Boamah stated that she disputed the claim that the trauma he may have experienced was not taken into consideration. She stated that the assessors conducted a holistic children's services assessment and were considerate towards his personal circumstances including any trauma that he may have had prior to and during his journey to the UK and any subsequent ongoing effects of trauma may have.
135. Ms Boamah said that during the assessment they were mindful that the age assessment process can cause anxiety to most participants considering the potential trauma they may have experienced throughout their life and journey to the UK. If they had felt his traumatic experience was causing distress they would have made the decision to either reschedule the meeting or try to minimise his level of anxiety by avoiding talking about trigger subjects. The assessors were aware of some of the experiences he had during his journey to the UK, the effect this was having on him when they asked about his health in general when he reportedly struggled to sleep to nightmares and was not eating well due to the food provided at the reception centre.
136. At paragraph 17, it is stated that from the beginning of the assessment they were aware that the applicant did not want to engage with them, and this was evidenced by him never being ready for their meetings. They would have to wait for him before every meeting and some days the assessors will attend the meeting and he would refuse to come out of his room to engage. His attitude was more of an "I do not care" than someone who was asking for his age to be established to receive appropriate support.
137. In evidence in chief she confirmed that on 14 October 2020 [p155] the interpreter identified as RB informed them that he was born in Sudan but came to the UK at the age of 6 or 7 years old. As to the interpreter set out at [p156] she stated that he was also Sudanese. No other questions were asked in examination in chief.
138. In cross examination, Ms Boamah was asked about the applicant's journey from Sudan and that he had been taken to

Libya and it was his claim that he had been a child and trafficked across international borders. She was asked what steps she had taken as a result of his history? She stated that at the time he was not in “immediate danger of trafficking” and that they were acting as age assessors and that if he were in danger they would have made a referral. It was suggested to her that she had a young person who had been traumatised from having endured modern slavery but had made no referral to the NRM. In evidence she stated that she was aware of the NRM but that she thought that a referral would only be made if the person was in “immediate danger.” She stated that they were undertaking an age assessment and they “did not have the time” to make the referral for him. When asked how many times she met the applicant, she stated that she had met him in October and in the last assessment in January. It was suggested to her that she had 3 months to make a referral. Ms Boamah stated that they did not have the time from October, and they could not get information from him. She later said that they were “under pressure.” When asked how long it would take to make a referral to the NRM, she stated 30 minutes/half an hour. When asked why she could not find half an hour she stated that she could not do so at the time. When asked if she had some training in modern slavery, she said that she did have some training in 2019. It was suggested to her that the training she had received did not say that a referral should only be made if the person was in “immediate danger.” She could not remember exactly what it stated as it was 2019. She said that she did not speak to the allocated social worker about the applicant being a victim of modern slavery. She accepted that her duty was to safeguard young people and when asked if she accepted whether she had discharged that duty she stated, “not completely” and that by the time she had first met him they “ had in our mind that the issue was addressed/resolved.” She agreed that they could have done more. She stated that in hindsight the issue should have been addressed with the applicant and for him to receive support at the time.

139. Ms Boamah was questioned about the events had stated to taken place between 2011 and 2016 and whether she had done any research about what had been taking place in Darfur at that time? She said that she had read about Darfur and rebels in the village. She stated that she had read this from the BBC news and other papers. She said she had watched the news that she tries to read about current issues and that this was something she was aware from her general knowledge rather than undertaking specific research. She said she had gone onto the Internet. She was aware that there had been a genocide that she did not know that the ICC had indicted the president of Sudan. She stated that she had taken this into account when assessing his age

140. Ms Boamah accepted in her evidence that if S had undergone such a history in his formative years he would likely be suspicious of people in authority including the police and social workers. She further accepted that it would make a young person reluctant to have meetings with strangers as a result of what he had experienced and when looking at his journey and his contact with the French authorities. She stated that they “did consider how traumatising this was for him at the time.” Ms Boamah was asked about the view taken that he was disengaged, and she was asked if she thought there may be other reasons for this other than him lying about his age? She stated “yes, the reason why we tried to support him to tell us because if he provided the information it would help in determining his age.”
141. She was asked how many age assessments that she was doing at that time, and she stated that she had 10 age assessments and agreed that they were intensive work. She was also asked if she was under pressure at work? Ms Boamah stated that there was pressure but “looking at social work we are always under pressure.” She agreed that she had said she was under pressure at the time that she could not make a referral to the NRM as there was a lot going on she agreed that age assessments were very important decisions. She did not agree with the suggestion that having to make those decisions under pressure that she might make the wrong decision. She stated that social workers had to make decisions under pressure, and they have to make decisions on the information they have.
142. Ms Boamah was asked whether she had the opportunity to read the evidence of RP[page 268] . It was suggested to her that the witness had a long period to assess the applicant and she was asked that if she had obtained this information would she have taken it into account? Ms Boamah stated “yes, I would have asked about her observations because she had known the young person for a longer time and as to why she had made that decision.” She was asked whether it was possible that after having made further investigations like this she would have come to a different decision? Ms Boamah stated she could have.
143. Ms Boamah was asked about the evidence given by JC. She stated that she had no experience of the organisation. It was suggested to her that JC had regularly seen the applicant and that she was clear in her opinion that he was the age that he said he was (17 turning 18). In the circumstances the witness was asked whether she was still confident in the outcome? She stated, “yes because of the age assessment on our observations.” Ms Boamah stated that if she were to do the assessment now , “I would look at this and take this into account and probably the outcome would be different.”

144. Ms Okonkwor filed a witness statement on 30/8/21 at [209]. She was not required to give oral evidence.
145. In her witness statement she sets out her qualifications as a social worker and experience with working with young people and that since August 2020 had been employed as an experienced social worker within the service for unaccompanied asylum seeking children. The applicant was allocated to her on 26 August 2020, and she sets out that she has seen the applicant on 8 visits. She last saw the applicant on 8 January 2021.
146. She described her interactions with the applicant observing his behaviour to fluctuate. There were times when he was friendly, polite and respectful compared to other times when he would walk out of meetings refusing to leave the office or engaged in verbal arguments with the staff. She described him as being very confident when confronting adults and that he had also engage in antisocial behaviour where he had refused to sleep in his room had been sleeping in the corridor. She described him as exhibiting a “mature confident demeanour and came across as being intelligent and self-assured.” Her opinion of his demeanour was not one that she thought was indicative of a young person but rather indicative of someone already well into adulthood.
147. She stated that having read the age assessment she agreed with the outcome the assessors had reached. It was her observation on 11 November 2020 that her professional opinion of the applicant’s age was that he was between the age of 22 and 25 at the time.

The submissions:

148. Both parties then made submissions before me, adopting and expanding upon their skeleton arguments. I do not intend to set out those written submissions provided by the advocates as they are a matter of record and I confirm I have taken them into account my analysis of the evidence. I am grateful to both advocates for the assistance they have both given during the case.
149. Mr Parkhill on behalf of the respondent relied upon his written submissions. He identified in his closing submissions that the applicant’s evidence lacked credibility and sought to identify within those written submissions where it was said the account lacked credibility. Mr Parkhill identified areas within S’s evidence where it was submitted that his account had not been consistent, for example the account of his journey, what had happened in Libya and how he had entered France. Other inconsistencies referred to include his account of accommodation in France,

inconsistent evidence as to contact with his family and his evidence as to how he knew his date of birth.

150. In relation to the account given as to how he knew his date of birth, Mr Parkhill submitted that his account had changed from a vague account given during the age assessment to a significantly changed account referring to the Sheik on a basis which he had not mentioned before. He submitted that there had been no adequate explanation why this account had been mentioned so late in his evidence. The explanation given was that he had not been asked sufficiently precise questions before, but it was submitted that one would have assumed that his legal representatives would have asked questions of him in a sufficiently searching manner when drafting witness evidence. The suggestions of deficiency of prior questionings falls away when looking at the evidence as the applicant had volunteered the account.
151. As far as the account was given spontaneously and voluntarily, he submitted that the court was still without an explanation as to why he had not given that account to the assessors or to his solicitors.
152. In those written submissions, reference was made to the Eurodac evidence (see paragraph 10). In his oral submissions, Mr Parkhill referred the Tribunal to the correspondence set out in the supplementary bundle and the separate document. He submitted that the assessors did not have the Eurodac evidence at the time of the assessment but had the evidence from the Immigration Officer as to her understanding. It was the position of the respondent that the email evidence and the Eurodac document provided a basis for which the court could conclude that S did claim asylum in France.
153. Mr Parkhill referred to the opinion evidence presented on behalf of the applicant. In particular that the evidence of JC demonstrated that she had received no training in assessing age and no experience of that. While she accepted that 17 and 19-year-olds played sport together she accepted it would be difficult to identify a 17 year old from a 19 year old on the basis of experience, she refused to accept that the applicant could be any older. He submitted it was evident that she was not keen to appear to disbelieve the applicant and that whilst that was understandable given the ongoing relationship, her evident reluctance to say anything suggesting that she disbelieved him meant that her opinion as to his age should carry very little weight.
154. As to the evidence of RP, she did not attend for cross examination and her evidence should be given little weight. In

any event, her opinion could add very little she does not set out in the experience or training in assessing age and there was no suggestion that she had sought to challenge or explore the issue with the applicant. In any event her evidence was based entirely on appearance and demeanour which is unreliable and even on the applicant's own case, her opinion is obviously wrong (see written submissions at paragraph 34).

155. As to the allocated social worker, she provided a statement where she considered the applicant was older than 18. Her opinion was based solely on the claimant's appearance and demeanour, and it was accepted that that could be an unreliable basis upon which to determine age, however she was experienced social worker and had seen the applicant on several occasions. As the evidence was not obviously wrong, and unlike JC she was not constrained by her relationship, in the circumstances her opinion evidence should be preferred.
156. Mr Parkhill addressed the cross examination of the age assessors by reference to questions concerning the National Referral Mechanism ("NRM") as set out at paragraphs 37 - 39 of the written submissions. In the submissions he made the point that no complaint in respect of the NRM was pleaded, nor was material produced as to how the NRM operated. In the circumstances caution is required in respect of findings that the applicant might seek in respect of the NRM. Furthermore, even if the assessors might not have taken steps, any duty was owed by the respondent corporately. The social workers were not seeking to discharge any function in respect of the claimant save for assessing his age.
157. It was submitted on behalf of the respondent that the Tribunal should reject the applicant's claim date of birth and to accept and adopt the conclusion which the age assessors reached and to determine that the applicant date of birth is likely to be 20 December 2000.
158. Mr Hitchens on behalf of the appellant relied upon his written closing submissions. In that document he sets out a critique of the age assessment that was undertaken by the local authority and that reviewing the assessment in its totality, the assessment was a very poor one and in the circumstances the Tribunal is invited to attach little or no weight to it. For much of the assessment, the applicant did not have the benefit of an interpreter who spoke his language, and the assessors placed impermissible weight on the applicant's demeanour and physical characteristics. It was further asserted that it was carried out by assessors who were not sufficiently experienced.

159. When looking at the assessment, there was a high level of reliance on the applicant's physical features in circumstances where it was common ground that there is a 5 year margin of error in assessments conducted on the basis of physical appearance.
160. It was further argued that the age assessors sought to rely upon the applicant's demeanour and that whilst it was stated that this played a part in the assessment process, the assessors did not properly engage with the clear explanations for his apparent "demeanour" during the assessment process. Reference is made to the suggestion that he had "sabotaged" the assessment process by "claiming not to understand the interpreters." However, the chronology of the assessment was set out in the written submissions, and that in the light of having failed to undertake an assessment within 2 months after its start it was irrational for the assessors to suggest that the applicant had come up with excuses or had tried to sabotage the assessment process.
161. In any event it was submitted that the evidence was not consistent with the applicant having "sabotaged" the assessment process. The social workers accepted that there were false starts and that it would be frustrating and upsetting that the process by 21 December 2021 had taken over 2 months to implement. Both witnesses for the local authority had accepted that his experiences of the French police and Sudanese government may have made him suspicious and reluctant to cooperate with people in authority, and lastly the appellant had been adversely affected by his dramatic life experiences. Given the psychological evidence set out at [840] this would inevitably affect his presentation, demeanour and engagement.
162. The last point made was that the appellant had been exhibiting challenging behaviour at the time of the assessment process and not only in the process itself. It was not behaviour in any way that was inconsistent with that of a 17-year-old in the circumstances he described.
163. As to the asserted inconsistencies set out in the respondent's written submissions, Mr Hitchens sought to clarify the evidence and to put those inconsistencies in their evidential context. That is set out in his written submissions at paragraphs 7 (a)-(d) and in his oral submissions. They were described as "minor inconsistencies" at a time when he was a child in extremely traumatic circumstances. Irrelevant points were made as to whether or not he had a four-minute conversation with his family and that he could not remember precisely when he started maths lessons as a young child. In essence it was submitted that the respondent had mischaracterised his evidence in a number of

respects. Importantly it was submitted that the applicant had made it clear that he was unable to estimate precise times in Libya as he did not have any means of knowing the date or time and was according to the applicant, held in conditions that could be described as akin to modern slavery.

164. In his oral submissions he pointed the Tribunal to the Eurodac evidence and highlighted the lack of clear evidence to demonstrate that the applicant had made a claim for asylum as submitted by the respondent. He relied upon the written submissions at paragraphs 18-19. He submitted that the only sensible interpretation when considering the evidence the whole is that the French authorities had no trace of the applicant even after a renewed search had been undertaken. Taking the respondent's case at its highest, the evidence did not support any assertion made that the appellant had made a claim for asylum. In any event even on the respondent's case in October 2017 he was still a child and therefore would not have claimed asylum as an adult.
165. As to the question of interpretation, in his oral submissions Mr Hitchens submitted that Ms Batala's evidence was fair and that she had accepted that prior to 21 December that the word "sabotage" should not have been used. She accepted that there was likely to have been some communication difficulties and that was one interpreted lived in Sudan as a child, which would not necessarily mean that he would have retained the same dialect as the applicant. The witness also accepted that people within Sudan spoke different languages and communication could be difficult. He submitted that the applicant had no difficulties in understanding the court interpreter and properly engaged with him being able to give full evidence and answers which were not forced. There was positive enthusiasm which juxtaposed the approach with the interpreters that had been provided on behalf of the respondent.
166. As to the cross-examination concerning the NRM, he addressed this at paragraph 20 (a) of his written submissions. In his oral submissions he conceded that whether a referral was made or not did not affect the assessment of age. However in his submission, it was relevant to issues of credibility given the evidence given by Ms Boamah as to the circumstances when such a referral should be made in any event it was accepted that more could have been done. The appellant's case in his witness statement was that the assessors were not empathetic, and this was supported by the lack of a referral and was linked to the perception that the applicant had formed. It was also relevant to whether there were alternative explanations for the applicant's disengagement.

167. When considering the opinion evidence, Mr Hitchens submitted that the evidence of JC and RP supported and was consistent with the evidence of the applicant. Both have had the opportunity to observe him regularly over long periods, both are experienced in working with young people and in particular young asylum seekers, and that in the circumstances their evidence should be given greater weight than that of the social workers. The social workers having had more limited interactions with the applicant over the course of the short meetings involved and were unable to observe him in a variety of settings which the other witnesses for the applicant had been able to do. Furthermore they assessed him at the time when he exhibited challenging behaviour and in a chaotic phase of his life. Mr Hitchens submitted that Ms Boamah in her evidence and cross-examination fairly accepted that if she had had the information from those 2 witnesses it would have caused her to make more enquiries and that this could have made a difference potentially to the outcome.
168. Mr Hitchens therefore submitted that greater weight and reliance should be placed on the evidence of the witnesses provided on behalf of the applicant, including the applicant's evidence, over the assessment and the analysis of the local authority and make a finding that the applicant's date of birth is 20 December 2002.

Discussion:

169. When beginning an analysis of the evidence and in the absence of documentary evidence of the appellant's age, the appropriate starting point is an assessment of the appellant's age on the basis of the credibility of the applicant's evidence. In that regard, I have considered his evidence and other sources of information including the evidence of other witnesses, the background material and the closing submissions of the advocates.
170. When assessing the applicant's credibility I have taken into account a number of relevant factors. Firstly, I have had regard to the Joint Presidential Guidance Note number 2 of 2010 Child, Vulnerable Adult and Sensitive Applicant Guidance. Secondly, the applicant's credibility has been considered in the round and thirdly, I give due allowance to the described life experiences of the applicant and that this will be likely to have an effect upon him providing a coherent account.
171. Through my consideration of the evidence I have taken into account the likely difficulties he may have experienced and the difficulties in providing evidence in support of his account. In this case as urged by Ms Hitchens I am mindful of the cultural differences that there are likely to be, and I have been careful not to proceed on any assumptions or view his evidence from a Western or UK perspective.

172. When considering the applicant's evidence it is necessary to deal briefly with a submission made by Mr Hitchens. He refers to the cross-examination of the applicant as not being conducted in accordance with the guidance and that the applicant was asked inappropriate questions about the content and frequency of lessons when a young age and was cross examined on minor inconsistencies on his account at a time when he was a child and existing in circumstances of claimed modern slavery (see paragraph 16 of the written submissions).
173. When asked to clarify the submission, he stated that he went no further than to say the points raised should be taken into account when assessing the submissions made by the respondent as to the applicant's evidence being vague as to when lessons started or considering the circumstances when he was in France or Italy. Mr Hitchens made it clear that he was not asserting that there was any procedural unfairness which would mean that the proceedings would have to be abandoned or not able to proceed further.
174. I do not view the written submissions as stating that there was any procedural unfairness in the questioning of the applicant. If that had been the case such a submission would have been raised after the evidence of the applicant. It was not. Furthermore I also observe that at the outset when the advocates were asked as to whether any special measures had been identified and what steps had been taken/agreed, nothing was expressly raised on behalf of the applicant. I am satisfied that during the hearing the applicant had the assistance of being accompanied by his support worker throughout and that all steps were taken to ensure that he was able to give his best evidence.
175. Furthermore, I do not consider that there was any improper questioning of the applicant and that the questions were asked in a careful and structured way to ensure that the applicant could provide his answers. As Mr Parkhill submitted, there needed to be a balance adopted as to the questions asked and that where it could be said later that evidence was "vague" or not detailed, the applicant should be given an opportunity to give full evidence. There is always a careful balance to maintain but I am satisfied that the questions were appropriate, and I observe that there were times when the question had to be repeated because the applicant often would not wait for the question. If the question had not been asked it might be said that he did not have the opportunity to answer. In any event, the applicant's written submissions state that the applicant gave "clear consistent and credible evidence" and that he was described as "eagerly engaging with the process of giving evidence." That would accord with my own observation and that the applicant did not display any difficulties in answering the questions. Had there been such

a difficulty, I am satisfied that it would have been brought to the Tribunal's attention at the time.

176. I think the point made by Mr Hitchens is a generalised point but nonetheless an important one that the issue of the credibility of the applicant's evidence must be viewed in the light of his experiences and that the coherency of his account may be affected by this life experiences including the prolonged journey to the UK. Those matters are all points which I readily accept and are at the forefront of my mind when undertaking an assessment of the applicant's credibility in the assessment of the evidence as a whole.
177. In fact as I shall go on to set out, whilst the written submissions of Mr Parkhill seek to identify a number of credibility points from the evidence, having considered them in the context of the applicant's account, those of his claimed life experiences, and the evidence around the circumstances of the assessment, I do not find that many of them reflect adversely upon the applicant. Some are in fact not inconsistencies and those that are may be viewed as minor. I shall set out my reasons for reaching this view.
178. In his written submissions Mr Parkhill sets out what he describes as inconsistent evidence given by the applicant. The submissions made on behalf of the respondent is that the applicant has not given credible or consistent evidence. In particular, the local authority invite the Tribunal not to accept the account given as to how he knows his age and that the inconsistency of his evidence demonstrates the lack of credibility generally.
179. Any inconsistencies in his account do not impact on the applicant's age in the sense that they are indicators of his age, but they impact on the credibility of his account as to how he knows his age. I have therefore given careful consideration to that evidence and the matters raised.
180. Mr Parkhill identifies that the applicant was not consistent about his account of his journey noting that in his statement of evidence he said he stayed in Libya for a year [396] whereas in the assessment interview he said he stayed in Libya for approximately 6 months [746] and that he was not consistent as to who took him to the farm whether it was the owner or the brother of the farmer. He highlighted a further inconsistency as to his journey from Italy, having told the assessors he took the train from Italy (Ventimiglia) to France (Menton) [732], whereas in his statement of evidence he travelled to France on foot.
181. It is important to view those inconsistencies concerning his time in Libya in the light of his evidence which was that he had no means of knowing the date or time any given place. Given his

age at the time, which even on the respondent's case he was still a child, and the specific circumstances he described as akin to modern slavery, I do not attribute any weight to those inconsistencies.

182. Whether the owner of the farm took him to his brothers farm or whether he was taken to Tripoli not by the farmer but by the brother of the farmer, the events occurred many years ago and it is inevitable that specific details may be omitted. I do not consider any inconsistency as to how long he was on the farm undermined the evidence he gave that he did not know with any certainty how long he was on the farm given the circumstances he described being held in.
183. As to whether he took the train into France or walked, when the applicant was cross-examined about the difference he said he travelled to Menton by train but then got off the train walked and boarded another train. That explained why his statement asserted that he had entered France on foot. There is no real inconsistency given that he did not know where Ventimiglia was and did not know where France began, or Italy ended.
184. A further point raised on behalf of the respondent is that the applicant's evidence about his accommodation in France was unclear. In particular, that the applicant had told the assessors that he was not given accommodation in France (at [734]). This contrasted with his oral evidence where he referred to having been provided with some accommodation provided by a charity and living in a derelict house. It is submitted that his oral evidence was the first time that he had mentioned staying in accommodation and that he not told the assessors of this or mentioned it in his witness statement.
185. However when looking at the reference relied upon at [734], that was not the context in which he was asked the question. The applicant was asked whether he had claimed asylum and the applicant stated that he did not have the chance after being arrested and fingerprinted and "kicked out and we were asked to find our own accommodation, so we had nowhere other than to stay on the street." The applicant was describing the circumstances at that time in answer to the specific question asked and was not talking generally about accommodation in France. In fact at [769] the typed written notes of the interview 23/12/20 the applicant referred to going back to the church or some charity organisation to be provided with tents. At [733] he made reference to staying in a camp where various organisations (charitable) were assisting him and supporting him providing him by going to people's homes for showers. At [734] the applicant referred to being told to find accommodation and that the place they had been staying at been raided by the police looking for

drug dealers. Whilst it was submitted that he did not refer to having accommodation in his witness statement, at paragraph 62 [264] the applicant described being in France living on the street a lot of the time but also described “every Friday whilst I lived in France an organisation who I do not know the name of came and collected me and other teenagers to take us to a place where we could have a shower, clean clothes and have shelter for the weekend”. I find that there is some consistency with the oral evidence that he gave concerning accommodation that he had in France including assistance from various charities.

186. As to any inconsistency as to his attendance at religious school, at [261] he stated that he went to Islamic school from the age of 5 to 8 years and stopped going to the school because he fled Sudan when he was 13 years of age. Mr Parkhill contrasted that with the SEF questionnaire where he said he attended religious school for 3 years from the ages 5 to 8 years.
187. The applicant told the assessors that he left the Quranic school in 2011 after some event that had forced most of the village to flee and that most people had left after the houses were burnt including the Imam. He did not know how old he was at the time. In his oral evidence he said that there were 2 events happening; the 1st event happened in 2011 when people were displaced, and the teachers never came back and therefore there were no schools and he studied at home before he left Sudan.
188. I accept the submission that the precise details about his education in Sudan related to events at a time when he was a child and that he could not be expected to recall precise detail. However having reviewed the evidence in the round, I do not think that there is any real discrepancy. In 2011 he would have been 8 years old on his evidence and it is known on the applicant’s account that he left Sudan in 2016 which is consistent with his claim that he stopped his education when he was 13.
189. Mr Parkhill also submits that he was inconsistent about contact with his family. He points out that upon arrival he told the Home Office that he last had contact with his family in Ramadan (May) 2020 when in Calais (see SEF questionnaire) whereas in answer to the question “what are your family doing? he told the assessors at [727] “ I have not contacted them since I left Sudan.” Whilst Mr Parkhill sought to rely on this inconsistency as to what he told the assessors, when looking at the notes, there is no inconsistency. In the typed notes set out at [757] it is recorded “I have not contacted them since May”. That evidence is consistent with his SEF questionnaire .When looking at the written notes at [727]I note that it records “I have not contacted them since” which is followed by a word that is not legible followed by “I left Sudan.” On the face of it there appears to be

an error in the recording of what was said and the type written notes as set out above are plainly consistent with his evidence. Counsel for the local authority pointed to a reference at [256 w/s] and that the applicant stated he had not been able to contact them since he left therefore inferring that the applicant said he last had contact with his family when he left Sudan. I do not think that is correct. When looking at the preceding part of the paragraph the applicant is talking about when he left France and his arrival in the UK and therefore it is not been clarified whether he means he last had contact when he left France or Sudan. However in any event, this is made clear in the same witness statement at [260 paragraph 32] where the applicant states "I have not seen my family since I left Sudan in 2016. I have only spoken to my mother once since I left, this was over the phone during Ramadan in 2020." The witness statement is consistent with his SEF questionnaire as to the last time he had contact with his mother.

190. The account given by the applicant as to how he knows his date of birth is central to the account given. It is submitted on behalf of the respondent that the applicant has given inconsistent evidence on this issue. Mr Parkhill has identified that the applicant began by telling the assessors that the Imam had told the children their ages during lessons. At [731 written notes] it is recorded that the Imam was the one who registered the births and if anyone had a dispute they would approach him. Later in the same interview on 21/12/20, the applicant was asked what age the Imam said he was, and the applicant's reply was "he did not give me an exact age was just saying we were all born in the same year". The applicant has given an explanation about the circumstances stating, "to be honest he was not referring to the exact year when we were born, he was referring to some Surat verses of the Quran and trying to remind people here about the year when more than one person or group of people were born and in the same year he was telling me and other people that we were born in the same year." He was then asked how do you know your date of birth? The applicant replied, "he gave me the date because he was recording all the dates." He later stated he went the Imam to ask him his date of birth (see[738]-[739]).
191. Looking at the replies, the applicant appears to be giving an explanation about a general conversation describing the Imam and about giving an exact age and then explained he was referring to this in the context of verses of the Quran. From my reading of those responses he was not saying that he had not been told his date of birth and later stated he had been given it because he had asked the Imam for his date of birth and explained that people from the local areas had been trying to find out the real ages because they needed to check and clarify for example for marriage purposes. Again I do not read this is the

applicant stating that he went as a result of any thoughts of marriage as the written submissions assert. When asked about the circumstances in which he was asked about his age the reply recorded is “as a friend of the same area other male say I am older than you,.... So I went to ask him about this.”

192. The point made on behalf of the respondent is that the account given by the applicant in his oral evidence is inconsistent with that account. In particular the applicant has given account in his oral evidence that he knows the date of birth because children had lessons in how to write the date of birth and that on Thursdays the Sheik would teach them numbers and maths and write their name down in Arabic and their date of birth and that they had a piece of wood on which they would write it down in charcoal. It is therefore submitted that the applicant has given a detailed account of the lessons on the day of the week in which that happened (Thursday) and the material written on (charcoal onward) used to write the date of birth but it is surprising that an account so detailed was not mentioned in the written statement or to the assessors. By way of reply, Mr Hitchens on behalf of the applicant submits that this is an unfair characterisation of the evidence the applicant gave and that he gave a clear and coherent account of how he knew his date of birth and that given that clear account it was not one that he could have invented “on the hoof.”
193. I have therefore considered those submissions in the context of the evidence. When the applicant gave his evidence and he was cross-examined as to how he knew his date of birth, as can be seen from the record of the evidence he gave a long and very detailed account of how we knew that in the context of being taught by the Sheik. It is submitted by Mr Hitchens that there would be considerable difficulties for someone who was inventing such an account. In my view, the level of detail was such that it is not likely that someone would seek to offer or volunteer such an account as detailed as it was with the inherent problems that could be highlighted under close cross-examination.
194. Furthermore, when he provided his early account to the assessors, the applicant did make reference to the Sheik. When he was first asked if he knew the date of birth the applicant stated, “normally the Sheik talks to the young children, telling them their date of birth” (at [731]). It is correct that prior to this the applicant stated that the Imam registered births. Following his reference to the Sheik, no follow-up questions were asked about the Sheik and then questions were asked about the Imam. In his account he referred to being told his date of birth in lessons. In the interview which took place on 23 December 2020 [767 typed notes] the applicant was asked how he knew his date of birth. The applicant replied, “the Sheik of the area confirmed

my date of birth to me.” The record of the interview then referred to leaving school and events where the home was burnt down including that of the Imam’s and when asked follow-up questions “can you tell me what led you to ask the sheik about your age at the time? The applicant stated, “I am not in the mood to talk about what happened to me.”

195. When asked about these questions the social worker in cross examination accepted that the assessment at this point may have been affected by having recounted traumatic events of seeing and experiencing the village houses being burnt down. That being the case, I can understand why the applicant did not feel able to answer the next question. He therefore did not provide any further explanation about the Sheik and the circumstances in which he was told his date of birth. No follow-up questions were asked in the interview, and it does not appear to have been followed up later on. The “minded to interview” did not go ahead and therefore the questions which could have elicited further answers had not been asked.
196. The relevance it seems to me is that where it is stated that the applicant has given a wholly different account that is not correct as he had in fact given an account referring to the Sheik, albeit in general terms. Furthermore, the applicant’s explanation for giving this account is that if he had been asked particular questions he would have answered and given these details. That is supported by the lack of follow-up questions. The way in which the applicant gave his account was that he volunteered this information when taken to the account given to the assessors. However he was asked about the Imam and was not taken during cross-examination to the parts which in fact referred to the Sheik. I also observe in this context that he did make reference to the assessors of the use of charcoal and a board at school [see728].
197. I do not consider that his account was vague in some respects or that this lessened credibility of his account. I accept the submission made by Mr Hitchens that he readily accepted that he could not precisely remember events but that this was not an indication of being vague in order to detract from the other parts which had more relevance.
198. As to the evidence as to why he would be told his date of birth, it is submitted on behalf the respondent that the applicant had stated that age was irrelevant to the community he lived in by reference to the evidence when he stated, “no one asked how old you are – those questions are not questions in our area” and that therefore being told his date of birth as he described was inconsistent with this.

199. I do not think that this is a fair appraisal of his evidence. I prefer the submission made by Mr Hitchens that when he gave his evidence it was to the effect that the date of birth did not have everyday importance but that it was important if they required it for what the applicant described as “formal reasons.” In this context I mindful that there are likely to be significant cultural differences between Sudan and the UK regarding the recording of ages and the celebration of life events such as birthdays and this would also include in what circumstances information such as someone’s age might be seen as important.
200. I have considered the evidence as to whether the applicant made a claim for asylum when in France. The applicant told his assessors at [743] that he did not claim asylum in France and also stated this in oral evidence.
201. The respondent relies upon the EURODAC document alongside email correspondence set out in a separate document. In his oral submissions, Mr Parkhill submitted that the chain of emails demonstrated that when read together they confirmed that it was likely that the applicant had made a claim for asylum in France. Thus it is submitted that if the Tribunal finds that the applicant did so claim asylum, his assertion that he never gave a date of birth to the French authorities cannot be true. Furthermore, it is submitted that if the applicant had been a child and made a claim for asylum, he would not have been left without accommodation and therefore it must follow that it is more likely that he claimed asylum as an adult which is why he is reluctant to admit that fact.
202. It is common ground that the assessors did not have a copy of the EURODAC document that is exhibited in the supplementary bundle (page 12), but they did have an email from the immigration officer set out at [172]. The first email from the social worker is not exhibited but the reply from the Immigration Officer on 20 December is that the applicant claimed asylum in France on 18 October 2017. In response to the email, the social worker asked if his date of birth and age had been given and whether he was “refused” (see email 21/12/20). The Immigration Officer replied that she did not have that information.
203. Following this, further enquiries were made in March 2022. On 28 March, the local authority asked for the Eurodac document from the Home Office. This was sent on 29 March. The Eurodac record provided a photograph with case ID number, sex “M,” place of apprehension recorded as “unknown,” date of apprehension “18/10/2017 12.21” and under heading “marked” it states “no”. On the 29 March, the local authority asked the Immigration Officer to confirm that the results showed that he claimed asylum in France, and it is recorded “ the record itself is not clear about

this?”. The reply received on 29th of March was “yes I have checked the record its France.”

204. When assessing the email exchanges it is plain that the record of evidence was unclear. There has been no chain of evidence to show that the applicant claimed asylum only that he had been apprehended on 18 October 2017 at a place unknown and that his fingerprints had been taken as subsequently shown up on the Eurodac result when accessed by the Home Office (see page 12 of the supplementary bundle). The Immigration Officer was not able to provide any other evidence in support and the reply that she gave to the question to confirm he claimed asylum in France elicited a response “yes I have checked record its France” which suggests that she was confirming the country rather than confirming a claim for asylum had been made.
205. The lack of evidence and uncertainty over this is also reflected in the email exchange in the supplementary bundle. The French embassy was contacted in December 2021 for information, but they replied that they had no trace of any file for the applicant (page 11). Later on a copy of the Eurodac record was sent on 29th of March 2022 to the French authorities with a request for further information. On 14 April 2022, the reply from the authorities was that they had no trace of the file in the applicant’s name, nor any case reference related to the case ID given in the Eurodac result.
206. It remains the position that there is no original source document or evidence to show if and in what circumstances the applicant was apprehended. The date and time of his apprehension is made plain and also that he was fingerprinted as it was this which showed up as a match on the database but beyond that no further explanation has been given concerning the document. Importantly as Mr Hitchens submits, there is no evidence to suggest that the applicant gave a date of birth or any different date of birth if a claim was indeed made.
207. I find the extent of the evidence to be unsatisfactory and when taken together all it demonstrates is that the applicant had been apprehended by the authorities in France in October 2017 at a time when he agrees that he was there. It is not evidence in my judgement to demonstrate that the applicant claimed asylum or that he gave a different date of birth to that which he now claims. It therefore does not undermine or damage his credibility in the way contended by the respondent.
208. I now turn to consider the age assessment conducted by the local authority. In R (A) v London Borough of Croydon (Rev 1) [2009]UKSC, at [33] Baroness Hale observed:

“... The better the quality of the initial decision-making, the less likely it is that the Court will come to any different decision upon the evidence.”

209. In the first instance it is appropriate to consider the weight to be given to the respondent’s assessment . Having considered the evidence of the assessors and the cross examination of that evidence alongside that of the applicant and other witnesses, I have reached the conclusion that I should give little weight to that assessment. I shall set out my reasons for reaching this view.
210. I do not accept the submission made that the social workers were under pressure when conducting the assessment. As Ms Boamah stated in her evidence, social workers are used to working under pressure and that is the nature of the job they undertake. Nor do I accept the submission that they were insufficiently trained to undertake age assessments. I am satisfied from the description of their previous work histories that both social workers who conducted the assessment have experience in age assessment and dealing with unaccompanied asylum seeking children.
211. The conclusions reached in the assessment are summarised earlier in this decision. In essence, the age assessors considered that the applicant’s physical presentation, demeanour and interaction with the assessors was not consistent with their experience of working with 17 year olds. Whilst the assessors acknowledged the applicant’s account of taking cattle grazing, which involved strenuous physical activities as well as working on the farm in Libya, they considered that he presented with the physique of a young adult who had completed puberty. Alongside the reliance placed on his physical presentation, the assessors placed weight and reliance upon issues of his overall demeanour and interaction with the assessors during the interviews. They concluded that it was strongly indicated that he was disengaged throughout the whole assessment process. The assessors felt that the applicant attempted to sabotage the assessment process, for example, he claimed not to understand the previous interpreters used for the purpose of the age assessment although he has been engaging with these interpreters when participating with him for different purposes. The assessors believed that the applicant may have hoped that the assessment would not go ahead if he brought barriers.
212. When considering the assessment there is a high level of reliance on the applicant’s physical features and/or physical maturity. I do not consider this to be a sound basis upon which to reach a conclusion about a young person’s age for the reasons amply stated by the Vice President in R (AM v Solihull M BC [2012] UKUT 00118 at paragraphs [16] and [19] recited earlier.

213. Furthermore, there is a 5 year margin of error in assessments conducted on the basis of physical appearance. In this case the margin between the two dates of births is relatively small (2 years). When considering the social workers evidence which was that the applicant presented with the physique of a young adult who had completed puberty, Ms Batala's evidence as to how she reached that conclusion was unclear and she was not able to give any comparison between those who had or had not reached puberty. If it could be said that young boys ordinarily complete puberty between the ages of 16 and 18 (although much depends on their own particular circumstances), the assertion that the applicant had completed puberty was consistent with the applicant's claimed age of 17 years.
214. The second feature of the assessment relates to the applicant's demeanour or his behaviour. In essence, it is stated that he failed to engage with the assessment process and his conduct was such that he was considered to have "sabotaged" the assessment. Whilst that was the conclusion reached in the written assessment, it was accepted in the oral evidence given by Ms Batala that in the circumstances the use of the word "sabotage" was "too strong a word" and clarified this by stating that he had been "uncooperative."
215. When assessing this issue, it was plain from the answers given cross examination that both social workers accepted the limitations of this. When looking at the way in which the assessment was undertaken, on any reading of the chronology the assessment had an extremely poor start. The assessment process was to start on 14 October 2020. This was not effective as the interpreter went to the wrong centre and did not speak the applicant's language. On 16 October 2020, a further meeting had to be cancelled as there was no appropriate adult, on 12 November 2020 an assessment meeting took place, but the interpreter could not speak the applicant's dialect and on 16 November 2020 a meeting again had to be cancelled due to no accompanying adult being available. On 24 November 2020, the meeting did not go ahead as the interpreter went to the wrong address and on 26 November 2020, the meeting had been cancelled as there was no appropriate adult available. Two effective meetings were held on the 21st and 23rd of December 2020. Thus by the time of the first effective meeting of 21 December 2021, through no fault of the applicant it had taken 2 months to begin the age assessment process. Both social workers accepted that any frustration on the applicant's part was likely to be explained by that uncertainty and poor start.
216. It was further accepted that the applicant's experience with figures of authority such as the French police would also be likely to have an effect upon his level of cooperation and that in the

circumstances any reluctance to cooperate with those in authority would have to be factored in.

217. It is further the position that the applicant had been moved to a different place of residence and one with which he was unhappy. The evidence in the assessment taken from his time at [first centre of residence] demonstrates that he was generally exhibiting challenging behaviour at the time of the assessment process. This was not, reserved for the process itself but was behaviour consistent with that of an immature young person.
218. When reaching a view as to his demeanour, and whether he had actively sought to disengage, the social worker accepted in her evidence that the applicant could have been adversely affected by his life experiences. I do not consider that any criticism should be made of the social workers in this regard as they made appropriate enquiries as to his mental health (at [164]). The evidence that they had at that time from the GP was that he was in good health. However, the applicant later exhibited clear pointers towards some mental health issues including insomnia, lack of sleep and recurring nightmares. In this context I am satisfied that Ms Batala sought to assist the applicant and adopted a sympathetic approach to him. That is demonstrated from her evidence where upon being told that he had some health worries, she advised him to see a GP and notified his key worker. She also made sure that he was supported in the interview and acknowledged in her evidence his anxiety. Nonetheless, the social worker did not have the advantage of the evidence from the psychological assessment that was conducted in June 2021 and exhibited at [839-[841] which referenced his anxiety and depression when discussing traumatic experiences and separation from his family indicating a moderate level of psychological distress and having presented with symptoms of post-traumatic stress disorder including intrusive memories of past traumas. That report was not available to the assessors which might have led them to a different conclusion as to the cause of his conduct/demeanour.
219. In any event, Ms Batala accepted that his behaviour/conduct was consistent with someone who did not want to talk about traumatic circumstances. During his assessment interviews, there are a number of times where he stated that he was not “mentally in the mood” and was unable to answer questions. The social worker accepted, in my view fairly, that the applicant’s state of mind might have affected the way in which he interacted with the assessment and that he did not engage when he talked about the traumatic experiences. Her evidence where she said “we asked him questions and he just closed up” is consistent with that. Ms Batala further accepted when cross-examined about the information contained at [741] about events in Sudan that had

occurred when he was a child which included the burning of the villagers houses, that this may well have caused him to disengage at that time. Her references to him being “tearful” when stating “mentally I cannot talk about it” [at 742] is also evidence consistent with a state of mind which may have affected his engagement.

220. Reference has been made in the applicant’s evidence as to being denied the benefit of an interpreter he could understand and spoke his language. Having considered this issue, I reject any assertion made that he had never met someone who could speak Burgo or Arabic with a Sudanese dialect as the evidence strongly points to a Burgo interpreter being provided. Furthermore, the applicant had volunteered himself that he understood Sudanese Arabic. I also accept the evidence of the social workers that the interpreter used for all sessions in December were from Sudan, as opposed to coming from Iraq or other countries.
221. That said, I consider that it is more likely than not that there would be some difficulties in dialect. That was accepted by the social worker who stated that it would be likely that there would be different regional dialects and further accepted that this could account for some lack of understanding during the assessment. The evidence given by the applicant with the assistance of a Southern Dafuri interpreter was marked by comparison and there were no problems in understanding or comprehending the questions that were asked. However that is not a point that I would attach much weight to.
222. When asked to identify what evidence was in her view determinative beyond his physical and demeanour Ms Batala referred to the evidence recorded at [87] which referred to questions about the year that he left Sudan. It was recorded that he stated, “the autumn of 2016”.When asked when autumn started he stated, “normally starts in July or August up to January because this is the rainy season, and we call it autumn.” When asked how old he was at the time, the reply recorded is “to be honest, I am not sure but like I said before my uncle took me to a lorry place are they part I heard him tell the lorry driver I am 12 to 13 years old.”
223. I accept the submission made by Mr Hitchens that this was not evidence upon which to conclude the applicant was being dishonest about his age. By stating that he was “not sure” was more consistent with an honest answer rather than one that was contrived but also it was not surprising that he did not know how old he was at the material time as he left on a date at some point between July and January and it was not disputed that his birthday fell within that date range. Furthermore, it is consistent with the applicant’s account and the timeline that he gave and

that if he were 13 in October 2016, in October 2020 he would have been 17 as claimed.

224. Both social workers were cross-examined by Mr Hitchens as to whether they had taken any steps to refer the applicant to the National Referral Mechanism (“NRM”) in the light of his stated history in Libya and the suggestion in his factual account that he had been a victim of modern slavery/trafficking.
225. It is fair to say that the replies given by both social workers and their evidence on this issue was not altogether satisfactory. Ms Batala identified the allocated social worker as the person who would have responsibility for such a referral however she could not recall if this had been discussed with any of her colleagues and conceded in her evidence that a referral should have been made. Ms Boamah in her evidence stated that the NRM was only for use when an applicant was in “immediate danger” although from later questioning accepted that it would have taken 30 minutes for a referral and that as she been involved with the applicant over a period of months, she further accepted there had been time to make a referral.
226. In my view any duty under the NRM was not the sole responsibility of one or either of the social workers concerned in the age assessment. Their role was to discharge their functions relevant to assessing the applicant’s age. Whether or not the social workers had taken steps to make a referral, this had formed no part of the applicant’s case previously and therefore had not been addressed in the evidence. Nor has the absence of such a referral been raised on behalf of the applicant prior to the hearing. Significantly, whether a referral was made or not does not affect the assessment of the applicant’s age. A victim of modern slavery or trafficking can be an adult or a child.
227. However, I accept the submission made by Mr Hitchens that it has some evidential relevance to the social work assessment of the applicant. It is relevant to whether there was any alternative explanation for his behaviour and disengagement. As set out in the evidence, the age assessors formed the view that the applicant had sought to “sabotage” the assessment from the outset and that this was characterised by his disengagement in the process. However, the applicant’s stated history included a period of time (when both parties appear to accept that the applicant was a child even on the disputed age) where he was in conditions that could be viewed as akin to modern slavery. If the issue had not been viewed in context and no steps taken to consider this, an important consideration as to why he presented in the way he did was absent from their assessment and thus affected any conclusions drawn from his behaviour.

228. I do not accept the submission made by Mr Hitchens that the evidence demonstrated that the social workers were not empathetic. I have formed the view that the evidence given by both Ms Batala and Ms Boamah is likely to be the position that they were considerate towards his circumstances including the trauma that he may have had prior to and during the journey to the UK and that they tried to take particular steps to build a rapport with him (see witness statement para 14 and oral evidence). In fact the evidence given by both social workers demonstrated that they were able to be empathetic towards the applicant and both social workers accepted a number of important matters in cross examination which they agreed may have had an effect upon the applicant's demeanour and engagement and provide a different picture.
229. Nonetheless, I conclude that the applicant's life experiences are likely to have had an effect upon his presentation and being able to participate fully and engage openly in the assessment. Issues of trust and the issue of a holistic assessment taking into account the circumstances in which the applicant had described were relevant considerations which were not factored into the assessment.
230. When assessing the evidence of the applicant, I accept the submission made by Mr Hitchens that the circumstances of the applicant's life experiences including leaving Sudan (even on the respondent's case as a child) having endured the claimed conditions in Libya akin to modern slavery and living for substantial periods in foreign countries with other young migrants and adults, are likely to impede his ability to give consistent evidence about his experiences.
231. I now turn to the other evidence available. Consistent with age assessments, a range of witnesses were called to give their opinions as to the likely age of the applicant. As set out in the précis of evidence, the witnesses included professional social workers who have formal training in age assessments and working with young people including unaccompanied asylum seeking children. Whilst they have a higher level of training, as noted in the witness statements, they see the young person who is the subject of the age assessment less often and their interaction is in the context of formal meetings relating to their care and via the local authority who itself is seeking to ascertain/challenge their age. In those circumstances the young person might be more reticent in their engagement. It is also the position that they are less likely have an opportunity to observe the young person interacting with other young people in an informal setting.

232. Other witnesses who have given evidence (oral evidence from JC) and written evidence (RP), are those who work in a professional capacity running services for a range of young people, including unaccompanied asylum seeking children and young refugees relating to education, providing advice and support and assisting them. They have the opportunity to see the person concerned on a regular basis over a period of time and because of the nature of the work undertaken are in a position often to make observations and provide evidence as to how that young person interacts with others in a less formal setting than an age assessment. Against that is that such witnesses do not have the formal training in age assessments. As submitted by Mr Parkhill on behalf of the respondent, it is also necessary to bear in mind the context in which they work with the applicant and that this does not require them to be critical of his age.
233. It is against those general observations that I consider the evidence of the witnesses.
234. JC set out her experience in her evidence and whilst her work is not specifically with unaccompanied asylum seeking children, she has experience of working with vulnerable young people over a period of 8 years and in particular vulnerable migrant children. Other relevant experience relates to working with young people who have experienced trauma. In cross-examination she confirmed she did not have any particular expertise of working with young people from Sudan but stated that she had worked with young people from a range of countries that included Sudan, Ethiopia, Eritrea and Afghanistan. She has no experience in conducting age assessments and plainly it is not her role in the work she undertakes to judge someone's age. She further confirmed it was not her role to challenge the applicant about his age.
235. However, she was clear in her evidence that the particular training she had (which involved domestic abuse) she was able to see how trauma impacted on someone's appearance, conduct and behaviour. While she accepted that someone who was 15 could, as a result of their experience, present differently in terms of maturity, she stated that there were things that were noticeably different in both settings and that it was possible to see the different characteristics and behaviour.
236. The witness began her work with the applicant in March 2021 and therefore at the time of her statement in September 2021 had been working with him for a period of 6 months. Since filing her statement, she has continued to work and engage closely with the applicant which is now for a period of 1 ½ years. In terms of contact and work with the applicant, she has worked with him on a one-to-one basis for appointments and been seeing

him once or twice a week which has led to her building up what she describes as a strong relationship with him.

237. I have had to consider the weight attached to the evidence that she has given concerning the applicant's likely age and as noted, she has no training in age assessment and no experience of assessing age. It is submitted on behalf of the respondent that JC was keen not to appear to disbelieve the applicant and that her reluctance to say anything suggesting that she disbelieved him meant that her opinion as to his age should carry little weight. I do not share that criticism of her evidence. I found her to be an impressive witness who gave her evidence well and in a way that demonstrated that she carefully thought through her answers in cross examination. In particular, when it was suggested to her that behaviour in an emotional sense could be separated from their chronological age, for example, a person could be more mature or less mature than their chronological age, she readily agreed with that. She further accepted that it was difficult to differentiate between a 17 year old and 19 year old and she also accepted the inherent difficulties of determining age by demeanour. Thus in my view she was able to see the situation from a different perspective to that of her own.
238. I have had to consider the basis of her evidence and how she formed her opinion of the applicant's age. It is based on her experience of working with young and vulnerable unaccompanied asylum seeking children over a lengthy period of 8 years involving different nationalities although not exclusively from Sudan working with victims of trauma. She has particular expertise of working with the applicant and this is not based on a few assessment sessions, but she has had a period of over 1 ½ years to work alongside the applicant working with him on a one to one basis. Thus I am satisfied that she has been able to see him and interact with him in a wide variety of social settings far more than has been the case for the age assessors.
239. While she refers to aspects of his demeanour, the way he presents himself and the clothes he wears as being "typical of a young teenager," those are not reliable indicators of age. However, she refers to aspects of his general behaviour and relevant to his claimed age. She described his behaviour as shy and being difficult to maintain eye contact which he found to be normal in a young person. She confirmed that he was confident with being alongside young males of his age and that he had placed heavy reliance on adult support which had been noted with people working alongside him and this is consistent behaviour of those between 15 and 18-year-olds who reach out for support and guidance. She described the applicant as someone who had been reaching out for such support and guidance.

240. As to the evidence of RP, she did not give oral evidence for the Tribunal for reasons which are not relevant. Mr Hitchens accepted that as a result of not being able to be cross-examined on her witness statement this affected the weight attached to her evidence but nonetheless submitted her evidence is worthy of weight and was reliable opinion evidence.
241. I have considered those submissions. There are other aspects which affect the weight of her evidence. She has not set out her experience or any training that she has in assessing age. Nor is there any suggestion that she has sought to challenge the applicant about his age. The point made by Mr Parkhill on behalf of the respondent is that where she states the applicant is somewhere between the ages of 17 and 18 and that he had developed friendships and boys who were 16 to 17-year-olds similar to him, that view was set out in a witness statement written on 7 September 2021 and at that date the applicant on his own case was already 18 years and 8 months and therefore demonstrates that she was wrong in her estimate of the applicant's age.
242. Against that, when viewing her witness statement which was filed in September 2021, she had worked with him since April 2021 and at that date even on his own account he was 18 years. In a statement she sets out "his stated age is 18 years old, and his physical appearance and social interactions lead us to believe his somewhere between 17 and 18 years". She later states that he has developed friendships with young people between the ages of 16-17 years of age similar ages to him. It is not possible to see from her statement whether she is referring to the applicant being more comfortable with those of a younger age rather than those associating with those older than 18 years of age.
243. What in my view is relevant is that she has worked directly with him from April 2021 and has formed the opinion of him that he has engaged consistently with the programmes that they have been involved with. He has interacted well with the facilitators and is described as taking learning very seriously and as being clearly invested in finishing his secondary education. He is described as being generally deferential to the staff who run the programme.
244. Whilst the weight that I attach to her evidence is less for the reasons I have set out in the preceding paragraphs; I attach some weight to her evidence because it is consistent with the evidence of JC. She found it difficult at first to maintain eye contact with him and described him as being like many young people who relied upon adults heavily for support. Neither witness had any problems engaging with him and it is plain from

their evidence that both describe him as accessing the support and actively seeking out support from services for support and for guidance. The evidence as to his conduct, behaviour and engagement is consistent with each other and is in contrast to the age assessors assessment of his behaviour.

245. Ms Batala stated that the differences between the applicant and the other children or young people at [centre S attended] was his disinterest in football and playing with games that she associated with younger people. This is not consistent with the contemporaneous records exhibited at [720] where he is described as follows, “you engaged with the other young boys, going for walks, playing football and playing games”.
246. The social worker’s view also was that he did not engage with the age assessment (para 17[152]) and that he was not interested in education which set him apart from other people of his claimed age (at [720]), and that he had a general lack of engagement with those involved with him as described in their interaction with him (at [158]). That evidence is in direct contrast to the lengthier observations of the applicant’s engagement, conduct and behaviour set out in the documentary and oral evidence of both JC and RP.
247. The last witness who gave opinion evidence was that of the allocated social worker who provided a statement at [209] who formed the view that he was older than 18.
248. In assessing that evidence, I take into account her experience as a social worker and that she had met the applicant on several occasions (at [210]). However I attach little weight to that evidence. There is no dispute between the advocates that her opinion was based solely on the applicant’s appearance and demeanour. There is also no dispute that that is an unreliable basis upon which to determine age. Consequently I find that evidence to be of limited assistance in determining the applicant’s age.

Conclusions:

249. It is the task of the Tribunal to reach an assessment of the applicant’s age as informed by the evidence. In doing so, there is no hurdle which the applicant must overcome. It is common ground that the applicant is now an adult and that the issue to decide is whether the applicant was a child when he arrived in the UK.
250. For the reasons I have set out I am satisfied that there have been a number of difficulties highlighted in the age assessment that was carried out. It did not take place until after a prolonged time

of delay beset with false starts and problems not of the applicant's making. After it did begin, 2 sessions were abandoned as a result of the appellant's stated problem with the interpreter provided. Whilst it has been said that that problem had not been apparent earlier, the fact remains that the local authority rightly erred on the side of caution and began the assessment afresh. Consequently whatever information was provided has not been made available or relied upon and given the local authority stance on those earlier 2 sessions, I make no finding as to whether the applicant was correct in his assertion that he could not understand the interpreter fully on those sessions. I have in general terms found that the interpreters that have been provided subsequently were in the language identified by the applicant although as set out, differences of accent and dialect are always likely to be problematic.

251. The mainstay of the age assessment proceeded on an analysis of the appellant's demeanour and his physical appearance. Such characteristics are likely to be of very limited value as there is no clear relationship between chronological age and physical maturity (I refer to R(on the application of AM) v Solihull MBC [2012] UKUT 00118). Furthermore, the reliance upon physical appearance is a notoriously unreliable basis for assessment, as found in NA, R (on the application of) v London Borough of Croydon [2009] EWHC 2357 at [27] and there is nothing obvious about the applicant's appearance in any event which would tend towards being determinative of his age.
252. The points raised as to the applicant's demeanour have been addressed in the analysis of the evidence and cannot be attributed in any reliable way to a dishonest account of his age. The assessment made of his behaviour which had been described as a failure to engage and of attempting to sabotage the assessment has since been clarified in the oral evidence where it was accepted that the use of the word "sabotage" was too strong a word. I do not consider that it has been demonstrated that there had been any deliberate manipulation or failure to engage but that it is better understood as a result of possible trauma of early years, lack of education his youth and the lack of any understanding at that time as to how his mental health may have impacted upon his behaviour.
253. As set out in the analysis there is evidence available now that was not available to the assessors which included medical evidence concerning the diagnosis of PTSD and general mental health problems and the evidence of the other professionals who have been able to observe him in a variety of different settings and social situations. Ms Boamah fairly stated that had she been aware of that evidence her decision on age may have been different. It is further the position that both social workers

accepted in response to questions from Mr Hitchens that there were factors that they did not take into account when assessing demeanour and considering his behaviour and the consistency or otherwise of information provided.

254. Whilst I pay due regard to the submissions made on behalf of the local authority that the evidence from JC and RP should properly be viewed in the light of having received no training in age assessment and that it is not their role to challenge the applicant, I am satisfied that their evidence is worthy of weight for the reasons set out. The Solihull case (cited above) refers to how opinions formed on the basis of observations and interactions with the individual concerned over a considerable period are likely to carry more weight than observations made in the artificial surroundings of an interview and that is a reality even the asserted experience of a social worker cannot overcome (see para[20] of the decision).
255. It is not only on that point that their evidence contrasted significantly with that of the local authority as to the level of engagement and his behaviour and conduct. JC has had the opportunity to closely work with him for a significant period of 1 ½ years and I have accepted her evidence as evidence that I can place weight and reliance upon.
256. A further feature relied upon in the assessment related to the appellant's account. In the analysis of the appellant's evidence there were inconsistencies in his account but these can be described as minor or inconsistencies when viewed in the round, were not reasonable to hold against the applicant. When taken together they do not undermine his general credibility or the credibility of his age. The Eurodac evidence was unsatisfactory and there was no evidence of any date of birth given for this applicant other than that which he has maintained. Whilst the social work assessment highlighted points that in their view indicated an inconsistency of account, those were the subject of cross-examination and an analysis of them are set out above. In this context I observe that the "minded to meeting" which is a core part of the age assessment was not conducted. This is of course an opportunity to deal with adverse points and one in which an applicant can provide further explanations before a final view on age is formed. This did not occur, and the social work assessment highlighted a number of questions they would like to have asked. This did not take place and I do not contribute any negative or adverse findings as to the level of detail given in his oral evidence.
257. Accordingly, taking all the evidence before me into account and doing the best I can with that evidence, I am satisfied that the applicant was born on the date he claimed which is the 20

December 2002. Whilst I take into account there is no documentary evidence for a date of birth for the applicant, having considered the overall evidence I find that the evidence considered in the round is supportive of the age he claims to be and is consistent with the date of birth he has repeatedly given.

Decision:

258. I find that the applicant was born on 20 December 2002, and I make a declaration to that effect.
259. I make an anonymity direction in the terms set out at the beginning of this judgment and in the accompanying order.

Signed: Upper Tribunal Judge Reeds

Dated 6 July 2022
