



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

JR-2022-LON-  
000099

In the matter of an application for Judicial Review

The Queen on the application of

Aria Ibrahim

Applicant

versus

Kent County Council

Respondent

**ORDER**

**BEFORE Upper Tribunal Judge Kebede**

HAVING considered all documents lodged and having heard from the applicant in person and from Mr M Paget of counsel, instructed by Kent County Council, for the respondent at a fact-finding hearing on 24 August 2022

IT IS ORDERED AND DECLARED THAT:

- (1) The application for judicial review is refused for the reasons in the attached judgment.
- (2) The applicant was born on 20 September 1997
- (3) The order of 17 May 2021 granting anonymity and interim relief is discharged.

Costs

- (4) The applicant is to pay the respondent's costs of the total claim, summarily assessed at £34,834.05.
- (5) The applicant shall pay the respondent's costs of the claim since 17 July 2022 of £16,169.25 included in the total summary assessment.
- (6) The applicant having the benefit of costs protection under section 26 of Legal Aid, Sentencing and Punishment of Offenders Act 2012) prior to 17 July 2022 the amount that he is to pay for that period is to be determined on an application by the respondent under regulation 16 of the Civil Legal Aid (Costs) regulations 2013.
- (7) There be detailed assessment of the applicant's publicly funded costs.

Permission to appeal to the Court of Appeal

- (8) Permission to appeal to the Court of Appeal is refused on the basis that there is no arguable error of law in the decision.

Signed:            *S Kebede*

**Upper Tribunal Judge Kebede**

Dated:           **6 September 2022**

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

**For completion by the Upper Tribunal Immigration and Asylum Chamber**

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 08/09/2022

Solicitors:

Ref No.

Home Office Ref:

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**Notification of appeal rights**

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

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

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



Case No: JR-2022-LON-000099

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

Field House,  
Breems Buildings  
London, EC4A 1WR

24 August 2022

**Before:**

**UPPER TRIBUNAL JUDGE KEBEDE**

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**Between:**

**THE QUEEN**  
**on the application of**

**Aria Ibrahimi**

**Applicant**

**- and -**

**KENT COUNTY COUNCIL**

**Respondent**

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The applicant, in person

Mr M Paget of Counsel, instructed by the Kent County Council, for the  
respondent

Hearing date: 24 August 2022

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

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**Judge Kebede:**

1. The applicant, a national of Iran, claims to be a minor and asserts that he was born on 29 Shahrivar 1382 in the Iranian calendar, which converts to 20 September 2003 in the Gregorian calendar, and was thus a child of 16 years of age when he entered the UK on 9 May 2020. Following an age assessment completed on 27 January 2021, the respondent assigned a date of birth to the applicant of 20 September 1998. That date has since been revised to 20

September 1997 further to a review of the applicant's social media accounts, making him 24 years of age at the time of the hearing rather than his claimed age of 18 years. This judicial review challenges the age assessment decision of 27 January 2021 on four grounds: that the respondent failed to approach the age assessment process properly and fairly; that the respondent failed to conduct a due and sufficient enquiry into relevant matters; that the respondent failed to give any or adequate regard to relevant considerations; and that the age assessment decision was wrong as a matter of fact.

## **BACKGROUND**

2. The applicant arrived in the UK by boat on 9 May 2020 as an unaccompanied minor and claimed asylum at Dover port, providing his date of birth as 29 Shahrivar 1382 (20 September 2003). His age was not disputed by the Home Office on arrival, and he was taken into the care of Kent County Council pursuant to section 20 of the Children Act 1989 and placed at Appledore Reception Centre. Due to his physical appearance and adult demeanour, the applicant's age was disputed by the SUASC Team (Service for Unaccompanied Asylum-Seeking Children), and he was interviewed on 16 and 19 November 2020 and attended three "minded to" meetings on 19 November 2020, 15 December 2020 and 19 January 2021 as part of an age assessment process. The age assessment was completed on 27 January 2021 and the applicant was informed of the decision on 29 January 2021, whereby he was assigned a deemed date of birth of 20 September 1998 and determined to be an adult. The Applicant's placement with Kent County Council was terminated and he was moved to Home Office accommodation.
3. On 18 March 2021 the applicant filed an application for urgent interim relief in a judicial review claim made in the Administrative Court, seeking the continuance of support from the respondent under the Children Act 1989, including the provision of accommodation under section 20 and financial assistance under section 17. On 17 May 2021 Deputy High Court Judge Obi granted permission to apply for judicial review, transferred the case to the Upper Tribunal and granted interim relief in the form of an order that the applicant be treated as a child of his claimed age and for the provision of care and support in accordance with that claimed age under the Children Act 1989 pending determination of his judicial review claim.
4. Following requests from the respondent's solicitors for confirmation that the applicant wanted to return to local authority care, the applicant chose not to utilise the interim relief and on 2 June 2021 a consent order was signed by both parties setting aside the relevant paragraph of Deputy High Court Judge Obi's order granting that interim relief. However, the order was not sealed by the court and, following an announcement by Kent County Council on 14 June 2021 that its Children's Services had reached capacity and could take no more unaccompanied asylum-seeking children, the applicant's solicitors advised the respondent the same day that he now wished to be accommodated and he withdrew his consent for the interim relief order being discharged. The respondent asked the Tribunal to refuse the applicant's request, but the Upper Tribunal Lawyer directed that, since the consent order had not been sealed and consent had now been withdrawn, the interim relief order of Deputy High Court Judge Obi still stood.
5. Directions were issued by the Upper Tribunal Lawyer on 16 February 2022 for

the filing and service of documents relevant to the determination of the applicant's age and date of birth and for a case management review hearing to be listed shortly. In the absence of compliance by the applicant with those directions, and following the failure by the applicant's solicitors to respond to various requests from the respondent's solicitors for disclosure of his social media and phone records, medical and dental records and the making of a subject access request from the countries in which he claimed to have been fingerprinted, as well as for the supply of contact details for the applicant if he still wanted to return to local authority care, the respondent's solicitors filed an application on 14 April 2022 for the applicant's claim to be struck out pursuant to rule 8 of the Tribunal Procedure (Upper Tribunal Rules) 2008.

6. The applicant's claim was then listed for a case management review hearing on 6 June 2022. Prior to the hearing, on 26 May 2022, the applicant's solicitors requested that he be accommodated and supported by the respondent. At the hearing, which was conducted by telephone by Upper Tribunal Judge Mandalia, it was confirmed that the respondent was not pursuing its application for an order dismissing the judicial review claim. Directions were given for the listing of the fact-finding hearing to determine the applicant's age, for the disclosure of all relevant materials including material relating to the applicant's social media accounts, and for the filing and service of documentary evidence. The applicant returned to the respondent's care that day and was assigned a social worker, Ms Juli-Ann Sherry.
7. Further to the directions of Judge Mandalia the applicant's social media accounts were reviewed at two meetings with Ms Sherry, on 22 and 27 June 2022. Ms Sherry then provided a statement setting out the outcome of the review together with attached information of the applicant's Facebook and other social media accounts.
8. On 19 July 2022 the applicant's solicitors advised the Upper Tribunal that they were professionally embarrassed and could no longer act for him. They therefore ceased to represent him. On 5 August 2022 the respondent filed a Statement of Facts and Issues and informed the Upper Tribunal that they had been advised that the applicant was representing himself and that they had served the Statement on him but had received no response from him. The applicant's social worker visited the applicant to prepare him for the Tribunal hearing and he prepared a statement for the hearing on 11 August 2022 which was passed to the respondent and filed with the Tribunal on 18 August 2022.

#### **DOCUMENTARY EVIDENCE**

9. The respondent produced a consolidated bundle of documents for the hearing which comprised three volumes: volume 1 included core documents and legal pleadings, orders and applications, and witness statements for both parties; volume 2 included the applicant's disclosure; and volume 3 included the respondent's disclosure. At the hearing Mr Paget produced a further statement from Aimee Saber, the Manager of Bridging the Gap, where the applicant was currently accommodated. All the documents had been provided to the applicant prior to the hearing, as confirmed in an email of 18 August 2022 from the respondent's solicitor Carmel Maher, and Ms Saber's statement was read to him through the court interpreter at the hearing.
10. The following is a summary of the main parts of the documentary evidence,

namely the age assessment report and the written statements of the witnesses who did not attend the hearing to give live evidence. Although I have not provided a summary of the contents of the rest of the documentary evidence in the bundle, that is not an indication of the level of consideration given to that evidence nor the weight accorded to it. I have carefully read all the evidence, whether specifically referred to and summarised in this decision or not.

### **Age Assessment dated 27 January 2021**

11. I start by summarising the salient parts of the decision under challenge, namely the age assessment report from Kent County Council which followed the age assessment conducted by Rebecca Asantewaa-Duah and Albert Agere, two social workers working at the time for Kent County Council. The report appears at pages 5 to 21 of Volume 1, Tab A of the bundle. The report confirms that the age assessment was conducted over 5 sessions, two meetings on 16 and 19 November 2020 and three “minded-to” meetings on 19 November 2020, 15 December 2020 and 19 January 2021, followed by the outcome meeting on 29 January 2021 when the report was served on the applicant. Each meeting was conducted through a Kurdish (Iran) interpreter.
12. Under the heading “Physical Appearance, Demeanour”, it was noted that the allocated social worker had stated that she noticed the applicant had a few grey hairs, but the assessors did not notice any. The applicant had explained that this may have been hereditary as he had had grey hair since the age of 13. The applicant had confirmed that he started shaving about 10 months ago when in Greece, but the assessors considered that he was likely to have been shaving for much longer than that because there was a clear difference in facial skin colour. The assessors noted sagging skin around the applicant’s eyes and eyebrows and that he had facial lines from his nose down to his mouth which they observed were usually known to start when a person was in their 20s. His Adam’s apple was pronounced, and his voice deep toned, which indicated that puberty was completed. It was noted that the applicant presented as an angry young man who was not happy at the Appledore Centre and was not happy that he had not been moved out into the community.
13. Under the heading “Social History and Family Composition”, the assessor noted that the applicant had become upset when mention was made of his father who he claimed had died 10 years ago when he was 7 years old. He stated that his father had been an active member of the KDP and that he (the applicant) had been an active supporter and had delivered letters for the KDP but had been too young to be a member of the party. The applicant gave details of his mother and sister and claimed to have lost contact with his family when he was in France, en route to the UK, having last spoken to his mother through the agent’s mobile telephone. The applicant said that he did not know his mother’s telephone number, that she did not have a Facebook account and that he could not write a letter to her because he could not read or write and did not know how to send a letter. The applicant claimed to have left Iran when he was aged 15 years and 10 months and he gave details of his reasons for leaving Iran, namely because of a threat to his life since the Iranian authorities were looking for him. He gave details of his journey to the UK: he was brought by an agent through Iraq, Turkey and by boat to Greece where he was held in a detention centre for one and a half months and then transferred to a detention centre for minors and then to a camp for minors. He decided to leave there after three months as it was not the destination his mother wanted for him and he spoke

to the agent again who took him to Albania, Serbia, Romania and on to Austria and then to Germany where he was detained for one and a half months. He was told he would be returned to Greece but then the Greek authorities did not want to take him back and so he was released and was told he was free to stay in Germany or move on. The age assessors felt that that part of the applicant's story did not appear to add up. From Germany he went to France where he stayed in a jungle in Dunkirk for 3 months and he then made his way to Dover from Calais by dinghy. The applicant claimed that the entire journey took 10 to 11 months but was unable to explain how he had worked that out when he was unable to give the date that he had left Iran.

14. Under the heading "Developmental Consideration" it was noted that the applicant had said that his age was 17 years. He said that his mother had told him his age when he left Iran and he had worked out his current age by adding up the time he had spent travelling to the UK. He had celebrated his birthday in Iran every year. The assessor noted that the nasolabial/ marionette lines on the applicant's face tended to appear at the age of 23/24. The applicant claimed to have started fasting when he was 6 years of age, which was 11 years prior to his current claimed age, yet fasting was noted to normally to start when one reached puberty at the age of 12/13, which, when added to the 11 years of fasting, would then make him 23/24.
15. Under the heading "Education", it was noted that the applicant claimed not to have gone to school and that he was unaware that education was compulsory in Iran. He claimed to have been taught a little Kurdish and English when he was in Greece and that he had learnt to write his name and do his signature. He had not known how to use social media previously, but had learnt when in the minor's camp in Greece. The applicant was claiming that he wanted to get an education in the UK, but he had been attending very few of the English lessons in Appledore Centre. He wanted to become a teacher.
16. Under the heading "Independent/ Self-Care Skills", it was noted that the applicant claimed he had learned to cook whilst in France, he knew how to budget, he had travelled around in France but had not travelled anywhere in the UK as he was not allowed to go out. He had a mobile telephone and knew how to use it and he had learned how to use Facebook.
17. Under the heading "Health and Medical Assessment", the assessors noted that the applicant was observed to be generally fit and healthy. He had reported that he sometimes got flashbacks and suffered from nightmares from traumatic experiences, but he had declined the offer of emotional support from CAMHS.
18. Under the heading "Information from Documentation and Other Sources" it was noted that the applicant claimed to have no form of identification with him in the UK including a birth certificate, passport or other travel documents. He claimed to have a birth certificate at home, although he said that his mother may have destroyed it because he was in trouble and the information could be used to track him. He did not think his mother could request his birth certificate. Observation reports from those professionally involved with the applicant were then included. Linda Kudita, a support worker at Appledore reception centre commented that the applicant presented as more mature than his claimed age and she did not feel that he fitted the remit of the provisions she offered, which was for 16 to 17 year olds. Teena Sanders, a social worker at Maidstone Children Social Care, noted that the applicant had a 'five o'clock

shadow', that his hair was thick and bristly as that of an adult male, that his Adam's apple was pronounced, that his voice was of a mature adult male, that his facial features were set and were without the soft features of a youth, that he had a few grey hairs and that his body language was that of a confident adult male. She considered his physical appearance and demeanour to be that of an adult male and suggested that he was an adult male in his late 20s/ early 30s.

19. In their analysis of the information obtained and their conclusions, the assessors considered that the applicant's account of why his mother did not have his birth certificate or could not obtain it may simply be a fabricated story. The assessors' observations of the applicant's physical appearance suggested that he was older than his claimed age, since the observed facial lines (nasolabial or marionette lines) and frown lines, his facial hair and shaving requirement, his skin appearance, pronounced jawline and Adam's apple were all indicative of someone in their early 20s. His storyline was not credible as there were gaps and inconsistencies in his account of when he left Iran, whether he was allowed to go out in Iran, who had paid for his travel to the UK, how he met the agent in Greece and what had happened in Germany. The assessors did not believe the applicant's claim not to have gone to school since he was able to calculate the length of his journey to the UK and his claimed age. It was considered that he probably went to school, since his mother was educated, and education was compulsory in Iran. The assessors considered the applicant's demeanour to be that of a disgruntled young person and that he appeared to have the confidence and courage of an adult to stand up to professionals for what he believed were his rights. They found that to be indicative of a mature person communicating at an adult-to-adult level. Having then taken a holistic view of the applicant's circumstances they concluded that he was likely to fall within the age range of 22-24 and that his most likely age was 22, with a date of birth of 20/09/1998.

#### **Statement from Juli-Ann Sherry**

20. In her statement of 14 July 2022, Ms Sherry confirmed that she had worked for Kent County Council since September 2018, working as a children's social worker in the Children and Social Work Team until September 2021 and then in the Service for Unaccompanied Asylum-Seeking Children (UASC) and had been assigned as the applicant's social worker on 7 June 2022 following his return to Kent. Ms Sherry provided details about the social media review meetings which took place on 22 and 27 June 2022 at the applicant's semi-independent accommodation, Bridging the Gap. She explained that she had downloaded information from his Facebook account but was only able to access information from his public profile. From the public profile she was able to ascertain that of the 777 friends the applicant had, 104 of the first 131 profiles appeared to be mature male adults in the UK and Iran, 4 were female and 7 appeared to be of school or college age. Ms Sherry noted that the applicant had removed 19 profiles/ friends from his account the day before her visit, which also deleted any conversations with them via the Facebook Messenger chat. She noted that one of the friends removed was a profile with the username 'Aria Aria'. She noted, on her second visit, that the mobile number registered with the account had been changed by the applicant a few days before the social media review was to take place. Ms Sherry noted the groups which the applicant had joined or visited on Facebook which included a dating group for ages 19 to 25 and another for 30-55, and several groups for universities in the UK which he had



visited between August and September 2020. Ms Sherry provided details of some of the profiles the applicant had removed and also provided details of Facebook Messenger chats that she downloaded from his Facebook account. She referred in particular to a conversation with a 'Shatw M' in which the applicant gave his year of birth as 1997 and to a conversation with a Romanian national 'Costyn C' which referred to them having worked together. Ms Sherry was unable to access the applicant's TikTok account and noted the limited information on his Instagram account which was a newly created account giving his date of birth as 20 September 2003, as well as the lack of information on his Snapchat account and WhatsApp.

### **Statement from Aimee Saber**

21. In her statement of 18 August 2022, Ms Saber confirmed that she was the Manager of Bridging the Gap and that she would see the applicant most days as her office was based in the house where he lived. She worked with his keyworker to produce his weekly reports which were sent to the Social Services. She first met him on 6 June 2022 when he moved to that accommodation but had not had much interaction with him. She stated that he did not spend a lot of time there and generally returned after she had finished work each day. Ms Saber confirmed that, following meetings with his social worker and having been told that skeleton arguments were due from both parties for the Tribunal hearing, the applicant wanted to write a statement. She gave him some paper and reminded him that the statement needed to be in his own words and needed to tell the court why he was the age claimed. When he said that his friend was helping him, he was told again that the statement needed to be in his own words and that he should write it in Kurdish and it would be interpreted for him. Ms Saber confirmed that the applicant wrote the statement the same day, on 11 August 2022. He stayed in his room the entire time and no one else was there. She confirmed that he took the statement to the office and gave it to his keyworker who then gave it to her and she sent it to Invicta Law. Ms Saber was not able to confirm if the applicant was on the phone to anyone to assist him in writing the statement.

### **THE HEARING: ORAL EVIDENCE**

22. The respondent did not call any witnesses, but the applicant gave oral evidence before me, as did two of his friends.

### **Witnesses for the Applicant.**

#### **The Applicant**

23. The applicant was referred to his two statements, the first dated 17 March 2021 (Volume 1, Tab D, page 186) and the second confirmed by Ms Saber as written on 11 August 2022 and translated on 16 August 2022 (page 207).
24. In his first statement the applicant explained that he knew his age and date of birth because his mother told him. She told him his date of birth before he left Iran, and she told him to tell the authorities his correct age when he reached a safe place. He remembered her telling him that he was 15 years and 10 months old when he left Iran and he had calculated his age by adding the time he had spent travelling. He had a birth certificate in Iran and had seen it but could not read it. He was not sure if his mother still had it or if his family could get a copy if not. He did not want to put them in danger by asking them for a

copy, even if he was able to contact them. He did not go to school in Iran but had tried learning things on his own and learned to read a little when he was in Greece. He started fasting when he was 6 years old and completed a full fast when he was 14 or 15. The applicant provided details of his father's death and involvement with the KDPI and his journey to the UK. He responded to the age assessment, claiming that the staff at the Appledore centre were not nice to him and that the interview process was very long and difficult. He found it very difficult in the accommodation to which he was moved following the age assessment, as was living with adult men which made him uncomfortable.

25. In his second statement, prepared for the hearing before the Tribunal, the applicant said that he wanted to prove that he had been a victim of injustice and of racism. His social workers were racist towards him. With regard to his appearance, his face had changed because of the hardship he had faced in his life and the injustices he had faced in this country. He would not have given his Facebook and social media accounts to the government and would not have pursued his case if he was lying about his age. The Facebook conversation was something he had written falsely to convince a girl when she had disrespected him after finding out that he was born in 2003, and there were other messages which showed his true age. The college in Manchester had accepted him at his claimed age and he had had a girlfriend of his own age.
26. When cross-examined by Mr Paget, the applicant said that he disagreed with Aimee Saber's statement. He had told her that he could not write Kurdish well and needed help from his friend and when she came to his room, she saw that he had help from his friend to complete the statement. His friend helped him through the telephone. He had the camera on and his friend assisted and corrected what he was writing. The applicant said that he was not very good at writing in Kurdish Sorani but he could write a little. When asked why he had told the age assessors that he could not write, the applicant said that that was a year and 10 months ago and that he changed since then as he had gone to college and had also been taught a lot by friends. When asked why he had not simply dictated the statement to his friend and then his friend could have given it to Mr Saber, the applicant said that he was keen to have authority over it.
27. The applicant was referred to the transcript of his Facebook Messenger chat with Shatw where he had said that he had studied for 16 years and was asked why he had told the age assessors that he had not been to school. He replied that the friend who was there today was the one who was talking to the lady Shatw. He then said that it was a boy he knew from France whom he trusted a lot who had been talking to Shatw on his behalf on Facebook. They had used each other's social media accounts. The boy was called Sarchal. He had tried to explain that to his lawyer, but his lawyer did not believe him and gave up on him. The applicant said that the conversation in the Facebook messenger chat was partly between Shatw and Sarchal and partly between Shatw and himself. The fact that he had disclosed his social media accounts showed that he had nothing to hide. Mr Paget put to the applicant that he had not disclosed everything, as he had deleted 19 friends' profiles the day before the review meeting with the social worker. The applicant said that he had deleted some for political and security reasons. His friend Sarchal had asked him to delete the conversations which related to him (Sarchal) and his friends and may have deleted some of his (the applicant's) friends too by mistake. The applicant said that he also deleted three or four of his friends' profiles himself as they were mean to him. When asked by Mr Paget why he had not explained all of that in

his statement, the applicant said he had not thought of doing that but was telling everything now. He was only given 2 hours to write his statement and he forgot to mention that, since his brain was not working properly with all the stress and trauma he had suffered. It was Sarchal who said that he had studied for 16 years and was born in 1997 and it was Sarchal who had written about his work. When asked why he had not contacted Sarchal to attend as a witness and confirm this, the applicant said that he was told to bring only 2 witnesses and was not advised to bring Sarchal.

28. The applicant was asked why, in his 11 August 2022 statement, he had said that he was 19 years old when he was 18 years of age at that time. He replied that he was almost 19 and considered himself to be 19. When asked why he had not sought a replacement passport which could have resolved everything, the applicant said that he did not know how to do that. When shown the photograph of him on arrival in the UK the applicant said that he looked older because of the stress and trauma he had suffered, and that people matured at different ages in any event. When asked why he had not taken up the offer of child appropriate accommodation following the court order, the applicant said that he had been moved to Manchester and had made friends there and was attending college and did not want to move back to London. However, he was subsequently put in accommodation which was not suitable and had money stolen from him and he asked his lawyers to send him back to the proper accommodation. When asked about the time spent in Greece and Germany the applicant said that he was treated as a child in Greece and was given accommodation and education as a child. In Germany they were going to put him in a foster home as a child and he did not want that so he told them instead that he was an adult in order that they would let him go, which they did.

#### **Mabast Ahmadi.**

29. Mabast Ahmadi confirmed and adopted his statement of 24 May 2022. In that statement his date of birth was given as 3 June 2003. He stated that he entered the UK in September 2020 and was currently attending college. His age was accepted on arrival, and he was given leave to remain in the UK. He first met the applicant when they were in detention when they arrived in the UK, and they were together there for one week. He was in quarantine at the time. He met the applicant subsequently in London when they were protesting against the Iranian regime, and they used to talk on the phone until the applicant broke his phone and changed his number. He did not believe that the applicant was 23 but thought that he looked 18.
30. When cross-examined by Mr Paget, Mr Ahmadi confirmed that he was not an expert on assessing age but he was sure that the applicant was the age he claimed to be. He would not have engaged with him as a friend if he was older.

#### **Hama Hastyar Omar**

31. Hama Hastyar Omar confirmed and adopted his statement of 24 May 2022. In that statement his date of birth was given as 16 March 2004. He said that he entered the UK on 27 August 2019 and was a student at college. His age was accepted by the Home Office without any supporting documentation. He met the applicant in college in October or November the previous year and they were in the same class and were close friends. He believed that the applicant

was a minor as he behaved like a child. Although the applicant was older than him, his mentality at times made him younger as he cried a lot. He did not agree that the applicant could be 23 and he felt that he sometimes acted younger than 18.

32. When cross-examined by Mr Paget, Mr Omar said that he had a lot of experience in knowing people's age. He had lived with the applicant for a year and was able to determine his age. The applicant was a year younger than him. He knew that from his behaviour. When asked to confirm if his evidence was that the applicant was born in 2005, Mr Omar said that he meant that the applicant was younger in his behaviour and mentality. He believed him when he said that he was born in 2003, but he behaved as though he was much younger. He confirmed that he was not an expert on assessing age but he was sure that the applicant was the age he claimed to be. He would not have engaged with him as a friend if he was older. He did not believe that he was born in 1997 or 1998.

## **THE HEARING: SUBMISSIONS**

### **The Respondent**

33. Since his submissions were being translated by the court interpreter, Mr Paget did not provide a detailed assessment of the law and the relevant jurisprudence but relied upon his skeleton argument in that respect. He submitted that there were two key factors in assessing age in cases where there was no documentation available, namely physical appearance and credibility. Whereas there were no physical characteristics which could determine age, an applicant's physical appearance was important. This applicant looked like an adult. There was nothing positive to support his claimed age and his case was therefore always weak. However, it became weaker when his social media records were disclosed. Firstly, it was apparent that he had hidden some records as he had deleted the profiles of 19 friends the day before the meeting, and there was no proper explanation provided for that. Secondly, there was a conversation in his Facebook Messenger chat with Shatw which was fatal to his case as there was an admission by the applicant that he was born in 1997 although he had told everyone he was born in 2003. The applicant's explanation for that was not credible. He had made no attempt to explain that conversation prior to his 11 August 2022 statement and the explanation given in that statement was entirely different to the one given before the Tribunal. The explanation given to the Tribunal was a nonsense. In addition, the applicant's explanation as to how he wrote the 11 August 2022 statement, when he had claimed previously to be illiterate, was not credible. The witnesses were not experts on age assessment. Mr Paget asked me to determine that the applicant was born on 20 September 1997.

### **The Applicant**

34. The applicant responded at length to Mr Paget's submissions. He claimed that Mr Paget's submissions were biased and hostile and were not based on fairness. His physical appearance had to be considered in the context of the hardships he had encountered on his journey, facing death at sea and in a lorry, suffering at the hands of smugglers and living in the forest in France without supplies. He had also lost his father at a young age and had become disconnected from his mother and sister. He was held with 20 others when he

arrived in the UK, some of whom looked older than him, but he was picked out and treated as an adult and that led to a lot of problems and broke him. As for the Facebook Messenger conversation, that conversation had begun with him saying that he was born in 2003, but that part of the conversation had not been included in the documents produced for the Tribunal. The applicant said that he had come to the Tribunal alone, without a solicitor, without a social worker and without any support, to tell the truth and to defend himself. He had lost his childhood and his future as a result of the age assessment. He had asked for medical assessments to be conducted to prove his age, but no-one had done that. His lawyer had scared him and told him not to go to court as he would be charged a lot of money if he lost, but he wanted to tell the truth. His friend Sarchal could explain about the Facebook messenger chat and was happy to answer a call. The applicant concluded by asking that his case be considered fairly. He had not lied and had been brought up not to lie. He had told the truth about his age.

### THE LEGAL FRAMEWORK

35. The legislative framework within which this case is to be considered is well-established and there was no disagreement between the parties on this. It is not, therefore necessary to set out relevant authorities at length. In brief, therefore, I set out the following principles.
36. Where the age assessment of the local authority is in dispute, it is for the court or Tribunal to reach its own assessment of age, as a matter of fact (R (A) v Croydon London Borough Council) [2009] UKSC 8).
37. The various authorities make it clear that there is no burden of proof in such cases. In R (CJ) v Cardiff City Council [2011] EWCA Civ 1590 the Court held that the application of a legal burden of proof is an incorrect approach to adopt. It is not the function of the court (or Tribunal) to ask whether a local authority has established that a claimant is an adult, nor to ask whether a claimant has established that he is a child. Rather, it is for the court or Tribunal to decide on a balance of probability whether a claimant is or is not at the material time a child. The role of the court or Tribunal is inquisitorial. The Tribunal is required to conduct a “sympathetic assessment” of the evidence in favour of the applicant:
38. In R (on the application of AM) v Solihull Metropolitan Borough Council (AAJR) [2012] UKUT 00118 the Tribunal made general observations about the impact of evidence of various sorts and from various sources, concluding that “[14] ... almost all evidence of physical characteristics is likely to be of very limited value” and “ [19] ... So far as demeanour is concerned, it seems to us that there may be value to be obtained from observations of demeanour and interaction with others made over a long period of time by those who have opportunity to observe an individual going about his ordinary life. But we find it difficult to see that any useful observations of demeanour or social interaction or maturity can be made in the course of a short interview between an individual and a strange adult.”
39. At [21] of MVN v London Borough of Greenwich [2015] EWHC 1942, Picken J referred to the ADCS Age Assessment Guidance of October 2015:

*“The **Merton** guidelines have also been reflected in the 'Practice Guidelines on Assessing Age' as developed for local authorities by the*

*London Boroughs of Hillingdon and Croydon. That document sets out the relevant principles, as helpfully summarised by Miss Luh in her opening skeleton argument, without objection from Miss Screeche- Powell, as follows:*

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

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

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

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

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

40. And went on to say at [27] that:

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

## **DISCUSSION**

41. Although the grounds of claim, as originally pleaded, involved challenges to the age assessment process, those challenges were not specifically argued before me, given in particular that the applicant was no longer legally represented. The sole challenge before me was to the respondent's factual conclusion on the applicant's age. Although the applicant made various remarks about hostility against him, from the social workers to Mr Paget, and made generalised suggestions of racism, he did not particularise those remarks or comments and provided no evidence to support them. Indeed, the evidence provides no support for such allegations and it is clear that the applicant simply disagreed with the social workers' conclusions and disagreed with the respondent's decision.
42. There is no evidence to suggest that the age assessment process was not conducted in accordance with the Merton guidelines or that the age assessment process was flawed in terms of an unfair or inadequate approach or that it failed to give adequate consideration to relevant matters. It is clear from the evidence provided by the respondent that the age assessment process was a lengthy and detailed one conducted by properly qualified assessors who asked appropriate questions to the applicant and provided him

with ample opportunity to clarify matters. The applicant was interviewed on two occasions, followed by three 'minded-to' meetings where clarification was sought from him by the assessors on various matters, and he was given an opportunity to ask relevant questions himself. On each occasion he was accompanied by an appropriate adult and had the assistance of an interpreter in his language. The assessments made by the age assessors were based upon various factors, amongst which were the applicant's appearance and demeanour. The original grounds of claim challenge the assessment on the basis that undue weight was given to such matters, but that is clearly not the case since that was one of many factors which were considered on a holistic assessment of the applicant's circumstances. Neither is it the case, as the grounds assert, that there was a failure in the assessors' approach to credibility. It is clear that there were numerous inconsistencies in the applicant's account of how he knew his claimed age, as set out in the analysis of information obtained section of the age assessment report, and the assessors were perfectly entitled to draw the adverse conclusions that they did. Indeed, there were many reasons given by the social workers for concluding that the applicant was an adult of 22 to 24 years of age at that time, all of which were summarised in the concluding section of the report, and all of which were relevant and appropriate considerations. Accordingly, I find no merit in any of the grounds challenging the age assessment process.

43. I therefore turn to the challenge which the applicant was pursuing before me, namely the respondent's factual conclusion on his age. The respondent's case relies upon the age assessment report together with the applicant's appearance. The age assessment report is, in my view, a weighty piece of evidence, as it was conducted over a period of two months and included several meetings, as opposed to a single meeting, and involved a detailed assessment of various factors as mentioned above. Of particular relevance is that it was not only based upon an assessment of two qualified and experienced social workers but also upon the observations and opinions of two people who were professionally involved with the applicant over a period of time. The first person was Linda Kudita, a support worker at Appledore Reception Centre, who had been professionally involved with the applicant for three months at the time she made her report and who concluded, for the reasons set out in the age assessment report, that he presented as more mature than he claimed to be and that he did not sit within the remit of the provision she offered, which was for 16 to 17 year olds. The second person was Teena Sanders, a social worker, who had been visiting the applicant for three months at Appledore, who commented on his appearance including his facial hair, grey hairs and pronounced Adam's apple, and his confident and adult-like body language, and who concluded that he was an adult male in his late 20s/early 30s.
44. The applicant, on the other hand, has no independent supporting evidence, from professional staff at his accommodation or with whom he had come into contact elsewhere, from teachers at the college where he had previously studied, or from anywhere else. He does not have any form of identification such as a passport or identity card or birth certificate. His explanation for his inability to obtain a copy of his birth certificate was, in my view, particularly lacking in credibility. He claimed that he could not ask his mother to send him his birth certificate because he feared it would put her life in danger in Iran, but gave no credible explanation as to how that was the case. He claimed to have lost contact with his mother since leaving France as he did not know her

telephone number. When asked at the age assessment interview why he could not send her a letter he claimed that he could not read or write, yet his evidence before me was that he had since learned to write a little. Indeed, his claim to be illiterate was completely undermined by the fact that on 11 August 2022 he had managed to write a statement in Kurdish for this hearing, which he then handed to Aimee Saber the manager of Bridging the Gap. His account of having had help over the telephone to write the statement is completely unbelievable. Firstly, his claim that Ms Saber saw him speaking on the telephone in his room is inconsistent with her statement, and secondly, I do not accept that the 6-page statement he produced could possibly have been written by someone with such limited literacy skills in the circumstances claimed. There is simply no credible explanation for the applicant not being able to contact his mother and obtain his birth certificate and that in turn suggests that he is aware that his identification documents would not assist him in proving his age.

45. The only evidence upon which the applicant seeks to rely to support his claim is his own assertion as to his age and the evidence of his two friends who appeared at the hearing. Accordingly, as Mr Paget submitted, the credibility of the applicant's evidence was therefore the key issue and I agree entirely with Mr Paget that that evidence was wholly unreliable. Not only were there the various issues of concern identified in the age assessment report, including the contradiction between the applicant's claim to have had no education yet his ability to calculate his age from his periods of travel to the UK, his unsatisfactory explanation about his birth certificate having been destroyed and his questionable account of his experiences in Greece and Germany, but also his account of how his second statement was produced, as mentioned above, and the explanations given for the issues arising from his social media accounts.
46. Indeed, the applicant's claim has been significantly damaged by the disclosures from his social media accounts to such an extent that his solicitors considered themselves to be professionally embarrassed. It was the applicant's own evidence that they had withdrawn their representation after the social media disclosure. The social media disclosure was particularly damaging to the applicant because it was apparent that he had deleted several friends' profiles and conversations the day before the first review meeting with his social worker Juli-Ann Sherry, including one profile which seemed to be his own, and had changed his mobile telephone number linked to his account, and because it revealed a chat in which he gave his year of birth as 1997 but "*here I'm 2003*" and suggested that he had previously studied for 16 years and had recently been working. Clearly that completely undermined his claim to have been born in 2003, to have had no education and to have done nothing in the UK other than study. Further, as noted by Ms Sherry, the groups which the applicant had joined or visited on Facebook included a dating group for ages 19 to 25 and another for 30-55, and several groups for universities in the UK which he had visited on Facebook between August and September 2020.
47. The explanation offered by the applicant, at the hearing, was that he shared his Facebook account with his close friend Sarchal and that it was Sarchal who had written that chat and had deleted the profiles of his own friends' profiles. He said part of the chat was his own, but part was Sarchal's, and he identified the damaging parts of the chat as having been written by Sarchal. I have no hesitation in rejecting that explanation. Firstly, it is entirely different to the



explanation offered by the applicant in his statement of 11 August 2022, where the suggestion was that he had lied about his age in the chat to attract the girl with whom he was chatting. No mention was made of a friend using his Facebook account. When asked why he had not mentioned Sarchal in that statement, the applicant said that he had been pressed for time and forgot. I reject that claim. Secondly, there is no reason for that explanation not having been offered in the months following the disclosure of the social media records, particularly at a time when the applicant was still represented by his solicitors. Thirdly, there is no credible explanation why Sarchal was not produced as a witness to confirm the account, particularly when, according to the applicant, he was a very close and trusted friend who had looked after him in France and was now living in London. Fourthly, there has been no previous mention of any such person, despite him allegedly being a very close friend, in particular in the section of the age assessment report at page 10 of the bundle where a detailed account was given about the people encountered and friends made by the applicant on his journey to the UK. In my view the applicant has simply invented a person named Sarchal in an attempt to explain away the very damaging information in the Facebook chat and I have no hesitation in concluding that the chat was written by the applicant himself, so revealing his true year of birth and his years of education, as consistent with the conclusions already reached by the age assessors. As Mr Paget submitted, that was fatal to his case.

48. I am mindful of the guidance provided in the relevant jurisprudence as to the caution to be exercised when considering credibility in general. I refer again to the ADCS Age Assessment Guidance set out above, that *“General credibility is not to be determinative of age. It is more likely that a young person who tells a consistent account of his life which supports his claimed age will be the age he claims to be. Conversely, young people may lie for reasons unrelated to age but related to their claims for protection or the reasons they had to leave their country of origin.”* However, it seems to me that the above adverse findings are directly relevant to the credibility of the applicant’s account of his age. I do not accept that he has provided a truthful account. On the contrary his account has been deliberately untruthful. The submissions he made to me were simply a protestation of his truthfulness and an implication that those who disbelieved him were doing so out of hostility, as reflected in his conversation with Juli-Ann Sherry on 1 August 2022, recorded in the case notes at page 200 of the agreed bundle. Neither is the case.
49. As for the evidence of the applicant’s two witnesses, I did not find that that added anything to the applicant’s case. Both are his friends and cannot be considered as independent witnesses. They are not experts in assessing age. Their evidence carries little, if any, weight. If anything, the second witness in particular provided further unreliable evidence and it was clear that he was just trying to help his friend rather than assisting the Tribunal. He was asked several times to confirm that he was not an expert in age assessment, but he did not answer the question and said that he could tell anyone’s age including Mr Paget’s. He insisted that the applicant appeared a lot younger than himself due to his behaviour, at one point stating that the applicant was a year younger than him but then changed that to younger in behaviour only, and at another point corrected himself when he thought he had mentioned the applicant having been born in 2008 and said *“it’s 2003, right?”*.
50. Accordingly, there is no evidence at all which supports the applicant’s case. His

own evidence relating to his age is significantly lacking in credibility, for the reasons set out above. There is a comprehensive and well-reasoned age assessment report which provides various bases upon which the applicant has been assessed as an adult of 22 years of age at the time of the report. His social media records provide further evidence of him having lied about his year of birth and his educational background. It is to be noted that when offered child-appropriate accommodation following the interim relief order, he declined the offer and did not respond to further offers until over a year later when his Tribunal hearing was approaching. Whilst it is the case that reliance upon physical appearance is, as held in NA, R (on the application of) v London Borough of Croydon [2009] EWHC 2357 at [27] "*a notoriously unreliable basis for assessment*", it is relevant to add to all of the other evidence already discussed that the applicant's appearance does not lend any support to his claim.

51. Taking all the evidence before me into account and doing the best I can with that evidence, I am satisfied that the overall evidence is supportive of the age the respondent considers the applicant to be and is consistent with the date of birth assigned to him and relied upon by Mr Paget, namely 20 September 1997.

### **DECISION**

52. The applicant's claim for judicial review is dismissed. I find that the applicant was born on 20 September 1997 and is currently 24 years of age and I make a declaration to that effect.

### **Costs**

53. Costs submissions were made by the respondent in writing, with confirmation provided from the respondent that the matter had been discussed with the applicant who had been invited to reach an agreement but had declined to respond. No submissions were made by the applicant to this Tribunal. Neither party was required to attend the hand-down hearing and neither party attended.
54. The respondent's submissions were to the effect that the applicant should pay the respondent's costs of the total claim, summarily assessed at £34,834.05, with all costs to be assessed if not agreed. Within that total cost, the respondent submitted that the applicant was to pay the respondent's costs of the claim since 17 July 2022 of £16,169.25 and the applicant, having the benefit of costs protection under section 26 of Legal Aid, Sentencing and Punishment of Offenders Act 2012) prior to 17 July 2022 was to pay for that period an amount to be determined on an application by the respondent under regulation 16 of the Civil Legal Aid (Costs) regulations 2013.
55. In the absence of any submissions from the applicant, and having had regard to the clear evidence that the applicant was repeatedly warned by his solicitors, his social worker and the respondent, of his liability to costs should he pursue his claim, I accept the respondent's submissions and make the order requested.
56. The orders for anonymity and interim relief are hereby discharged.