



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

In the matter of an application for Judicial Review

The King on the application of

‘SS’

(Anonymity direction continued)

Applicant

versus

London Borough of Brent

Respondent

Anonymity direction - Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Applicant is granted anonymity, to the extent set out in this direction. No-one shall publish or reveal any information, including the name or address of the Applicant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court. For the avoidance of doubt, both parties are permitted to disclose the Applicant's identity and to share a copy of the judgment and order with the Secretary of State for the Home Department (including the Single Competent Authority), with the Applicant's immigration solicitors and any other relevant body for the purposes of updating the Applicant's Home Office records. The reason for granting anonymity is that the Applicant has been granted asylum.

**ORDER**

**BEFORE Upper Tribunal Judge Keith**

HAVING considered all documents lodged and having heard Ms A Patyna of counsel, instructed by Simpson Millar LLP Solicitors, for the Applicant and Mr A Lane of counsel, instructed by the Respondent at a hearing on 12<sup>th</sup> to 14<sup>th</sup> September 2023, and handed down on 14<sup>th</sup> September 2023

IT IS ORDERED THAT:

- (1) The application for judicial review is granted for the reasons in the attached judgment.
- (2) This Tribunal makes a declaration that the Applicant was, at the time of the Respondent's assessment of him, a minor, with a date of birth of 2<sup>nd</sup> September 2004.
- (3) The Respondent's decisions on the Applicant's age are quashed.

**Costs**

- (4) The Applicant has succeeded in his primary aim in applying for judicial review, specifically a declaration of his date of birth as minor, at the date of the Respondent's assessment.

- (5) The Respondent shall pay the Applicant's reasonable costs of the claim, to be assessed, if not agreed. The Respondent shall make a payment on account of costs in the sum of half of the Applicant's bill of costs as drawn within 28 days of receipt of the same.
- (6) There shall in any event be detailed assessment of the Applicant's publicly funded costs.

**Permission to appeal to the Court of Appeal**

- (7) No application has been made for permission to appeal to the Court of Appeal. In any event, permission to appeal is refused, as there is no arguable error of law in my decision.

Signed: J Keith

**Upper Tribunal Judge Keith**

Dated: 28th September 2023

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

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**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): *29 September 2023*

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-002070

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

Field House,  
Breams Buildings  
London, EC4A 1WR

14<sup>th</sup> September 2023

**Before:**  
**UPPER TRIBUNAL JUDGE KEITH**

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**Between:**  
**THE KING**  
**on the application of**  
  
**‘SS’**  
**(Anonymity direction continued)**

**Applicant**

- and -

**London Borough of Brent**

**Respondent**

Anonymity direction - Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Applicant is granted anonymity, to the extent set out this direction. No-one shall publish or reveal any information, including the name or address of the Applicant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court. For the avoidance of doubt, both parties are permitted to disclose the Applicant’s identity and to share a copy of the judgment and order with the Secretary of State for the Home Department (including the Single Competent Authority), with the Applicant’s immigration solicitors and any other relevant body for the purposes of updating the Applicant’s Home Office records. The reason for granting anonymity is that the Applicant has been granted asylum.

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*Ms Patyna*  
(Counsel, instructed by Simpson Millar Solicitors), for the Applicant  
*Mr A Lane*  
(instructed by Cornerstone Barristers) for the Respondent

Hearing dates: 12<sup>th</sup> to 14<sup>th</sup> September 2023 and handed down on 14<sup>th</sup>  
September 2023

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**APPLICATION FOR JUDICIAL REVIEW JUDGMENT**  
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**Judge Keith:**

- 1) These written reasons reflect my oral reasons, which I gave at the end of the third day of the hearing on 14<sup>th</sup> September 2023.

- 2) The Applicant applied on 18<sup>th</sup> July 2022 for judicial review of the Respondent's decisions of 13<sup>th</sup> December 2021 and 19<sup>th</sup> April 2022 to assign the Applicant an age range of between 23 and 25, although the Respondent thought that he might well be older than 25. The Applicant has contended that his correct date of birth is 2<sup>nd</sup> September 2004.
- 3) The Respondent's first decision followed meetings between the Applicant and the Respondent's social workers, on 10<sup>th</sup> and 23<sup>rd</sup> November 2021. After the Applicant's legal representatives contested that assessment in pre-action correspondence, on 7<sup>th</sup> March 2022, the Respondent agreed to carry out a follow-up assessment and to issue an addendum report. On 23<sup>rd</sup> March 2022, a third meeting took place at which the Applicant was asked further questions, following which the Respondent published the addendum report, which maintained the previous decision.

*These and other proceedings*

- 4) In terms of the proceedings, I do not recite the full litigation history, except to note that the application was originally brought in the Administrative Court and sought additional remedies including accommodation and support for the Applicant as a child. However, by virtue of the Applicant now, even on his own case, being an adult, the Applicant has since amended his claim. Paul Bowen KC, sitting as a Deputy Judge of the High Court, transferred the application to this Tribunal, in orders dated 25<sup>th</sup> October 2022.
- 5) The Applicant challenges the decisions as procedurally unfair in a number of respects. He also says that they have reached the wrong conclusion about his age. In relation to the first meeting, the Applicant points out that he was unaccompanied by a suitable adult and that in both this meeting and the subsequent November 2021 meeting, the Respondent failed to provide him with an interpreter who spoke his dialect. Moreover he argues the role of the appropriate adult in the second November meeting was not explained to him, so that even though she was present, he did not feel able to seek her support, as he believed her to be a colleague of the two age assessors. He also complains that whilst the Respondent indicated at the end of the 23<sup>rd</sup> November meeting that there would be a follow-up meeting, at which the Applicant could respond with any concerns, instead, the Respondent reached the first of the two impugned decisions without providing any process by which he could address any of those concerns, or sometimes what is referred to as a 'minded to refuse' process. He complains that even though the Respondent considered matters again and made the second April 2022 decision, that did not cure the procedural unfairness. In her second decision, the Respondent adopted some of the flawed reasoning from the earlier decision, including, for example, that the Applicant had not mentioned matters such as living in an internally displaced persons camp, as a result of which the Respondent had drawn adverse inferences about his credibility, when in reality, he had simply not been given a chance to explain issues. This example showed two errors, as one of the age assessor's notes had referred to the Applicant

mentioning living in a camp, but he was not asked about that in any detail.

- 6) I pause to note, at this stage, that the Applicant has been recognised as a potential victim of trafficking under what is referred to as a “reasonable grounds” decision, as distinct from a “conclusive grounds” decision, and also that the Secretary of State for the Home Department has, on 6<sup>th</sup> September 2023, recognised the Applicant as a refugee. As Ms Patyna recognises, there is a burden upon the Applicant in that case and a different standard of proof, but she argues that this adds to the Applicant’s credibility, particularly where, as here, there is no suggestion that the Applicant’s assertions as to his age are maintained to avoid removal.

*The chronology and the Applicant’s case*

- 7) I refer for the rest of these reasons to a bundle of relevant documents submitted by the Applicant. I will refer to page numbers in the format, “AB/[xx]”. Elements of the chronology are agreed, whilst others rely upon the Applicant’s narrative of events before he entered the UK. In reciting the Applicant’s chronology, I refer to two of the Applicant’s witness statements which he adopted at the hearing before me, at pages AB/[125 - 144] and AB/[175 - 185].
- 8) The Applicant was born in Darfur, Sudan and claims that his date of birth is 2<sup>nd</sup> September 2004. He acknowledges that his community did not celebrate birthdays but says that his mother would sometimes tell him his birthday and remind him of how old he was, because she explained that it was important that he knew his age and date of birth because he would need to tell people. He described in one version of a narrative at §7, AB/[126] that his mother told him that he would be able to start lessons at the mosque from his next birthday. The gist of his evidence was that starting lessons at the mosque was a big ‘life event’, at which, on the first day, formal dress was worn.
- 9) The next life event that he recalled, at which his age was mentioned, was when his family had to give personal information, when having fled from their home village, they arrived at an IDP camp to be registered. His mother had told him that he needed to know his date of birth because the camp was not safe and that if anything happened to his family, he would only be able to get help if he could prove who he was, by giving his name and a date of birth. The context of the family’s flight was that his home village was attacked, he says by militia as part of racially motivated violence. The attackers regarded themselves as “Arab”, as distinct from the villagers whom they persecuted. The Applicant’s father was beaten up and the family fled to the IDP, staying there from 2013 until early 2020. The Applicant claims that he left the camp in or around February or March 2020, encouraged by his family, as they believed that the camp was not safe. He left with others from the camp, and then went to Libya, either in one narrative, to work or in another narrative, due to the risk of remaining in the camp. In Libya, the appellant claims that he was kidnapped, tortured, and forced to work by

a farmer who mistreated him and did not pay him sufficient money. He fled Libya in 2021.

- 10) The boat in which the Applicant left Libya was picked up by Mediterranean authorities and he was taken to Italy, where he stayed for a few weeks, but he was not given any help, and resorted to eating food out of rubbish bins. He travelled to France where there once again he received no assistance and was forced to live destitute under a bridge. He left France in July 2021, in the back of a lorry bound for the UK. He was encountered in Oxfordshire on 7<sup>th</sup> July 2021, as recorded in the Respondent's own records, and was placed in adult accommodation under the National Asylum Support Service, or NASS.
- 11) The Secretary of State, as distinct from the Respondent, did not undertake any formal assessment of the Applicant's age, although at an early stage of her dealings with the Applicant, she recorded his date of birth as being 2<sup>nd</sup> July 2023 which the Applicant has disputed. The Applicant was referred to the Respondent on 1<sup>st</sup> November 2021 by the Young Roots charity, as a putative young person in need of assessment, which prompted the two November meetings. The Respondent regarded the first as an introductory meeting, and the second as a brief age enquiry, because of the age assessors' belief that the Applicant's demeanour strongly suggested that he was an adult.
- 12) As a consequence of those two meetings, the Respondent reached the first decision on 13<sup>th</sup> December 2021. In doing so, it was without the benefit of detailed medical evidence as to the Applicant's mental ill health. A first full assessment of the Applicant's health was carried out by a senior clinical psychologist, Dr Angeliki Argyriou on 13<sup>th</sup> July 2022, as noted in a later expert report of Dr Erica Eassom, clinical psychologist, (§2.2.0, AB/[226]). The Applicant's medical records (AB/[538]) confirmed that the Applicant had suffered insomnia on 13<sup>th</sup> December 2021, which the Applicant says was indicative of his mental ill health at the time of his November interviews. Dr Eassom assessed the Applicant as not suffering from PTSD, but having residual symptoms of that same condition, which she stressed was important to understanding of his presentation during interviews including in relation to demeanour, (see §1.4.4, AB/[218]). Dr Eassom was also critical of other aspects of the age assessors' comments, particularly regarding what the assessors believed to be expected responses to questions about sexual orientation and their views on his irritable behaviour, (see §4.4.14, AB[267]). Dr Eassom assessed that that the Applicant's mental ill-health would impact on his ability to give evidence or answer questions, (§4.5, AB/[269]), all of which undermined the age assessors' analysis of his credibility, in particular, where this was based on an assessment which had been made without the Applicant having a chance to respond to any concerns before the final decision was reached.
- 13) Dr Roxane Agnew-Davies, another expert medical witness, produced an additional report on 23<sup>rd</sup> August 2023, (AB/[956 - 1022]) by way of an update, in which she noted, at §1.5.4, AB/[962] that the Applicant was bewildered when asked questions and to assign a numerical value to

indicate, for example, the frequency of symptoms. Dr Agnew-Davies was concerned that the Applicant could well be innumerate, either because of a lack of education, or learning difficulties, which included, in her words, low IQ. She was also concerned that his comprehension was unusually limited, as was his capacity to articulate his experience.

- 14) As well as the Applicant's own witness statements, the Applicant relied on witness evidence of a number of professionals who had worked with the Applicant. These included two professionals from the Young Roots charity, and an English language ('ESOL') teacher, about whom I will say more later. Those witnesses also attended the hearing to give live evidence.

#### *The Respondent's case*

- 15) As Mr Lane confirmed at the hearing, the Respondent's position is that whilst the Applicant has asserted a specific age, in truth, he does not know his own age. Whilst I set out below the Respondent's concerns in the two age assessment decisions about the quality of the Applicant's evidence, in light of the omissions in his narrative and contradictions, Mr Lane pragmatically accepted, without any formal concession that the process was unlawful, that many of these concerns may be explicable by virtue of the Applicant's mental ill health, as commented upon by Dr Eassom. The Respondent did not have the benefit of that medical evidence. Nevertheless, as Mr Lane was keen to stress, the Respondent maintains its position that the Applicant was and is an adult, based on an assessment by experienced social workers trained in age assessments, in contrast to both the Young Roots social workers and the ESOL teacher who did not have such training, however well-intentioned they may be. Mr Lane was at pains to stress that there was no doubting their good faith and their professionalism in carrying out the roles they did, rather they lacked the relevant specialist expertise.
- 16) In the first age assessment decision of 13<sup>th</sup> December 2021 (at AB/[320 – 330]), the Respondent's social workers regarded the Applicant's physical appearance as being that of being an adult, noting that he was six foot tall, with what they regarded as a clear presence of what might be termed "five o'clock shadow" (facial hair), a pronounced Adam's apple, and a deep and confident voice. In contrast to his later assertions that he did not understand the interpreter provided, they recorded him as confidently asserting that he understood the interpreter, when asked (AB/[322]). The age assessment decision also records that the Applicant exhibited no fear or apprehension, and he was able to maintain direct eye contact. The assessors noted that the Applicant did not know his parents' age or those of his friends. When asked about his sexual orientation, the assessors regarded him as not displaying what they anticipated would be the typical teenage interest in the question.
- 17) Moreover, the assessors were concerned that the Applicant's reasons for why he had left Sudan appeared to change, from a desire to leave with friends to find work, to his parents suggesting that he must leave, after his family home had been burned down by militia. Whilst the assessors

recognised that the reason might be a combination of both factors, they regarded his reaction to such an emotional event, as being surprising. They were also concerned about a potential contradiction in the dates of events, with the Applicant registering with a doctor in July 2021, when they believed (incorrectly) that he was recorded as arriving in the UK in October 2021. They were also concerned that the Applicant was unaware of when his brother was born, in contrast to being clear about his own date of birth.

- 18) The assessors also noted what they regarded as the Applicant's high level of exasperation with the age assessment process. When becoming impatient, they observed the Applicant shrugging his shoulders, looking at the ceiling, rolling his eyes and becoming irritated when repeatedly asked questions. It reached the point that when he was frustrated at the pace of the questioning, the Applicant took a pen from the interpreter to write things down, which was also in contrast to the Applicant's claim that he was unable to read or write much. The assessors also contrasted the Applicant's uncertainty about the dates of specific events, with his specific knowledge about his age. They also contrasted his interactions with the two assessors, one being female, the other male, and they observed that the Applicant was far more assertive and less deferential with the adult male, whom he saw as an equal.
- 19) In the addendum decision, at AB/[348 - 355], the Respondent considered the Applicant's further representations. These included that one of the Young Roots' social workers, Ms Walne had been referred to by the Applicant as 'khala' or mother/auntie, said to be deferential and consistent with his being a minor. In contrast, the assessors viewed this as a universal term of respect for a female stranger rather than one which was deferential, and the assessors queried whether Ms Walne's view was speculative or based on professional opinion. They similarly rejected as having particular weight, Ms Walne's observation that the Applicant had frequently asked her to speak on his behalf, even where he was aware of, or had engagement with matters, for example, completing simple requests for medical support. In their view, this was very common with asylum seekers and refugees coming to the UK. Ms Walne had also observed the Applicant's behaviour of fiddling with and chewing the hood of his jacket or "stimming" as being typical of a younger person, which in the assessors' experience could also be indicative of boredom. In the addendum decision, the assessors added that the Applicant had also made no prior mention of living in an IDP camp and had contradicted himself about his age in the two meetings of 10<sup>th</sup> and 23<sup>rd</sup> November. They were further concerned that one of the social workers from the Young Roots charity had appeared to assist the Applicant in counting on her fingers when the Applicant was asked about numbers and ages during one of the meetings. They further rejected the Applicant's contention that he had not understood all the questions asked of him because of difficulties in the interpretation.

*The hearing*



- 20) I did not hear oral evidence from the Respondent's age assessors. It had been agreed that they would not provide oral evidence, in pre-hearing directions.

*Ms Gould's witness evidence*

- 21) Nevertheless, I considered a witness statement of Dettie Gould, one of the assessors, at AB/[204 - 211]. She is the Respondent's manager of the unaccompanied asylum-seeking children's (UASC) team, with unchallenged expertise in age assessment of over 14 years. She described the initial visit on 10<sup>th</sup> November 2021, at which she explained appropriate adults typically do not accompany the person being visited. She added that a Sudanese Arabic interpreter was available on the telephone.
- 22) As a consequence of that initial meeting, she decided that there should be a brief age enquiry, as it was clear to both her and her colleague that given the Applicant's demeanour, he was an adult, as per the non-statutory guidance provided by the Association of Directors of Children's Services on age assessments ('ADCS' guidance). The 'brief enquiry' meeting was the second of the two November meetings, held on 23<sup>rd</sup> November 2021, with an Arabic-speaking interpreter present. Whilst Ms Gould accepted that a 'minded to refuse' process was not adopted, the Applicant had, in her view, been given sufficient time to clarify or to add to what he had said during the course of the meeting and whilst it was true that he had been told that he may need to be spoken to again, that was an indication that the assessor may wish to do so and was not an indication that there would be a follow-up meeting or a 'minded to refuse' process. She later concluded that there was no need to contact the Applicant and therefore the Respondent reached the December 2021 decision.
- 23) In relation to the absence of evidence about the Applicant living in an IDP camp, Ms Gould accepted that she had not specifically asked the Applicant where he had lived because she did not wish to ask leading questions. She said that even had he volunteered that he had lived in an IDP camp, this would have had no bearing on her conclusion about his age, particularly given the concerns about his physical presentation. She reiterated the contradictions in the Applicant's claimed age of 17 years and four months in the first November meeting as opposed to 17 years and two months in the second November meeting, despite, in her view, his demonstrating that he could perform basic arithmetic subtraction.

*Witness evidence of those attending this hearing*

- 24) I heard evidence from the other following individuals, who adopted their witness statements and who also provided additional oral evidence.
- a) **The Applicant:** When giving oral evidence at the hearing before me, the Applicant had the assistance of an interpreter in Sudanese Arabic. The parties' legal representatives agreed that I should treat him as a vulnerable witness. Consequently, they had agreed before the hearing

limitations on the subject matters about which the Applicant could be asked and the way in which questions could be asked. In particular, they agreed that the Applicant should only be asked open, rather than leading questions, with regular breaks as and when requested and in any event, hourly. Without any criticisms of Mr Lane on a couple of occasions, questions did slip into becoming close questions but on intervention, Mr Lane readily rephrased as these, and I thanked both representatives for their collaborative approach in ensuring that the Applicant was able to give his best evidence. He requested, and we provided a number of breaks. The legal representatives also confirmed that they were satisfied that there were no difficulties in interpretation in the hearing before me.

- b) **Shona Walne:** Ms Walne is a youth worker at the Young Roots charity, specialising in asylum support for those aged between 11 and 25. The organisation runs a casework service and an outreach programme. She and her colleague, Ms Hoang, accept that they have no formal training in age assessments. Before working for the Young Roots charity from 8<sup>th</sup> November 2021, Ms Walne had worked as an outreach coordinator for a youth charity in Calais, working with migrants and the highest proportion of those whom she met were primarily between the ages of 14 to 17, and the largest proportion were Sudanese. She records in her witness statements (AB/[119 - 124] and AB/[166 - 174]) initially having had 45 one-to-one casework sessions with the Applicant, some face to face, some by telephone, lasting on average 20 to 30 minutes and since November 2021, the Applicant's attendance at 48 youth activities which she had co-facilitated. She strongly believed the Applicant's age to be as he claimed. She based her belief on a number of factors, including his deferential treatment to her, calling her 'auntie', asking her to speak on his behalf when she accompanied him to appointments, even where language was not a barrier, (see §10 of her first statement), and his seeking support from trusted adults in various ways, such as appointments with his solicitor. When the Applicant was stressed or nervous, she observed him behaving in a way typical of a child or a teenager, including stammering, as well as moodiness, mood swings and feeling in the moment, rather than having more of a considered approach. She gave the example of his college attendance, when on occasion, the Applicant said that he did not feel like attending on a particular day, for no reason. Ms Walne updated her evidence in her second statement, by which time she had now had 64 one-to-one casework sessions, and in which she reiterated the Applicant's deference to authority figures. She also noted his close friendship with a 16 year old, whom she described as his best friend, on a residential trip in February 2023.
- c) **Bruce Hope:** Mr Hope is a curriculum manager for the ESOL study programme of the College of North West London and has been in that role since 2021. He has had ESOL management experience since 2006 and has worked with looked-after children and unaccompanied asylum-seeking children aged between 16 to 18, since 2016. His current role involves overseeing 200 students between the ages of 16 to 18 who are enrolled on the college's ESOL courses, across two campuses, including

Wembley, which the Applicant attends, and he had spent a lot of time over the last seven years working with learners like the Applicant. As Mr Hope describes in his witness statement (AB [170 - 174], in his role as centre manager and as course leader, he got to know the Applicant well. Whilst he accepted that it was hard to judge precisely someone's age, he had no concerns about the Applicant's claimed age and he thought it was much more likely that the Applicant was in his late teens rather than in his mid-20s and he accepted the Applicant's case that he was now 18 years old. In contrast, he did not believe it to be likely that the Applicant was 23 to 25 or even older, as the Respondent maintained. He based his view in the context of being the main teacher for the Applicant's class between January and July 2022, when he taught the Applicant face to face, ten hours a week, so that when added together he had approximately 300 hours of face-to-face contact time with the Applicant. He described the Applicant as a diligent pupil, and at §8 of his statement, noted that the Applicant interacted well with his claimed age group. Mr Hope placed particular weight on the Applicant's friendships, which were with a boy who was 17 and another who had just turned 18. He tended to associate with those of that age group. Moreover, the Applicant also tended to join in what Mr Hope described as "enrichment activities" such as painting, which, in Mr Hope's 22 years of experience of teaching, contrasted to older students who tended to focus on academic learning and did not see the value of pastoral activities or anything "just fun". Mr Hope also expressed both in his witness statement and before me orally that he had a particularly strong view of those who lied about their age, specifically older people who claimed to be children. He stressed that he does not provide witness statements in support of every age-disputed student, as he has had experience of a number of learners whom he did not believe to be 16 to 18, some of whom he believed to be in their mid-20s or older, which from his perspective caused him significant concern because of welfare and safeguarding issues for children. He described that this caused challenging problems for colleges in the absence of more detailed guidance, about which he had to regularly refer to the college's safeguarding lead. He emphasised, in that context, that he did not think for one moment that the Applicant fell within the category of people about whom he had suspicions as not falling into the category of 16 to 18.

- d) **Jennifer Hoang:** Ms Hoang refers in her witness statement to her role as a senior caseworker at the Young Roots charity, as having started work there in February 2022. Before this she spent four years as a youth worker, supporting children aged 11 to 18. She had volunteered for three months in Greece at a community centre for refugees, working with children, and in Lewisham for two years where she had practical experience of younger people. In her current role, she works with young people accommodated within 'contingency' hotels in Brent, where she works with Ms Walne as a peer and where they cover one another's cases across the three contingency hotels in Wembley. She has had five one-to-one casework sessions with the Applicant lasting around 30 to 45 minutes each and at least 20 informal interactions. She too believes his claimed age. This is in part based on his shyness,

including giggling and his deference towards and dependency on her. The Applicant has required a lot of practical and emotional support, including, for example, in making a GP appointment for him even though he had attended the same GP on a number of occasions. In Ms Hoang's experience, this behaviour is common for those within the Applicant's claimed age bracket of up to the age of 18. She described him as, on occasion, petulant, for example, when he had complained about not being entitled to an Oyster card despite it having explained to him that he was not and why not. She also described a 'herd' mentality where the younger group of learners would be reluctant initially to become involved in activities but when one did then the rest of the group would follow with enthusiasm. That was true of the Applicant. She had also learnt of the Applicant's friendship with a 16-year-old Sudanese young person, and it was also typical of the Applicant socialising with others around his claimed age. Whilst he did have one friendship with an older person around 21, the dynamics of that relationship were more typical of a younger and older brother. She contrasted this to the cohort of a group of Sudanese men who were around 23 to 25 years old. The Applicant chose instead to spend his time with teenagers, rather than them.

### *The Law*

- 25) In terms of the law, the parties agreed the relevant law and as a result I do not set it out in full, but it is worth noting a number of key principles. First, I have to decide the Applicant's age as a question of fact, precisely in terms of his date of birth. There is no burden of proof, but I must decide matters on the balance of probabilities. I must adopt an inquisitorial approach, with a sympathetic assessment of the evidence, see CJ v Cardiff County Council [2011] EWCA Civ 1590. There is no margin of discretion to the local authority's own view, rather that assessment is evidence to be considered with all other evidence adduced, see R (AS) v Croydon LBC [2011] EWHC 2091 (Admin). As in this case, where there is an absence of corroborative documentary evidence, the starting point is the Applicant's own credibility, (see: R (AE) v Croydon LBC [2012] EWCA Civ 547), and the focus should be on how the Applicant knew his date of birth. I also make allowance for the fact that asylum seekers may have problems in giving coherent accounts. In relation to appearance and demeanour almost all evidence of physical characteristics is likely to be of very limited value and the ability to make useful observations on demeanour or social interaction, in the course of short interviews between an individual and adults previously unknown to one another is not necessarily counteracted by the expertise of the social workers, see R (AM) v Solihull MBC [2021] UKUT 118 (IAC).
- 26) I also remind myself that I should not pick between the alternatives put forward by the parties but must rather decide the age myself, see N v Croydon LBC [2011] EWHC 862 and in relation to the benefit of the doubt, while the majority of the case law relates to decision makers such as local authorities giving a person the benefit of a doubt in circumstances of where they are unsure of whether a person is 17 or 18 I accept that the principle is equally applicable to me.

*Discussion*

- 27) Although I have considered the evidence holistically, I must start somewhere, and the best place is to how the Applicant claims to know his age.
- 28) On the Applicant's case, he accepts that birthdays were not celebrated within his community in Sudan. Instead, he points to three important 'life events' in which his mother discussed his age with him. The Applicant explained during his first witness statement, at §7,AB/page [126], that his mother had given his date of birth to the local mosque when she signed him up for classes. He claims that she told him when he was young that he would be able to start lessons at the mosque from his next birthday. The Applicant claimed that he was very excited to study at the mosque because his neighbours were already attending, and he wanted to go with them. He described starting lessons at the mosque as a big event. Children had their heads shaved and they had to wear a long dress called a 'jalabya'. He knew his birthday was 2<sup>nd</sup> September, because he was counting down to his next birthday so he could start lessons at the mosque. It did not matter to him how old he was. He did not know his age at the time. He was just excited for his next birthday because it meant he could start going to lessons with the other boys he knew.
- 29) When the Applicant gave oral evidence, when asked when he started going to the mosque, he said around the ages of six or seven. He accepted that the mosque did not have any age limits, in terms of a minimum age for attendance and he did not know why therefore he had started at a particular age, and he could not remember why it was important that he knew his age. Mr Lane fairly put to him that in his witness statement it appeared, as I have just outlined, that his attendance at mosque lessons was a big event and while he did not start on his actual birthday, his passing a particular birthday so he could attend seemed, from his statement, to be important, whereas in his oral evidence, he was unsure of whether he could have been six or seven, and he made no reference to the celebratory event. I am conscious that the event will, even on the Applicant's account, have taken place many years ago, in or around 2010 or 2011. I also remind myself of the Applicant's vulnerability, which may affect his recollection of events and may mean that he may only give short answers, and may not elaborate on his evidence, when questioned. Nevertheless, I accept Mr Lane's challenge that there is a discrepancy in the Applicant's recollection of the event in his witness statement, i.e., a celebratory event of significant cultural import, whereas when Mr Lane put this to him in cross-examination, he simply reiterated that he was unable to remember. While his vulnerability might explain that lack of recollection, what ultimately leads me to conclude, on the balance of probabilities, that his recollection was not truthful, were two factors. The first is the Applicant's acceptance that the mosque had no particular age limit for accepting those wishing to attend, which undermines the narrative that the Applicant's mother would only permit him to attend on or after a particular birthday, of which, in any event, he was unaware. The

second is the comment made by Professor Agnew-Davies at §1.5.4, AB/[962], one of the experts relied on by the Applicant, that he was “bewildered” by a task requiring him to assign numerical values; and that he “could be innumerate because of the lack of education or have a general or specific learning disabilities...”. While she noted that by the time of his assessment in 2022, he could count to 20, he really struggled to understand the relative differences between the anchors on each rating scale. This undermines the Applicant’s claim, at a much earlier age, to have counted down the days to his next birthday, despite his assertion of having learnt some maths from his family during everyday life and knowing the Gregorian calendar.

- 30) The second life event was when the Applicant says that he and his family fled his home village and arrived at the IDP camp in 2013. Once again on the Applicant’s case he would have been only around nine years old but he recounted at §8 of his first statement, (AB/[127]) that he knew his age because his family and he had to give their personal information when they arrived at the camp to be registered. He also repeated that his mother told him that because the camp was not safe, he would only continue receiving help if he could prove who he was by giving his name and date of birth. In cross-examination by Mr Lane the Applicant gave two versions. The first was that his family had told him that his age had been registered and they repeated the age to him. In an alternative version of events, he said he had witnessed his mother telling the camp officials his age. In other words, there was a distinction between as on the one hand, being told by family members afterwards and on the other, witnessing a parent telling the camp official. Either scenario, or both scenarios are possible and once again I am acutely conscious that the Applicant is a vulnerable witness. Nevertheless, he records this as a specific life event of which he has a distinct recollection and instead of saying that he does not have a specific recollection at all, he instead has two alternative recollections. Whilst it is possible that his parents will have registered him with the IDP camp officials and provided his age, as part of that registration, I do not accept, on the balance of probabilities, that his recollection is reliable or truthful. I find that on both this and the first claimed life event, the Applicant has embellished his account and the truth is that he cannot remember being told his age, in connection with these two events.
- 31) I turn to the final life event, which is the Applicant’s recollection of being told by his mother his date of birth when he left Sudan, to travel to Libya because it was important that he knew it. On his account, his travel to Libya from Sudan was arranged with his parents’ knowledge. He was accompanied from the camp with people whom his parents knew, on one version, to find work. He did so with a mobile phone, albeit it had been taken from him in Libya and he describes trying to contact his family via a person who knew his family in the camp, (see §85 of his first witness statement). The account of the Applicant leaving his family at a young age accompanied by people his parents knew, with a mobile phone and his mother impressing upon him the need to know his name and date of birth is credible, and on the balance of probabilities, I find to be reliable, in the context of modern migration patterns. Whilst Mr Lane submitted

that the Applicant's claimed age was likely to have been contrived because he will have learnt from traffickers the importance of claiming to be a minor to enter the UK, I accept that it is more probable that prior to departure, his immediate family will have taken steps to ensure first a method of communication by which he can be contacted, ultimately even if here, it has been unsuccessful, and second, impressed upon him the need to know his identity, including his name and date of birth. Notwithstanding the problems with the Applicant's evidence in terms of his recollections, and my concern that he has embellished the two earlier memories, the Applicant's claim that he was told his age by his mother upon leaving Sudan, a significant life event, has the ring of truth. There is also no reason to doubt the mother's truthfulness in giving that age, as Mr Lane contended, in the circumstances where she cannot have known how long it would take the Applicant to enter Europe safely, where his age may be more relevant to how he is treated.

- 32) Moreover, in assessing the Applicant's credibility, I do so in the context of the two other important sources of evidence, which I discussed with the representatives. The first is the evidence of the age assessors' reports. They had concerns about the Applicant's inability to mention a material part of his narrative, for example, having lived in an IDP, his confusion about his age in certain interviews, his physical presentation and his demeanour. In relation to the former, namely inconsistency and omission of material parts of the analysis, I attach significantly less weight to those concerns because as Mr Lane pragmatically accepted, the assessors made an assessment outwith the context of the medical evidence which has diagnosed clear mental health difficulties, with the practical impact on his willingness to disclose matters, his ability to recall them and potential difficulties with his numeracy. All might, in that context, explain the problems in his evidence which the assessors had identified. I also bear in mind the relevant case law in relation to physique and also demeanour and the very limited weight I should attach to that in the context, on the one hand, of the limited period of time which the assessors have had with the Applicant, in contrast to the evidence of Ms Walne, Ms Hoang and Mr Hope, which I will come on to discuss in a moment. I also accept Dr Eassom's criticism of the assessors' analysis, that many of the assessors' concerns about the Applicant's behaviour were highly subjective (see §4.4.14) such as juvenile curiosity about questions about his sexuality, particularly, as I have outlined, given the limited period in which the assessors met the Applicant.
- 33) I turn to the second source of evidence which informed my assessment of the accuracy of the Applicant's claimed age, namely the witness evidence of Ms Walne, Mr Hope and Ms Hoang. Their good faith was undisputed but Mr Lane, in appropriate and courteous terms, submitted that good faith was not enough, where specialist expertise was lacking, and age assessment was not an exact science. I noted his submissions, carefully put, as he cross-examined each witness, as to why some aspects of why they believed the Applicant to be his claimed age could be explained by other factors: for example, dependency because of vulnerability; or deference because of being brought up within a loving

family unit. Each witness was willing to accept Mr Lane's general proposition that everyone is different, with their own journeys to the UK and that particular circumstances might explain aspects of the Applicant's behaviour which they had observed.

- 34) However, I accept Ms Patyna's submission that the witnesses cannot be fairly summarised as accepting that the Applicant could well be a year older, for example, with a year of birth of 2003, which as Mr Lane invited me to consider, had been adopted by the Secretary of State, and which he submitted must have come from somewhere. I accept Ms Patyna's argument that each witness was careful to explain that they had substantial experience of dealing with young people from similar backgrounds to the Applicant, including asylum seekers, those having travelled from Sudan and including those, for example, who have been the victims of torture and trafficking. Each witness in my view was conscious in reaching their view, taking into account those factors. They readily recognised that each person is different, but they formed their views, based on informed broad experience of working with different cohorts of age groups. For example, Ms Hoang observed those with whom the Applicant socialised were his claimed age, and she said that it would not be normal for somebody of the age range suggested by the Respondent of between 23 to 25 or older to form friendship groups with such a younger cohort. Mr Hope gave powerful evidence of his concerns about those claiming to be younger than they were, and explained how he has had to grapple practically with the issue, because of safeguarding concerns and processes. He had no hesitation that the Applicant was his claimed age on that account. Whilst I take into account the fact that each of the witnesses did not have any formal age assessor experience, I also take into account the substantial exposure that each of the witnesses had to the Applicant in interacting with him and observing him with children, to a far greater extent than the age assessors, including hundreds of hours in an informal, unguarded environment. I regard their evidence as compelling in supporting the Applicant's claim.

### *Conclusions*

- 35) Having considered all the evidence holistically, even where I do not refer to it specifically, I have already outlined why I place limited weight on the social workers' report. I am conscious of the limitations on the Applicant's evidence and have explained my concerns about parts of it. Notwithstanding this, at the heart of this application is the Applicant's belief in his own age as he perceives it and merely because he has embellished elements of his account, or his evidence is in part unreliable because of his lack of recall of a sequence of events, it is not appropriate to discount all his evidence in its entirety. In particular, I find that the final life event of his being told his age and having impressed on him the need to know who he is and how old he is, has the ring of truth, which in combination with the compelling testimony of those who have witnessed and worked with the Applicant over many hundreds of hours, leads me to conclude, on the balance of probabilities, that the Applicant believes his age to be what he claims it is and that this is consistent with the view of those who know him well.



- 36) For these reasons I conclude that the Applicant has an assigned date of birth of 2<sup>nd</sup> September 2004, as claimed by the Applicant.

*Costs*

- 37) On the question of costs, the parties accepted that as the Applicant has succeeded in his application, the ordinary principle is that he should be awarded his costs. Mr Lane submitted that I ought to consider a reduction, to reflect the Applicant's embellishment of part of his account. However, while I do not condone such embellishment, I accept Ms Patyna's submission that no particular costs could be ascribed to those disbelieved parts of the narrative and that the litigation had not been lengthened as a result. In the circumstances, I regarded it as appropriate to award the Applicant his reasonable costs, subject to an order as to costs being drawn up between the parties, which they agreed would include a payment on account.

*Permission to appeal to the Court of Appeal*

- 38) I also considered whether to grant permission to appeal to the Court of Appeal. Mr Lane indicated that no such application was made, but in any event, I considered whether to grant permission and refused to do so, on the basis that there is no arguable error of law in my decision.

Signed:

J Keith

Upper Tribunal Judge Keith

Dated: 28<sup>th</sup> September 2023

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