



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

**JR-2023-LON-  
000288**

In the matter of an application for Judicial Review

The King on the application of

**R A K**

**(by his litigation friend Joshua Singer)**

Applicant

versus

**The London Borough of Hackney**

Respondent

**NOTIFICATION of the Judge's decision**

On the application for assessment of the applicant's age

UPON HEARING Ms Miranda Butler for the applicant and Mr Joshua Swirsky for the respondent

**Order and Declaration by Upper Tribunal Judge Gleeson:**

**IT IS ORDERED AND DECLARED AS FOLLOWS:**

1. The Applicant was born on 28 December 2005.
2. The Respondent's age assessment of 8 August 2022 is quashed.
3. The Respondent shall provide the Applicant with age-appropriate support pursuant to the Children Act 1989 in accordance with his declared age.
4. The Respondent shall pay the Applicant's costs on the standard basis, to be the subject of detailed assessment.
5. The Respondent shall pay the Applicant a payment on account of 50% of his costs within seven days of being served with a bill of costs.
6. Permission to appeal to the Court of Appeal is refused.

Signed: **Judith Gleeson**  
**Upper Tribunal Judge Gleeson**

Dated: 24 January 2024

**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): *25/01/2024*

Solicitors:

Ref No.

Home Office Ref:

IN THE UPPER TRIBUNAL

JR-2023-LON-000288

Field House,  
Breams Buildings  
London  
EC4A 1DZ

24-26 October 2023

**BEFORE**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**R A K**

**(by his litigation friend Joshua Singer)**

**Applicant**

**and**

**The London Borough of Hackney**

**Respondent**

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Ms Miranda Butler, instructed by Wilsons Solicitors LLP, appeared behalf of the Applicant.

Mr Joshua Swirsky, instructed by London Borough of Hackney Legal Services, appeared on behalf of the Respondent.

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**APPROVED JUDGMENT**  
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JUDGE GLEESON:

1. The applicant is a citizen of Sudan and asserts that on arrival in the UK he was a minor with a date of birth of 28 December 2005. Given that date of birth, he is now an adult having reached his majority on 28 December 2023.
2. The applicant is an asylum claimant in the UK, and his account is that he was persecuted in Sudan by the Janjaweed, who kidnapped and assaulted

him. He left Sudan and travelled on via Libya, where he says he was trafficked. I am not seised of the international protection appeal: my task in this application is simply to determine the applicant's date of birth.

3. The applicant arrived in the UK on 16 July 2022 and was housed initially by the Home Office in adult asylum accommodation at the Dictionary Hotel. The respondent in a short form age assessment completed on 8 August 2022 considered that he was then about 22 years old (so age 23 now) and has at all material times been an adult. That would mean that he had been born before 7 August 2000.
4. The applicant challenged the age assessment by judicial review in the High Court.

### **Anonymity**

5. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the applicant has been granted anonymity, and is to be referred to in these proceedings by the initials R A K. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. **Failure to comply with this order could amount to a contempt of court.**

### **Background**

#### **Age assessment**

6. On 8 August 2022, the applicant was the subject of a short form age assessment by social workers Ms Rosemary Musoke and Ms Elizabeth Monakana. He was interviewed through a Sudanese Arabic interpreter.
7. The age assessors found the applicant to be older than his claimed 16 years, more likely to be 22 years old. Their reasons were as follows:

“[The applicant] stated that when he was in France, he had to give a different date of birth to make him older so that he was not put in a children's camp. According to the Home Office documents that were seen, [he] gave the Home Office his date of birth as 28.12.2004.

He explained to the Home Office that he gave Spain a date of birth of 28.12.2005 but that it was an estimate because he did not have a birth certificate. He also informed the Home Office that his mother told him that his date of birth is 28.12.2003. It is strange that the date of birth he provided to us was the estimated one he gave to Spain. It seems that [the applicant] does not know his date of birth and is likely to be acting on advice from people. There are three different dates of birth. Clarification was sought around this and his response was that 2003 was the date of birth of his brother. He denied that he had told the Home Office that his mother gave him this date of birth, further explaining that his mother had mental health problems. [The applicant] also claimed that in France they misrecorded his date of birth. He stated that he gave them 2003 and they wrote 2003/2004 as it was closer to December. [His] explanations created

further uncertainty about his true age. The fact that he lied about his age to avoid being put in a children's camp made the assessors doubt his credibility.

Causing further doubt, [the applicant] reported during this interaction that he could not remember the year that he started school but was aged 6, and finished in Year 8 in 2019. In the Home Office documents seen he had reported on the 16th of July 2022 that he started school in 2005/2006 when aged 6 or 7 and attended for 8 years. It is difficult to believe that ... within less than a month [the applicant] could no longer recall the year that he started school.

When asked about the differing ages that he gave to the Home Office in the UK on arrival, [the applicant] appeared to avoid the question instead giving an answer about why he gave the date of birth in France. This gave the impression that he was trying to give himself time to think of an answer. Assessors made it clear that they were not satisfied with his response that the interpreters did not understand him due to other information that he shared with the Home Office being correct. There was no follow up to this from [the applicant]: he repeated the same explanation.

[The applicant] is of slim build, despite his small frame, he was seen to have deep smile lines on both sides of his mouth. Deep smile lines indicate facial maturity that is mostly seen on older people rather than teenagers. He had dark shadows around his chin and cheek. Dark shadow could also be seen above his top lip. stubble hair was observed, which gave the impression that he had a full beard and moustache that had been shaved. His hairline appeared to be receding slightly. As well as this, laryngeal prominence was observed which corresponded with his deep voice. He had broad shoulders. His arms could be seen as he was wearing a t-shirt and these were muscular as were his forearms which could be the result of him working.

[The applicant] came across as confident, he made eye contact with the assessors at intervals and was able to articulate himself well through the interpreter. However, there were moments when he seemed unsettled and would look down. For example when he was asked about his shaving habits and also when he was questioned about the different dates of birth that he has given to authorities. This gave the impression that he was trying to think about how he could answer the questions. Overall [the applicant] seemed mature.

Based on [the applicant's] physical appearance and demeanour during this interaction the assessors felt that he could be aged 22 and not 16 years old as claimed. Thus an adult and not a child."

8. The applicant sought judicial review of the assessed age.

### **Permission for judicial review**

9. On 23 January 2023, permission for judicial review was granted in the Administrative Court by Hugh Mercer KC sitting as a Deputy Judge of the High Court, on two grounds: first, that the age assessment was not *Merton*-compliant nor compliant with the respondent's own guidance, and

that the age assessors had failed to take into account relevant considerations; and second, that the respondent had unlawfully failed to provide support as required by the Children Act 1989. Permission was refused on a third ground, failure to refer the applicant into the NRM.

10. Judge Mercer KC made an anonymity direction and an order transferring the assessment of the applicant's age to the Upper Tribunal. He directed the provision of age-appropriate accommodation and support pursuant to the Children Act until the final conclusion of the proceedings, and anonymity for the applicant, using the initials RAK.
11. That is the basis on which this application comes before me.

### **The Upper Tribunal's task**

12. The object of the present proceedings is to determine the applicant's age, as a finding of fact. I have had regard to all of the evidence that was placed before me and I have particularly taken account of the fact that whatever his age, this applicant is young.
13. This application is not an asylum appeal and no questions have been asked which could lead me to a conclusion as to whether the appellant's asylum account is credible or whether he now has in Sudan a well-founded fear of persecution for a Refugee Convention reason which would entitle him to international protection in the United Kingdom. That is a matter for the Home Office in the first instance: the Upper Tribunal is not seised of it today.
14. The legislative framework within which I reach my decision is well established and there is no disagreement between the parties on this. The disagreement between the parties arises on the credibility of and the weight to be given to various elements of the evidence before me. There is no burden of proof and no formal benefit of the doubt principle.
15. The starting point for assessing the applicant's age is the credibility of the applicant's own evidence regarding his age (see *AE, R (on the application of) v London Borough of Croydon* [2012] EWCA Civ 547 at [44] in the judgment of Lord Justice Aikens, with whom Lord Justice Lloyd agreed). My primary focus must be on the applicant's account of how he knows his age and date of birth, but it is permissible to have regard to credibility more generally, as long as the primary focus is not forgotten and care is taken to ensure that particular importance is afforded to the credibility of evidence in relation to his age (see *MVN v London Borough of Greenwich* [2015] EWHC 1942 (Admin) at [27] in the judgment of Mr Justice Picken).
16. In *R (on the application of AM) v Solihull Metropolitan Borough Council (AAJR)*, [2012] UKUT 00118 (IAC), the Upper Tribunal (Vice-President Ockelton and Upper Tribunal Judge Lane (as he then was)) considered that almost all evidence of physical characteristics was likely to be of very

limited value as there was no clear relationship between chronological age and physical maturity in respect of most measurable aspects of such maturity. The Tribunal in *AM's* case found that it was difficult to see that any useful observations of demeanour or social interaction or maturity could be made in the course of a short interview between an individual and a strange adult, including the asserted expertise of a social worker, but that a person such as a teacher or family member, who can point to consistent attitudes and a number of instances over a period of time, or the reactions of an individual's peers or those who work with groups of young people should carry more weight, particularly if any necessary allowance for cultural differences is made.

17. That is the basis on which I approach my task in this review.

### **Vulnerability**

18. It was common ground that the applicant is a vulnerable young person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance.

19. The following vulnerability adjustments were agreed, based on medical evidence from Dr Sarah Heke, Consultant Clinical Psychologist and Clinical Lead with the Centre for Anxiety Stress and Trauma (CAST) at the Central and North West London NHS Trust, who diagnosed the applicant as 'a very traumatised teenager' who had post-traumatic stress disorder, depression and anxiety:

- (i) There were to be no questions asked about the applicant's trauma, in particular his experience of torture and trafficking. If such questions were considered necessary, permission should be sought in advance from the Tribunal;
- (ii) References to his experience of torture and/or trafficking were to be avoided. If they were to be mentioned, for instance in closing, the applicant should have the opportunity to leave the room;
- (iii) The applicant could have a supporter present during the hearing if he wished;
- (iv) The applicant would require a Sudanese Arabic interpreter, and a careful interpreter check should be carried out to ensure that he and the interpreter understood one another and could communicate readily;
- (v) Regular breaks should take place, at least once every 45 minutes during his testimony and once an hour during the rest of the hearing;
- (vi) Complex, compound and rapid questions were to be avoided. The applicant should be allowed appropriate time to answer questions and collect himself between questions; and
- (vii) Adversarial questioning should be avoided.

All of these adjustments were applied and respected.

20. The applicant did not return for the second and third days of the hearing, so no further adjustments were necessary regarding mentioning his history of trauma and torture.

### **Evidence before the Upper Tribunal**

21. The applicant gave oral evidence through an interpreter during the morning of the first day's hearing. An interpreter check was carried out and both interpreter and applicant confirmed that they understood each other. There were no interpretation issues during the applicant's evidence.
22. I heard oral evidence from the applicant, from Mr Joshua Singer, from his friend Mr Ayman Ibrahim, from Mr Mubarak Ahmed Juma, who ran the football club he attended, and from Ms Vanessa Jacob and Mr Tom Leventhall, of the ELATT English language class he attended.
23. There was only one oral witness for the respondent, Ms Elizabeth Monakana, who jointly with Ms Rosemary Musoke (who did not give evidence), carried out the short form age assessment on 8 August 2022. After the respondent was ordered to treat the applicant as a child in January 2023, Ms Monakana was appointed as his nominated social worker, and it was in that context that her oral evidence was called.
24. There was additional evidence for the applicant: a letter from Dr Sunhye Ahn of Freedom from Torture; a psychology report from Dr Heke; and a number of witness statements from Ms Katya Novakovic, who has conduct of this matter, explaining the late production of this evidence.
25. A letter of support from Ms Camilla Bartelink of the Red Cross was expressly not admitted by Upper Tribunal Judge Mandalia by an order dated 18 September 2023. It was erroneously included in the judicial review bundle and considered by me in the embargoed draft circulated to the parties last week. Mr Swirsky helpfully pointed out the error in his comments on the embargoed draft, and I have reassessed the evidence, specifically excluding from my consideration the comments of Ms Bartelink.
26. At the beginning of the hearing, I explained to the applicant that the Tribunal's aim was to enable him to give his best evidence and to feel comfortable and able to do so. The court was kept quiet, with only the representatives, their solicitors, the interpreter and Mr Singer (his litigation friend) in the room. The agreed breaks every 45 minutes were observed during the applicant's evidence, and a one-hour break during the evidence of Mr Singer, which was heard in the afternoon of the first day.
27. At the beginning of Mr Swirsky's cross-examination, I explained to the applicant the purpose of cross-examination, in that it would give him an opportunity to respond to matters which the respondent might raise later in its evidence or argument.



28. Mr Swirsky for the respondent asked his questions carefully and without adversarial questioning. At the end of his evidence, the applicant confirmed that he had felt comfortable and also had understood the interpreter. I asked him if he had any other questions about the hearing, but he had none.
29. In addition to the witness statements of those who gave oral evidence and letters or e-mails sent by them I also had the age assessments, handwritten notes of the age assessments where they were available, social care records and immigration documents. I have taken account of the documents that were before me, not only those that I have specifically referred to but also those which in the trial bundle and supplementary bundle, to the extent that they were relevant to the issue of the applicant's age.

### **Agreed issues**

30. The parties agreed that the primary issue for me is the applicant's likely age, and his date of birth is a secondary issue. My approach is that a date of birth must be assigned, as well as an age, since the respondent's statutory responsibilities flow from his age at various times.
31. The parties have further agreed that in order to determine the applicant's age, I must assess the credibility of his account of his age and date of birth, the weight to be placed on the respondent's short form age assessment, and the weight to be given to third party evidence.

### **Short age assessment**

32. As the assessment of his age is to be made afresh by the Tribunal, I will place only limited weight on the outcome of the short form age assessment by Ms Musoke and Ms Monakana, but will have regard to his answers to the questions asked, the evidence about the circumstances in which the assessment was made, and the written and oral evidence of the assessors.
33. The applicant was interviewed for the short form age assessment on 8 August 2022, at the Dictionary Hotel where he was then living. It was adult accommodation. The applicant described his journey, and said that he had not applied for asylum in any other country, though he had been forced to give fingerprints at the borders in Spain and France. He had told the French authorities that he did not want to stay there.
34. He could not remember the year he started school, but had finished in Year 8 in 2019. He had worked on a farm in the rainy season from the ages of 10-12 years old. He had been imprisoned and tortured on the way here.
35. The applicant asserted that all the interpreters who dealt with him in all the countries he passed through were non-Sudanese and did not have African dialects. They translated what he said incorrectly. They assessed

him as age 22 and not 16 as claimed. The applicant was given the outcome on 9 August 2022, face to face with a Sudanese Arabic interpreter, the applicant confirming that he understood her very well.

### **Respondent's witnesses**

#### **Ms Elizabeth Monakana**

36. Ms Monakana, who in August 2022 undertook the age assessment with Ms Musoke, was appointed in January 2023 as the applicant's allocated social worker and it was in that context that she was called as a witness at the hearing. She is a social worker with London Borough of Hackney Children and Families Service.
37. Since becoming the applicant's social worker in January 2023, Ms Monakana met him five times in that capacity, the first time on 25 January 2023 when he passed into her care, then for his initial health assessment and on three home visits. Her witness statement was made on 3 May 2023 and she adopted it as her evidence-in-chief.
38. Ms Monakana's opinion of the applicant's English language ability did not accord with that of the ELATT tutors. She considered that he generally needed an interpreter and that he could only speak and understand some basic English. She considered the applicant to be polite, reserved and calm. He was adapting well to his new accommodation and environment and had made a friend, an Arabic speaking Lebanese young person. Unusually for a new asylum seeker, the applicant had friends outside the Sudanese community and was able to relate to a variety of people. He liked the young persons' accommodation where he was living. The applicant had stayed with friends he had met at the Dictionary Hotel, and visited them there.
39. The applicant had sleep and nightmare issues from his journey, but his nightmares were reducing. He was being supported through Freedom from Torture counselling. He had been able to apply the therapist's advice.
40. When he first arrived, the applicant needed to get to his ELATT college but was not sure of the new route. He walked to his old accommodation and took a bus from there. Once his keyworkers were aware of the difficulty, they supported him in working out the route from his new accommodation and he had not needed any further help. Ms Monakana thought this was unusually resourceful.
41. The applicant was able to budget his money, cook for himself, and clean his room, as well as travelling independently. He planned his own daily activities, seeking advice when needed. The applicant was self-aware and knew his limitations. He had complained of inadequate teaching at his college and asked for transfer to another college near his old accommodation, where he had friends. However, after discussing the academic year with Ms Monakana, the applicant had opted to transfer

away from ELATT to a mainstream college from September 2023. The applicant had pushed hard for football boots, refusing to take no for an answer and trying an alternate route through his Red Cross advocate.

42. Ms Monakana acknowledged that the applicant was slim but said he had deep smile lines and tear troughs on his face, and a defined jaw and broad shoulders. He had a dark outline around his upper lip and chin, suggestive of shaving. Ms Monakana thought he presented as an older person. Overall, she considered him likely to be an adult in his early- to mid-twenties.
43. In answer to supplementary questions from Mr Swirsky, Ms Monakana said that she was still the applicant's allocated social worker, working alongside his support worker on health services, school, and independence skills. The applicant had been able to cook when he arrived but had wanted to learn to cook fish. He burned it the first time he tried. He cooked regularly, together with another young person.
44. In cross-examination, and contrary to what was stated in her witness statement, Ms Monakana said that she did not conduct the applicant's age assessment, which had been done by Ms Rosemary Musoke and another worker.
45. Ms Monakana would see the applicant every 6 weeks, communicating in between by telephone and WhatsApp. She said that his English was better now and they did not always use an interpreter: the applicant would ask, if he needed an interpreter. She always booked one for a Looked-After Child Review to give a young person the best opportunity to express themselves efficiently.
46. Ms Monakana and a colleague had taken the applicant and 8 other young people on a residential trip to Wales, where they stayed and worked on a farm. The intention was to help them get out of London, and develop their social skills. The applicant demonstrated that he already had practical skills in chopping wood and other farming activities: the staff praised him. He was able to cook, chopping vegetables very impressively, almost as if he had been a chef previously. The applicant said he had learned it at school.
47. The applicant had been at an under-21s placement in City Road, but that closed, so he had been moved to a semi-independent placement in Leyton for under-18s.
48. Ms Monakana had not changed her opinion of the applicant's age.
49. In cross-examination by Ms Butler for the applicant, Ms Monakana confirmed that she was the senior social worker. She had received age assessment training on two occasions. She explained how the age assessment process worked and the steps which had been taken to ensure

fair process and robust conclusions. The applicant's affect had been flat: he was calm in distress, not angry.

50. Ms Monakana was unaware of the applicant's mental health diagnosis and had not read his psychiatric reports. Freedom from Torture were ending support because he was settled and stable: the applicant agreed that he did not need it now. His nightmares had subsided, and he had no ongoing concerns. He liked where he was living and had made friends.
51. Ms Monakana was not based at the applicant's placement. She could not say what the nationalities were of the other young people there, as they came and went in such places, and staff did not update her every time someone left or moved in. She did know some of the young people he socialised among, not all were Sudanese. That could be evidence of his being more mature. The applicant returned to the Dictionary Hotel to see his friends, play video games, and play football, which were activities enjoyed by people of all ages.
52. The applicant had been in the UK for 6 months before coming into her care and already knew how to cook for himself. He just got on with his day-to-day life and was very, very independent. The applicant's mouth and body hygiene were not good and he had needed help with those. His room was not untidy, but nor was it the tidiest, and he was always able to budget his money. He knew how to travel in the local area, where and how to buy his groceries and prepare meals of chicken, eggs, and meat generally. His Lebanese friend had helped him learn further cooking skills.
53. Overall, the applicant's independence skills were over and above what would be expected, but with his support team, they had been supporting him further to develop the skills he had already. She remained clear that his behaviour was that of an adult over 21: this level of independence was very rare in teenagers.
54. The applicant really thought through everything he did and gathered information before making a decision. His request to change college was consistent with that and she was surprised that he could identify good and bad teaching in such a short period at ELATT. She accepted that asking for help was not age-specific and that she herself asks for help. Asking for football boots when he did not have the money himself was not age dependent either. The applicant was very good at adapting to his environment. Her evidence was based on what she had observed.
55. There was no re-examination.
56. That completed the respondent's oral evidence.

### **Applicant's evidence**

57. The applicant's evidence was contained in the age assessment, two witness statements which he adopted at the hearing, and his oral evidence. Both of the witness statements had been translated into Arabic

(the translations are in the bundle) and the applicant was therefore able to check their accuracy before signing the English versions.

58. The following is a summary of the account the applicant gave about his family in Sudan, his age, and where relevant his journey and background since leaving Sudan.
59. **Family members.** The applicant's father is dead. His eldest brother is dead also. The applicant is the youngest of nine children. The applicant, his mother and his eight siblings lived with his paternal uncle after his father died. Of his five older brothers, all of them have left home, and the applicant has no memory of any of them except the youngest, who is two years older than the applicant and was born in 2003. He does not know where they are, or even if they are alive. He also has three older sisters, who have left home and are married. Since leaving Sudan, the applicant told the age assessors that he had no contact with any family member.
60. **Appearance.** When interviewed by the age assessors, the applicant was small and of slim build, but had a beard shadow which the age assessors considered suggested that he had shaved to appear younger. They also saw a slightly receding hairline, a pronounced Adam's apple and a deep voice suggesting that his voice had broken. He had muscular arms and forearms, suggestive of hard physical work.
61. The applicant told the assessors that in Sudan 'they took us to prison, tortured'. He had been chased by dogs and still had nightmares about that. He had difficulty sleeping. He had shaved, because he had been told that this would promote beard growth and he wanted a beard. He was not aware of his voice having broken.
62. **Knowledge of age.** The applicant had never had or seen a birth certificate but did see his national number in 2019 (Year 8) because the students had to do an examination to get into Year 9. The applicant told the assessors that it was his paternal uncle who told him his date of birth when he registered at school at the age of 6 or 7. By coincidence, he was born on the same day as his cousin, the uncle's son.
63. He did not say his mother told him the date of birth, because she was unwell, which was why the family was living with his uncle. Since his father's death, his mother had mental health problems.
64. **Schooling.** The applicant began studying at a school in Sudan, in a city in West Darfur, when he was 6 years old. Between the ages of 10 and 12 years, his mother, who was not well, forced the applicant to work on the family farm, during the rainy season only. The applicant told the assessors that he finished school in Year 8 in 2019, when he was about 14 years old.
65. **Journey to UK.** The applicant left Sudan in December 2020, because of the wars there, in which young people were killed. He travelled through Chad, Libya, Algeria, Morocco, Spain and France to the UK. The details of

his journey are not relevant until he reached Spain, where he spent about three months, and then travelled on to France, where he spent a little less than a month, before reaching the UK.

66. In Spain, the applicant said he was fingerprinted but did not claim asylum. He gave the Spanish authorities the 2005 date of birth, which he says is his real date of birth. They put him in a camp with other children, but he did not want to stay there. He ran off during a day out when the Spanish authorities were 'showing us around'.
67. In France, the applicant was fingerprinted again, but did not claim asylum. He gave the French authorities his brother's year of birth, giving his birthdate as 28 December 2003, but 'they put 2003/2004 because it was closer to December'. He did this so that the French authorities would not put him in a children's camp. The applicant wanted to be able to continue travelling to the UK, not to be detained in France as a child.
68. **Asylum screening interview.** The applicant is recorded as having given his date of birth as both 28 December 2003 and 28 December 2004 at different points in his asylum screening interview. He disputes that record, saying that the interpreter made an error. It is his case that he told the Home Office 2005, not 2004 or 2003.
69. **Age assessment.** The applicant was interviewed through an Arabic interpreter, on the telephone. The interpreter was not a Sudanese Arabic speaker. He complained that the interpreters used in France and in his UK asylum screening interview translated inaccurately as they were not African Arabic speakers, nor Sudanese, and he did not know he could ask for a specific dialect. He thinks the interpreter for his age assessment interview was speaking the Iraqi dialect of Arabic, the applicant having become familiar with that dialect while he was in Libya.
70. **First witness statement.** The applicant confirmed that his instructions had been taken through an interpreter. The statement was read back to him in Arabic through an interpreter before he signed it. The first witness statement deals with matters more relevant to his asylum appeal, but to the extent that it deals with his age, the following matters were advanced.
71. The applicant's family are of the Masalit tribe and come from West Darfur. In 2003, following a Janjaweed attack on his home village, the applicant's father and grandmother died and the rest of the family fled to a refugee camp. The applicant was born there. He did not know the dates of birth of his older siblings, except the one nearest in age ('his older brother') because they left home long before he was born. One of his sisters also left home. The other two married young, to men within the camp, and did not live with the applicant and his mother once they had their own families.
72. The family had a farm near their home village. The applicant's uncle told him that his mother had been different before all the family shocks and

stresses. When the applicant remembers her, she was irritable and inconsistent, telling him to do something and then scolding him for doing it and denying she had asked him to carry out that task. Sometimes she seemed to hate him, but other times she would look after him. His married sisters would come over and help wash his mother, as she had stopped washing herself.

73. The applicant's uncle had four children of his own, three sons and a daughter when the applicant knew him: his uncle's older children had moved away. That was what usually happened. His uncle often took the applicant to school, looked after him, and took him to his own house. It was the uncle who told the applicant his date of birth when he was 6 or 7 years old and starting school.
74. In 2018 or 2019, when the applicant was 12 or 13, his mother insisted that he help her on the family farm. They farmed okra. The applicant's family were often hungry, going to sleep with empty stomachs and asking the neighbours to share food, or eating plain bread with water. They needed to farm their land, and just hoped that the Janjaweed would not attack their okra farm again.
75. One day in 2019, the applicant and three friends went out of the camp to hunt locusts, but were attacked and punished by the Janjaweed, who considered the locusts to be theirs. People from the camp came and the Janjaweed went away. The applicant could not walk properly after the beating: his knees were injured, and he had cuts on his back. The boys were taken back to the camp in a donkey cart. It took a month for the applicant's wounds to heal: the damage to his back healed completely, but he still has scars on his knees from that event.
76. In about October 2020, the applicant witnessed another distressing incident. A man was shot right in front of him by the Janjaweed: the man was trying to stop the Janjaweed attacking some boys whose farm was being damaged by Janjaweed camels. The Janjaweed shot at the boys: they survived but needed hospital treatment. The police came but the Janjaweed shot and killed a policeman. The applicant froze. He could not walk properly because of the shock. His uncle came and took him home.
77. The applicant decided to leave Sudan. Some of the other people in the village had been giving the applicant money because his father was dead. All of his brothers had left. The applicant told his uncle he was leaving. His uncle tried to persuade him to stay, but the applicant left with the money, and without the uncle's permission. He did not tell his mother he was going.
78. In the nearest town, the applicant met a man from the village who took him to Chad and gave him a small mobile phone and a contact number, which he later lost. He worked for a man in Libya, but then was taken by Libyan people smugglers and trafficked. The traffickers beat him. Eventually, he escaped and returned to his employer, then travelled on to

Algiers in Algeria. He had saved some money but Algerian soldiers stole it from him on the journey. Once the applicant reached Casablanca, Morocco, he began trying to cross the Spanish border. On 29 December 2021, at the border, he was chased and held by dogs, and bitten, as well as being really badly beaten. He was detained, taken to hospital for his wounds, then detained again.

79. The applicant was released in mid-January 2022 and finally managed to enter Spain in March 2022, on a boat from Casablanca, arriving somewhere near Valencia. He now said that he had applied for asylum in Spain (in contrast to what he said to the age assessors) and gave the Spanish authorities the 2005 date of birth.
80. From the beginning, his intention was to come to England. It had been his dream for a long time. The English language was the most popular and he loved it already. He did not know that England was in the UK. The applicant ran away from his carers in Spain during a tour of gardens and palaces, and with the help of someone he knew, he travelled on to Paris, where he was street homeless for a time.
81. The French police arrested him and told him that he was not allowed to be homeless. The applicant was fingerprinted but not offered an opportunity to claim asylum. He gave his brother's year of birth, 2003, but his own day and month to the French authorities. Other young people arrested with the applicant had advised him to provide an earlier date, and not to admit to being a child, because the authorities would keep him in France and not allow him to travel on to England.
82. The applicant then spent a few days in Calais, trying to find a lorry to come to England. He stowed away on a lorry one night and on arrival, told the people signalling the lorries that he was looking for England. They told him that England was in the UK, and that he was already there, and called the police. They gave him water to drink.
83. The applicant said the screening interview took place when he was exhausted and hungry. He had been given water, a shower, and an opportunity to change clothes, but no rest or food. He complained that the Arabic spoken by Iraqi interpreter at his interview was difficult to understand. He told the interviewer that his mother used to confuse the applicant's date of birth with that of his older brother, who was born in 2003.
84. At the end of the screening interview the applicant was put in a room with others, and went to sleep. He was placed in a hotel in Dalston (the Dictionary Hotel) where he shared a room with four adult men, who stayed up late being noisy and keeping the light on. He did not get much sleep, and had nightmares about the dogs who had chased him at the Spanish border. The food at the Dictionary Hotel was not good: it was mostly rice, which he did not like and which hurt his sore tooth. He had difficulty accessing medical and dental treatment.



85. People from the Refugee Council came to see him and helped with clothes, a coat when it got cold, and a mobile phone. The applicant tried to contact his family in Sudan: he had not been in touch with them since leaving in 2020. He made a friend in the house, who was also a minor, and they spent time in the park together. After a time, the friend was moved on, to live with other young people.
86. **Second witness statement.** In his second witness statement, dated 15 May 2023, the applicant said that he was now in accommodation for young people in Islington, which was much better. He could eat what he liked, and the staff and other young people were nice. The applicant was sleeping better, as he had a room to himself, and he did not get the bad dreams so often now. He had weekly counselling, which was very helpful.
87. At the new place, the applicant had a helpful key worker who accompanied him to the dentist, and to go shopping and buy clothes and hair cream. She had explained that he should brush his teeth in the morning, and before he went to sleep, so he was doing this. His confidence had improved and he sometimes felt able to ask other people for help. The other young people were about the applicant's age, between 16 and 18 years old. Some of them were also living in his latest accommodation.
88. The applicant made a friend at the new place and they cooked together. He could manage chicken, fish and eggs, though the first time he cooked fish, he had burned it. He attended college four days a week, studying English, maths, and social studies.
89. The applicant went to a Red Cross youth centre on Tuesdays and an ESOL study group on Thursdays. The ESOL group was particularly enjoyable and once, last year, they went ice-skating. He did not want that evening to end.
90. The applicant found a football club which he went to on Mondays and Thursdays. The Monday sessions were more crowded, with about 4 teams. Thursday was quieter and he liked it better.
91. The applicant still had not managed to contact his family since leaving Libya. He had texted 'one of my relatives who also lived in the area where I am from' but then that mobile phone was seized in Libya. He had some telephone numbers on a piece of paper but they took that, too, so he had no way to contact the family. He had asked his social worker to help him contact his family, and had tried on Facebook, now that he had a UK mobile telephone, but could not find any profiles belonging to them.
92. The applicant had contacted Migrant Help, but only once, in July or August 2022. They could not help him directly: all they could do was provide him with a telephone number for a solicitor. He denied having told the Home Office that he was born on 13 July 2005, on another occasion. He thought that was probably another interpretation error.

## Oral evidence

93. The applicant adopted that evidence as his evidence-in-chief and was tendered for cross-examination. He said that although he had worked on the family okra farm, which was not far from his family's village, he had never been to that village. In the camp, they lived in a hut made with tree branches, and had neither electricity nor running water. Some people in the camp had mobile phones, but those were not available to him, and nobody in the applicant's family had access to a mobile phone.
94. The applicant's account of his family in Sudan was consistent with his witness statement. When working on the family okra farm, unwillingly, the applicant travelled there by donkey. It was his mother's donkey. They did not go every day, and they never stayed overnight or went to visit the family village nearby. He only went a few times, because he had school. There was nobody else to help his mother: she did not pay him, as he was her son.
95. The applicant said that he was the only one of his nine siblings to attend an ordinary school: the rest studied Qur'an at the mosque. His mother had not been to school at all and was illiterate. His paternal uncle could read the Qur'an but had never been to school. He did not know whether his uncle could write or read.
96. At school, the applicant had an English teacher whom he did not like. He learned some spoken English but did not learn to read or write the language. Sometimes he studied geography, and he had heard the name 'UK' but had no knowledge of other countries or Europe. Despite this, the applicant's ambition was to come to the UK.
97. The applicant did not celebrate birthdays when he was young and he only understood 'a little bit' about dates before he left. While in Sudan, the applicant could name the days of the week and number the months of the year. He did not understand the calendar and could not name any year except the year he left Sudan, 2020, because he heard people talking about it. When asked again about this, he said he also remembered 2019 because he had an important examination that year. It was the examination of basic education at his school.
98. The applicant possessed a card with his picture and name, but did not know whether it was an identity card. That card was left behind in Sudan, with the applicant's uncle. The applicant's uncle knew the applicant's date of birth because it was the same as that of his own son. When the applicant went to school, he was not exactly sure how old he was. When they were at home, his uncle occasionally mentioned how old the applicant was.
99. The applicant now said his mother had also told him his date of birth: she knew the dates in their own dialect even though she had not been to school. He still did not understand months or days in the Sudanese

calendar at that time and did not remember what his mother had told him. He thought this was not the first time he had mentioned his mother telling him his date of birth.

100. When it was pointed out that this information was not in any of his witness statements, the applicant blamed the interviewing officer who said he did not have time for explanations, and did not allow him to explain. The applicant was not sure whether he had mentioned to the age assessors that his mother told him his date of birth. However, he was now sure that he remembered that both his mother and his paternal uncle had told him his date of birth.
101. The family had mentioned that the applicant's older brother was born in 2003. He did not know what day or month it was. His older brother left Sudan not long after the applicant started school: the applicant was 6 or 7 years old, so his brother would have been just 8 or 9 years old when he left, and still a child. By that time, his married sisters had also left the camp: he did not know whether they were still in Sudan. It was a while ago, and maybe he had forgotten.
102. The applicant said he left after an attack on his village, and then corrected that to an attack on the refugee camp. His uncle forbade the applicant to leave, but he had some money saved up, and he just went. He was then about 14 years old. His plan was just to get out of the risk zone. He had no idea what he would do then.
103. The applicant had learned more about dates and the calendar after leaving Sudan. For example, now he knew that the 28<sup>th</sup> day of a month was a few days before the end of that month.
104. The applicant had just two telephone numbers with him, one for his paternal uncle, and one for a distant relative who lived in the same camp. He had not messaged his uncle directly: he had tried to ring him but could not get through. The applicant was not sure whether he was on the maternal or paternal side, nor exactly how to describe their relationship, and the applicant could only remember his nickname, not his real name.
105. The applicant had sent a one-word text to his extended family member ('Greetings'): he did not have a mobile phone so he asked someone else to send it. There had been no response. After that, the Libyan traffickers took the piece of paper away from him.
106. There followed some questions about the journey. The applicant's evidence about the beginning of his journey was consistent with his witness statements until he spoke about his journey from Morocco to Spain.
107. Contrary to what his witness statements said, the applicant now claimed to have managed to reach Spanish territory in North Africa (Melilla or Ceuta) on foot, and only later to have got a boat from there to Spain,

rather than from Casablanca. The journey by bus to the Spanish border in Africa was over four hours long, and the applicant had made many attempts to cross the border, each time being turned back to Casablanca by the Spanish government.

108. Once on Spanish territory, the applicant was taken by boat to mainland Spain. He had intended to keep travelling but they insisted he apply for asylum in Spain, the part which was in Morocco. He explained having told the age assessors that he did not apply for asylum in Spain, by saying he had not done so until after they took his fingerprints and asked his name, date of birth, nationality and country of origin. The Spanish authorities used an Arabic interpreter on the telephone, whom he understood though he was not sure whether the interpreter spoke Sudanese Arabic.
109. The applicant knew the date he arrived in Spain in March 2022, because it was Ramadan and other young people around him were talking about that. A Moroccan man gave him a telephone as a present, and the applicant contacted a friend who lived in Spain, whom he had met in Morocco. He left Spain before the asylum decision, because his intention had always been to come to England.
110. The UK was the only country he knew about, and although he felt safe in Spain, he was determined to reach here. The applicant left Spain and went to France, with the friend he had contacted, but he left that friend in Calais and did not know where he was now. He had lost the latest mobile phone which he used to contact his friend. He lost it in some woodland between Spain and France.
111. In France, the applicant had lied to the immigration authorities about his age, on the advice of other young people he met. If he had not, he would not have been allowed to leave France.
112. In the UK, he was given water and clothes, but not given anything to eat for eight hours before his screening interview. He had not slept on the journey, so he went to sleep while waiting to be interviewed. They woke him up to interview him. There were misunderstandings with the interpreter who was from Iraq or one of its neighbouring countries: the applicant had not asked which country but he definitely did not speak Sudanese Arabic. The man kept writing things down, but the applicant did not know what he was writing. He did not know where the interpreter had got the information that the applicant's mother told him his birthday was 28 December 2003. He thought that was an interpretation error and denied having said it.
113. The applicant remembered having been asked farming questions. His evidence up to this point was that he had worked on the farm between the ages of 10 and 12 years old. The applicant denied having said that and said it was the interpreter's fault. There had been no misunderstanding regarding questions about his sore knee and headache. He denied having

said he started to study between 2005 and 2006, which would make him 22 years old on arrival in the UK.

114. There followed further questions about how the applicant knew the dates when he was interviewed in Spain and when he was fingerprinted in France. He denied having told the Home Office that he told the French authorities he was born in 2004. He denied having told the Spanish authorities 'whatever came to my head at the time' which was recorded in the asylum interview record. He thought the interviewer was not listening properly.
115. Regarding giving the 2003 date in France, the applicant's explanation remained the same, but he added that his mother used to confuse his date of birth with that of his older brother. When he tried to explain that in the UK, the interviewer got confused and told him to 'leave the story of [his mother] aside'. He had told the truth at the screening interview.
116. The age assessors decided what date to write: he did not tell them 2004 at any stage. They wrote down 2003/2004 but that was their decision.
117. The applicant had not known how to cook before coming to the UK. He learned here. He could cook meat, and eggs, but he burned the fish. He had not contacted his family from here, but he had managed to find the Messenger contact for a maternal cousin in the city, and asked him to go to the camp. It was not very close and he did not think his relative went.
118. The applicant denied having had a beard or moustache. He wanted to have one, so friends advised him to begin shaving as it would help his moustache to grow. He came to the UK because he already loved the country, and also for refugee protection. He wanted to earn money, mostly to spend on himself. Whether or not he was found to be a child, the applicant intended to continue studying. There was no particular level he wanted to reach.
119. In re-examination, the applicant said his mother had told him the 2005 date of birth. She had been well in the beginning but became ill after the events in the family village which killed her mother and her husband. Sometimes, now when she was confused, she would think the applicant was his older brother and call him by that name and date of birth. Sometimes she would tell him to do things, then later on, she would tell him off for doing them. He was not sure when this had started.
120. The applicant had not known any more about the UK than other countries when he set out from Sudan. He got the number for his maternal cousin in the city from someone else he met who came from the same camp, and knew the number. They communicated through WhatsApp, but there were network problems and he could only get through at night. Usually, they could not communicate. He had not managed to get through to his maternal cousin since some time in 2022.

121. In answer to questions from me, the applicant said that he had not known his maternal cousin before leaving Sudan, because he was young. His cousin was a lot older and might have known the applicant. He said he had not got a mobile phone now, but then contradicted himself and said he had lost the telephone code for his cousin on the new telephone and could not register him.
122. The interpreter at Dover had told him 'when I say don't speak, you should not speak'.
123. The applicant confirmed that despite the differences between Iraqi and Sudanese Arabic, the pronunciation of numerals was the same.
124. At the end of his evidence, the applicant confirmed that he had felt comfortable and able to give his best evidence at the hearing. There had been no issues with the court interpreter. The applicant had no questions for me.

### **The applicant's witnesses**

#### **Mr Ayman Abubaker Ibrahim**

125. Mr Ibrahim gave evidence with the assistance of an Arabic interpreter. His statement, made on 23 August 2023, was adopted as his evidence-in-chief. The statement was prepared over the telephone with the help of an interpreter, then translated into Arabic for Mr Ibrahim to check and sign a hard copy.
126. Mr Ibrahim is a Sudanese asylum seeker who was initially age-disputed but has been assessed by the local authority as 18 years old. He met the applicant at the Dictionary Hotel, where they would chat over food, play table tennis in the park, or sometimes football. Mr Ibrahim is not very interested in football.
127. Like the applicant, he was accommodated in the Dictionary Hotel in London with adults until his age was accepted, then moved to young people's accommodation until he turned 18. Their stays in the Dictionary Hotel overlapped by just 2 weeks, after which they did not see each other much, due to the distance between their accommodations, and attending different colleges. They kept in touch by messaging applications, and both usually attended a weekly event organised by the Red Cross.
128. In answer to supplementary questions from Ms Butler, Mr Ibrahim said that whereas he used to see the applicant about once a week at the Red Cross event, he now met him four days a week because they were both in the same college and the same class.
129. In cross-examination, Mr Ibrahim was asked some questions about his own age assessment. He was not from the same part of Sudan as the applicant, but they had talked about their struggles, and their ages, and felt like brothers. Mr Ibrahim had always thought the applicant was the

same age as he was. He had never had any reason to believe the contrary.

130. There was no re-examination. In answer to a question from me, Mr Ibrahim confirmed that the applicant had been studying elsewhere but was studying at the same college as Mr Ibrahim from September 2023. No questions were asked by either representative arising out of my question.

### **Mr Joshua Singer**

131. The next witness was the applicant's litigation friend, Mr Joshua Singer. He adopted his witness statement signed on 17 May 2023 as his evidence-in-chief. Mr Singer is a Children's Advisor in the age dispute project of the Refugee Council. He previously worked as a legal caseworker for a non-governmental organisation in Greece which supported unaccompanied asylum-seeking children there.

132. Mr Singer began working for the Refugee Council in August 2021, and was assigned to this age dispute project in December 2021. The project supported age-disputed young people, and intended only to work for young people whom they believed to be under 17 and where there was 'no compelling reasonable evidence to suggest otherwise'. Mr Singer's role was to visit age-disputed young people and decide whether they were suitable for acceptance onto the project, forming a judgment of his own about their age, and 'determining whether they could be a child matching their claimed age or are clearly an adult'.

133. The applicant had been referred to the project on 1 September 2022 by his solicitor, Ms Novakovic of Wilsons LLP. She had already asked Hackney Children's Services to move him into appropriate accommodation for his claimed age and consider conducting an age assessment.

134. Mr Singer visited the applicant at the Dictionary Hostel, his adult accommodation, on 7 September 2022. The applicant was small framed, about 5'2" tall, and young-looking, with no blemishes, marks or visible facial hair. He was clearly a child.

135. The applicant seemed timid, but well-mannered and deferential. He answered any questions he was asked fully and openly. He spoke of the difficulties with the initial Home Office interview and the interpreter problems. He had no mobile phone and hardly any clean clothes except those he was wearing. Mr Singer returned to the Hostel 5 days later with a bag of clothes and toiletries, and a new mobile phone which he helped the applicant set up.

136. On 27 October 2022, Mr Singer visited again to drop off a new coat, and to ensure that the applicant knew how to get to the Young Roots Youth Club, where he was due to go later that evening. The applicant was not confident enough to go there alone and had assumed that Mr Singer would accompany him.

137. Mr Singer referred the applicant to Freedom from Torture who pre-assessed him by telephone on 4 November 2022 and accepted him as a therapy client.
138. Following the grant of interim relief by Hugh Mercer KC on 23 January 2023, arrangements were made of the applicant to be with other young people, accommodated as a child. In a telephone call that day, the applicant expressed his delight at the proposed change, and the next day, he said how much he was enjoying his new accommodation. Mr Singer had not needed to help him again since then.
139. Based on his numerous interactions with the applicant, Mr Singer considered it highly likely that the applicant was still a child, and 17 years old as claimed.
140. In response to supplementary questions from Ms Butler, Mr Singer said that he met the applicant again on 7 July 2023 for a conference with Counsel. The applicant had grown and bulked out, and was going to the gym a bit. Mr Singer had worked with well over 200 young people, including the ones in Greece. He had his own caseload of 60 age-disputed young people, over half of the 110 which the project was supporting.
141. In cross-examination, Mr Singer said that the Age Dispute Project operated a presumption in favour of believing young people about their asserted age, unless there was compelling evidence to the contrary. That was how the Refugee Council worked: it was good practice. Young people did give dates of birth which were not their own: in his experience, they were found to be children despite that.
142. He had worked with the applicant over a longer period, seeing him first in adult accommodation at the Dictionary Hotel, when he was desperate to get out and make and/or meet friends, then in the care of children's services, and had seen the difference in the applicant. The applicant had complex post-traumatic stress disorder and mental health issues, but of course it was possible for adults to have these issues also.
143. There was no re-examination, and that was the end of the proceedings on the first day of hearing.

**Ms Vanessa Mihaela Enohia Jacob**

144. Ms Jacob's evidence was taken remotely at her request. In her witness statement dated 12 May 2023, she stated that she had been employed by East London Advanced Technical Training (ELATT) as a key worker in the sixth form department, composed of young people between 16 and 18/19 years old. On 12 May 2023 when she made her statement, she had been employed there for just over a month.
145. Ms Jacob had just completed her PGCE teaching qualification, so she had about two and a half years of experience working with young people during her training. She had spent a year working with young adults with



autism, Downs Syndrome, and epilepsy and then, through an agency, for over a year working in a Pupil Referral Unit as a teaching assistant and behaviour mentor, working with primary, secondary and college age students.

146. The sixth form ELATT students were primarily those with additional needs: asylum seekers, people with learning difficulties and people with brain damage. Her role was to provide additional support to these students: whatever they needed, including pastoral support, financial support, and guidance on careers and apprenticeships.
147. Ms Jacob's role was to monitor every aspect of how the students were doing and to support them with careers, housing, funding and safeguarding concerns. She only met students if they needed her. She would see the applicant three or four times for week as he came to ELATT for his lunch or for his Oyster card (ELATT funded travel and lunches for the students). She would accompany them to Tesco at lunch time, helping them to scan and pay for what they could buy with the money they had to spend, and getting receipts.
148. The applicant did not need much help but often scanned too quickly: she helped him slow down and not miss anything when scanning. His level of independence and general behaviour was that of a normal teenager in his position. She did not know what they spoke about, because there was a language barrier, but the behaviour of the applicant with other students and his overall attitude was similar to other teenagers. He was healthy, as far as she knew.
149. Ms Jacobs considered the applicant's ability to be typical of a 16/17 year old and that the way he perceived and understood things was more typical of a 17 year old than of someone in his early twenties.
150. Ms Jacob adopted her witness statement as her evidence-in-chief and answered a supplementary question as to when she had last seen the applicant. She said she saw him last in July 2023, some 3 months before the hearing today.
151. She was then tendered for cross-examination. Ms Jacob confirmed that she did not usually meet students one to one, unless they needed her. The general student body at the College was mostly UK-born, with English as a first language. She was unable to specify the balance of nationalities in her class: it was possible there were other Sudanese but her involvement was much broader than their origins or back stories. Her focus was on what the young people might need from ELATT.
152. What she knew about the applicant was that he was a young asylum seeker and age challenged. That was very common among the young people with whom she worked. She did not tend to find out about whether a young person was age-challenged until it was made relevant to her.

153. With this applicant, she used English for their conversations, and sometimes, another student might assist him if their English was better. She never used an interpreter in such conversations. The applicant was one of the higher ability students in her ESOL classes but she was unable to comment on whether his ability was age-appropriate for a 16-17 year old, in contrast to her witness statement.
154. ELATT paid for the students' lunch on the three or four days when they came in to study. Ms Jacob would accompany them to Tesco to buy their lunches, and the students then came back to eat in the canteen, playing video games or sitting together. The applicant mainly interacted with the other Sudanese ESOL students in his class. However, Ms Jacob had seen him interact with the non-Sudanese ESOL students, and with other students in the canteen at lunchtime. In fact, he socialised with everyone in the class.
155. Ms Jacob had not asked the applicant about his history. That sort of thing came up pretty often among her Sudanese boys: they had all left violence in their home cities. She could not remember whether the applicant had ever given her the particular details of his circumstances, but when the group of students talked more broadly, it was very clear that he shared their experiences.
156. Ms Jacob also had not asked the applicant about his age. She was not an age assessor and gave support only for a short period of time. She had begun working for ELATT two months before she made her May 2023 statement. None of the young people in her class were in their twenties: she now thought that they were between 16 and 18 years old. She could have been mistaken or confused when saying 19 as the maximum age when preparing her witness statement.
157. There was no re-examination. In answer to a question from me, Ms Jacob confirmed that her statement had been prepared on 16 May 2023 but that she had re-read it only 'roughly', a week before the hearing. She did not have a copy with her at the hearing.

### **Mr Tom Leventhall**

158. Mr Leventhall also works with ELATT as a full-time ESOL English language teacher. His experience on 2 May 2023, when he made his witness statement, was rather longer than that of Ms Jacob: he had nine months' experience, having begun working for ELATT in September 2022.
159. Mr Leventhall had been working in education since 2009 and teaching English since 2012. Prior to his work with ELATT, he taught at a series of private language schools, with students ranging from teenagers 14 and up, to adults in their sixties. Earlier in his career, he had been a secondary school teaching assistant for children with special needs.

160. The ELATT sixth form was small, about 80 students in classes of 8-16 students each, all aged between “16-18 or 19”. Most students were referred by local authorities or outside organisations which support refugees. They were assessed initially by keyworkers, who would then provide an overall supportive structure to help them.
161. The ELATT sixth form students were mainly unaccompanied asylum seeking young people although the department catered for people with special educational needs, and looked after children, as well as asylum seekers and recognised refugees.
162. Mr Leventhall had worked with the applicant for five or six months when he made his statement in May 2023. The applicant was one of the higher level students, asking questions and helping less able students who were struggling. He had English all day on Wednesday (6 hours) and on Friday mornings (3 hours). He socialised with the other young people in class, but particularly with a group of Sudanese boys. Mr Leventhall thought the applicant looked and behaved like a teenager of the age he claimed to be.
163. Mr Leventhall had not discussed the applicant’s age with him. At the end of 2023, when the applicant was living in an hotel, Mr Leventhall arranged a speaker from a refugee charity to come and talk to the students about the asylum process. Mr Leventhall asked the students to think of questions for the speaker. The applicant expressed anxiety in being with adults and the applicant’s wish to live with people his own age.
164. In answer to supplementary questions from Ms Butler, Mr Leventhall said that he had looked through his statement ‘in the last week or so’ and adopted it. The class in which he taught the applicant had ended in July 2023 and the applicant had not popped in during the autumn term. He confirmed that the class age was 16-18 (not 19) and that he considered that the group of Sudanese boys were in that age range.
165. In cross-examination, Mr Leventhall said that ELATT’s recruitment was on a rolling basis: students did not have to wait for the beginning of the academic year. All his ESOL students were refugees or asylum seekers. There was a separate adult section which dealt with life skills. He only ever spoke to students in English: that was how ESOL learning worked.
166. Most of the students were age challenged: Mr Leventhall did not tend to find out specifically which ones were age challenged until it was made relevant to him. There were about 8 students in the applicant’s class.
167. Like Ms Jacob, Mr Leventhall did not think that asking about the students’ back stories was appropriate, but it did come up pretty often. All his Sudanese boys had similar accounts of having left violence in their home cities. He could not recall whether he ever had a specific conversation with the applicant about his back story, but generally, when the students talked broadly, it was very clear that he shared their experiences. He definitely had not discussed the applicant’s age with him, but thought him

to be the same age as the other Sudanese boys in the class: nothing about the applicant's behaviour suggested otherwise.

168. Ms Jacob was the key worker for that class. He confirmed her account of the Tesco lunch purchases by the group. All the Sudanese boys in the group were the same age, and all of them had issues with the hotel, which made their lives hard.
169. In re-examination, Mr Leventhall said that he had no direct knowledge of whether the applicant was age challenged, or how many of his students were in that position. That was handled by the College at the administrative level and was not his responsibility.
170. However, had he considered the applicant to be significantly older than the rest of the group, he would have raised it as a health and safety issue with a key worker, or his line manager. That had never occurred in the past.
171. In answer to a question from me, the witness said that there were some students, with whom he had discussed their back story if they asked him to do so, but his role was to teach them English and help them integrate into the UK, not to retraumatise them.
172. Neither representative wished to ask any questions arising out of that answer.

### **Mr Mubarak Ahmed Juma**

173. Mr Juma made a witness statement on 1 August 2023, which he had looked at recently before giving his evidence and which he adopted at the hearing as his evidence-in-chief.
174. In his witness statement, Mr Juma said he was a full time programme coordinator for Street Soccer London, an organisation based in Vauxhall which used the power of football to help young people and adults across London. Mr Juma had been involved for two and a half years, initially as a volunteer but in the previous 18 months, as an employee. People called him 'Frankie' rather than his given names. Mr Juma ran the football sessions, but also did the administrative work, management and social media for the organisation.
175. They had a session for boys in school and college, another for asylum seekers and refugees, and worked both with homeless people and prison leavers. The programme was delivered in conjunction with Crisis and Switchback. There were sessions for different age groups, one for 15-18 year olds, and one for adults. There were normally about 25 people in a session, but there could be up to 60 in the school holidays, in the sessions for young people.
176. The applicant started coming to Street Soccer London in early 2023 and had been coming for about 8 months, having been told about it by a

friend. He came first to an adult session, but Mr Juma thought he was young and 'looked tiny' so he recommended the under 18 sessions. The adult sessions could include people up to the age of 60, and some of them would be healing from drug addiction or homelessness. It was not the best environment for someone so young, and Mr Juma told the applicant he would do better in the right age group.

177. The applicant resisted that advice. He wanted to stay in the adult group. Mr Juma insisted: even before seeing the applicant's date of birth on his application form, he thought him 'small and looks young' and did not want him to be injured. A change of session was best both for the applicant, and safer for Street Soccer London and Mr Juma.
178. The applicant moved to the younger group and came almost every week. He really loved football. He performed very well in an Easter tournament for 15-18 year olds. Mr Juma could speak to the applicant as they shared the Arabic language, but the applicant was unable to talk much to other members of the group because there was a language barrier.
179. Mr Juma considered that the applicant was definitely not in his twenties. His behaviour and mentality was that of a young person. If the applicant missed a session, Mr Juma would call and check on him, to find out if he had been tired, or unwell. There was a WhatsApp group for the young people in the sessions; Street Soccer London tried to support the asylum seekers in different ways, as they had challenges and often many problems.
180. Mr Juma had never discussed age with the applicant, but he had heard him complaining 'always' about the hotel. There were many people in a room and he was not comfortable sharing with the adults there.
181. In answer to supplementary questions from Ms Butler, Mr Juma said that he had seen the applicant the previous week and that the applicant came to his football sessions twice or three times a month, depending how often the under-18s groups were run.
182. In cross-examination, Mr Juma explained that sometimes Street Soccer London provided SIM cards for players who did not have internet access. The SIM cards were donated by a charity, Good4Good. There were three coaches, Mr Juma, a coach from Crisis called Bruce, and another colleague, Jim.
183. The applicant had attended the over-18 session with another young person, Mehmet, who was 16/17. Mr Juma coached both the under- and over-18 sessions, depending on the rota, so he had coached the applicant. The adults in the over-18 sessions were quite big and tall and the applicant was struggling to play them: they were calling him 'chibli' which means 'small'. Mr Juma referred hm to the under-18 sessions on a different night.

184. There were drop-in sessions serving the three hotels near Shoreditch High Street, where young people could just come and play. If they came regularly, then subject to a risk assessment, they might be admitted to the under-18 sessions. In his experience, the asylum seekers and refugees session was mostly adults, and the school and college sessions were mostly under 18s, although there were three Tunisians in the under-18 sessions, who were all living in a hotel with adults.
185. Mr Juma was aware of having two or three players who were age-challenged. There had been another underage player who was 'massive' and Mr Juma had been quite happy to have him in the adult sessions. The difference with the applicant was that he was struggling against the older players, because of his small size. Mr Juma accepted that people came in different sizes and that size was not age-related. He observed that a footballer called Duke Bellingham had been playing in the top adult league at 17.
186. There was no re-examination.

## **Other evidence**

### **Ms Rosemary Musoke**

187. The bundle contains a witness statement from Ms Rosemary Musoke, who did not give oral evidence. Ms Musoke qualified as a social worker in 2011, having been awarded a BSc in Social Work from the London University of Greenwich. She began working for London Borough of Hackney in August 2019.
188. Ms Musoke confirmed the reasons already quoted for the social workers' conclusion as to the applicant's age and exhibited the age assessment to her witness statement. She considered that the applicant presented physically as older than 16 and that he was 'an adult over the age of 18'.

## **Medical opinions**

189. In summarising the evidence of Dr Heke and Dr Ahn below, I have omitted the uncontentious evidence about the applicant's vulnerability, for which appropriate adjustments were made at the hearing. Their evidence was not tested in cross-examination but I have given it such weight as it will bear.

### **Dr Sunhye Ahn (17 July 2023)**

190. Dr Ahn is a Clinical Psychologist who has worked at Freedom from Torture since January 2023 and holds a MSc in War and Psychiatry, and a Doctorate in Clinical Psychology. He is a registered member of the Health and Care Professions Council. He has previous experience in third sector organisations and the NHS, dealing with refugees and asylum seekers, including survivors of torture and trafficking.

191. Dr Ahn described his letter as a 'clinical letter' summarising the treatment the applicant is receiving at Freedom from Torture. The applicant had met the criteria DSM-5 for post-traumatic stress disorder in February 2023 and for moderate depression and severe psychological distress.
192. After seven sessions on his initial stabilisation treatment plan, the applicant had reported a decline in symptoms of post-traumatic stress disorder and major depressive disorder, and in June 2023, there were improvements taking him below the diagnostic level for post-traumatic stress disorder, and indicating minimal depression and moderate psychological distress. His symptomatic improvement remained fragile but given the improvement on the other two areas, and feeling much better overall, the applicant did not wish to focus on treatment for them at present.
193. By mutual agreement he had moved on to the 'Tree of Life' form of narrative therapy: he had attended 2 sessions and was expected to be offered another 9 sessions, following which there would be a review of his treatment plan and symptoms. He would always be able to re-access therapy if his issues recurred.
194. Dr Ahn expressed no view on the applicant's age.

**Dr Sarah Heke (6 September 2023)**

195. Dr Sarah Heke DClinPsy, BA is a consultant clinical psychologist and Clinical Lead for Employee Trauma Support at the Centre for Anxiety Stress and Trauma (CAST) Central and North West London NHS Trust. She specialises in trauma focused therapy and holds a Doctorate of Clinical Psychology (University of Leicester) and BA (Hons) Psychology with European Study (University of Exeter). She has 29 years' experience in this difficult area.
196. Dr Heke's first report (December 2022) advanced in the Administrative Court proceedings before this application was transferred to the Upper Tribunal, concerned the deleterious effects on this applicant of living at the Dictionary Hotel, which is adult accommodation. The respondent was directed to provide the applicant with age-appropriate accommodation and support pursuant to the Children Act 1989, pending the final conclusion of these judicial review proceedings.
197. In her second report, based on a meeting with the applicant on 13 June 2023, Dr Heke dealt principally with the applicant as a vulnerable witness. She had explained her diagnosis of major depression, Post Traumatic Stress Disorder (PTSD) and other co-morbid mental health problems to the applicant when the session began. In her opinion he continued to meet the full criteria for post-traumatic stress disorder albeit at a less severe level.

198. Dr Heke considered that the proceedings regarding his age assessment and asylum claims had reduced the applicant's ability to give a coherent and detailed account of his history. He was now connecting more fully with his sadness and loss, as the acute ongoing sense of threat abated. The applicant would be able to give evidence, provided that support was available for any consequent emotional distress. He would require an interpreter who spoke Sudanese Arabic.
199. Dr Heke's evidence does not go directly to the applicant's age. The applicant's GP records were made available to her and need no separate consideration in this judgment.

## **Discussion**

200. The parties provided written submissions after the hearing, to assist me in reaching a decision on the applicant's age. Those submissions are a matter of record and need not be set out in full here.
201. When assessing the applicant's evidence, I bear in mind the opinion of Dr Heke that the applicant remains affected by post-traumatic stress disorder and may not be able to give a consistent history. I recall that the applicant he has given different dates of birth at different times, depending on what would serve him best. I remind myself that the applicant did provide an explanation for the lies told to the French authorities (albeit not a very satisfactory one) and that special measures were put in place in the hearing room because of his vulnerability, based on the mental health evidence of Dr Ahn, in particular.
202. I must therefore assess the applicant's age and reach a decision on his date of birth on the basis not just of his evidence, but also on that of the witnesses called both by him and by the local authority. The applicant's oral evidence when considered with the witness statements both in the process of these proceedings and to the Home Office was contradictory and inconsistent. The inconsistencies do not impact on the applicant's age in the sense that they are indicators of his age but they do impact on the credibility of his account. If all I had before me was the applicant's evidence, I would not be inclined to accept it at face value.
203. There is other evidence, including evidence from the respondent's witnesses. None of the individuals who gave evidence is an expert: it is not possible to be an expert in determining age. Their evidence is opinion evidence and when I consider the weight to be placed upon that evidence proffered by those individuals, I do so in the context of their contact with the applicant and the experience and the contact that each individual has with young people, both as asylum seekers, refugees and with non-asylum seekers.
204. I have reconsidered the evidence before me, omitting the contents of Ms Bartelink's letter and expressly excluding it from consideration. My



conclusions are not predicated upon the respondent's view or which witness evidence is to be preferred.

205. I have reached my concluded view on the totality of the evidence before me, both oral and documentary, save that of Ms Bartelink. Assessing the applicant's age only on the remaining evidence, I have reached the following conclusions.
206. I first considered what birth year the various witnesses' evidence indicates, looking at when they gave their opinion, and counting back from that to establish what year it signified. Of the applicant's witnesses, Dr Ahn's evidence, although helpful as to the precautions which needed to be put in place for the applicant to give his evidence at the hearing, is of no assistance in deciding how old he is because Dr Ahn expressed no opinion as to the applicant's age.
207. Mr Singer considered the applicant to be 17 in May 2023; and Mr Ibrahim thought him to be the same age as him, 18 years old, in August 2023. If Mr Singer is right, he would have been born in 2005. If Mr Ibrahim is right, he would have been born in 2004.
208. The ELATT witnesses, Ms Jacob and Mr Leventhall, both said in their witness statements that the applicant could be anything from 16 or 17 in May 2023 up to 19 at most. That would give a range of birth dates between 2003 and 2006. In Ms Jacob's oral evidence, she said she could not really say how old he was. In oral evidence, Mr Leventhall reduced the older limit to 18, giving a birth year of 2004, but said that he had never discussed the applicant's age with him.
209. Mr Juma described the applicant's willingness to take on the adult football players when he joined Street Soccer December 2022 or January 2023. The applicant had to be persuaded to go to the under-18s group. The applicant, although small and slim, was presenting as an adult and over 18. Moving him to the under-18s was about his physical size and characteristics, not really about his age. Mr Juma did not give an opinion about the applicant's age but on that evidence, it seems that he perceived the applicant as being on the cusp of 17/18 which would give a birth year of 2004 or 2005.
210. Of the respondent's witnesses, Ms Musoke considered him to be 'over 18' so again, born in 2004 or earlier. Her evidence relied on physical characteristics which were not apparent at the hearing. She was involved only in the short form age assessment which took place in August 2022 and has not had contact with the applicant since then. Her witness statement exhibited the age assessment.
211. Ms Monakana's evidence considered him to be over 21, so born in 2002. She had met the applicant only five times and could not remember being one of the age assessors, although her name appears on the assessment report. She was his allocated social worker. Ms Monakana's account of

the applicant's English language ability differed from that of the ELATT tutors, and she was unaware of his mental health difficulties. She said his room was only moderately untidy, that he could manage his money, was resourceful about finding his way to places and could cook to some extent. None of those is necessarily an indicator of being over 21.

212. Ms Monakana's description of the applicant as muscled, with a prominent Adam's apple, receding hairline, deep wrinkles and the marks of shaving a beard and moustache, do not accord with those of the other witnesses, nor with the applicant as he appeared at the hearing. I am unable to place much weight on Ms Monakana's evidence in reaching my conclusion as to the applicant's age.

213. I remind myself that I am not obliged to apply any standard of proof, or to prefer one set of witnesses to the other. However, the ELATT tutors and the Mr Juma had much closer contact with the applicant than did the age assessors, and the same is true of Mr Singer. These are all people who work regularly with young people, including but not limited to unaccompanied asylum seeking children. I give their evidence weight.

214. Taking all the evidence before me into account and doing the best I can with that evidence I have concluded that this applicant was born in the Gregorian calendar year of 2005 and became an adult in 2023.

## **Declaration**

215. **I therefore declare that the applicant's date of birth is 28 December 2005.**

## **Costs**

216. By consent, it is agreed that the respondent will pay the applicant's costs on the standard basis, to be assessed if not agreed.

217. The parties have further agreed that the respondent will make a payment on account of 50% of the costs claimed to be paid within 7 days of service of a statement of costs.

## **Damages**

218. A draft consent order was prepared and the parties were agreed on all ancillary matters save that expressed as follows:

"The respondent shall provide the applicant with unpaid support under the Children Act 19819 from 5 August 2022 (the date on which the applicant was referred to the respondent) until 26 January 2023 (the date on which the applicant was provided with support under the Children Act 1989 pursuant to the order for interim relief)."

219. For the respondent, Mr Swirsky was not willing to agree that paragraph. He noted that the applicant was seeking to recover the difference in money between what the applicant received as asylum support and what he would have received as a child in August 2022. No account was taken of other services. Although this claim had been raised in the applicant's grounds for review, it was not present in the skeleton argument for the hearing nor was it included in the applicant's evidence. No such issue had been transferred to the Upper Tribunal in the Transfer Order and no details of the differentials relied upon had been provided.
220. Ms Butler on 23 January 2024, and without leave, submitted what she described as consequential submissions responding to Mr Swirsky's disagreement on the question of damages. She argued that there was no restriction in the transfer order and that the Upper Tribunal was therefore seised of the damages claim. She asked the Upper Tribunal to direct a short hearing on the point. She also made various observations about Mr Swirsky's proposed grounds of appeal which it is not necessary to set out here.
221. I am not minded to direct the respondent to pay the damages sought. Nor do I consider that it is necessary to hear oral submissions: if the applicant wished to rely on this point, it should have been argued, orally or in submissions, and put to the applicant for oral or written evidence. As it is, this damages claim is completely unparticularised and I decline to make the order sought.
222. **I make no order for damages for the period 5 August 2022 to 26 January 2023.**

### **Grounds of appeal**

223. Mr Swirsky for the respondent advances two grounds of appeal:
- (1) That the error in relation to Ms Bartelink's letter in the draft decision is incapable of correction and fatally undermines the judgment I am handing down today; and that
  - (2) Having found the applicant's account to lack credibility or reliability, it was not open to me to arrive at the conclusion which I did, on the basis of the other evidence before me.
224. Neither contention is arguable. In relation to ground 1, the draft judgment was confidential to the parties and their legal representatives. Counsel were asked to submit 'any typing corrections and other obvious errors...so that changes can be incorporated, if the Judge accepts them, in the handed down judgment'. I have reconsidered my decision, which is handed down today, expressly excluding Ms Bartelink's evidence from my consideration. I have re-examined the remaining evidence. I am satisfied that on that evidence alone, my finding as to the applicant's age remains

valid, and that there is more than sufficient evidence to support it without Ms Bartelink's letter. Ground 1 is unarguable.

- (3) In relation to ground 2, it is right that the applicant admitted misleading the Spanish and French authorities as to his date of birth. His explanation comes to this, that in order to continue travelling from France to the UK, the applicant was prepared to lie about his date of birth. I have not placed much weight on the applicant's own account.
- (4) Mr Swirsky contends that my judgment does not explain why my finding as to the applicant's lack of credibility did not lead me to assign a different date of birth to him. Again, this is unarguable. I have considered what the various witnesses said about his age, including the respondent's witnesses. I have given reasons for the conclusion reached. Accordingly, and despite his lack of credibility, I have found that he is the age he says.
- (5) There is no arguable error of law in my judgment and I refuse permission to appeal. ~~~~0~~~~