



JR-2023-LON-000539

IN THE UPPER TRIBUNAL
IMMIGRATION & ASYLUM CHAMBER

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW

BETWEEN:

THE KING on the application of
YF

Applicant

-and-

LONDON BOROUGH OF HACKNEY

Respondent

ORDER

BEFORE Upper Tribunal Judge Rimington

HAVING considered all documents lodged and having heard the applicant as a litigant in person and Mr Harrop-Griffiths of counsel, instructed by the Respondent at a hearing held on 21st and 22nd November 2023.

AND HAVING heard from Mr Harrop-Griffiths and the applicant in person on ancillary matters at the hand down of the judgment on 10th January 2024.

IT IS DECLARED THAT:

(1) The Applicant's date of birth is 22nd November 2000 such that he was 21 years of age upon entry to the UK on 20 May 2021.

IT IS HEREBY ORDERED THAT:

- (2) The application for judicial review is dismissed in accordance with the judgment attached.
- (3) The Applicant shall not be identified directly or indirectly. He is claiming asylum.
- (4) There be no order for costs.

Permission to appeal to the Court of Appeal is refused. The applicant gave no grounds for appeal stating merely that it was unfair and he disagreed with the decision. I consider there to be no arguable error in my judgment.

Signed: Helen Rimington **Upper Tribunal Judge**
Rimington

Dated: 10th January 2024

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

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

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

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

IN THE UPPER TRIBUNAL
JUDGMENT GIVEN FOLLOWING HEARING

JR-2023-LON-000539

Field House,
Breams Buildings
London
EC4A 1DZ

21st and 22nd November 2023

**THE KING
(ON THE APPLICATION OF YF)**

Applicant

and

THE LONDON BOROUGH OF HACKNEY

Respondent

BEFORE

UPPER TRIBUNAL JUDGE RIMINGTON

- - - - -

The applicant attended in person.

Mr Harrop-Griffiths, instructed by the London Borough of HACKNEY appeared on behalf of the Respondent.

- - - - -
ON AN APPLICATION FOR JUDICIAL REVIEW

APPROVED JUDGMENT
- - - - -

JUDGE RIMINGTON: The applicant is a Sudanese national who entered the United Kingdom on 30th July 2022 and maintains that he was a child of 16 years at the time of entry being born on 22nd November 2005. The respondent considers that he was born on 22nd November 2000. He is thus 'age-disputed' and the sole issue before the Tribunal is the applicant's date of birth.

Background

2. In his witness statement dated 4th November 2022, the applicant maintained that he was born and lived in Al Geneina. He went to school from 2012 until the 8th grade. Owing to the violence in Sudan his mother told him to leave [14] which he did in May 2021. He travelled via Chad where he stayed for 3 days and on to Libya where he remained for one month. He took a boat and arrived in Malta in July 2021 where he was detained in a camp for 8 months and was then moved. He flew by air to Italy remained for 1 day and travelled through France to Calais where he remained for 4 months and arrived in the UK in July 2022. He states that on entry he was given food and drink and the police were called and he was questioned and said he was 16. He was then given something to sleep on but awoken early the next morning for an interview and told the UK authorities that he had left Sudan in May 2021. He explains in his statement that he was tired when interviewed and that he was only 16 and felt as if he had been threatened and that he had struggled to understand what the interpreter was saying [32]. He said in his witness statement that he was very confused during the screening interview. After the applicant was accommodated, he was put in touch with Care4Calais and then some days later given an age assessment. Again, he states that there were problems with interpretation.

3. The Secretary of State's GCISD Case Record Sheet shows on 31st July 2022 an interview was conducted with the applicant in Dover at 1415 hours in the afternoon and the interviewing immigration officer considered that owing to his demeanour and appearance he was considered to be an adult of 21 years with a date of birth of '22/111/2001'.
4. On 1st August 2022 at 00.40 am an official on behalf of the Secretary of State went through the applicant's (YF's) initial contact and asylum registration questionnaire with him. It is recorded that his physical appearance and demeanour very strongly suggested YF was an adult, that he was born on 22nd November 2000 and was ascribed that date of birth for the purpose of his asylum claim.
5. The respondent conducted a 'short form' age assessment on 26th August 2022 which concluded that the applicant was "over 18".
6. Care4Calais referred YF to solicitors to challenge his age assessment (Luqmani Thomson who secured a legal aid certificate on the applicant's behalf) and also to solicitors for his asylum claim.

The grounds of challenge to the age assessment

7. In summary, it was asserted that:
 - (i) the applicant had been entirely consistent, given clear reasons how he knew his age (told by his mother) and there was no reasoning advanced to support the subsequent claim, that he was 22 years old.
 - (ii) the assessment was not Merton compliant or compliant with caselaw.

- a. The stated basis for the shortened assessment was unreasonable and indeed no reasoning given merely that his appearance and demeanour suggested maturity. It was disputed that his appearance and demeanour strongly suggested he was over 18 bearing in mind he was asked questions relating to credibility. Caselaw emphasised the unreliability of these factors. There was merely post hoc justification. There were matters raised which required further investigation. The inconsistencies which were never put to him were either not consequential or readily explicable. There was only a brief investigation into the applicant's history albeit caselaw allows for a range of approaches.
- b. There was no 'minded to' process in the age assessment, or further enquiry in relation to the timeline, not providing details of the passport, failure to provide details of the cousin, lack of celebration of birthdays, or the said contradiction in the applicants account of contact with his mother by phone or Facebook.
- c. There was no reasoned conclusion as to the actual age ascribed.
- d. There was a failure to give an opportunity for an appropriate adult to be present. The Association of Directors Children's Services guidance ("ADCS") on age assessments is clear that an appropriate adult may be required for the assessment to be fairly conducted. The

applicant was not asked whether he wanted an independent adult.

e. A suitable interpreter of Sudanese Arabic was not provided for the age assessment. The assessment was conducted without an interpreter of the correct language and dialect, in direct conflict with the ADCS Guidance. The interpreters attended remotely. A third interpreter was found but there was no review of the previous answers.

(iii) where there was no conclusion as to age a heightened scrutiny of the assessor's methods and reasoning was required and the decision was irrational. The assessors failed to take into account relevant matters such as YF's vulnerability as an asylum seeking child who had fled violence in Sudan and endured a journey to the UK. They did not follow the guidance.

(iv) there was unlawful refusal of support and accommodation.

Litigation history

8. Hugh Southey KC sitting as a Deputy High Court Judge granted permission for judicial review on the basis the evidence that the applicant was an adult was 'far from overwhelming'. He granted permission on all grounds on the basis that he did not wish to restrict the grounds albeit the public law grounds were 'less strong'.
9. On 7th August 2023 the Upper Tribunal was advised by Luqmani Thomson that they were no longer instructed and the legal aid certificate had been discharged. The papers disclosed that the applicant was then (in September 2023) referred to an alternative solicitor who demanded payment

of £1,500 + VAT in order to consider the papers. Following on, the applicant stated that he would represent himself. The applicant then proceeded on 13th November 2022 to request an adjournment in order to find another solicitor to represent him. That application was in all the circumstances and applying the test of fairness, refused on the basis that the only person giving evidence was the applicant, an interpreter would be present and there was no need for cross examination. The facts and grounds of appeal together with supporting documentation had been filed by YF's previous solicitors. The applicant had previously had experienced solicitors who were no longer instructed and there was no real prospect that he could secure funds to engage further solicitors in the future.

10. On reviewing the correspondence it would appear that Luqmani Thompson withdrew following the identification on 20th June 2023 of social media accounts by the respondent which the applicant had not previously disclosed in accordance with the Upper Tribunal's order dated 28th March 2023. On 24th July 2023 it would appear that Luqmani Thompson ceased to act for the applicant.

Legal Framework

11. In the leading case of **R(B) v The London Borough of Merton [2003] 4 All ER 280** Stanley Burnton J set out detailed guidance on the process to be followed by local authorities when assessing age which has been repeatedly endorsed. The High Court in **VS v The Home Office [2014] EWHC 2483 QB2** summarised the relevant legal requirements of an age assessment at [78] as follows:

"...

78. *The purpose of an age assessment is to establish the chronological age of a young person.*
79. *The decision makers cannot determine age solely on the basis of the appearance of the applicant, except in clear cases: Merton per Stanley Burnton at [37].*
80. *Physical appearance is a notoriously unreliable basis for assessment of chronological age: **NA v LB of Croydon** [2009] EWHC 2357 (Admin) per Blake J at [27].*
81. *Demeanour can also be notoriously unreliable and by itself constitutes only 'somewhat fragile material': **NA** per Blake J at [28]. Demeanour will generally need to be viewed together with other things. As Collins J stated in **A and WK v London Borough of Croydon & Others** [2009] EWHC 939 (Admin) at [56]:*

'... What is meant by the observation that he appeared to be comfortable in his body? It is difficult to follow what this does mean and how a discomfort with a changing body can manifest itself. Nonetheless, the assessment of his physical appearance and demeanour coupled with the discrepancies and inconsistencies in his account of how he knew his age could justify the conclusion reached.'

82. *There should be 'no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child': see **Merton** per Stanley Burnton at [37-38]. The*

decision, therefore, needs to be based on particular facts concerning the particular person.

83. There is no burden of proof imposed on the applicant to have to prove his or her age in the course of the assessment: see **Merton** per Stanley Burnton at [38]. This is confirmed also by **R(CJ) v Cardiff CC [2011] EWCA Civ 1590**, in which, at [21], Pitchford LJ said this:

'It seems to me that once the court is invited to make a decision upon jurisdictional fact it can do no more than apply the balance of probability to the issue without resorting to the concept of discharge of a burden of proof. In my view, a distinction needs to be made between a legal burden of proof, on the one hand, and the sympathetic assessment of evidence on the other. I accept that in evaluating the evidence it may well be inappropriate to expect from the claimant conclusive evidence of age in circumstances in which he has arrived unattended and without original identity documents. The nature of the evaluation of evidence will depend upon the particular facts of the case.'

84. In similar vein, benefit of any doubt is always given to the unaccompanied asylum-seeking child since it is recognised that age assessment is not a scientific process: see **A and WK** per Collins J at [40].

85. The two social workers who carry out the age assessment should be properly trained and experienced: **A and WK** per Collins J at [38].

86. *The applicant should have an appropriate adult, and should be informed of the right to have one with the purpose of having an appropriate adult also being explained to the applicant: see **FZ** per Sir Anthony May P at [23-25]; **J** per Coulson J at [14]; and **AAM** per Lang J at [94(a)].*
87. *The child should be told the purpose of the assessment see **FZ** per Sir Anthony May P at [3] (summarising **Merton**).*
88. *The decision 'must be based on firm grounds and reasons' for it 'must be fully set out and explained to the applicant': **A and WK** per Collins J at [12].*
89. *The approach of the assessors must involve trying 'to establish a rapport with the applicant and any questioning, while recognising the possibility of coaching, should be by means of open-ended and not leading questions'. It is 'equally important for the assessors to be aware of the customs and practices and any particular difficulties faced by the applicant in his home society': **A and WK** per Collins J at [13].*
90. *It is 'axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him': **FZ** per Sir Anthony May P at [21]. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant 'with their conclusions without first giving him the*

opportunity to deal with the adverse points': [22]. See also J per Coulson J at [15]; AAM per Lang J at [94(c)]; and Durani per Coulson at [84-87] (in particular, at [84]: 'Elementary fairness requires that the crucial points which are thought to be decisive against an applicant should be identified, in case the applicant has an explanation for them').

91. *Assessments devoid of details and/or reasons for the conclusion are not compliant with the Merton guidelines; and the conclusions must be 'expressed with sufficient detail to explain all the main adverse points which the fuller document showed had influenced the decision' (FZ per Sir Anthony May at [22])."*

12. In **R (FZ) v London Borough of Croydon** [2011] EWCA Civ 59 Sir Anthony May P confirmed that social workers could, in the course of an age assessment,

"be able to judge a putative child's general appearance and demeanour, and to make a general credibility judgment from the manner in which he answered their questions. It does not follow that the court would be bound to make the same judgments." ([29]).

13. In **R (AE) v Croydon LBC** [2012] EWCA Civ 547 the court held that in the absence of documentary evidence, the starting point was credibility and in **MVN v London Borough of Greenwich** [2015] EWHC Civ 1942 (Admin) Picken J noted at [27]:

"It would, therefore, appear that the primary focus is on the credibility of the person's evidence concerning

his or her age, but that it is permissible to have regard to credibility more generally provided that, in looking at credibility more generally, the primary focus to which I have referred is not forgotten... "

It was emphasised that all material should be taken into account and further that "allowances should be given to the fact that asylum seekers (and similarly victims of trafficking) may have problems giving coherent accounts of their history".

14. The importance of an appropriate adult being in attendance was confirmed in **R (FZ) v London Borough of Croydon [2011] EWCA Civ 59** at [24] as part of the necessary elements of a fair and appropriate process. This has, however, been revisited by **R (SB v Kensington and Chelsea) [2023] EWCA Civ 924**.

15. In **R (HAM) v London Borough of Brent [2022] EWHC 1924 (Admin)** Swift J, however, concluded that whether an appropriate adult was required depended on the circumstances of the case as opposed to it being a legal requirement [20]. Swift J confirmed that it was necessary for adverse points to be put to the young person so that they may have an opportunity to respond but Swift J also held that the distinction between a full **Merton** assessment and a short form assessment was legally irrelevant; what is required in all cases was for the principles identified in **Merton** to be applied in respect of "reasonable investigation and fair process"

Documentation

16. As the applicant represented himself there was no 'agreed bundle'. The respondent's solicitors, in accordance with an amended order, collated the core

bundle, Sections A to E. This evidence included a witness statement from Mr B Schlonski, the applicant's social worker, dated 19th May 2023 and witness statements from age assessment social workers, Ms E Monakana dated 2nd May 2023 and Ms R Ahmed dated 17th April 2023. There were also care records and additionally extracts from the applicant's social media accounts in relation to Tiktok, Instagram, and Snapchat. There were further extracts from a Facebook account and correspondence in relation to the production of social media with his former solicitor Joseph O'Connor from Luqmani Thompson.

17. Mr Harrop-Griffiths had provided the applicant with the LA's skeleton argument and at the hearing produced a supplementary 6 page bundle of extracts from a further Facebook account for the applicant. This evidence was admitted; it had been referred to previously in the correspondence and there was no objection from the applicant.

18. Owing to his previous representation, the applicant's grounds of challenge were already formulated and there were two signed sworn witness statements from the applicant dated 4th November 2022 and 11th May 2023. In support of his claim there was a witness statement dated 22nd May 2023, from Rizwan Aboo, Director of Ashville Supported Accommodation where YF lives, and a letter dated 3rd March 2023 from Camilla Bartelink, ESOL Project Co-ordinator of the Young Refugee Service of the British Red Cross and an undated letter from Elizabeth Howell, Senior Curriculum Manager at the New City College Hackney.

The Hearing

19. The applicant attended and gave oral evidence at the hearing. At all times he was treated as a vulnerable

witness. His keyworker, Mr Ali Al Shimari, an appropriate adult (who could also converse with the applicant in Arabic), accompanied the applicant. Both the applicant and Mr Shimari were advised to request breaks as needed and the applicant was reminded to say if he failed to understand anything and request repetition if required.

20. Mr Harrop-Griffiths was asked to cross examine only using simple direct questioning and to conduct any examination slowly, which he did.
21. An interpreter Mr Khanis, who spoke Sudanese Arabic, was in attendance physically on the first day when the applicant gave oral evidence and remotely on the second day in order to interpret all submissions made by Mr Harrop-Griffiths and any submissions by the applicant. At the outset The applicant confirmed he understood the interpreter. At the close of the first day the applicant was supplied with two legal authorities, **R (HAM) v London Borough of Brent [2022] EWHC 1924** and **R (SB) v London Borough of Kensington**.
22. At this point I identify some key aspects of the oral evidence. The applicant asserted that he had never used the internet before March 2022 and only did so when he arrived in Calais and was given a phone by a charity. He confirmed that it was in Calais that he had a social media account. He stated that someone by the name of Yasir gave him an account in Calais and the Facebook account at E132 of the bundle in the name of Y**** I**** and was the only Facebook account he had ever had.
23. He told the Tribunal that he would have to be reminded by his mother of his date of birth from the time when he was approximately 7-8 to when he left school (13 years)- otherwise he forgot.

24. He added that he knew the very day he left Sudan because the mother spoke to the driver to ask how long it would take to get to Chad and the driver said it was 28th May 2021 and that it would take between two or three days. When the question was repeated the applicant confirmed the driver stated the year.
25. The applicant agreed that in the first Home Office interview, on 31st July 2022, he confirmed he understood but then stated at the hearing that he did not in fact always understand. He did not recall being asked if he were fit and well to proceed, nor to state if he did not understand the interpreter. He did not recall all the questions but did recall his answer that he did 8 years of education. The applicant denied stating that he said he left school in 2017 when aged 14 years and if that were right then he would be 19 in 2022. He said he told the interpreter he left school in 2020 when he was 14.
26. In relation to the second interview on 1st August 2022, the applicant denied stating that he did not have a telephone (as recorded) merely that he could not remember his number. His phone, he maintained, was taken from him and said that he did not have an email address at the time. He stated he arrived in Malta in July 2021 not February 2021 and did not state that he left Sudan in May 2019 because he left in 2021. He stayed in Chad 2 days, in Libya for one month, and in Malta for 8 months and then flew to Italy on a forged passport where he stayed for one day before going to France and where he remained in Calais for 4-5 months. He confirmed that he stated he was detained in Malta for 8 months and that the Maltese gave him the money to buy the false passport which he used to exit. He confirmed that he did not claim asylum in Italy or France because he did not wish to be detained. In

terms of his uncle in the UK, he denied that he had said he had spoken to the uncle 2 years ago and that he said his uncle had been living in the UK for 8 years (as recorded at 3.10). He agreed that the reason he said he left Sudan was because there was a problem with tribal conflict but not that there was a land problem. He agreed that he referenced the Rizigad tribe but denied he gave a date of 2019 when he left. He also confirmed that he agreed he had understood all the questions and when asked if he wished to change anything he said 'no'.

27. In relation to the age assessment the applicant stated that only the third interpreter understood him (the first was cut off) and he denied the answers he gave in relation to being in contact with his mother 5-6 days earlier (as recorded). Although he denied stating that he contacted his mother by Facebook the applicant earlier confirmed that with the assistance of someone in the Calais camp that was how he had contacted his mother.
28. In relation to social media the applicant stated that he did not include his Facebook account when his then solicitor made enquiries because the applicant was only using Tiktok, Instagram and Snapchat at that point. There was a picture of the applicant on the Facebook account with a jacket which he bought last year after he joined the New City College. It was pointed out that his solicitor made the statement as to the social media accounts on 26th April 2023 in response to the court order from the Upper Tribunal regarding social media disclosure.
29. YF denied he himself created the Facebook account [1] on 16th November 2019 under the name of Y**** I**** stating that his friend in Calais had created it. He stated that after the solicitor enquired, he went home and deleted his

picture from Facebook and deleted the account because it was inactive and he was not trying to hide it. As Mr Harrop-Griffiths pointed out, the applicant had not managed to delete the account and it had been discovered by a LA solicitor and not disclosed.

30. On the further account [2] in the name of I**** Y**** there was a photo of someone in front of the Triton Fountain in Malta with a profile update on 27th February 2021. The applicant denied posting the photograph under the name of Y**** I**** [name of account 1] on 7th March 2022 or sending messages in the name of Y**** I**** (eg 9th March 2022) about the photograph on this account. He stated that since he took the previous account [1], he was just watching videos and this activity might have occurred prior to him taking the account.
31. At this point the applicant was asked to remove his hat in court which he did. He denied that the photograph in the second Facebook account was of him.
32. In submissions Mr Harrop-Griffiths relied on caselaw and made particular reference to **R (HAM) v Brent** and **SB v Kensington and Chelsea**. He submitted that the applicant had provided directly contrasting timelines and advanced that the more likely scenario was that the applicant had initially told the truth in his first interview. In fairness, Mr Harrop-Griffiths referred to the witness statement from Mr Aboo and the letters of support outlined above which gave opinions that the applicant was a minor on entry to the UK. I was invited to read the interviews and age assessments carefully. The applicant had confirmed that he had understood the questions in the Home Office interviews and was fit and well. The applicant's oral evidence contrasted sharply with the information he

told the assessing social workers in relation to the contact with his mother. The applicant's oral evidence was not credible in relation to forgetting his birthday, his account of the driver when leaving Sudan giving the year of departure nor the details of contact with his mother.

33. The social media had not been properly disclosed. The applicant had told his solicitor only about three of the accounts despite speaking to his solicitor on 12th, 17th and 24th April 2023. Less than a week after his discussion with his solicitor he changed the picture profile on his first Facebook account on 30th April 2023. This was noted by the Hackney Solicitor. There was also a reference to a sister on the account by the name of A I, a Sudanese name. There was also a second account in the name of I**** Y**** and it was most likely the applicant created this - the profile was uploaded on 27th February 2021 in Malta.
34. Mr Harrop-Griffiths relied on the age assessment and submitted that the witness statement from Mr Aboo and the authors of the letters were not informed about the credibility issues. The letters principally referred to the applicant's demeanour and behaviour.
35. The procedural issues raised by the applicant in relation to the short assessment, the minded to process, the failure to give a precise age by the Age Assessors, the lack of an adult and difficulties with the interpreter related to the question of fairness. In terms of the short assessment this was to be decided in context and the social workers had acted reasonably in deciding what to investigate. The applicant had an opportunity to counter what the age assessors said. The applicant knew well the case against him. The credibility issues were put to him.

It was noted that he was confident and able to answer all questions and was able to speak for himself challenging as appropriate during the assessment. The lack of an adult did not undermine the assessment. The third interpreter had summarised the previous questioning and the applicant had agreed with that summary. In the light of **R (Ham) v Brent** and **SB v Kensington** none of these said procedural defects had a bearing on the fundamental issue of whether the applicant was telling the truth and the assessment of his age. Even if there was force in the criticisms, they had no bearing on this trial.

36. The applicant was asked if he wished to contribute or ask questions and merely, graciously, thanked the court and representatives and his supporters for their time.

Analysis

37. I have undertaken a holistic consideration of the evidence bearing in mind the legal principles set out above. I take into account the Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance because notwithstanding that at no point did the applicant indicate any mental health needs, he claimed to be under 18 (at least leading up to the first day of the hearing as his birthday was on the second day of the hearing) and there is no bright line of maturity; further he had no representation.
38. I turn to credibility. As pointed out, the ultimate timeline offered by the applicant contrasts sharply with that initially given to the Home Office. The applicant gave different dates in his Home Office interviews, age assessment and then in his witness statement and oral evidence.

39. The applicant in his witness statement and oral evidence advanced that he left Sudan on 28th May 2021, arrived in Malta in July 2021, left Malta in March 2022 and arrived in the UK on 30th July 2022.
40. The interviews with the Home Office on arrival were in contrast to that evidence and his various accounts not explained either by his youth or interpretation. He was able to give accurate detail in parts of his interviews as explained below.
41. In first Home Office interview which was witnessed by a social worker, the applicant confirmed he understood the interviewer and interpreter and confirmed that he understood he was to make the officer aware if he had difficulty in understanding. I thus do not accept that there were any interpretation difficulties. When asked how old he was YF first said 17 when even on his own claim he was 16. He then said that he undertook 8 years of education [Q12] and he stopped education in 2017 [Q13]. Twice the applicant confirmed that he left school in 2017. He then stated he was 7 years old when he started education [Q19] and then that he left Sudan in 2021 [Q17] at the age of 15 [Q18] and it took him a year and 8 months to reach the UK [Q23]. Clearly, if he left Sudan in May 2021 he could not have been in the UK by the date of the interview in July 2022. It was put to him that he claimed he was 14 in 2017 but 15 in 2021. When challenged he again stated that he left school in 2017 and it was recorded yet again that the applicant said he left school in 2017. As the assessor concluded, his date of birth based on his presentation and his own evidence led them to believe he was 21 years old (although the date of birth was given was on 22/111/2001). In view of the repeated confirmation by the applicant that he left school in 2017 and stated then

in the interview and has repeatedly stated he spent 8 years in school and left at approximately 14, that interview should be afforded weight. Even on his own evidence this made him 19/20 at the date of interview, not 16 and the applicant's credibility is thus undermined.

42. In the second interview the following day, albeit at 40 minutes past midnight, the applicant nevertheless confirmed that he felt fit and well and he was ready to be interviewed and at the end that he had understood all the questions. Here he was told he had been age assessed as being born in 2000. There was no indication he did not understand the interpreter and as submitted he gave detail with which he agreed at the hearing, such as where he came from (Al Geneina), his main language being Arabic and that he also speaks Tama. He also gave information in relation to difficulties with the 'Rizigad' tribe [4.1] and gave detail about the fake passport used to depart from Malta. At both sections 3.4 and 4.1, that is, on two separate occasions he confirmed that he actually left Sudan in 2019, by contrast with his earlier and later assertion of 2021. The applicant asserted in this interview that he arrived in Malta in February 2021 [3.2] (not July 2021) and this is consistent with the Facebook account [2] in the name of I**** Y**** which was one of the accounts not disclosed by the applicant to his solicitor. The lack of consistency with later assertions is not explained by the claimed tiredness. He did not complain at the time of being tired and the applicant was able to give detail which was clearly correct.

43. He also stated during the interview that he had no funds to leave earlier than he did which I agree suggests he was raising the funds himself rather than his mother funding the journey. Even if that were not the case, if his

mother had funded the journey, I do not accept that he would have last spoken to her just once whilst in Calais as he suggested in his oral evidence; this was also in sharp contrast to the evidence given to the age assessors in late August 2022 that he had spoken to her just five days earlier. There was simply no reason for experienced age assessors to concoct the fact that the applicant had spoken to his mother five days earlier. Not least during the oral evidence he told us his stepfather with whom he lived had a mobile telephone.

44. I found the applicant's oral evidence that he knew the date of his departure from Sudan particularly the year being 28th May 2021 not credible. It is distinctly unlikely that when asked how long the journey would be to Chad from Sudan the driver would give the year. The applicant explained that the Sudanese calendar used months similar to the Gregorian calendar and May is not at the very start or end of the year such that the driver would refer to the next year. The applicant advanced no cultural differences to explain this.

45. A further issue which undermines the applicant's credibility is that he claimed he gave his date of birth to the authorities in Malta when detained for 8 months. There is confirmation in the papers from the Maltese authorities that no Sudanese person of that date of birth was registered with them. His name, despite being given in various alternatives, did not appear on their register either. The applicant in his own witness statement, however, confirms that he registered a claim for asylum in Malta and was interviewed. I do not accept that he can have done so under the name and date of birth given to the UK authorities because there is simply no record despite diligent enquiries being made by experienced solicitors

under various permutations and spellings of his name. That undermines YF's credibility.

46. Despite the specific direction of the Upper Tribunal in March 2023 to disclose any social media accounts including Facebook, the applicant did not disclose relevant social media accounts. Notwithstanding that, when he opened an Instagram account that had a date of birth being 21st January 2005, he also included an email address which linked him to at least one Facebook account which during oral evidence he accepted was his and which he did not disclose. The first account was created on 16th November 2019 prior to the Tribunal order. As noted, YF spoke to his solicitor in April 2023 on three occasions and at no point revealed this information on Facebook. The applicant's explanation in his oral evidence that he did not think it relevant because he did not use it is simply not credible. I do not accept an experienced solicitor would fail to translate the contents and importance of the court order to the applicant. YF must have known he needed to disclose it and did not. Further, apparently on 30th April 2023 YF changed the profile picture on that account and it was therefore not inactive.

47. Nor do I accept YF's explanation that he merely 'adopted' an account from someone else bearing in mind how easy it is to open a Facebook account. On his own evidence, he tried to delete the account when he returned home. Further, the applicant gave evidence that he did not have social media prior to being in Calais and yet this account was opened in 2019. This accords with the second Home Officer interview where the applicant asserts at [3.4] that he left Sudan in May 2019.

48. The respondent submitted there is another second Facebook account [2] and shown in the supplementary bundle produced. This is in the name of I**** Y****. In the applicant's disclosed Snapchat and Instagram accounts there is the same name and spelling in an email address. The Facebook profile picture is of a young man who is standing in a square and holding his hands to his face. It is submitted, and I accept, that this is a square in Malta and depicts the Triton fountain. The profile picture was uploaded on 27th February 2021. I find it is more likely than not that the applicant created this account. Not least it has the same name as on his Gmail account with his Snapchat and Instagram accounts and the picture is of someone with hands and a hairline which are remarkably similar to the applicant's and show he was in Malta in February 2021. He therefore must have, contrary to his oral evidence, arrived in Malta before July 2021. At [3.2] of the 1st August Home Office interview he states that he arrived in Malta in February 2021 which is consistent with this Facebook account photograph. I thus do not accept that he arrived in Malta in July 2021 as claimed in his witness statement and oral evidence which further undermines his credibility.

49. The age assessment was conducted by two experienced age assessors and short form assessments are not precluded depending on the circumstances. Swift J in **R (HAM) v Brent** confirmed that in relation to the compendia of guidelines set out for example in **VS** *'It would be wrong to regard each item on each list as a requirement of fairness in every case'*. The court should focus on the case before it and as set out in **R (HAM) v Brent** at paragraphs 10 and 11 there is no burden of proof, the assessment must be made

on reasonable enquiry, but this will depend on the circumstances and the enquiry must be undertaken fairly.

50. The social workers made reasonable investigation of the facts and adopted a fair process in this instance.

51. As noted in R (HAM) v Brent whether an appropriate adult is required depends on the circumstances of the case as opposed to it being a legal requirement. Nothing in the assessment suggested that the Merton guidelines were not complied with or that the social workers failed to adhere to the ADCS guidelines, which are just that, guidelines. The social workers were clearly aware that the applicant asserted he was a minor, are trained in dealing with minors in age assessments and were indubitably aware that he had endured a long journey some four weeks earlier.

52. I note the criticism that there was no 'minded to process' but the applicant was well aware of the key question and the issues raised with him such that he felt able to challenge the assessment at the time and this can be seen from the text as follows: 'Y presents as physically older than 16 and more as an adult. His facial features, smile lines, broad shoulders and manner suggest maturity. He challenged this - saying that you can be 14 and big or a 19 year old and small' and further 'Y was confident and able to question the assessors with regards to the dec[ision].'

53. The social workers, contrary to the grounds, gave adequate reasoning for their conclusions. YF's asserted timeline was set out and the 'Home Office paperwork' was specifically noted and the contrasting timelines identified. Even within his own timeline given at the age assessment (as recorded both in handwritten and typed notes) the social workers noted that the applicant

asserted he arrived in Malta in December 2021, spent 8 months there and then arrived in Italy in March 2022 which was inconsistent with his previous (and indeed later) statements.

54. The discrepancies in the timelines were clearly put to YF and although he raised issues as to the interpreter as can be seen from the interviews, he confirmed that he understood the questions and felt fit and well. On that basis although the social workers took into account the explanation that the applicant was tired, it was open to the age assessors to conclude that he was older than he was, not least because of the basic calculations made and the direct contrast between information given by the applicant at his interviews with the Home Office and the information given at his age assessment. YF's credibility was also questioned over the account of his contact with his mother whether by phone or Facebook. It was also reasoned that although YF said his mother told him his age, he had no documentation, he did not celebrate birthdays and it was difficult to believe he would know when his age was changing. It can be seen from the age assessment that the social workers did not rely merely on physical presentation and demeanour but on the applicant's own inconsistent evidence as recorded over time. That reasoning was undoubtedly open to the LA and adequate.

55. The short form assessment made clear that there was a Sudanese Arabic interpreter in attendance, albeit by telephone. It is clearly described in the record of the assessment that the third interpreter summarised what YF had said previously to the social workers and he agreed with that summary. I find there is nothing in the criticism relating to interpreter.

56. As stated in SB v Kensington at [86] 'an arguable procedural lapse may support an application for permission to apply for judicial review, but once permission to apply has been granted, it is unlikely to play a significant part in the court's decision, based on all the evidence, about the claimant's actual age, which is the court's real job in these cases.' I also note [90] of that authority which held 'Whether an interview will be unfair if there is no appropriate adult will depend on a range of factors, which will vary from case to case. I also agree with Swift J that *R ((ZS) Afghanistan) v Secretary of State for the Home Department* is not binding on this point.' That point is also relevant to any criticism of the interpreter.

57. Turning to the witness' statements, only Mr Aboo had given a statement on behalf of the applicant and this was reticent in its terms as follows: 'At Ashville, the staff believe that the age stated on is section 20 (age 17) can be correct (sic) as we have no concerns currently to suggest otherwise. However, we have not had to manage a situation where a young person was clearly older than claimed so cannot make any comments in that regard'. Neither Ms Howell (who said YF's behaviour comfortably fitted the behaviour of a 16 year old) nor Ms Bartelink made formal witness statements which reduces the weight to be given to their opinion, and none of the witnesses attended court on behalf of the applicant in order to have their evidence tested. None had age assessment training and none appeared to be aware of the contradictory accounts given to the Home Office in interview. Little weight is therefore given to their statement/letters.

58. The short form age assessment was therefore not flawed through the lack of an appropriate adult, failure in interpretation or a lack of the minded to process or reasoning. Reliance can be placed on the opinion of the two trained and experienced age assessing social workers who concluded, on adequate reasoning, he was an adult on entry. They put him at over 18 years old and although they did not pinpoint his date of birth that does not undermine the assessment overall. I accept the underlying conclusion that he was an adult on entry.
59. I also have taken into account and give weight to the witness statement of Mr Schlonski, an experienced social worker with age assessment training and a consultant with the Unaccompanied Asylum Seeking Children Unit, who was the applicant's own allocated social worker and who had engaged with the applicant over time. Mr Schlonski noted the applicant's ability to establish a stable lifestyle pattern, including attendance at college, and his possession of high levels of independent living skills being very good with budgeting and managing finance and navigating public transport. Mr Schlonski confirmed in a balanced sworn witness statement that the applicant was a 'well rounded individual ... able to process information' and that the applicant displayed a level of maturity, with good skills in emotional maturity and self advocacy, inconsistent with the age claimed but 'comparable with adults in their early twenties.'
60. Independent of the social worker assessments, the various and contrasting timelines drawn from the applicant's own evidence given in his interviews, witness statements and oral evidence overall undermines his account of his age. Not least the applicant concealed his social media accounts which pinpointed the creation of at

least the first Facebook account in November 2019. It is likely he created this account, contrary to his assertion, following his exit from Sudan as one of the means to remain in contact with his mother (indeed he told the court in his oral evidence that this was a method he used to contact his mother).

61. I conclude that this applicant was born in late 2000 and that the assessment of him being 21 in his first interview was correct; (although the year of birth was said to be 2001 it was revised to 2000 the next day). He was therefore an adult on entry to the UK in 2022. The applicant's accounts and timelines in his witness statements and oral evidence were simply not credible for the reasons given above. The applicant's first interview with immigration officials, however, was conducted in the afternoon, he had an interpreter and the interview was supervised by a social worker. Although stating that he felt intimidated during interviews he made no formal complaint despite initially being represented. At that first interview YF confirmed twice that he left school in 2017. Although he also stated at this first interview that he left school when he was 14 years old, even on his own evidence this made him 19 years old. The applicant, however, said repeatedly that he started school at the age of approximately 7. That said, he also gave evidence that his mother had to remind him of his age until in his early teens. If YF had spent approximately eight years in school leaving in 2017 (at the latest) and attended school at the age of approximately 7/8 years, bearing in mind he states he was born in November, I conclude, using this approximate time line and considering the evidence overall including that of Mr Schlonski, that YF was born in 2000.

62. I find therefore that the applicant was an adult on entry, and I give him a date of birth of 22nd November 2000. 0~~~~