



IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
(JR-2024-LON-001113)
In the matter of an application for Judicial Review

Field House,
Breams Buildings
London, EC4A 1WR

Between:

THE KING
on the application of

K S D
(Anonymity direction made)

Applicant

- and -

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

Respondent

Before:

UPPER TRIBUNAL JUDGE REEDS

ORDER

HAVING considered all documents lodged and UPON HEARING Ms. V. Simpeh of Counsel, instructed by Lawstop Solicitors for the Applicant and Ms C. Rowlands of Counsel, instructed for the Respondent at a hearing held on 29-31 October 2024 and with further written submissions dated 6 November 2024

AND UPON handing down judgment on 22 January 2025, pursuant to (i) the draft judgment being circulated to the parties under embargo terms on 10 January, (ii) the parties providing typographical and obvious corrections to the judgment by the time requested, (iii) the parties being notified that judgment would be handed down on 22 January, with neither party to attend provided there was no consequential matters to be dealt with and UPON the parties agreeing a draft order, save for the issue of costs upon which both parties have provided their written submissions and confirming that neither advocate would seek to attend and were content or the issue if costs to be decided on the submissions each advocate had provided.

AND UPON considering the submissions provided by each of the parties on the issue of costs

AND UPON the Upper Tribunal Rules requiring consideration of permission even in the absence of a party application

IT IS ORDERED THAT:

1. The application for judicial review is dismissed for the reasons in the attached judgment.
2. It is determined and declared that the applicant's date of birth is 3 April 2004 so that on arrival in the United Kingdom on 11 September 2023, he was 19 years of age
3. The applicant do pay the respondent's costs of the case, subject to detailed assessment and subject to the costs protection provided by section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Civil Legal Aid (Costs) Regulations 2013.
4. There be a detailed assessment of the applicant's publicly funded costs.
5. Neither party sought permission to appeal to the Court of Appeal and, having considered this issue of myself as I am required to do by rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008, I refuse to grant such permission as there are no properly arguable points of law raised on the facts of the case.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Unless the Upper Tribunal or a Court directs otherwise, the publication or communication of any information likely to identify the Applicant as a party to these proceedings is prohibited save for any communication to:

- a. Any employee, officer or contractor of the Respondent discharging a social care function.
- b. Any lawyer engaged by the Applicant or Respondent.
- c. Any officer, employee, or contractor of the Secretary State to the Home Department discharging any function related to immigration; or
- d. Any support worker or charity engaged in supporting or advising the Applicant.

Signed: **Upper Tribunal Judge Reeds**
Upper Tribunal Judge Reeds

Dated: 22 January 2025

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): 22/01/2025

Solicitors:

Ref No.

Home Office Ref:

Notification of appeal rights

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

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

If the Tribunal refuses permission to appeal, either in response to an application or by virtue of rule 44 (4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision refusing permission to appeal to the Court of Appeal was sent (CPR Practice Direction 52D3.3).



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JUDGMENT

HAVING considered all documents lodged and upon hearing Ms. V. Simpeh of Counsel, instructed by Lawstop Solicitors for the Applicant and Ms C. Rowlands of Counsel, instructed for the Respondent at a hearing held on 29-31 October 2024 and with further written submissions dated 6 November 2024 and written submissions as to costs from each of the parties on 15 and 16 January 2025.

Upper Tribunal Judge Reeds:

Introduction:

1. The applicant, a national of Eritrea, asserts that he was born on 3 April 2007 and was thus a child of 16 years when he entered the UK on 11 September 2023. Following an age assessment completed on 22 September 2023 the respondent (“The Local Authority”) produced an age assessment report in which a date of birth was assigned to the applicant of 3 April 1999, and that he was assessed to be aged over 18 at the time he entered the United Kingdom.
2. This judicial review challenges the age assessment decision on the ground that the applicant is the age he claims to be and, as part of that challenge, that the age assessment was not *Merton* compliant and thus unlawful and that the age assessments should not be afforded any weight.
3. The primary issue to resolve these proceedings as the applicant’s age, which is in dispute between the parties.

Anonymity:

4. An anonymity order had been made earlier on the grounds that the applicant had made a protection claim which is still in progress and therefore I make an order for anonymity pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Unless the Upper Tribunal or a Court directs otherwise, the publication or communication of any information likely to identify the Applicant as a party to these proceedings is prohibited save for any communication to:

- a. Any employee, officer or contractor of the Respondent discharging a social care function;
- b. Any lawyer engaged by the Applicant or Respondent;
- c. Any officer, employee or contractor of the Secretary State to the Home Department discharging any function related to immigration; or
- d. Any support worker or charity engaged in supporting or advising the Applicant.

The background:

5. The applicant’s stated personal history is set out in his statement and the litigation history is set out in the schedule of agreed facts in the bundle and is detailed as follows. The applicant is a national of Eritrea who grew up with his parents and siblings. He attended

school from the age of 7 or 8 in 2014 and studied for about 5 years. He left school to help his mother with the sheep on the farm. When the government found out that he had left school they came looking for him. He states that he left Eritrea by camel to find his mother's brother who lived in Sudan. His mother's brother helped him leave Sudan in August 2022. He travelled from Sudan to Libya and then from Libya to Italy and to France.

6. KSD arrived in the UK from France on 11 September 2023 by a small boat. He gave his date of birth as 3 April 2007.
7. It is common ground that the applicant had no documentation with him when he arrived in the UK on the 11 September 2023. He was detained on arrival
8. An assessment took place on his arrival by the Chief Immigration Officer, a second Immigration Officer and a social worker and with an interpreter present. It is described as "Initial Age Decision (significantly over 18) Questionnaire" (at [315]). The applicant was interviewed on 11 September 2023 between 15.30 - 15.45 and notes of the interview were provided. They concluded in their assessment that the applicant was an adult aged 24 years with a date of birth of 3/4/1999. The applicant's response was that he still claimed to be a child. As the applicant had made a claim for asylum, an initial contact asylum registration questionnaire was completed with the applicant and Immigration Officer on 14 September 2023 (see[128]). Following this the applicant was provided with accommodation.
9. On 21 September 2023, a safeguarding referral was made by Care4Calais to the Local Authority (at [153]). KSD was therefore visited by the Local Authority social workers on 21 September 2023 for a welfare check (at 151-152]). The social workers who visited were of the view that the applicant was an adult. They took a photograph of him at (at[155]) showing him in good spirits.
10. The respondent Local Authority ("LA"), sought to undertake an assessment to assess his age which took place on 22 September 2023.
11. He was accompanied by an 'appropriate adult', and he was interviewed by the two social workers, who then produced the age assessment report following that meeting on 22 September 2023 (see report at [165]). Thus assessing the applicant as being over the age of 18 when he first entered the United Kingdom on 11 September 2023. The applicant was provided with a letter setting out the social workers' decision on his age (see letter at [178]).

12. It is that assessment, which the applicant seeks to challenge in these proceedings.
13. On 21 November 2023 , a pre-action letter was sent to the respondent by the applicant's solicitors requesting that the Local Authority undertake an age assessment and to provide the applicant with support pending completion of the report. On 5 December 2023, the Local Authority responded to the letter attaching a copy of the age assessment and maintained its position. A second letter was sent on 11 December 2023 (see [186]).
14. On 2 January 2024, the respondent replied, maintaining that its age assessment was correct. The Local Authority did not agree that there was any basis to treat the applicant as his claimed age or to undertake a further assessment or to provide support on an interim or permanent basis. On 19 January 2024, the solicitors sent a witness statement from his sister, H (at [105-111]).
15. This claim was not issued until 7 March 2024 and was therefore out of time and included an application for interim relief in the Administrative Court.
16. On 10 April 2024, Jonathan Glasson KC (sitting as a Deputy High Court Judge) granted an extension of time to bring the claim and granted permission but refused the interim relief sought in these proceedings and ordered that the claim be transferred to the Upper Tribunal.
17. Standard directions were issued by the Upper Tribunal Lawyer on 26 April 2024 (at [91]-[92]).
18. On 26 July 2024, a case management review was held before Upper Tribunal Judge Mandalia which included orders made for the disclosure of evidence and filing of documents (see [93-96]) and the order made was sealed on 1 August 2024. In that order UTJ Mandalia addressed an application made on behalf of the Local Authority for disclosure of Home Office records from the applicant's solicitors in respect of the witnesses, H and SM. He made an order that the applicant should disclose records relating to H and SM (sister and brother in law), "including, but not limited to, a copy of any screening interview, interview record, and statements made disclosing information about their family," by 6 September 2024.
19. The first part of the disclosure which related to SM was provided and uploaded to the CE File on 13 June 2024 (see [221 bundle 2]) and also on 6 September 2024 (at [323-637]bundle 2). The second part of the disclosure was received on 17 October 2024 (see 43-211SB]) which related to H.

20. Two applications were submitted to the Tribunal - one on 24 October 2024 for an anonymity order to be made and the other on 28 October 2024 seeking permission to rely upon two further witness statements from H and SM. It was stated that, “Both witnesses made an initial statement which we filed on 7 March 2024 and 11 June 2024 and having reviewed their statements, both witnesses wish to rely on 2nd witness statement which seek to clarify the information provided in their 1st witness statements.”
21. Further directions were issued pursuant to those applications made on behalf of the applicant on 28 October 2024 (see [5-6SB]). An anonymity order was made but the other application was adjourned for consideration on the 29 October. The case then came before me for a substantive hearing. The case was listed for a three day hearing commencing on the 29 October 2024.
22. Notwithstanding the late disclosure, there was no application made for an adjournment of the hearing on behalf of the respondent on the day of the hearing. However as much time as had been requested was made available to Counsel for the respondent to consider the documentation before the hearing began.
23. The parties agree that primary issue for the Tribunal is to determine the applicant’s probable age and date of birth.

The legal framework:

24. Part III of the Children Act 1989 (“the 1989 Act”) imposes a range of duties on local authorities in respect of children within their area who are in need. Section 17 of that Act, for example, obliges local authorities to safeguard and promote the welfare of such children and to provide a range and level of services appropriate to their needs. Section 20(1) of the Act requires that every local authority ‘shall provide accommodation for any child in need within their area’. And, by section 23C of the Act, a local authority may continue to be obliged to perform certain functions in respect of a ‘former relevant child’ (or a person who should be treated as such) even after that individual has attained the age of eighteen.
25. By section 105(1) of the 1989 Act, ‘child’ means a person under the age of eighteen. In R (A) v London Borough of Croydon [2009] UKSC 8; [2009] 1 WLR 2557, the Supreme Court held that whether a person is a child is a question of precedent or jurisdictional fact to be determined by the courts: per Lady Hale at [32], with whom Lords Scott, Walker and Neuberger agreed, and Lord Hope at [51].

26. I have been provided with comprehensive skeleton arguments prepared by counsel, which set out the relevant law. It is not necessary for me to review all the relevant authorities at this stage.
27. I take into account the decision of the Court of Appeal in R (CJ) v Cardiff City Council [2011] EWCA Civ 1590; [2012] PTSR 1235. In his judgment, Pitchford LJ (with whom Laws LJ and Lloyd Jones J (as he then was) agreed) held that the nature of the court's enquiry under the Children Act is inquisitorial and that it was inappropriate to speak in terms of a burden of establishing a precedent or jurisdictional fact: [21]. The court is required, Pitchford LJ continued, to apply the balance of probability without resorting to the concept of discharge of a burden of proof, and a 'sympathetic assessment of the evidence' is appropriate.
28. Where the age assessment of the local authority is in dispute it is for the Tribunal or the Court to reach its own assessment of age as a matter of fact by reference to all material and evidence in the case, applying the balance of probabilities standard of proof.
29. Neither party has the burden of proving its case. Rather, the Tribunal will reach its own conclusion on the matter of the Applicant's age, see R (CJ) v Cardiff City Council [2011] EWCA Civ 1590 where at [23], Pitchford LJ said:

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

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

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

31. In R (B) v Merton LBC [2003] EWHC 1689 (Admin), Stanley Burton J laid down guidance to be adopted by local authorities when

undertaking an age assessment. This guidance was summarised in VS v The Home Office [2014] EWHC 2483:

- 1) *The purpose of an age assessment is to establish the chronological age of a young person.*
- 2) *The decision makers cannot determine age solely on the basis of the appearance of the applicant, except in clear cases.*
- 3) *Demeanour can be notoriously unreliable and by itself constituted only ‘somewhat fragile material’: NA v LB of Croydon [2009] EWHC 2357 (Admin) per Blake J at [28]. Demeanour will generally need to be viewed together with other things.*
- 4) *There should be ‘no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child’: see Merton per Stanley Burnton J at [37-38]. The decision, therefore, needs to be based on particular facts concerning the particular person.*
- 5) *There is no burden of proof imposed on the applicant to prove his or her age in the course of the assessment: see Merton per Stanley Burnton J at [38], confirmed by R (CJ) v Cardiff CC [2011] EWCA Civ 1590.*
- 6) *Benefit of any doubt is always given to the unaccompanied asylum-seeking child since it is recognised that age assessment is not a scientific process: A and WK v London Borough of Croydon & Others [2009] EWHC 939 (Admin) per Collins J at [40]; see also [21] of A (AB) v Kent County Council [2020] EWHC 109 (Admin).*
- 7) *The two social workers who carry out the age assessment should be properly trained and experienced: A and WK per Collins J at [38].*
- 8) *The applicant should have an appropriate adult and should be informed of the right to have one, with the purpose of having an appropriate adult also being explained to him or her.*
- 9) *The applicant should be told the purpose of the assessment.*
- 10) *The decision ‘must be based on firm grounds and reasons’ [and] ‘must be fully set out and explained to the applicant’: A and WK per Collins J at [12].*
- 11) *The approach of the assessors must involve trying ‘to establish a rapport with the applicant and any questioning, while recognising the possibility of coaching, should be by means of open-ended and not leading questions.’ It is ‘equally important for the assessors to be aware of the customs and practices and any particular difficulties faced by the applicant in his home society’: A and WK per Collins J at [13].*
- 12) *It is ‘axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him’: R (FZ) v Croydon LBC [2011] EWCA Civ 59, [21]. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant ‘with their conclusions without first giving him the opportunity to deal with the adverse points.’*
- 13) *Assessments devoid of detail and/or reasons for the conclusion are not compliant with Merton guidelines; and the conclusions must be ‘expressed with sufficient detail to explain all the main adverse points which the fuller document showed had influenced the decision’ (FZ, at [22]).”*

The evidence:

32. The parties produced an agreed bundle of documents for the hearing contained in two bundles (hereinafter referred to as bundle 1 and 2). In addition a supplementary bundle of documents was filed during the hearing which included the Asylum and Immigration and Home Office records as disclosed in respect of the H (the applicant’s sister). This bundle shall be referred to as “ SB”. In a separate bundle the parties provided an agreed bundle of relevant

authorities (accessible by email link). During the hearing missing documentation as identified from the Home Office records but which had not been provided was brought by the witness SM. This included his marriage certificate, 4 wedding photographs and his Eritrean ID document. All parties were able to view those documents and copies made available.

33. The applicant attended the hearing and gave evidence with the assistance of the Court interpreter. Ms Simpeh confirmed that there were no specific measures that were necessary to enable the applicant to give his evidence within the meaning of the Joint Presidential Guidance note Number 2 of 2010: Child, Vulnerable Adult and Sensitive Applicant Guidance, but the proceedings featured regular breaks, and the applicant was addressed with concern to ensure that he understood and was comfortable with the proceedings. It was agreed that in accordance with the Guidance that the questions in cross-examination would be asked in way that the applicant could understand.
34. There was no indication that he had any difficulty at any point in understanding the proceedings or that he had any problems giving his evidence. I am satisfied that if there had been they would have been brought to the Tribunal's notice. As stated, the applicant had the benefit of a Court interpreter when giving his evidence in the Arabic language. He also was assisted by an interpreter who summarised the respondent's closing submissions so that he could follow and understand the proceedings.
35. He had provided a witness statement dated 3 April 2024 (at [97]).
36. His sister H attended before the Tribunal and gave oral evidence and was cross examined and also her husband SM attended and was called to give evidence on behalf of the applicant and was cross examined by Ms Rowlands. There is also other written evidence in the bundle relied upon by the respondent which includes 2 witness statements from the two social workers who completed the age assessment.
37. I have also been provided with skeleton arguments from each of the advocates prior to the hearing and written submissions at the conclusion of the evidence and their oral submissions. Following the conclusion of the hearing Ms Simpeh sought to file short submissions. Ms Rowlands also filed a written response to those submissions on the 6 November 2024.
38. I further observe that the applicant is presently seeking international protection, so I do not make any findings of fact or observations on his claim. That is a matter that has been considered by the Home Office and will be decided on appeal to the First-tier

Tribunal by application of a different standard of proof than applied in this matter.

39. When assessing the applicant's credibility, my assessment is being considered in the round, taking due account of the evidence presented with due allowance for the fact that many child asylum seekers will have problems in presenting a coherent account of their personal history and travel to this country.
40. The evidence given by each of the witnesses is recorded in the record of proceedings. I have carefully considered all of the evidence before the Tribunal, including the oral evidence of the witnesses that gave evidence. They were cross-examined and I have had the opportunity of observing them give their evidence. I also have regard to the other evidence before the Tribunal, but whose authors were not called to give evidence.
41. I have not considered it necessary to summarise all of the evidence in this judgment separately as the parties are plainly aware of it and I intend to refer to the parts of the evidence in the course of undertaking an analysis and assessment of the evidence and the findings of fact made. I have carefully read all the evidence, whether specifically referred to and summarised in this decision or not.
42. Both parties made submissions, adopting and expanding upon their written skeleton arguments and written submissions provided after the evidence. They are a matter of record, and I confirm I have taken them into account in my analysis of the evidence, even if not referred to. I am grateful to both advocates for the assistance they have given during the case. As with the oral evidence they are a matter of record and there is no need to set them out in detail. I have taken into account the competing arguments and the relevant issues when assessing the evidence.

Analysis of the evidence:

The age assessments:

43. The applicant arrived on 11 September 2023 by small boat. He applied for asylum. He was assessed by a Chief immigration Officer (CIO), Immigration Officer (IO) and social worker (SW) on 11/9/23 from 15.30-1545 (see [315] and [124]). It is recorded that the applicant understood the Immigration Officer and interpreter and that he was fit, well and happy to be interviewed. The applicant gave his full name when asked how old he was he stated he was 16 with a date of birth of the 3rd/4th/2007. When asked who told him this when he learned it he said, "very young age" and when asked again

how old he was when he was told his date of birth he said, "very young age".

44. The assessing officer's report is set out at [312]. It is stated that "All assessments begin with initial impression made from visual presentation. An initial impression of age ranges formed based on height, facial features including facial hair, skin line/folds, et cetera: voice tone and general impression" It records, "I have therefore looked at the applicant to be satisfied with the assessment in the absence of documentary evidence and based on their size, facial and body hair, and behaviour I was not satisfied that they are the claimed age based on the assessment I am in agreement with IO that the applicant is 24 years of age and they will be registered on our system as born 3/4/1999.
45. It is further recorded that the assessment was witnessed by social worker x who is in agreement that the applicant is 24 years old. "The view of the social worker has been given considerable weight due to the expertise of working with children". The SW observations are set out at page [312]: his claimed date of birth 3/4/2007. "He claimed to be 16 years old but looks older than the age claimed. His mother told him his age. He did not provide any official documents to prove his identity".
46. As regards his physical presentation it was recorded that "K has a visible Adam's apple that has grown forward. He has laughing lines and crow feet. He spoke with clear voice. He spoke with a confident tone, clear voice, indicating that the larynx changes associated with puberty had taken place. K has defined jawline and has defined cheekbones. His facial features are also entirely developed. His nose is large and fully developed and proportionate his face which is common in adults. He has a defined muscle tone, which is consistent with reaching adult age. K has mature skin indicating that he is an adult. K has strong hands, and his fingers were observed to be mature I am mindful that hardship lifestyle and poverty could have contributed to his fingers showing signs of ageing as he travelled for a number of months to reach the UK. K is medium in height and petite built in stature. However the curvature in his body structure indicates developmental changes associated with adult hood".
47. His demeanour was recorded at page [313] and [159] as follows. "K presented as calm and confident individual who was able to assert his views and feelings during the interview meeting. He appeared to be confident contrary to children were normally shy although he was avoiding eye contact with the interviewers. He showed no evidence

of childlike emotional distress or anxiety. He started school when he was 8 or 9 years old. He started school in 2008 or 2009. If that was the case he would be 22 years old. He studied for about 6 years and then changed his mind to 5 years. He stopped school to help his family with the cost of living. When he was challenged, he denied saying the above to the interpreter and said that it started school at a later year. Overall he clearly presented as an adult in his behaviour and physical appearance.”

48. The conclusion is set out at pages[314] and [160]. There were no safeguarding issues identified or reported that needs to be followed up in the UK. It is recorded that “K did not provide any official documents to prove his identity, age or date of birth, his physical appearance and demeanour clearly indicate that he is an adult, K’s appearance and demeanour suggest that he is over the age of 18 years old. K was age assessed as an adult aged 24 with date of birth 3/4/1999”.
49. The outcome is recorded at page 308 as follows: “Treat as an adult: Two officers (one of at least Chief immigration Ofc, higher executive officer, or higher officer have separately determined that their physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age and no other credible evidence exists to the contrary (p308)
50. It is recorded that both assessing officers’ assessment was based on the same level of information as that available to the 1st assessing officer; the assessments were undertaken after they interacted with the claimant or after they observed the claimant’s interaction with other Home Office members of staff or other people around them. Explanation for decision: appearance and demeanour strongly suggests significantly over 18 years of age ([309]).
51. K’s response was also recorded as he continued to say that he was 16 years old [310]. He was informed that his age was disputed.
52. The applicant had made an asylum claim and there is a copy of the initial contact and registration questionnaire at page 128 taken on 14 September 2023 undertaken by an interviewing officer at 13.53 with the applicant and interpreter (Arabic language). He was informed that if he felt unwell at any time during interview he should tell them and confirmed that he was ready to be interviewed. It was made clear that questions were going to be asked about his identity, family, background, travel history and his health. There is a record of the relevant questions asked of the applicant. He gave a date of birth of the 3/4/2007 and said that he had no documents

with him in the UK (1.7); he said he had a sister in Birmingham who arrived in 2019 (Q 1.15). He confirmed that he had no health concerns (p133). At Q2.6 it set out What level of schooling/education did you study to? I did attend school 8th grade [134]

53. As regards his history, it is recorded that he said , “I left Eritrea on August 2022 I travelled to Sudan by car / Foot and stayed there for 10 months. I supported myself by living with my uncle. I then travelled to Libya by car / foot entering and stayed there for 2 months . I stayed where the agents kept us until we got a boat to Italy. I got a boat to Italy on the 5th of August 2023 I stayed in Italy for 2 days travelling to France by train. I stayed in France until the 11 th of September 2023. My maternal uncle paid for my trip in the boat - each country they travelled through Italy France” . He confirmed that he had no documentary material to provide but it is recorded, “I have a visa in my passport”.
54. In relation to his claim for asylum it is recorded , “I have come to the UK to claim asylum as my life is in danger from the regime in Eritrea. I was threatened by the government. I was out in the mountains, and I heard that they came searching for me. I was scared to go back so I left to go to Sudan”.
55. When asked if he had any documents or any other evidence relevant to his claim, family life or other personal circumstances the applicant’s answer is recorded as follows “I do not have any material with me that I can submit. I am not in touch with my mother at present. I will try [143]”.
56. Following the provision of accommodation, a safeguarding referral was made [153] on 21 September 2023 by a volunteer from Care4Calais.
57. He was therefore visited by two social workers on 21 September 2023 (see[151-152]) for a welfare check. The purpose of the visit was a welfare check, age conversation and emotional well-being, advice and support.
58. Their observations were set out in the report as follows:
“you were calm and smiling during most of the conversation but notably withdrawn during discussions around your age. You did not appear mentally or physically unwell and you declared that you were not by the interpreter. You appeared to take a shine to the 2nd social worker completing today’s welfare check as you did not give her much personal space and you also used her work mobile to take a selfie whilst we were in the process of trying to organise your

interpreter. Although she removed her phone from the table after I pointed this out and took this as you just playing around, I did wonder what your motivation is doing this in a setting in which we were people you did not know.”

59. Your voice: you said to us in your own language for the interpreter to translate, “I need to move from here the food is unsatisfactory and I am a child living with an adult in my room. We were not completely sure of this, but we did attempt to reassure you that you will have an age assessment tomorrow to deem you under or over 18. You requested your own tribe’s language which is “Bilen”. This was detailed in the initial referral but are interpreting services did not have access to this language it is very rare for people to speak this. You also speak Tigrinya and Arabic”.
60. You were worried but we could not substantiate whether this is because you were scared of being caught for being an adult posing as a child or scared of being mistaken for an adult when you are in fact a child, it was not our role today to judge either way.
61. The SW also set out that there was also a “slight concern regarding your respect for people’s personal space or personal possessions, I will report this back to my manager for future monitoring”.
62. The analysis is set out at page [152]. They refer to having checked his welfare and that when asked whether there was any physical threat so they knew how to safeguard the applicant he explained that there was no threat as the individual in the room was severely disabled and could not even walk but that he felt they were an adult so he should be away from them. They referred to the Home Office documents which the applicant had brought with him, which detailed that he was over 18. It is recorded, “Myself and the other social worker tended to agree with the Home Office as a result of conversation today although we were not present to be making full judgements of age as this will be clearly the outcome of the age assessments. Having said the above we still had to make an initial judgement that we felt you were not certainly a child by looking at you and speaking to you today and we did not so not (sic) immediate accommodation out of the hotel was necessary. .. “
63. The SW recorded “Appeared to be in good spirits”. The social workers who visited were inclined to think that he was an adult. They took a photograph of him [155] showing him in good spirits.
64. The applicant underwent an age assessment. The date of the assessment was 22 September 2023 with an interpreter present by telephone, language Tigre. It was conducted by SW Mr Adam (lead assessor) and second SW Ms Murray.

65. The age assessment was one described as “For use for reduced length age assessments which are undertaken in cases where it is very clear from the individual’s physical appearance that they are over 18 years of age, with no compelling evidence to the contrary, and therefore a shorter Merton compliant age assessment is justified.”
66. The submissions made on behalf of the applicant seek to challenge the age assessment carried out by the local authority on the basis that the assessment is not “Merton compliant” and as a consequence no weight should be attached to the age assessment in reaching a decision on the applicant’s age .
67. The age assessment report was written by two social workers who undertook the assessment, at [165] to [173]of the agreed bundle. The age assessment was carried out on 22 September 2023. Also present at the age assessment was an appropriate adult and interpreter. The qualifications and expertise of the assessors is set out in their respective witness statements, statement of Mr Adam[121-122] dated 21/6/24 and of Ms Murray [119]-[120] also dated 21/6/24.
68. They set out their qualifications and experience in their respective statements. Mr Adam is a qualified registered Social Worker and holds a PG Diploma in Social Work from February 2012. In addition, he holds an MPhil Degree from University of Swansea in the Variation in Adaptation among Refugees.
69. He has several years of experience of working with children and families particularly with those who are unaccompanied asylum-seeking children. He has been completing a Merton compliant holistic age assessment with those whose age are disputed. He states that he has been completing the age assessment in a holistic way taking into account self-report of their background and family, observations of their behaviour and development, and information held by other agencies to reach a judgement about their likely age. He states that he is mindful that several factors may influence the growth and development of a child / young person, such as genetic, physical, psychological, trauma factors as well as family, community, and culture. He has experience of undertaking age assessments, both as lead and second assessor since 2021.
70. Ms Murray is also a qualified Social Worker and holds a PG Diploma in Social Work obtained in July 2019. In addition, she holds a BA Honours Degree in Working with Children and Families obtained in 2011. Her experience is set out at para 5. She has experience of working with unaccompanied minors within Child in Care Teams,

completing social work assessments with people from a range of nationalities. She states that she is mindful that a number of factors may influence the development of a child/ young person, such as genetic, physical, psychological factors as well as family, community, and culture. She had experience of undertaking age assessments, both as lead and second assessor.

71. Mr Adam's role in the assessment was as a lead assessor, undertaking a fair age assessment interview, along with his colleague, Ms Murray, Senior Social Worker/ Her role in the assessment was as second assessor and shared some questioning with the lead assessor.
72. The applicant's language was confirmed to be Tigre as the language he was able to understand. The role of the interpreter was explained and the applicant confirmed that he was able to understand the interpreter fully and was happy to have them present to interpret for him.
73. The assessment process and what K was told is set out at [167]. It is recorded that K was advised by the assessors at the start of the interview of the process of age assessment. He was told he would be asked a range of questions and would be provided with opportunities to clarify any information gained and should seek clarification if he did not understand a question.
74. Both assessors introduced themselves to K and explained that they are social workers trained to work with children/young people and are not the police or immigration officers. K was asked to be honest and open in respect of the responses to questions put to him. He was also asked if he was fit and well enough to be interviewed by the assessors which he confirmed he was. K was asked if he had an opportunity to have drinks, food and a rest before the start of this assessment. He confirmed he had.
75. The interpreter was asked to check with K that he understood the language he was speaking to him in Tigre and K confirmed he understood the interpreter.
76. It is further recorded at [167] that information about the assessment process was explained to K. They explained that the assessment was being undertaken to make a determination on his age based on the information available at the time of his initial arrival into LA area.
77. The assessment process was also explained to him and that it would be undertaken by the two social workers present and that an appropriate adult and an interpreter would be present during the

age assessment interview. He was also informed that the decision of this age assessment would be provided at the end of the interview. It was also explained to K he had the right to challenge the outcome of the assessment if he is not happy with the outcome of the assessment through his legal representation within three months. It is recorded that K was given time with his appropriate adult before the assessment started to ensure he understood their role. It also recorded that it was explained that he could take breaks at any time when needed and could ask to clarify or repeat any questions if he was unclear about anything.

78. The summary of the assessment is set out at [168]-[170], under the headings of Physical appearance and Demeanour, Family Composition, Education, Journey, Typical day, Religion and Birth Record.

79. Physical appearance and Demeanour:

K has a brown complexion with curly black hair and dark brown eyes. This appeared to be his natural hair colour. K's hair was short in length although longer at the top. K is approximately 5ft 7 inches in height and is slim build.

80. K's appearance, age range and facial features are in keeping with a young person from Eritrea and surrounding countries. His facial features are clearly developed, and he has a defined jawline; his nose is fully developed and proportionate to his face which is common in adults. K has a visible Adam's apple.

81. K's demeanour in the interview was calm and confident, although he did become visibly upset when talking about his family. At times he avoided eye contact with the assessors. He was able to express himself and was comfortable in providing the responses he gave. He was clear about his responses to questions put to him. He remained calm and polite throughout the interview. His responses to the questions demonstrated that he understood what was being asked.

82. Family composition

K reported the following.

My family is made up of my mother, M and my father, I. I do not know the ages of my parents. K explained that he is the youngest of five siblings; he shared that he does not know their ages or dates of birth. K explained that his oldest sister is called H, and she lives in London with her three children. K said that he gave the police the telephone number for his sister, and he no longer has it. K would like to find his sister in the UK.

K gave the names of his other siblings as Hamxx, H and Khxxxx. K said that only H lives in the UK.

83. Education:

K said that he started school in 2014, he said he did not know how old he was when he started school, but he attended Axxx School. K said that he is able to read and write in Arabic. At school he studied the Quran. He left school after five years to help his mother at home.

84. It is recorded that K had previously told the Home Office assessor that he started school when he was 8 or 9 years old in 2008 or 2009, if this was the case he would be approximately 22 years old. The social workers undertaking the age assessment did not have this information prior to meeting with K. The SW stated, "We were confident in our assessment that we did not feel the need to go back and challenge him on this as it would not have changed our view of his age, but this highlighted discrepancies within his account."

85. Journey:

K reported the following. I arrived in the UK on 9th September 2023. I came to the UK by boat from the Jungle camp in Calais, France. My Uncle arranged and paid for this.

I left my country Altria in August 2022. I left my country by Camel, and I entered Sudan illegally. I first went to a town called Wad Sharife, I was there for two days, and my Uncle came, and he took me to Halfa.

In Halfa, I stayed there for seven months. War broke out and I was no longer safe there.

From there, I travelled to Libya by car and my uncle arranged this. Whilst in Libya, I stayed in empty warehouses with other people. The agents fed us macaroni cheese. I got to Libya in June 2023.

I moved on after one month to Tripoli in Italy and I stayed there for a month. I do not know what the weather was like because I had to stay inside the warehouse. I was mistreated and I was not given food and water often. I did not know the other people I was with apart from the agent. There was another young person who was a minor.

I left Tripoli in a small boat. We were rescued at sea in the small boat, the Italian authorities gave us tents to sleep in and water. The place was called Lampedusa. I do not know how long I was there for; I followed some people that I had met in Tripoli, and we went to a place with a bridge. There, we got on a train which took us to Paris, and it took two days.

When I arrived in Paris, I followed people to Calais.

86. K told the assessors that he arrived at the camp in Calais on 11th September 2023 and was there for more than 1 month. The SW stated, "There is a clear discrepancy/confusion here as he arrived in the UK on 09/09/2023. "
87. It is recorded that he said, "I told the people at the Calais camp that I wanted to go to the UK, they contacted my uncle, and he funded my journey. I was able to get on a small boat to the UK. I was scared on the boat. There were people of different nationalities. The boat was made of plastic. When I arrived in the UK during the night, I was given winter clothes by the police here".
88. K told the assessors that he does not like the hotel, he does not like the food. He said I am not happy in my room; I am sharing a room with an ill person. He coughs through the night, it makes me scared, and I am not sleeping well.
89. Typical day
K attended school for 5 years and told assessors that he left school to help his mum.
K said that his typical day in Eritrea would be to help his mother and assist with meals and cleaning up.
Religion: His religion is Muslim. Sometimes he prays.
90. Birth Record:
I do not have any documents with me that show my date of birth. My birth certificate is at home, I do not know what language it is written in, I have never seen it. It is recorded that K was very clear that he has a birth certificate, but it is unclear how he can be so certain as he has never seen it.
91. The Details of analysis (include any identified safeguarding and welfare considerations) are set out at [169]-[172]:

The assessment was undertaken by two qualified social work England registered social workers and supported by an appropriate adult from Number 22. There was an interpreter present throughout the process in person. The role of the appropriate adult was explained, and K confirmed that he understood.
92. K explained that when he arrived in England he got caught by the police and he told them that he was 16 years old. The Home Office advised K that he did not look like he was 16 and they gave them the date of birth as 03/04/1999.
93. K said that he does not have any record of his date of birth, only that his parents told him before he left his country. K said that he is

unable to obtain any documentation to support his age as he has no communication with his family.

94. K had previously told us that people in the camp in Calais were able to contact his uncle on his behalf.
95. K was interviewed as part of the assessment process on 22/10/2023. He was informed that he will get the outcome of the assessment by 25/10/23.
96. The analysis sets out that the Local Authority believed that K is likely to be 24 years of age. They record that the decision was arrived at considering a number of factors and issues which arose during the assessment.
97. The reasons the Local Authority came to this decision are set out:
 - 1) K's appearance is in keeping with a young adult of this age range. His facial features indicate developmental changes associated with adulthood.
 - 2) K informed us that he does not have a birth certificate or any identification document from Eritrea to confirm his claimed date of birth. His understanding of his age is because his parents verbally told him his date of birth. K was very clear that he has a birth certificate, but it is unclear how he can be so certain as he has never seen it.
 - 3) Throughout the assessment K presented as confident and calm. He did become visibly upset when talking about his family and he asked for a short break which was provided.
 - 4) K told the Home Office that he started school when he was 8 or 9 years old in 2008 or 2009, if this was the case he would be approximately 22 years old. K told social workers in this assessment that he started school in 2014 and left after 5 years.
 - 5) Overall, K clearly presented as an adult in his behaviour and overall appearance. His responses were measured and mature and he had a level of confidence not usually seen in children. [171]

The analysis states (in no particular order of significance).

Date of birth/age

K said he was born 03/04/2007 which at the time of the assessment made him 16 years of age. His parents told him this date of birth and he has not seen documentary evidence although he said that he has a birth certificate at home.

Physical Appearance, Interaction and Demeanour ;

K's physical appearance as stated in the summary of this report is in keeping with an adult of his age range, and his facial features are in keeping with a young adult from Eritrea and surrounding countries.

K's demeanour in the interview was calm and confident. He did become upset when sharing information about his family.

Journey to UK

K was able to provide information about the countries he travelled through on his journey to the UK but unable to provide a clear timeline of dates. K said that he left his country in August 2022 his journey took him just over one year. K was able to provide details of the countries he travelled through from the time he started his journey from his home country Eritrea up until he arrived in the UK. However, K's timeline did not reflect this as he couldn't remember much and was often hesitant about the dates and times he spent in these countries. However, this is not unusual considering this is a traumatic journey and taking into consideration lack of sleep, fatigue and the different time zones they travel through countries. He relayed he was assisted by an agent, and he met another young person on part of his journey who was a minor. K shared that his uncle had arranged for him to leave his country and had assisted with some of his travel. K said that people in the camp at Calais were able to contact his uncle to fund the remainder of his journey to the UK. It is not clear how his uncle was contacted when K said that he has no communication now with any members of his family.

98. The assessment set out the outcome and advice given to K. It recorded that he had been advised that the Local Authority cannot determine that he is a child, and a conclusion has been reached in respect to his age through a holistic consideration of all relevant factors and information available at the time of the assessment. This included but was not limited to factors such as culture, linguistic, emotional and physical developmental factors. The benefit of the doubt principle was not felt applicable in this case.
99. The decision reached by the SW 's was that his claimed age of 16 years old DOB: 03/04/2007 is not agreed. They were of the view that he was "Clearly an adult - K has stated that his age is 16 years old. Our assessment has concluded that K is older than his claimed age and social workers are in agreement with the Home Office assessment that K is 24 years old with a birth date of 03/04/1999.
100. The assessors also recorded K and his presentation after the interview as follows: K appeared fit and well during and after the assessment. He expressed that he was unhappy living at the hotel.

He confirmed that he was in good health(other than not sleeping well due to roommate coughing).

101. The SW's also recorded his demeanour at end of assessment_ as follows:
"K presented calm, friendly and polite throughout the assessment. He did not seem to be surprised or upset at the outcome of the assessment. He thanked us for our time and went back to his room".
102. K was provided with a letter of the outcome of the assessment which was read by the social worker and translated by the interpreter. It is further recorded that, "K did not appear to be surprised or upset at the outcome of the assessment. He thanked us for our time."
103. Additional information It was explained to K that his age given by the Home Office of 24 years old was agreed with by the assessing social workers and that he would not be supported by the LA.
104. Purpose of the visit: to undertake an initial screening age assessment with you. The assessment would involve conversations with you on your journey to the UK, your education, your family and other questions that could help in determining your age as your age was disputed by the Home Office upon your arrival and you were deemed to be an adult with the age of 24 years.

Observation: " he was seen well and healthy. You confirmed you were well to start the age assessment with you. You were calm during assessment, but you got a bit emotional and tearful when talked about your journey. You were given time to calm down and you completed the assessment. You are advised that we concluded that you are not under 18 from the information gathered and in line with H0 assessment as well as our social work colleagues observation yesterday. You are advised to seek legal advice if you are not in agreement with our conclusion. You are advised you will be provided with an outcome letter of the age assessment.

Your voice: you believe that you were under 18 with DOB 3/4/2007. You do not like to live in the hotel and share with older person in the room. You also said you did not like the food and live in the hotel with all people.

What is working well? You were seen healthy and fit; you feel safe in a hotel access to meals and shower. You appear to have some friends who speak Arabic like you. You have a married sister in the

UK, and you would like to trace her. You did not appear to be too worried when we decided that you are over 18.

What needs to happen? You need to seek legal advice if you do not accept our conclusion that you are an adult in line with the Home Office assessment and our social work colleagues who saw you on 21/9/23.

105. Analysis: today we carried out age assessment with you, K. We concluded that you are an adult over 18 years old. You are provided a letter, and you will be provided with a copy of the full assessment within this week. You did not provide any evidence to disprove you are not an adult in line with the views of 2 social workers you met on 21/9, and the Home Office's age assessment deemed you upon your arrival. You did not produce any documentary evidence to confirm that you are under 18 years. You were advised to bring a copy of your birth certificate to reconsider your age.
106. The submissions on behalf of the applicant sought to argue that the age assessment was unlawful and as such no weight should be placed on it. There are specific criticisms made of the assessment as set out in submissions advanced on behalf of the applicant. In particular that that the applicant was not given the opportunity to respond to it as there was no "minded -to" meeting conducted. This is the aspect of the process whereby adverse inferences are put to the individual applicant before a final decision. It is further submitted that as to the assessment of his appearance and his demeanour, which relates to both the Home Office assessment and the later social work assessments should not be relied upon because those interviews were short, they were undertaken after arrival and in any event physical appearance and demeanour are unreliable factors of age.
107. By way of response, Ms Rowlands submits that weight should be attached to the age assessment and that this was a lawful assessment. It was not the case that this assessment was not worthy of any weight. She submitted that the Tribunal should not spend time on procedural challenges, and that whilst the procedural challenge here is that there was no "minded to session", this was academic because there has been every opportunity to respond to the assessment. She submitted that the "minded to" session was not required because it was an obvious case that he was an adult, and that the social worker concluded that he was clearly and obviously an adult and had reached an assessment that was also consistent with the earlier Home Office assessment both in terms of physical appearance and also his demeanour. The assessments are

consistent with each other that K is well over 16 as were the other assessments made which also noted that he was calm and confident when dealing with people who are assessing him. Weight can be attached to an assessment that relies upon physical appearance and demeanour.

108. When addressing their respective submissions there is no statutorily prescribed way identifying how local authorities are obliged to carry out age assessments and the law proceeds on the basis that the most reliable means of assessing the age of the child or young person in the circumstances in which no documentary evidence is available by a "Merton compliant" assessment (see R(B) v Merton London Borough Council [2003] EWHC 1698 (Admin) confirmed by the Court of Appeal in BF(Eritrea) [2020] 1 All ER 396 at [53]).
109. Whilst it is submitted on behalf of the applicant that that the age assessment was unlawful due to the procedure adopted, as Ms Rowlands submits short form age assessments are not unlawful depending on the circumstances.
110. In R (HAM) v London Borough of Brent Swift J stated that it was clear that Stanley Burnton J in Merton did not equate the legal requirement for any fair procedure with any sort of checklist and that fairness is a matter of substance and not simple form. Swift J stated that this was the "origin and essence of the observations at paragraph 50 [of Stanley Burnton's judgement]" which Swift J described as critical. He said that when considering whether an Age Assessment has been conducted fairly the court must focus on the case before it; however, while he said it would be wrong to regard each item on the list with reference to VS and AB as a requirement of fairness in each case. This includes the "minded to" meeting.
111. It is therefore submitted on behalf of the applicant that the process was unfair, and that the respondent breached the requirements of procedural fairness. I have considered those submissions in the context of the particular circumstances.
112. In this regard, I observe that the age assessment is part of the evidence, but it does not enjoy any special status or to properly be described as "expert". However as set out earlier in the summary provided, the age assessment was carried out by two experienced social workers and thus properly forms part of the evidence of the case which is to be considered "in the round".

113. Ms Simpeh in her submissions referred to the reasoning given by the social workers at page [171] and that they were not put to the applicant following their meeting with the applicant. They as follows:
- (1) K's appearance is in keeping with a young adult of this age range. His facial features indicate developmental changes associated with adult hood.
 - (2) K informed us that he does not have a birth certificate or any identification document from Eritrea to confirm his claimed date of birth. His understanding of his age is because his parents verbally told him of his date of birth. K was very clear that he has a birth certificate, but it is unclear how he could be so certain as he has never seen it.
 - (3) Throughout the assessment K presented as confident and calm. He did become visibly upset when talking about his family and he asked for a short break which was provided.
 - (4) K told the Home Office that he started school when he was 8 or 9 years old in 2008 or 2009, if this was the case he would be approximately 22 years old. K told social workers in this assessment that he started school in 2014 and left after 5 years.
 - (5) Overall K clearly presented as an adult in his behaviour and overall appearance. His responses were measured and mature and he had a level of confidence not usually seen in children.
114. When addressing the submissions, it is necessary to take into account that that reasoning is not to be viewed in isolation from the other parts of the analysis set out in the age assessment report and the information provided by the applicant.
115. There is no dispute that there was "no minded to" meeting undertaken. However this is always a "case-sensitive question", and the essential requirement is procedural fairness. Having considered the advocates' submissions on this issue and in the context of the assessment, I agree with the submission made by Ms Rowlands that a relevant question to ask in this context is what would have been achieved by taking that step. Whilst Ms Simpeh submits that the process was unfair by not holding a "minded to" meeting because the applicant was not able to answer the points made against the applicant, a central issue in the assessment concerned the applicant's physical appearance and demeanour. That is plain from reading this assessment at subparagraphs 1, 3 and 5 as set out above and the earlier assessments that were undertaken. It is difficult to see what would have been gained by following "a minded to" interview in such circumstances.

116. As to the issue of the birth certificate, the social workers were recording what the applicant had said to them, namely that he did not have any documents with him to show his date of birth but that he had said to them that his birth certificate was at home, but he did not know what language it was written in as he had never seen it. Their view was K was very clear that he had a birth certificate, but it was unclear how he could be so certain as he said he had never seen it (see [170]). The social workers also recorded that K had said he was unable to obtain any documentation to support his age as he had no communication with his family. In this context they also recorded that K had previously told them that people in the camp in Calais were able to contact his uncle on his behalf (see [170]). The applicant addressed this issue in his written evidence stating that he did not say that he had a birth certificate (see paragraph 15 of witness statement). In the circumstances it is difficult to see what would have been gained by a “minded to” meeting setting out that issue. Given the applicant’s account that he never said what is recorded, it has not been demonstrated that any difference would be made to this issue as the local authority’s position remains as it does now that he said he had a birth certificate.
117. As to his account of the year that he started school, this was recorded as being given to the Home Office originally and not to the age assessors. They did not have that information prior to meeting with K for the assessment (see [169]). They gave their reasoning for not going back to him on this issue as they considered it would not have changed their view of his age. It seems to me that that is relevant to their overall assessment of his age in the context of their assessment based on his physical appearance and demeanour but that this did highlight a discrepancy within his account which may have elicited a different response. However the applicant’s account is that he did not say that which is recorded in the Home Office interview. He states, “My solicitors told me that the Home Office recorded that I started school when I was 8 or 9 in 2008 or 2009 and that the independent social workers have relied on this to say that I am over 18. In my initial meeting with the Home Office, I had just arrived in the UK, and I was exhausted and scared from my journey. More importantly, I did not understand the interpreter that was translating at this time and believe he did not understand me. I told the Home Office interpreter that I attended school when I was 7 or 8 and I don’t know why they recorded that this was in 2008 or 2009 “and that is his case presently. Other than highlighting that there is a discrepancy it is difficult again to see what difference a “minded to” meeting would have made to this issue, but I agree that this could have been explored at such a meeting. Nonetheless the issue

of whether he said this or not, alongside other factual issues have been matters that have been addressed through written and oral evidence and thus issues to be determined at this hearing.

118. Dealing with the issue of physical appearance and demeanour, the age assessment relied upon the social workers' assessment of both the applicant's physical appearance and his demeanour.
119. I have taken into account the case law relied upon by Ms Simpeh which highlights that physical appearance alone can never be effectively relied upon to determine chronological age. As stated such characteristics are likely to be of very limited value as there is no clear relationship between chronological age and physical maturity (I refer to R(on the application of AM) v Solihull MBC [2012] UKUT 00118). Furthermore, the reliance upon physical appearance is an unreliable basis for assessment, as found in NA, R (on the application of) v London Borough of Croydon [2009] EWHC 2357 at [27].
120. That said, assessment of appearance is not wholly excluded from the process (see R (FZ) v London Borough of Croydon [2011] EWCA Civ 59 which confirmed that social workers in the course of an age assessment, "be able to judge a putative child general appearance and demeanour and to make general credibility judgements from the manner in which he answered their questions. It does not follow that the court would be bound to make the same judgements " (at [29]).
121. The relevant guidance refers to matters such as presence of hair on an individual's body being affected by matters of ethnicity and genetic background. Whether an applicant has a broken voice or not or an Adam's apple may not assist in determining the issue of age as recognised in the authorities cited by Ms Simpeh. However it is not unreasonable or irrational for the age assessors to take into account the applicant's physical characteristics and developmental considerations. Physical appearance is not an entirely irrelevant factor to take into account when assessing a person's age. However the authorities cited by Ms Simpeh demonstrate that caution should be exercised when it comes to weight attributable to this particular consideration. Demeanour is also relevant consideration and again should be treated with caution. This may not be a significant factor, but it is one that can be taken into account.
122. The social workers' assessment of the applicant was that he was clearly over 16. In summary, they found that his appearance and his facial features were clearly developed, that he had a defined jawline

and that his nose was fully developed and proportionate to his face which is common in adults, and he had a visible Adam's apple. In terms of his demeanour, the social workers both assessed the applicant as having a calm and confident demeanour during the interview. He was described as being able to express himself and was comfortable in providing the responses he gave and was clear about his responses to the questions put to him. It is recorded that the responses to the questions demonstrated that he understood what was being asked of him. They did note that he became upset when sharing information about his family. They formed the conclusion that overall K clearly presented as an adult in his behaviour and overall appearance. His responses were measured and mature and that he had a level of confidence not usually seen in children.

123. The conclusions reached by the age assessors on his physical appearance and demeanour were consistent with other evidence taken from earlier assessments. The first assessment on 11 September 2023 conducted by the CIO, IO and a social worker concluded that the applicant was not 16 years of age as claimed but was considerably older. It was recorded that the view of the social worker was given considerable weight due to their expertise of working with children. As to his physical presentation, it was noted that K had a visible Adam's apple that had grown forward. He had laughing lines and crow's feet. He was described as speaking with a clear voice, a confident tone, indicating larynx changes associated with puberty having taken place. He was found to have a defined jawline and defined cheekbones, and his facial features were "entirely developed". Reference was made to his speech as being common in adults and having a defined muscle tone. It was further recorded that the body structure of the applicant indicated developmental changes associated with adulthood. In so far as his demeanour was assessed, it is recorded that he presented as a calm and confident individual who was able to assert his views and feelings during the interview meeting compared with children who are normally shy although he avoided eye contact with the interviewers. It was recorded that he showed no evidence of childlike emotional distress or anxiety. The outcome of their assessment is recorded at [308] and that 2 officers had separately determined that his physical appearance/demeanour strongly suggested that the applicant was significantly over 18 years of age and that no other credible evidence existed to the contrary. It is also recorded that the assessment was undertaken after their interaction with him or after they observed his interaction with other members of staff.

124. Following this the applicant met with 2 further social workers for a statutory visit on 21 September 2023. In the documentation provided between [151-152] the social workers recorded their interaction with the applicant which included his behaviour with the female social worker, using her phone to take “selfies”. Whilst they were not conducting an age assessment, it is recorded that the social workers agreed with the Home Office’s assessment that he was not a child and did not therefore recommend that he required accommodation away from the hotel in which he had been placed.
125. Submissions were also made on behalf of the applicant that the assessment should not be given weight (or in the alternative little weight) based on procedural unfairness in the context of the applicant being interviewed shortly after arrival and the general circumstances of the interview. This was based on the applicant’s evidence as set out in his witness statement but also in his oral evidence. In submissions this issue was one which was addressed by reference to the applicant’s evidence generally and his credibility, but it seems to me that it is also relevant to what is recorded in the relevant interviews and assessments and whether the applicant did say what is recorded and whether the process adopted was unfair.
126. The applicant’s evidence about the age assessment is set out at [99] between paragraphs 12 and 17. In summary he states that he found the process very intimidating and scary and that they asked him a number of questions relating to his childhood in Eritrea and his journey and they wanted a lot of specific dates and information and did not feel at all comfortable during the meeting. As regards specific answers that were given, the applicant states that the age assessment recorded him saying that he had a birth certificate at home, but he denies saying that he had a birth certificate and that he was very clear that he had never seen any documents containing his age and cannot say whether they exist back at home. As to the record of the interview made by the Home Office which set out that he had said he started school when he was 8 or 9 in 2008 or 2009, he sets out that in that meeting he had just arrived in the UK was exhausted and scared. He also stated that he did not understand the interpreter that was translating at this time and believed that he (the interpreter) did not understand him. He states that he told the Home Office that he attended school when he was 7 or 8 and does not know why it was recorded as 2008 or 2009.
127. This was also explored during the oral evidence. He was asked questions in cross examination about that meeting on 21 September and that his behaviour by picking up the mobile phone and taking photographs of himself displayed confidence. The applicant stated

that it was not confidence but because they treated him very well. In his evidence he sought to contrast the difference in the way in which he had been treated by the social workers on 21 September with those present at the age assessment. He agreed in cross examination that he understood the interpreter. When it was put to him that the age assessment records show that he was asked about the journey to the UK and his education, school and background and there was nothing scary or intimidating about those questions, the applicant stated that it was difficult for him because he had never had meetings like that. When it was suggested to him that it was difficult because he was lying about his age he stated that that was not correct but that when they asked questions they had looked at him and he felt a bit intimidated. In re-examination he said he was not scared of the social workers who came on 21 September because they brought him things and they talked to him nicely but when asked about the difference between that and the 2nd meeting he replied that the 2nd time they asked lots of questions about childhood and family and siblings and were looking at him staring and he felt uncomfortable.

128. It also recorded at [179] that “he instructs the whole process was very intimidating and he felt as though the assessors were trying to make him feel uncomfortable.”
129. I have considered the evidence from those separate sources alongside the evidence of the applicant. Having done so I do not accept the applicant’s account that he found the process either intimidating or scary; whether this was during the interview with the Home Office and social worker who was present or at the age assessment conducted by the 2 social workers. I also take into account the account given in the evidence of the welfare visit which was undertaken by 2 separate social workers which also provides a reflection of the applicant’s behaviour and demeanour on that occasion.
130. As regards the 1st interview I take into account that it took place on the day of arrival although he was not interviewed immediately. However the observations of those present were recorded from their own interactions with the applicant as set out at [313] and that K presented as a calm and confident individual who was able to assert his views and feelings during the interview meeting. By way of example, it is recorded that after he had given the year 2008 at 2009 as the date he started school, when later challenged he denied saying that to the interpreter and said that he had started school at a later year. They also recorded that he appeared to be confident and that he showed no evidence of childlike emotional distress or

anxiety. I take into account that during the interview he was in the presence of 3 adult strangers.

131. The applicant's confidence was not only recorded as present during the initial interview but also at the statutory visit which took place with 2 further social workers on 21 September 2023. I am satisfied that they recorded their own observations of the applicant, and I am also satisfied that their recording of him as being calm and smiley during most of the conversation was an accurate recording of his behaviour and also that they found that he was notably withdrawn during discussions about his age. What was also of significance was the applicant's behaviour to one of the female social workers present at the meeting. It is recorded that the applicant appeared to take a shine to the 2nd (female) social worker completing the welfare check and that he did not give her much personal space and used her mobile phone to take a "selfie" whilst she was in the process of trying to organise an interpreter. She had to remove the phone from the table. The social worker present recorded their view concerning the applicant's motivation in a setting where he was with people he did not know and recorded that he was "slightly concerned regarding your respect of people's personal space and personal possessions". I do not accept his account that he did this because they treated him well but find that it was a reflection of his feelings and demeanour on that day whereby he felt confident and in control of the environment.
132. It is submitted on behalf of the respondent that K's adult behaviour was also exemplified by his reference to the use of the word "girl" when referring to the social worker. Ms Rowlands submitted that this was on a peer-to-peer basis. Ms Simpeh submitted that there was no significance in the use of that word and that other witnesses use the word "girl", and the use of the word did not mean that he was speaking to a "peer". It seems to me that the use of the word has to be considered as used in its context and that he was using that word as an expression of parity, i.e. that he felt comfortable with someone older, and this was not the conduct of someone who was a child. This mirrors the recorded behaviour of getting close to the female social worker and invading her space. Whilst Ms Simpeh submitted this was juvenile behaviour I do not agree. I consider that if he was a child of 16 that he would not have felt able to get close to a woman who was a stranger in those circumstances. It is more likely than not to have been a display of bravado and confidence in that setting consistent with an age older than 16. It is not a piece of evidence that has significant weight but is evidence to be factored into the overall assessment.

133. Submissions were also made that the responses recorded in the interview may not be accurate. These submissions were sent by email after the hearing had been completed. Ms Rowlands provided a short reply to those submissions. It was submitted that social workers, interpreters and Home Office assessors are not devoid of errors and that errors during interpretation could occur as well as the recording of information. In this context it was submitted that the Home Office assessors note whilst stating that he was from Eritrea (see [316], it was recorded in the report that his nationality was Afghan (at [315]) and therefore was an error. Having considered that point, I find that it is no more than a minor error and the HO interview proper takes into account his nationality as Eritrean, which is referred to in more than one place during the interview. In terms of substance, it does not change the weight to be given to either the observations of the applicant's physical appearance recorded by the Home Office immigration officers or the social worker which clearly relate to the applicant as an Eritrean national rather than an Afghan National, and the other documentation which refers to him as a national of Eritrea.
134. The 2nd point made in behalf of the applicant was that the social workers and their original notes had noted that the applicant's date of arrival was 9 September 2023 ((see [174]), but the applicant always maintained he arrived on 11 September 2023. It is submitted that the social workers said there was a clear discrepancy /confusion with his account of arriving on 11 September 2023 as he arrived in the UK on 9 September 2023 (see [169]). Thus it is submitted that the social workers were wrong about his arrival on 9 September 2023 and the applicant was being truthful.
135. There is no merit in that submission. It fails to take into account the context of the written evidence. The social workers record at page 169 what the applicant had stated to them, which was that he had arrived on 9 September 2023. This is reflected in the handwritten note of the interview, "I arrived 9 September" which is what the applicant had said to the social workers. They were therefore correct in stating that the applicant had also said that he arrived in Calais on 11 September 2023 and remained for a month (see page 175 hand written notes) which was inconsistent with his stated response that he arrived in the UK on 9 September 2023 which was the date of arrival given by the applicant when interviewed. It is more likely than not that the assessors accurately recorded what the applicant had said in the light of there being 2 different dates as recorded in the handwritten notes. Those notes are contemporaneous and are more reliable due to the immediacy of recording and engaging and writing down the information in real time.

136. The last point made was that the social workers also recorded that the applicant had been interviewed as part of the assessment process on 22 October 2023 and informed on 25 October 2023, but those dates were incorrect as he was interviewed on 22 September 2023 and informed on 25 October 2023. Having considered that in the context of the evidence, I am satisfied that this is nothing more than a typographical error and is not of any substance nor that this can properly undermine the social work records. I shall deal with these aspects of the applicant's evidence later in the analysis of his evidence and credibility.
137. I also reject K's evidence concerning the circumstances of the age assessment and that it was undertaken in an intimidating way, that the social workers made him feel uncomfortable or that the answers given to questions as recorded were either not said or were not translated properly. Whilst I take into account that it is unlikely that he would have attended meetings like this in the past, for the reasons given earlier I am satisfied that at the 2 previous meetings with the social workers or immigration officers could not be viewed as scary or intimidating and that K did present and behave in the way that is recorded. The evidence on this issue is consistent.
138. By reference to the process of the age assessment, the questions that he had been asked included questions about his journey to the UK, his education, school and background and could not be viewed as scary or intimidating. I also take into account the evidence of the social workers as to how the age assessment was conducted. It took place between the applicant and 2 social workers both of whom have set out their experience and expertise in conducting age assessments. The lead assessor has several years of experience of working with children and families particularly with Unaccompanied Asylum Seeking Children. He also has experience of completing age assessments. The other social worker present also has experience of working with unaccompanied minors and completing assessments of people from a range of nationalities. There is no suggestion that either of the 2 social workers assessors' did not have the expertise or knowledge in undertaking age assessments.
139. I accept the written evidence as to how the age assessment was conducted as this is likely to be the more reliable account as to the circumstances. The process and what K had been told about it is set out at [167]. K was told that he would be asked range of questions and would be provided with an opportunity to clarify information and importantly that he should seek clarification if he did not understand the question. He was asked if he was fit and well enough to be interviewed and he confirmed he was and was asked if he had any drink, food and rest before the start of the assessment

which he confirmed he had. It is also recorded that the interpreter checked with K that he understood the language and for K to confirm that he understood the interpreter which he did.

140. Whilst K's account is that he had never said many of the factual matters attributed to him or that there was a fault with the interpreter, the age assessment records that he confirmed he understood the interpreter and it was made clear to him that if he did not understand he could say so.
141. I take also into account that there is no reference in the assessment to any concerns being raised by either the interpreter or the appropriate adult who was present. The applicant was supported by an appropriate adult who is independent of the local authority and whose role it was to ensure that the applicant was treated fairly. There is no evidence of any concerns raised by the appropriate adult as to the fairness of the interview and it is of significance when considering the applicant's account. I therefore accept the written evidence of the lead assessor as the more reliable and accurate description of K's demeanour and behaviour during the assessment whereby he was described as being confident and calm, that he was comfortable in providing the responses he gave and was able to express himself and that his responses to the questions demonstrated that he understood what was being asked. I accept as more accurate their conclusions reached based on their interactions with him that he presented as an adult with responses which were measured and mature and that he had a level of confidence not usually seen in children.
142. Drawing those matters together, a short form age assessment as this was, is not per se unlawful. Whilst there was "no minded to" process undertaken, the question of whether an age assessment has been conducted fairly, must be considered by focusing on the case before it. For the reasons set out above, I have not reached the conclusion that the age assessment was flawed on the basis that it was procedurally unfair by the way in which it was conducted, or that the replies as recorded were not as stated by the applicant. I take into account that there was no "minded to" meeting undertaken and therefore in respect of some of the issues which related to credibility were not put to the applicant. As set out above the reasoning which referred to their assessment of his physical appearance and demeanour were not matters which could have elicited any different view by the applicant had there been a "minded to" meeting but other issues such as the birth certificate and dates could have been put to the applicant. However in this context I take into account that neither party has the burden of proving its case on the applicant's age. Rather, the Tribunal will reach its own conclusion on the matter of the Applicant's age, see R

(CJ) v Cardiff City Council [2011] EWCA Civ 1590 where at [23], Pitchford LJ said:

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

143. Thus even if I were to find that there had been procedural unfairness the Tribunal is not, primarily, concerned with whether the Respondent's assessment of K's age was lawful. In R (FZ) v London Borough of Croydon [2011] EWCA Civ 59, the Court of Appeal observed:

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

144. Where the age assessment of the local authority is in dispute, it is for the Tribunal to reach its own assessment of age, as a matter of fact (see R (A) v Croydon London Borough Council [2009] UKSC 8).
145. Thus having considered the advocates' respective submissions and in the context of the legal authorities cited I have reached the conclusion that it is not the purpose of this judicial review to assess the legality of it, save to the extent that it is necessary to consider what weight to attach to that analysis undertaken. I accept the submissions made by Ms Rowlands and therefore any failures in the conduct of the age assessment itself (if there were any) go primarily to the weight the conclusions of the document attract in the assessment of the tribunal(see SB v Kensington and Chelsea RLBC [2023] EWCA Civ 924 at [86]). It forms part of the evidential landscape to be ascribed weight as appropriate and to be considered as part of the overall review of the evidence in the round. I therefore reject Ms Simpeh's submission that no weight should be given to the age assessment in this regard. In attributing weight to the age assessment I take into account that the social workers have provided details of their qualifications and work

experience; both have worked with asylum seekers and in particular unaccompanied asylum seeking children and have been trained in conducting age assessments and both of undertaken such assessments in the past. Thus I am satisfied that they are both experienced social workers with relevant experience and skills undertaking the task of assessing age and therefore their views carry weight. For the reasons that I have set out I am not satisfied that their recollection or recording of the evidence was in error, nor that they adopted an unsympathetic or any approach which made the applicant uncomfortable. I accept that in the light of their skills and experience, their views on his age were based on the evidence that he had provided but also the way that he presented and conducted himself and also the basis of his physical appearance. As set out, I am mindful of the fact that physical appearance and demeanour are factors which are unreliable in determining age but also their conclusions in this respect should be accorded some weight. It was not just the views of those 2 social workers that also the view of the immigration officer who also conducted an assessment.

The applicant's evidence:

146. 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 MNV v London Borough of Greenwich [2015] EWHC 1942 (Admin) Picken J set out, " it would, therefore, appear that the primary focus is on the credibility of the persons evidence concerning his or her age, but that it is permissible to have regard credibility more generally provided that, in looking at credibility more generally, the primary focus to which I referred is not forgotten...."
147. When beginning an analysis of the evidence in the absence of documentary evidence of the applicant's age, the appropriate starting point is an assessment of the applicant's age on the basis of the credibility of the applicant's evidence. In this regard I have considered his evidence and other sources of information including evidence of other witnesses, background material and the closing submissions made by the advocates.
148. Through my consideration of the evidence I have taken into account the likely difficulties the applicant may have experienced and the cultural differences that there are likely to be, and I have been careful not to proceed on any assumption or view the evidence from

a western or UK perspective. I again remind myself there is no burden on either party.

149. It is submitted on behalf of the applicant that his evidence is credible and consistent. Whilst the applicant has given the same date of birth when present in the UK and has been consistent in that, the issue arises as to how he knows his date of birth and the credibility of his evidence in that regard alongside his credibility and the credibility of the two witnesses called in evidence.
150. The applicant claims to be born on 3 April 2007. The written evidence (w/s 3/6/24) sets out that he started attending school in Eritrea when 7 or 8 in 2014 and that he studied for about 5 years. He left school to help his mother with the sheep and when the government found out that he had left school they came looking for him "because those are the rules in Eritrea". The brother of his mother helped him leave Eritrea in 2022 to avoid joining the army. He states that he has never seen a birth certificate containing his date of birth and that he knows his date of birth because he states, "my parents told me".
151. Part of the applicant's evidence as to his age is that he claims to have never seen a birth certificate or any document giving his date of birth although it is of note that his evidence in this regard has not been consistent. He stated in his witness statement he knows his date of birth because his parents told him (para 5, (98AB)). He stated that he started attending school in Eritrea when about 7 or 8 and this was in 2014 where he attended for 5 years until he left to help his mother with the farm. The government found out he left school they came looking for him and he left Eritrea.
152. When assessing the applicant's evidence what is significant is the lack of detail concerning important factual issues such as the circumstances in which he was told his age by his parents; when, and where and why, evidence as to whether family events and birthdays are celebrated in Eritrea and whilst he refers to having siblings there is no reference to their ages, their dates of birth vis-à-vis him. There is also no reference to any important events in his life which are referable to his age. In fact there were none given by him. I agree with the submission made by Ms Rowlands that the evidence in the witness statement is lacking in detail concerning the relevant and important aspects of parts of his life which would assist the Tribunal in assessing his claimed date of birth and how he knows it.
153. In her submissions Ms Simpeh acknowledged that K did not answer some questions that he was asked in oral evidence but that this

should not go to his credibility because a young person may not remember dates. She further submitted that K did give the date of 2014 as the date that he started school and that he was able to provide what she described as “ key dates” for example, he started school in 2014, that he left Eritrea in August 2022, left Sudan in June 2023, and arrived in the UK in September 2023.

154. I have had the opportunity to see and hear the applicant give oral evidence and for that account be subject to cross-examination. Again it is a striking feature that his evidence in this regard was similarly lacking in detail as his witness statement as was clear from his responses to questions during cross examination but also in re-examination. The applicant was asked general and open questions to elicit information about his background, growing up in Eritrea and his family members. All those questions were reasonable for the applicant to be able to provide some answers to in detail. They did not require any reference to dates as submitted.
155. By way of example the applicant was asked about the young people that he had spent time with both in his accommodation and those he met at college. When asked the age of the other males who shared a house with he said, “I do not know”, when asked if they were older or younger he was unable to say. When asked if he had friends in the UK he said that he had no more contact with them and when he goes to class, “we start talking”. Nothing could be gleaned from his answers to provide any background to his life in the UK and those he spends time with.
156. When asked about family members and their ages, his evidence was similarly deficient and lacking in credibility. When asked about his cousins and if he played with them, he stated, “I do not remember”. Whilst he was able to say that he had siblings, when asked to give the age differences between them he said, “I do not know”. When asked why he did not know his response was, “I never asked them about their ages”. When this was explored on the basis of whether they were older or younger, he stated that they were older but when Counsel attempted to ask questions to put their ages in an everyday context the applicant reverted to saying he could not remember. For example, when he stated that they were all at school and said they were not in his year, when asked if they were 1 or 2 years above him at school he said, “I do not remember”, when asked if they went to the same school he said, “maybe same school”. When asked if he saw them at school at break times he said, “no”. When Counsel asked him an open question by asking him what sort of things he did outside of school, the applicant responded, “I do not remember

everything; I was playing. I had friends at school. That's all I remember".

157. In an attempt to obtain information about his life, he was asked if he could remember any notable event when living in Eritrea. This was an open question, and it is reasonable to expect that the applicant would be able to point to something in his life when growing up in Eritrea. The appellant's response was, "no".
158. When asked about questions concerning his home and location when asked if his farm was in a separate location to his house he replied, "yes" but when asked how far away it was he said, "I can't be specific". When asked how far away it was he said that he could not specify and again when asked how long it took to get there on foot he was not able to provide an answer. He had agreed in his evidence that this had been a journey that he did most days and if travelling between his home on the farm it is reasonable that he would be able to provide some estimation of how long it took him to get there by foot. The way in which he was reluctant to provide answers to questions that he would reasonably be able to do created the impression that he was reluctant to give any detail about his home life and his family members which might shed light on his age.
159. These were not evidential issues which were peripheral to the issue of age but relevant to it. This extended to questions asked about his school and education. His answers in my view demonstrated a reluctance to provide answers or provide any detail which was reasonable to expect in all the circumstances.
160. In his witness statement he claimed to have attended school from the age of 7 or 8 in 2014 and had studied for about 5 years. He was cross-examined about this and when asked what age he started school he said, "I was 7 years old" but when asked if this was the normal age to start school he said that he did not know but that he had started. When asked what year he started school he said, "when I was 7". When asked again what year he said, "in the decade of 2000" it was notable that he did not identify the year 2014 in his oral evidence. He did however deny saying that it started school at age 8 or 9 to the Home Office.
161. When asked straightforward questions about his education he provided little evidence or none at all. By way of example when asked if he could provide evidence about the school year he could provide no answer to this including the length of the school year, again stating, "I do not know". It had been recorded that he told the

Home Office that he attended school to the 8th grade and when asked what grade 8 was at school he said he did not know. When asked if he started school at 7 and if this was the 1st grade he said “no” but when asked if it was he said that when he went to school he went at 8. Ms Rowlands asked a number of questions in an attempt to elicit from the applicant information about the school that he claimed to have attended but to no avail. When explaining that she was trying to understand what age the 8th grade would be he said, “I do not know.”

162. In my view the applicant did not provide any detail about his attendance at school or provide any description of the years that he was there or the school system he claimed to have been part of. This was a striking omission because the applicant claimed that he was able to know his age by reference to his education. However when cross-examined about this, his lack of knowledge or reluctance to answer questions in this area was plainly apparent. Even questions which were generalised in nature, for example when asked if normal school in Eritrea was from 8 - 16? He stated, “I cannot tell you. I started at 7”. When asked if his older sisters had left school earlier he stated, “I do not know”. When asked what year it was when he left school he said he did not know. When asked if his sister was still attending school when he left school he claimed that it was just the eldest but when asked to confirm the eldest he stated, “I am not sure”. When asked to explain why he did not know the answers when he lived with his sisters, his explanation lacked credibility stating, “when I was at school I stayed in the morning, and they were in the afternoon.”
163. His lack of willingness to provide answers to straightforward open questions was very apparent in his oral evidence. Many of his answers were “I do not know” and I accept the submission made by Ms Rowlands that in response to matters that it is reasonable to expect him to have some knowledge about or to have some evidence he would be able to provide, he provided no response or was unwilling to do so. This included information about where he lived, information about his education which he said he was part of and had experienced and had asserted was how he knew his age. I am satisfied that there is no reason why he should not be able to provide answers about these areas of his everyday life and I have had to consider why he has been reluctant to provide information and answer questions about these issues.
164. Similarly I also find that was the position in relation to his siblings. There is no reasonable explanation as to why he would be unable to answer or provide answers other than the vague, non-specific

answers about his siblings and the age gap between them if he was telling the truth about his age. Even if culturally speaking ages are not celebrated he would be able to provide some answer or have some knowledge that he his siblings were either 2 years ahead of him or some other age. It was not credible that he claimed when all the siblings went to school together that he would not know any details or evidence around these issues.

165. There were other credibility issues relating to his evidence about his age. When asked directly, "how old are you?" His answer was, "3/4/2007". When asked how old he was again he said he was 17 and something on the way to 18. Ms Rowlands made a submission that the appellant's evidence at this stage was notable by its hesitancy. Ms Simpeh submitted that the applicant had provided a response and there was no hesitation. On this issue I am satisfied Ms Rowlands is correct and the hesitation answering these questions was noticeable. It was not only his hesitation in answering but that when asked his age a more likely or natural response would be to give an age or figure, i.e. 16, 17 or 18 rather than, " 2007 month 4 day 3". When asked what age he was when he left school he said that he could not say exactly. When asked for an explanation as to why he could not give his age when he left school he said, "I was not counting". When asked again he said, "I do not know how old I was".
166. Notwithstanding the written evidence that he was clear that he attended school from age 7 for 5 years when that was explored by asking clear and straightforward questions in cross examination , the applicant was not able to provide any credible answers, and the lack of evidence provided was in my view striking in that he was not able to provide those answers.
167. As set out earlier when asked about starting school at 7 (in accordance with his written evidence) and that he attended for 5 years he was asked whether he would be 12 when he left, in answer to this he stated, "I do not know". When this was explored in further questioning and was asked what part of the sentence he said he did not know or why he could not answer the question he said that he did not count. The applicant did agree when asked to answer 5+7 that this was "12" . The questions were asked of the applicant a number of times and his responses in oral evidence were wholly unsatisfactory. He seemed to be unwilling to commit himself to giving any age based on the written evidence that he started school aged 7 and attended for 5 years and therefore on his account had been 12 years old when he left. Finally when Counsel asked him how old he was when he left school he replied that he could not

remember how old he was when he left school. When it was put to him that if there was any misunderstanding of his evidence he had the opportunity to put it right, his reply was “I cannot say”.

168. I reject the submission made by Ms Simpeh that the explanation for why he was unable to answer the questions was because he was someone who was not good with numbers. The questions and answers asked did not require any real mathematic ability; they were questions centring around his own life experiences and his own evidence about when he started school and age. This is particularly so when considering his evidence in re-examination. His witness statement was read to him where it was said that it started school at 7 or 8 in 2014 when asked how we knew it was 2014 he said, “I started school when I was 7 years old”. When Ms Simpeh asked him again how did he know it was 2014 when he started school he said, “they told me” when asked who, he said “teacher”. When asked why he could not provide the answer of 2014 he claimed that he did not understand the question. I reject his explanation. As set out he was asked straightforward questions about when he started school, and I am left with the impression that he was reluctant or unwilling to provide details or commit himself to dates. These were not difficult questions and were asked in a patient and understanding way. I am satisfied that his answers when viewed demonstrate his unwillingness to provide any real evidential basis for his claim to have started school at 7 and having left in 2014. As Ms Rowlands admitted he was clear about dates when he was asked about being out of Eritrea and in Tripoli but was not able to provide the dates that were significant in relation to the issue of his age.
169. I now turn to the issue highlighted in the evidence which can be referred to as the “missing years” which Ms Rowlands relies upon in her submissions. The applicant claims he left school (on his evidence) aged 12 if he completed 5 years of education.
170. Having considered the evidence holistically and “in the round” there are a number of credibility issues that arise from his evidence. First of all dealing with the reasons why he left school early. I am satisfied that they have not been properly or credibly explained by the applicant. He stated that he left school to help his mother on the farm. In cross-examination when asked why his mother needed help when he had older siblings he said that he had a farm and sheep, and he was minding the sheep. He has not explained why if he was the youngest he would be the one to help. In cross-examination it was put to him that it was not clear why he needed to leave school when there were older siblings to take care of his mother. His answers related to his father having problems with his hand and

vision but that did not answer the question in cross-examination as to why it was necessary for him when he had older siblings available. In re-examination I find that he did not provide a satisfactory response. He was asked if the other 2 sisters were at home when he left and he agreed and was then asked about the question Ms Rowlands had asked as to why they could not help. He said they were unable to do this kind of job. When considering this response, the applicant in his evidence in cross-examination had omitted to refer to having an older brother. His oral evidence was discrepant in this respect as when he was asked to give the name of his siblings he did not refer to having a brother. Whilst he had said this to the age assessors and his sister confirmed that he had a brother after he had given oral evidence, no reference was made in his answers both in cross-examination or re-examination as to why it was necessary for him to leave school being the youngest on his account when there was an older male sibling at home but to which the appellant had failed to refer to in his oral evidence.

171. Turning to the evidence relevant to the events in Eritrea, the applicant stated ((paragraph 3 w/s) that he left school to help his mother with the sheep on the farm. When the government found out that he had left school they came looking for him. He stated those were “the rules in Eritrea” that if you leave school then the government will come looking for you to take you to the army.
172. Again his evidence on this issue I find to be unsatisfactory and unreliable. Despite asserting that it is the rule in Eritrea that if you leave school the government will come looking for you, when asked about this rule in the context of military service and the age when it is compulsory, the applicant stated that he did not know. When asked if he was talking about military service at paragraph 3 of his witness statement he agreed but when asked again what the ages were for national service he again said that did not know. He said that when you left school they would come for you.
173. When assessing the applicant’s evidence, on his account he would have been approximately 12 years old when he claimed the government came looking for him. It was put to him that if the government were looking for him it was because he was older than 12 and therefore would be a useful soldier. His reply was “I cannot tell- I know if you left school they looked for you.”
174. I have considered that evidence alongside the country materials. It is right to record that the country materials were placed in the trial bundle by the applicant’s legal representatives after the applicant had given evidence. In that material there was a Ref world report

which the applicant relies upon. This is an old report from 2012 (248AB) and refers to credible reports of under 18's who may have been unlawfully conscripted during annual conscription rounds. A former conscript had said that it was estimated that in 2007 there were 17 children aged between 11 and 14 in his 500 strong battalion. It is also recorded that the authenticity of the report could not be verified. Whilst it is consistent with other reports of under 18's as being enlisted, it is not support for those aged 12 to be routinely or regularly enlisted in large numbers or that the government were expressly looking for those who were aged 12. This is supported by referencing other reports to older age groups for example, 9.6 DIS report refers to March 2021; a high school student was rounded up from outside his house in Asmara on 15 December 2024 from his 16th birthday.

175. What is also relevant is that the country materials in the HO Country Policy report 9.4.1 refer to the majority of Eritrean children dropping out of school before year 12 (120SB). At 9.4.2 reference is made to the local administration being responsible for the conscription of school dropouts. Generally the local administration responsible keep track of the school dropouts, and they are often reported by the schools and also 9.5 (281SB) records that when checks are undertaken in the " giffas" (i.e. the roundups) the checks are aimed at rounding up persons roughly of national service age. Thus there are 2 sources evidence which would suggest that the age of the person is ascertained either from the school to the local administrators or by the military.
176. Whilst it is submitted by Ms Simpeh on behalf of the applicant that the respondent accepted it was not implausible that the army was looking for him when he was 12 years old, that was not the submission made by Ms Rowlands. She submitted that it was not impossible but on the facts of this case it was unlikely and that it had to be considered in the light of the country material what was the most likely scenario and whether it was likely that he would have been picked up at age 12 in the particular circumstances described.
177. I also take into account that the context referred to unlawful conscriptions during annual conscription rounds, but this applicant's account was that he stated that they were specifically targeting him.
178. I have considered the country materials but have done so in the context of the evidence that relates to this applicant. His own account is that he left school at 12 which would have been in 2019

on his chronology, and that they were looking for him because he had left school. However it is also the applicant's claim to have left Eritrea when he was 15 years old in 2022. Ms Rowlands asked him that if he left school at the age of 12 and the government were looking for him and he left Eritrea at 15 how could he account for the 3 year gap? The applicant said, "I do not know".

179. When the evidence is considered in the round the evidence points to the applicant not leaving school at 12 but leaving school later than that and nearer to conscription age, which is not the 7th or 8th grade. His evidence was clear that he had heard that "they" meaning the authorities, was searching for him in the mountains (see p138). Therefore the applicant was not stating that this was a general "giffa" or roundup but that the Eritrean authorities were expressly looking for him. If that were the case, in accordance with the country materials the local administration would have known his age when he left school and would be more likely looking for a male who was closer or nearer to conscription age rather than a child.
180. That he is of an older age is also consistent with evidence relating to other family members although that evidence is scant. His sister did not leave until much older, approximately 18 and her husband did not leave school at such an early age, though on his evidence it was approximately age 14. Furthermore leaving at the 8th grade is consistent with his evidence given to the Home Office that he was educated to the 8th grade.
181. When assessing his evidence generally the applicant was unwilling to provide answers to questions that I am satisfied he would be reasonably likely would know the answer to. Further he was unable to provide a coherent timeline and provide explanatory evidence in support of his date of birth and his age when questioned in cross-examination and even at times in re-examination. There has been no coherent explanation provided as to how he knows his age.
182. A further consideration relates to factual evidence which has been recorded. He does not accept that he has said what has been recorded by the authorities. This is an issue already touched upon earlier when assessing K's evidence concerning the age assessment. Below are examples.
183. As regards the birth certificate, when interviewed by the social worker under birth record it is recorded, "my birth certificate is at home, I do not know what language it is written in, I have never seen it". The age assessment set out that the applicant was "very clear "in their conversations. However in his evidence (see

paragraph 15) he states that he did not say that he had a birth certificate. It is therefore necessary to assess whether the applicant did say what is attributed to him or whether it is a recording mistake. I have already set out some findings in this regard earlier in the analysis of the evidence.

184. The age assessors have provided their contemporaneous notes. The reference to birth certificate is recorded in those contemporaneous notes at page 174. In my view it is difficult to envisage circumstances in which the social worker would be in error in attributing this statement to the applicant if he did not say it. The availability of documents as to age is central to their questioning and thus likely to have been asked and the answers recorded as given. Handwritten notes are more reliable in this instance due to the immediacy of recording and engaging and writing down the information in real time.
185. There is also other support for this having been said by the applicant set out at page 180 on the instructions taken from the applicant, where it is recorded that he had to evacuate his home in Eritrea, and he did not know the current whereabouts of his identification document. Thus his claim that he did not have any documents in support of his age or identity is not supported by that evidence.
186. The applicant also told the age assessors that he had no recorded date of birth only that his parents had told him before he left the country. However when he first arrived and was interviewed on 11 September 2023 when asked him who told of him his date of birth and when he learned it he said,, “very young age” and when asked how old he was when he was told his date of birth it is recorded, “very young age”. In his witness statement he said he knows his date of birth because his parents told him (see paragraph 5)).
187. However in cross-examination he was not able to provide any satisfactory evidence about his age. He could not identify the ages of his siblings, nor the age gap that there was between them. He did not know the age he was when he left school. It is also right that he did not know his parents ages or siblings ages (P.168 Age assessment). He was equally unwilling to provide evidence about the ages of his cousins whom he claimed he played with.
188. The applicant told the age assessors that his uncle funded his journey (p169). In cross-examination his account was different. When asked if he was still in touch with his uncle he stated that he was not. When asked when he had lost touch with him he said that

it was when he had arrived in France. The evidence in the age assessment was to put him, but he denied saying what is recorded in the age assessment. However in the witness statement he had given an account of the interview, what he had said and was able to set out what he agreed he had said and what he did not say to the age assessors. There is no reference to him saying that this evidence about his uncle was not said by him (see page 99-100). Even in re-examination when asked about this issue he claimed to have given a number for his uncle to people so that they could contact him. On further questioning he did not know if his uncle had paid.

189. When reading the witness statement provided it is clear that his legal advisers did go through the age assessment with him, as demonstrated by the reference made to “I have been told by my solicitors that the age assessment records me saying..” (Paragraph 15), “my solicitors told me” (see paragraph 16 and paragraph 17). This is also consistent with the letter sent on 11 December 2023 (page 186) which discusses the age assessment (and see page 188).
190. I turn to other evidence relied upon by the applicant and the evidence of H (the applicant’s sister). H had filed a witness statement on 19 January 2024 (see [105-109]). At a very late stage in the proceedings an application was made for permission to file a 2nd witness statement, and that was signed on 25 October 2024 (see[27SB]). It is a short witness statement. What is significant is that it gave no detail as to the circumstances in which the 1st witness statement had been made nor the factual circumstances which had led to the 2nd witness statement being prepared. It is unsatisfactory that this was an issue ventilated in oral evidence. Both advocates have made their respective submissions about how this occurred and any evidential matters that arise and I have had the opportunity to consider those submissions and have done so having read and heard the evidence.
191. Ms Simpeh submits that H had explained that she signed the 1st witness statement and that she had provided her instructions in Arabic. H had stated that the statement was in her words, and she believed them to be her words which is why she signed it. As to the 2nd witness statement, Ms Simpeh submits that reliance should be placed on the evidence in re-examination that the 2nd witness statement came about after she had been contacted by the solicitor with an Arabic interpreter and when it was read to her she noted mistakes, and the witness statement was prepared to cover them.

192. In essence the differences in the witness statement relate to the amount of time living in the UK and the age when she had left Eritrea as not being 16 years of age but 18 years of age and that she did not meet her partner in Sudan but in Eritrea. H's evidence was explored during cross-examination, and this included the circumstances as to how the evidence was given and their content.
193. Having heard the evidence on this issue I am satisfied that the evidence given by the witness in this context is indicative of a lack of care taken to provide reliable and consistent evidence. When asked about the circumstances in which she signed the witness statement and whether she had read it she said, "not much" when asked if she had ever seen an Arabic version before signing it she stated, "no I do not remember". There was no explanation as to why if she had not read the witness statement she had signed it beyond saying that she had been asked to do so.
194. This is further supported by her evidence and cross-examination about the changes made. It was put to her that if she had started school in 2001 at 7 and left 11 years later she could not be 16 years old, and this was an obvious mistake. She said, "I did not pay attention, when they corrected it I paid attention".
195. Ms Rowlands made submissions concerning the content of the witness statement. She submitted that the evidence given by H demonstrated that the words used were not her own words as shown by the references in H's evidence which referred to "she said" and "they corrected it". Further submissions were made as to the wording used at paragraph 23 where she had referred to "formal interview process". Ms Simpeh submitted that whilst H had said she would not use the term "formal interview", H has confirmed that the statement was in her own words.
196. I am not satisfied that H has given reliable evidence concerning paragraph 23 where it stated, "I also know that he does not enjoy formal interview processes and would not put himself through process if it were not for the fact that the local authority did not believe his real age." When this paragraph was read to H she immediately said, "when did I say that?" When this was explored further as to whether it was something she believed or if it was what someone had suggested she said it was, "her feeling" after she had talked to him in the hotel. When asked what basis she had to say he did not enjoy formal interview processes she said, "he talked to me and had issues "and that she "felt" he did not enjoy the formal processes. However when it was put to her when calling from the hotel the applicant had not had the age assessment, she changed

her evidence to state that it was not the age assessment she was talking about but that they did not believe him. When asked what made her think that he had problems she stated, "it was just a feeling".

197. When addressing that evidence it was noticeable that there was an immediate reaction from H, "when did I say that?". I agree with Ms Rowlands that a witness should not be surprised about what is in their witness statement. On her evidence the witness statement had been subsequently read to her in Arabic and she had the opportunity to change this, but no reference was made to this being an error, thus she should not have been surprised.
198. H's evidence is also not supported by other evidence and the chronology. She said that this was told to her when calling from the hotel, but this could not be right as the applicant had not been assessed by the local authority at that stage. Further, the witness statement was taken in January 2024, and the applicant and H had not seen each other in person since 2012 and on her evidence when he was 5 years of age. Given those circumstances it is difficult to see how she would have any knowledge about what she knew about her brothers ability to engage or enjoy "formal interview processes". Whilst H changed her evidence to say it was not the age assessment he was talking about but that they did not believe him and it was "just a feeling", when pressed on this she said, "I might not have said those words" and referred to a change in dialect. However that is not properly explained by the evidence. The witness statement is not expressed as a "feeling" but that "she knows" that the applicant does not "enjoy formal interview processes" and therefore based on pre-knowledge. Whilst in her oral evidence and cross-examination she sought to explain the differences by stating the interpreter might have possibly changed it, there was an opportunity to set out any issues in the supplemental witness statement. Her further explanation that she had not made the correction as no one had explained is not credible given that the opportunity had been taken to go through that first witness statement which is not a complicated or lengthy document.
199. Whilst Ms Rowlands submitted that some of the evidence suggested the words were not her own, there is not a full picture of the evidence concerning this issue. In my view I think the evidence is a reflection of the general unreliability of H's evidence and the lack of care given to the evidence by her which she has provided which affects her credibility as a witness whose evidence I can place weight and reliance upon when considering the central issues.

200. Whilst these evidential issues relate to matters of general credibility, I am also satisfied that H's evidence has not been consistent in relation to how she knows K's age.
201. In her evidence she sought to explain that K had said that he had told the age assessors he was 7 or 8 when started school but that they had written down that he went to school in 2008 or 2009. She said she knew this was wrong because she was in Eritrea, and he was a baby (see[108]).
202. Her evidence was that he started school on a date after she had left Eritrea (which on her account she left in 2012). However in cross examination when asked questions about their education and when she was in school she was asked whether her siblings had carried on at school until 18 . She stated, "I am not sure -I left them in school" she was asked when she left Eritrea were all her siblings in school? She stated, " yes."
203. H was clear in her evidence during cross-examination that her siblings were all in school when she left. However when in re-examination she was asked about this and whether K was in school she said, " no." There was no explanation as to why she had said all her siblings were in school when she was being asked questions about herself and her other siblings nor why she sought to change her evidence in re- examination.
204. A further issue arose in evidence concerning how she knew K's age by reference to his education. Her account was that she remembered hearing from her family when in Sudan that K started school and that was in 2014 and knew K was 7 years old (see [108]).
205. However that evidence is internally inconsistent with other evidence in the witness statement, where she stated she did not keep in contact with K or her family other than to update them that she was going to the UK (see [107]). In cross examination when asked about this she said there was "not much" contact.
206. I find her written evidence to be internally inconsistent. If it is correct while living in Sudan she did not keep in contact with other family members other than to update them that she was going to the UK, which on the evidence was in 2019, she would not have been informed in or about 2014 he had started school.
207. Similarly her oral evidence was inconsistent. In re-examination she was asked if she knew when K had started school, and she said that she had no information about K - we start school at 7 years old.

When she was asked if she was aware if K started school or not she stated that she did not ask or go into detail but was sure he would be in school at that age.

208. From that evidence it is clear that she gave oral evidence that she was unaware of when he started school as she did not ask or go into detail. However when her witness statement was then read to her in re-examination where she stated that she had heard this from her family, she then stated that she was aware. Her explanation for not answering the question before was that because she did not understand the question and she was answering "in general".
209. When asked in clarification evidence why she had said 2 different things in her evidence, she stated she did not understand the question and when asked about contact with her family she stated that she had contact once a month or once every 2 months.
210. Having viewed her evidence on this issue I am satisfied that she did give inconsistent evidence as to how she knew his age by reference to the date he started school and in the context that she heard this from her parents. Her evidence on this issue was not consistent both in the written evidence or in the oral evidence in re-examination and the clarification evidence. I am satisfied she did not ask, nor did she go into detail about when he was in school. While she retracted this after the statement was read to her saying she did not understand because she was answering in general, I do not find or accept there was such a misunderstanding. She was asked clear questions and ones which were set in a factual context and when answering this question she was clear that she had not asked her family about them. Furthermore her answers as regards contact with the family was widely discrepant from stating that she had no contact other than to tell them she was going to the UK, to saying in cross examination that there was "not much contact" but in clarification evidence said she had contact once or twice per month.
211. Having considered that evidence I have concluded that on this issue H's evidence is unreliable and I do not place weight upon her evidence as to how she knows his age by reference to the stage of his education.
212. By reference to the applicant's age, in the witness statement ([107; para 19]) she sets out that in Eritrea "you are not provided with a birth certificate" when born at home but if born in hospital you might be provided with one. At [108] she refers not having any physical evidence to demonstrate K's age and because it is said "we did not have birth certificates".

213. That evidence is not consistent with K's evidence who, I am satisfied, did say that he had a birth certificate at home. Further, when cross-examined as to whether she had ever had a birth certificate her evidence was, "I really do not know I do not remember" however she had provided evidence in the witness statement about what she knew about birth certificates. She would know if she had been born at home or not and whether she had a birth certificate in those circumstances. Furthermore if she had a birth certificate it is not likely that she would not know or remember given the circumstances in which she sought to describe it in the witness evidence. Her evidence of not really knowing or not remembering is not credible.
214. I take into account that H did give oral evidence of the year of birth for her siblings and identified that K was the youngest sibling. That is some evidence in support of K's claim. However that evidence was given without any real context as she did not explain how she knew those dates of birth by reference to any other family circumstances.
215. I further take into account that H does not explain how it is she knows his date of birth beyond an unparticularised reference to being present at the birth. The circumstances in which she claimed to have been aware of his age in 2014 was not evidence upon which I can place weight or reliance given the inconsistent evidence she has given. Similarly when considering this issue in the context of the evidence of the applicant he was not able to give dates of birth family members or any approximation of their ages vis-a vis himself.
216. I turn to the assessment of SM (the applicant's brother in law).The way in which the written evidence was provided again was unsatisfactory. The witness had filed a witness statement earlier in the proceedings (10/6/24 p112AB). Very close to the hearing a further witness statement was filed seeking to make corrections/additions to the earlier statement with no real explanation in that witness statement or by any other supporting evidence as to how this had occurred. It simply states that the statement was being written after having reviewed the previous witness statement and at paragraph 8 refers to there being errors in the previous one. When asked in evidence in chief if he had seen the 1st witness statement previously he stated that it was the 1st time that he had seen the witness statement and when asked if he had gone through the statement he said, "not in detail". In oral evidence in chief he said that he provided the information "on the phone", and at the start in English. It is difficult to accept that SM

signed the witness statement without knowing what he had put in the document or in his words, “not in detail”. The original witness statement was not a lengthy statement, nor did it set out any complicated factual detail.

217. I agree with the submission made by Ms Rowlands that there is a stark contrast between what is set out in the initial witness statement and the 2nd witness statement which purported to correct mistakes. The timing of the 2nd witness statement was after the disclosure of his file from the Home Office which had the history of his asylum claim. Whilst Ms Simpeh submits the changes are not likely to be attributed to having seen the file, it is necessary to address the differences between the statements and in the context of the historical information previously provided. Having looked at those matters the differences as to dates provided in the disclosure provided a clear picture of the history in Eritrea, which included the date his wife joined him in the UK in 2019. SM changed the year he and his wife went to the UK. In the 1st witness statement he said it was November 2014 (at [113]) whereas in 2nd witness statement he said he arrived on his own in 2014 that she joined him in 2019. He changed the date that he left Sudan from 2012 to having left Sudan in December 2011 (this earlier date is recorded in the disclosure and the chronology given at page 382).
218. In the first witness statement there is no reference to any of his previous history about being in the army, the dates where he had been in military service and as relevant to the timeline for the applicant. The only reference is paragraph 13 about soldiers coming to his home often to check for him and that he would have hid. There is a lack of any evidence referring to any absence from the place he lived and as Ms Rowlands submits the impression created is that he was a constant presence at the family home where K lived and/or had avoided conscription.
219. Looking at the contents of the first witness statement , SM refers to remembering K being born on 3 April 2007 because his christening was on the same day and it was this day, which he refers to being 3 April 2007 being a “celebratory day” and “happy memory for me” (see paragraph 5 p113). The 2nd witness statement seeks to change this; he stated that whilst he had stated he remembered K being born because his christening was on the same day, “However, I do not believe this to be correct. I cannot recall whether I was there in person for K’ birth or whether I received this news having visited shortly after his birth. However I recall seeing K as a tiny newborn baby and I was present at his christening which I recall was around a week after he was born.” He later gives evidence as to

why his account is not clear and provides an account that he was called to join the army in 2005 (see paragraph 4) and that he was posted to a village close by the home and that he would return to the family would stay there 1 or 2 nights before returning to his post. He remembers the christening. He also stated that in 2008 he tried to escape the military but was caught and had to serve a year in prison and that after this he was put back into the army.

220. The detail given about his history and the dates were all set out in the disclosure evidence (see page 382). It records that he was rounded up for national service in 2005, he completed his training and assigned to a post and 27 August 2008 deserted his post and attempted to leave the country but was detained for one year and then was returned to his post before leaving Eritrea in December 2011. Therefore providing a timeline of being actively in the military during the key timeline of the applicant's claimed birth on 3 April 2007.
221. Ms Simpeh has submitted that weight should be attached to SM's evidence as it was clear, consistent and credible. I take into account in assessing SM's general credibility that he was correct when stating that he had not attended a Tribunal hearing. In the documentary evidence from the Home Office, there was a letter (dated 21/2/17) which stated that SM's claim had been allowed by an Immigration Judge (see [396SB]). This did not seem to be consistent with other documentation from the Home Office which set out that the substantive hearing had been taken out due to the Home Office having sought to withdraw her decision (to refuse asylum) having reviewed the decision (see [393SB]). This was later followed by a grant of asylum to SM on 10 March 2017 (see [398]). Having perused the electronic system held by the Tribunal, there appeared to be no reference to any hearing for SM. It was therefore concluded that the letter stating so was in error when seen in the light of the other documents held on the electronic system but also the date of the grant of asylum in March 2017. Whilst SM was correct about that he did not attend a hearing, this does not have any relevance to the factual account of how he knows the age of the applicant, or any evidence given in that context. It is a general credibility point, and I give this some weight.
222. Whilst Ms Simpeh has submitted that weight should be attached to SM's evidence as being consistent, clear and credible, having given careful consideration to that evidence I do not find the evidence given by SM overall to have been given consistently or clearly. It has not been satisfactorily explained why SM had stated in the 1st witness statement that he remembered K being born on 3 April

2007 because he was present on the same day when he was christened. I will return to the terminology used for this date in due course. He sets out the date by reference to the event he claimed to have attended and the particular circumstances “this was a celebratory day” and it was a “happy memory for me” (see paragraph 5). Furthermore he set it in the context of being very close to K’s family (see paragraph 6;p113). There is no ambiguity in that description, and he is clear that he knows K was born on 3 April 2007 because he was present at the birth because it was a celebratory day, and it took place on the same day. The 1st witness statement is not complex or factually difficult nor is it a long statement but consists of a few short paragraphs. In the circumstances it is difficult to see how he could have made such a mistake in the witness statement. The evidence he gave as to how he had signed a written statement was not satisfactory nor clear. When asked if he had signed the document and he had gone through it he said, “not in detail”. In cross-examination although he stated the witness statement had been taken over the phone and when the witness statement was sent he received an email which setting out the words he had have said in the witness statement and he signed it, he claimed that he did not read it in detail because he was busy.

223. Against that background, even if the 1st witness statement was read back to him in Arabic at a later date, he had received the witness statement which he had read (although not in detail) and it has not been explained why such an important detail was not corrected either earlier or by contacting the solicitor. The account given in the 2nd witness statement is wholly different. In this witness statement he resiles from the account of being present at the birth thereby knowing the date of 3 April 2007 stating that he does not believe it to be correct and that he cannot recall whether he was there at the birth of K but recalls being present at a christening about a week after the birth.
224. A number of inconsistencies in his account were identified during cross-examination. Firstly, it was clear in the 1st witness statement that he was present at the birth. In the 2nd he stated that he was not sure he could not recall if he was present at the birth whereas in oral evidence he said he was sure that he was not present at the birth.
225. The evidence as to the timeline around the claimed birth date was also the subject of cross-examination. As set out earlier the 1st witness statement provided no detail of his army service which on his account started in 2005 and therefore before the claimed birth

date of 2007 and that he did not finish military service until December 2011 which included a period of one year in imprisonment/detention in 2008. That was made clear in the later disclosure that had been provided.

226. When asked about this time in military service and how much leave he was given SM gave an account of being given 15 days leave to obtain an ID card. He stated that he did not need the card but had used this as an excuse to obtain leave. He confirmed that it had no formal leave apart from those 15 days. As to informal leave his evidence was that his unit was close to the city and that there was some informal agreement with the officer/leader who would let him go out for the weekend returning on a Monday. When asked when it happened he said 3 times in 2007 and in total "6 days".
227. I take into account that SM was being asked about events which had taken place a number of years ago but even when factoring that into an assessment of the evidence, I am satisfied that SM has not given a consistent account which has undermined the credibility of his account and to provide supportive evidence for the applicant's claim to date of birth.
228. The change in his account of being present at the birth and the change to being present around a week later is wholly different evidence and has not been satisfactorily explained. Furthermore his account of being present at the christening was also undermined. SM confirmed in his evidence that he was not present at the birth but was there on the christening day about one week later. He confirmed this in oral evidence. In cross-examination when asked if it took place the week after he was born he said, "one week exactly I am clear it was one week". However 3 April 2007 was a Tuesday. His account of being in attendance at the christening a week later(in oral evidence) was not consistent with the account given in cross-examination about the only visits/leave that he had from the military during the relevant time in 2007. He stated that he had 3 periods of leave (6 days) at weekends and that he was back in barracks on the Monday. When this was put to him in cross-examination that he would have known it was a Tuesday because in 2007 he was not at home during the week only at weekends, SM changed his account stating that he said, "sometimes in the weekend and other times I came at different times". In cross-examination he had previously said that he got leave at the weekend and had to be back in barracks by Monday. It was put to him on his earlier evidence he would not have been home during the week or on a Tuesday, he gave no answer stating that he was there. In re-examination when asked about the events he had given

in cross-examination he then stated it was 6 times, but they were different times. When asked what days of the week the christening was held he said that he did not recall although he was there because he did the food.

229. I do not accept the evidence given in re-examination to explain his earlier evidence in cross-examination. He had been carefully cross-examined about the leave given and in what circumstances he had been provided such leave given that he was on active duty and was in the military during the relevant timeline that was in dispute. He clearly stated in his evidence that he had 3 which amounted to 6 days which accords with and is consistent with the weekend leave he described. That evidence is not consistent with the later account that he gave that there were 6 different leave dates on different times. Nor is it consistent as to being present at his christening a week later. Whilst Ms Simpeh submits that he is clear that he been present at the christening which happened week after the birth or about a week after this did not stand up to scrutiny when it was explored in evidence. He could not have been at the christening if it was in the birthdate of 3 April 2007 as he originally stated but resiled from, as this was a Tuesday. Nor could he have been there about week later which would have been a Tuesday or a Wednesday. The description given in the evidence of it being a "Sumiya" or "Aqiqah" is a ceremony which usually takes place one week after the birth and the account of being present in a Tuesday or on the day of the week is not consistent with the evidence that he had given concerning the leave given at weekends.
230. It is further submitted by Ms Simpeh that there is no need for SM to amend the account in relation to K's birth. However in light of the most recent evidence (disclosure evidence) provided as to SM's military service dated from 2005 -2011 spanning the claimed birthdate it was necessary for SM to provide an explanation as to how he knew the date of birth given his lack of attendance/ living near or at the family home. Even if it could not be attributable to the disclosure evidence, it is of significance that he has provided no other evidence in support of K's claim date of birth or evidence relating to how he knows his age by reference to other events.
231. There is also a further credibility point that arises. In his written evidence he was clear that he and K's family were a "close family" (see paragraphs 6, 8 of 1st witness statement and paragraph 8, 9 of 2nd witness statement)). However when he was cross-examined about the applicant's siblings and was asked to give the age differences between them, he was unable to give the age difference between them saying he did not know; could be 2 to 3 years and

referring to his uncle not being well and that it could be longer. If he was in close contact with the family including K's siblings as claimed I am satisfied that he would have been able to provide evidence as to the difference in their respective ages and the gap between.

232. There is also a further issue of credibility which arises from that evidence. As to the central issue of how he knows K's date of birth the 1st witness statement sets out that he knows because he was there at his birth and remembers K being born because the christening was the same day as 3 April 2007. He provides background and context of it being a celebratory day and a happy memory for him. In the 2nd witness statement he resiled from this. Both in the 1st and 2nd witness statement he uses the word "christening". In oral evidence when paragraph 5 of 1st witness statement was read to him and before a question was asked SM immediately said, "he is not a Christian"(referring to K). This struck me as an odd interjection which came before any question could be or had been asked. The reference to attending a christening was not only in the 1st witness statement but also the 2nd witness statement. His account was the 1st witness statement was read back to him in Arabic, and he said that they were mistakes which he then said he went on to correct. That might not be objectionable, and it is open to correct mistakes. However when asked to explain why he had made the same error in the 2nd witness statement which was to correct the mistakes in the 1st witness statement he said that he had used the word to make it close to when you give the child a name -"we call it "Sumiya"". However this description or word was not used in either of the witness statements. His explanation for the use of the word was not credible or consistent. If his account as given in cross-examination was true and that he told the solicitor of the factual circumstances of offering a sheep and making a celebration but that it was suggested that he would use the word christening and that he had said in response the day of "Sumiya" it is reasonable to assume that the word used in the witness statement would be "Sumiya" and not the word "christening". Given that the cultural differences are of importance and that the witness was plainly providing an account of events in Eritrea and that if he used the word "Sumiya" it is more likely that that word would have been used when describing events. Not only was the word christening in the 1st witness statement but it also featured in the 2nd witness statement. The 2nd witness statement was made he said to identify the mistakes in the 1st witness statement and therefore it must have been obvious to him that this was a mistake. The explanation given by SM is not credible. When it was put to the witness that if his evidence was that he told the solicitor that a week after K was born, not the same day and that they did not have a christening but had

slaughtered a sheep, he claimed that this was the first time he understood or had a full understanding of “christening”. However he also said that “Sumiya” and “christening “are 2 different words thus it must have been clear to him that the witness statement was still not correct. This was not satisfactorily explained in re-examination either where he sought to explain his understanding of the use of the word “christening “and that it was the same word as “Sumiya”. He previously said that there were differences and in my view whilst they may refer to a similar type of celebration they are very different in how they are described in Eritrea/Arabic culture and language. In Arabic the word is “Aqiqah” ; there is no evidence or country material to show that “ Sumiya” is an alternative word.

233. In summary, SM provided no other evidence as to how he knew K’s date of birth. The reliability of his account is undermined by the lack of consistency and lack of credibility in the evidence given that is relevant to the issue of the applicant’s age. He has provided no other account of life in Eritrea with K’s family despite claiming to have been close to other family members and he could not give any evidence as to the age of K’s of the siblings or the age gap between them. There was a significant omission in the first witness statement about the timeline of events which was made clear in the disclosure that he was in military service between 2005 - December 2011 including a year in detention in 2008 and his evidence about the type of contact that he had during the relevant time period which was not consistent. He did not give a credible account of being either at the birth of K which he later resiled from nor that he had been at the celebration one week later in light of the about the opportunities to have been present in the context of the timeline and type of leave.

Conclusions:

234. The task of the tribunal is to reach an assessment of the applicant’s age as informed by the evidence. In doing so, I remind myself there is no hurdle which the applicant must overcome. The issue is whether on a balance of probability the applicant was a child when he arrived in the UK and thus is a child at the date of the hearing. I make no determination whatsoever on the merits of his protection claim which is the subject of a separate appeal. This has not been an easy or straightforward case to determine and there have been issues as to the disclosure of evidence at a late stage .That has been addressed in the analysis of the evidence.

235. As set out above, the local authority age assessment was the subject of challenge and for the reasons given I have not found the assessment to have been unlawful in the sense that there was any procedural unfairness. Whilst there was “no minded to” session, I have given reasons as to why on the particular circumstances of this case that even if one had been undertaken it would not have elicited any different response in the light of the applicant’s account of not having said what was attributed to him. However even if this failure was procedurally unfair, the applicant has had the opportunity to advance all the evidence he has wished to at this hearing. I therefore do not conclude that each and every aspect of the age assessment’s conclusions are of no weight. In summary whilst the age assessment process may have been difficult he confirmed that he was fit and well and it is not said that he has any medical problems. Even making an allowance that it would likely be a stressful experience, the age assessment records demonstrate that he was able to participate in the assessment. I reject his evidence as to how the assessment took place for the reasons set out earlier.
236. As part of the assessment, the local authority have relied on aspects of the applicant’s physical appearance and his demeanour. The age assessors relied upon those developmental considerations, and as identified also by other professionals which they deemed to be indicators of his age. Whilst caution should be exercised when attributing weight to evidence of physical appearance and demeanour, on the facts of this particular case I have reached the conclusion that it is been of some value in assessing age. This is because the evidence in the assessment is consistent with other assessments which were undertaken by other individuals including Home Office immigration officers and other social workers. They all reached the same conclusions after having had the opportunity to see and hear from the applicant and to form a view from their interactions with him.
237. I accept the submission made by Ms Rowlands that the thrust of the evidence is that he is able to live independently and apart from family members without any difficulties. The evidence demonstrates it has been able to undertake his own self-care, including being able to cook his food and live independently.
238. Unusually in this case there is no evidence from anyone who has been in contact with the applicant during his time in the UK for example college tutors or any contemporaries/friends that he has made to provide any alternative view of his demeanour or to provide supportive evidence of his claimed age.

239. When considering the evidence given as to physical appearance and demeanour, it is part of the overall picture in the light of the evidence taken “in the round”. However overall it is not a feature which is of any way determinative, and I give it some weight.
240. The general submission made by Ms Simpeh is that the applicant has given credible and consistent evidence as to his claimed age. However on my analysis of the evidence as set out I do not find that he has been either credible or consistent in his evidence generally or in that evidence relating to his age. For the reasons set out earlier the applicant’s written evidence lacks detail in the most important areas relevant to how he knows his age as was his oral evidence which was scant in detail, and he seemed unwilling to answer questions relevant to his life in Eritrea and in particular his education and his family which it is reasonable for him to be able to answer or at least provide some in which to set his age into context.
241. When assessing the applicant’s evidence, whilst he has given the same date of birth he claims to be his on arrival and since, for the reasons set out in my analysis of the evidence, he has not provided consistent, credible or truthful evidence as to how he knows his date of birth.
242. Ms Simpeh submitted that weight should be given to his social media downloads and TikTok where his date of birth is given as 3 April 2004. I do not attribute any weight to that because there is no evidence that this was an account where the date of birth was provided by him when in Eritrea or Sudan and before he entered the UK. This evidence has no probative value or weight, nor does it add consistency to the account as it is not known when that date of birth was added. Also the content of the TikTok evidence is not described and it is not possible to know what the nature of those TikToks are to demonstrate what relevance they have if any to his age.
243. I have set out an analysis of the evidence given by the applicant and H and SM. As set out I take into account that H did give oral evidence of the year of birth for her siblings and identified that K was the youngest sibling as some evidence which is supportive of his claim, but that evidence is without any real context as she did not explain how she knew those dates of birth by reference to any other family circumstances. I further take into account that H does not explain how it is she knows his date of birth beyond an unparticularised reference to being present at the birth. The weight attached to that evidence does not outweigh the issues of credibility found. The circumstances in which she claimed to have been aware

of his age in 2014 was not evidence upon which I can place weight or reliance given the inconsistent evidence she has given. Similarly when considering this issue in the context of the evidence of the applicant he was not able to give dates of birth family members or any approximation of their ages vis-a vis himself. Nor did the witness SM.

244. Having considered the evidence holistically, I have not found the applicant, or the two witnesses called on his behalf to have given reliable, truthful evidence upon which I can attribute any real weight or reliance for the reasons given and I have had to assess the issue of age in the light of the evidence which is in my view more likely to provide a credible and consistent timeline.
245. Having undertaken an assessment of the evidence given and taking his account of leaving school in 2019 and having attended until 8th grade, he would have been 15 in 2019. Adding in 3 years to account for him leaving Eritrea in August 2022, the applicant would have been approximately 18 years of age. On an analysis of the evidence I am satisfied that there are 3 years missing in the chronology from leaving school. For the reasons given I found that it is not likely that he left school at the age of 12 and that on the balance of probabilities his evidence given to the Home Office that he continued to the 8th grade is more likely which would give him the age of 15 when leaving school and not 12 years of age. If he left Eritrea in August 2022, this is nearer to the conscription age which is more consistent with the overall country materials and on the basis that he gave a more accurate timeline for his journey, he would have been over 18 on arrival if born in 2004 rather than in 2007 which accounts for those 3 years.
246. This is consistent with the evidence given as to his appearance, his demeanour and his reactions to the social workers concerned in their assessment of his age and likely date of birth.
247. The timeline given by SM is more consistent with an older date of birth for K. SM gives his date of birth as 10 January 1987. He joined the army in 2005 (aged 18 – 19 from avoiding conscription). He claimed that when you leave school they come looking for you. However on the chronology provided by SM they did not “get him” until he was 19 years of age and therefore 4-5 years before his conscription. His evidence was that he was spending the nights in the mountains. The inference drawn from that evidence is that for the 4 year period he was avoiding the military, and he was in hiding. However this is not consistent with him attending events with the family including celebrating Eid and therefore is not consistent

evidence nor is it supportive of the applicant's claim and the age in which he began military service is more in keeping with the general background information.

248. A later date of birth is also consistent with the lack of contact by his sister and husband in the UK. Their evidence was that they had only seen him once in 2024. I have considered the explanation for the lack of contact. She was asked why they had not visited, and she stated that because they lived in X(another town) and had 3 children. Even taking a sympathetic approach to the family circumstances, it is not satisfactorily explained in my judgement as to why no attempt was made to visit the applicant earlier than approximately July 2024 in the light of their account that the applicant had arrived as a child aged 16 in a small boat aided by smugglers. H's evidence was that she knew A had left for Europe having made contact with her Uncle. If it is correct that both knew that he was living with adults and was only aged 16 (having turned that age in April 2023) it is reasonable to expect that greater interest, and concern would have been shown in his circumstances and for visits to have taken place sooner. I take into account the submission made by Ms Simpeh that different families have different family dynamics which is a general proposition I would agree with, but this does not explain the particular circumstances and these family dynamics when his close family members resident in the UK believe him to be a child aged 16.
249. There was also a divergence in the evidence between the applicant and his sister on this issue. The applicant was asked if he had asked his sister if he could live with her and he claimed to have asked many times but that she would not take him. This was different from the evidence of his sister whose responses to the same question were different She was asked in cross-examination if anyone had suggested that he should come and live with her. She disagreed with this and when asked, "not even K" she said, "seeing me yes, coming to live with me no". If the evidence is correct that she had not seen him since she left Eritrea in 2012 and in her evidence she left him "little" it has not been satisfactorily explained why when the applicant arrived in the UK as a child she did not seek to re-establish face-to-face contact to ensure his welfare. The fact that she did not do so is supportive and consistent with the fact that he was not 16 years of age when he arrived, but he was an adult over 18 years.
250. I am also satisfied that K did tell the age assessors that he had a birth certificate at home when he was interviewed by them. This is set out in the contemporaneous notes and thus likely to have been a matter that was carefully noted if it had been said. In this context

and as to obtaining any documentation to support his age, K also told the assessors that he was unable to obtain any documentation as he had no communication with his family. I reject that evidence. As the social worker pointed out K had said that people in Calais had been able to contact his uncle on his behalf (see [169]170]). Notwithstanding any network issues, I conclude on the evidence that K and /or his family members have the ability to contact relatives in Eritrea who would be able to assist in providing documentation in relation to his age. I take into account that those fleeing persecution are often unable to bring documentary evidence with them. However to ask for documents would not require K to contact the military as on his account he attended school who had records of age and therefore would be likely to have some documents bearing his date of birth. However this is not an issue which I place great weight upon.

251. Whilst acknowledging there is no document giving the date of birth of the applicant that has been provided by him I conclude that the overall evidence when analysed is not supportive of the age he claims to be.
252. The Local Authority's age assessment reached the conclusion that the date of birth given of 3 April 2007 was not agreed by them and that he was clearly an adult of 24 years of age with the birth date of 3 April 1999.
253. I do not discount the possibility that the applicant may be older on the basis of the dates he gave during the various assessments. Also that he may have remained in Sudan for a longer period than he claimed. That would be consistent with the circumstances of his sister who remained there from 2012 until 2019 and that there were family members present in Sudan. Further, Ms Rowlands had made submissions on the basis of his oral evidence where he appeared to refer to the use of Sudanese words when describing his food rather than those in the Eritrean language. The examples given in the evidence refer to " Dama" for stew. However I do not find that it is possible to make any positive finding in that regard or attach weight to that in the light of the evidence as it stands as the use of such language may be as a result of having spent some time in Sudan or that the words were Arabic words and as such would be spoken in both countries however it would explain the views formed about his age of being in his twenties.
254. As explained in the decision of Langstaff J in R (MC) v Liverpool County Council [2010] EWHC 2211 (Admin), I am not bound by either the dates of birth suggested by the parties, and it is for the

Tribunal to consider the most likely date of birth. I have set out the reasons why I have reached the conclusion that the applicant is not a credible witness and who has given a credible or consistent account of the date of birth he claims nor upon other matters upon which may have shed light on the question of his age and in particular as shown by his unwillingness to answer questions about his education and his life in Eritrea. I consider that the reason why he has not been forthcoming in his evidence is because he has done so to conceal aspects of his upbringing and past which might suggest he is older than he claims. The reason for this is straightforward as it is well known that there are advantages to being accepted as an Unaccompanied Asylum Seeking Child.

255. I do not know if the precise day or month he has given is correct but there is no other date or month referred to and I have no reason to go behind the day and month thus I adopt those. I am satisfied that he was over 18 when he arrived in the UK for the reasons given and do not find that the year of birth was as claimed as 2007.
256. Thus drawing the above analysis together and having considered the entirety of the evidence “in the round” and to the balance of probability standard, doing the best I can and adopting a sympathetic approach, I find the applicant’s probable date of birth is 3 April 2004 and therefore he was not a child of 16 upon arrival in the United Kingdom but was over 18 years of age.

Decision:

I find that the applicant was born on 3 April 2004, and I make a declaration to that effect.

Consequential issues: costs:

257. Following the provision of the draft of the decision to the parties, they were invited to provide their draft agreed order. Both advocates have provided their draft orders and have confirmed that the only issue outstanding which requires consideration is that which relates to the issue of costs. Both parties have stated that they are content for the matter to be determined on those submissions.
258. Section 29 (1) (b) of the Tribunals, Courts and Enforcement Act 2007 provides that the costs of and incidental to proceedings in the Upper Tribunal shall be in the discretion of that Tribunal. Neither the 2007

Act nor the Tribunal Procedure (Upper Tribunal) Rules 2008 prescribe how that discretion is to be exercised. I have, however, concluded that for present purposes, I should have regard to CPR44 and the case law relating thereto, so as to follow, so far as appropriate, the general approach adopted in the High Court.

259. CPR44.2 (2) (a) provides that “the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party”. CPR44.2(4) provides that, in deciding what, if any, order to make, the court must have regard to all the circumstances, including the conduct of the parties. Conduct includes whether it was reasonable for a party to raise, pursue or contest a particular allegation or issues (CPR44.2 (5) (b)).
260. When coming to my conclusions I have paid particular regard to the principles set out in Bahta & Ors v SSHD [2011] C.P Rep 43 and R (M) v Croydon LB Council [2012] EWCA Civ 595. The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party.
261. In the written submissions on behalf of the applicant dated 15 January 2025 it is submitted that there should be no order for costs for the reasons given or in the alternative the appropriate order should be for the applicant to bear a percentage of the respondent’s costs which is put at between 40 to 50%. The position of the respondent is set out in their reply where it is submitted that the correct order should be that costs follow the event and that the applicant should pay the costs having failed in establishing his claim. I confirm that I have taken into account the submissions provided when reaching my decision.
262. The liability for costs should be considered in light of the principles set out in M v Croydon which emphasised the discretionary and fact specific nature of the exercise.
263. It is submitted that the applicant acted reasonably in bringing the proceedings and in the circumstances this should be reflected in any order made as to costs. Having considered that submission, I accept the submission made on behalf of the respondent that the position of the Local Authority was made plain and that the applicant was not born on the age he claimed. The applicant chose to bring the proceedings to establish that he was a child upon entry to the United Kingdom; a fact which was not found to be the position.
264. Further it is submitted on behalf of the applicant that there should be no order as to costs based on the fact that the date of birth as determined by the Tribunal which established that he was 19 years

old at the time of his entry into the UK significantly differed from the date of birth assigned by the respondent of 3 April 1999. However, I do not consider this submission to support the claim that there should be no order for costs or that there should be any reduction by way of apportioning the costs 40% or 50% as the submissions set out. The Tribunal is not bound by either of the dates of birth suggested by the parties (see decision of Langstaff J in R (MC) v Liverpool County Council [2010] EWHC 2211 (Admin)). Whilst the issue of the applicant's age constituted a precedent fact, the clear position advanced on behalf of the applicant was that he was a child upon entry to the United Kingdom and therefore the Local Authority had a duty to provide him with services appropriate to his needs and that when attaining the age of 18 would be entitled to provision as a "former relevant child" see Section 20 CA 1989). In those circumstances the submission that the applicant had "partially vindicated his position" does not affect the outcome in which he failed in his claim to demonstrate that he was a child at the time of his entry to the United Kingdom. This is an application where the applicant sought to challenge both the lawfulness of the respondent's age assessment, and the factual assessment made that he was not a child on entry. The claim failed in both respects and the applicant did not receive the relief that he sought.

265. In the circumstances and having considered the submissions made and applying discretion, in my judgment this case falls within the first limb of Lord Neuberger's judgment in M v Croydon . I have reached the conclusion that the order I should make is that the applicant should pay the respondent's costs.

Upper Tribunal Judge Reeds
22 January 2025