UTIJR6

JR/6410/2018
Heard on 23 September, and 12 and 13 December 2019

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen on the application of T T

Applicant

v

Derby City Council

Respondent

Before Upper Tribunal Judge Norton-Taylor

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the applicant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:
For the applicant: Ms A Benfield, Counsel, instructed by Bhatia Best Solicitors
For the respondent: Mr L Parkhill, Counsel, instructed by Derby City Council

Application for judicial review: substantive decision

Introduction

1. The applicant, a citizen of Eritrea, challenges the decision of the Respondent, dated 22 June 2018, that he was an adult with an attributed date of birth of 2 July 1998, following an age assessment.

2. The applicant asserts that he was born on 2 July 2002 and was, at the date of the respondent's decision, 16 years old. On his case, the

applicant is now 17.

3. There is, quite clearly, a significant disparity in the parties' respective positions.

4. The core issue in this application for judicial review is whether, as a matter of fact, the applicant is a child or not. This issue is for me to determine, having regard to all relevant evidence adduced, and on an application of the balance of probabilities. Neither party bears the burden of proof.

Relevant procedural history

5. The applicant arrived in the United Kingdom on the evening of 31 January 2018. Having been encountered by the Home Office in the early hours of the following day, an initial screening interview was conducted at which stage the applicant formally made a protection claim in this country. The Home Office formed the view that the applicant was an adult, contrary to his assertion that he was a child. The applicant was referred to the respondent on 20 February 2018 and a request was made for supported accommodation under the Children Act 1989 and for an age assessment to be undertaken. At this stage, or soon thereafter, the Home Office placed the applicant's protection claim on hold, pending the outcome of the age dispute issue (that claim remains outstanding to date). In the absence of what was considered sufficient action by the respondent, an initial judicial review claim was made on 6 March 2018. On 13 March 2018 the respondent commenced the age assessment procedure, with subsequent meetings taking place on 17 April, 6 May, and 22 June 2018. Permission to bring judicial review proceedings was refused by HHJ McKenna on 8 May 2018. That initial judicial review claim was not pursued further.

6. The age assessment was completed on 22 June 2018 and a decision made that the applicant was an adult. On 19 July 2018 the applicant's representatives sent a Letter Before Action setting out their objections

to the way in which the assessment had been conducted, together with criticisms of the assessment report itself. Unsatisfied with the response, this claim for judicial review was lodged in the Administrative Court on 23 August 2018 (sealed by the Court a day later and attributed the reference number CO/3354/2018). An Acknowledgement of Service, together with summary grounds, was lodged on or about 7 September 2018. By an order sealed on 27 September 2018, HHJ Worster granted permission, transferred the case to the Upper Tribunal, and made an anonymity direction (upon the granting of permission, the respondent had agreed to support and accommodate the applicant). On the same occasion, the current reference number of JR/6410/2018 was substituted for the initial Administrative Court reference. Thereafter, the Upper Tribunal issued a set of detailed case management directions in order to ensure that the substantive hearing would proceed efficiently.

7. Matters progressed smoothly until the morning of the first day of the substantive hearing on 23 September 2019. At this late stage it transpired that the Upper Tribunal had not booked a Tigrinyan interpreter for the applicant and his two witnesses. Without wishing to attribute particular blame for this unfortunate state of affairs, it does appear as though the omission was caused in part by administrative oversight by the Upper Tribunal, and also by a failure by the applicant's legal representatives to respond to a specific email relating to the need for an interpreter, sent in early September 2019. In any event, despite the best efforts of all concerned to find a way through this difficulty, the hearing had to be adjourned.

Preliminary issue

8. By an application notice sealed by the Upper Tribunal on 20 September 2019, the applicant sought permission for his Litigation Friend, Ms Yasmin Begum from the Refugee Council, to cease to act in this capacity. At the hearing, both parties were in agreement that this course of action would be appropriate and that, in light of R (on the application of JS and Others) v Secretary of State for the Home

Department (litigation friend - child) [2019] UKUT 64 (IAC), the applicant no longer requires a Litigation Friend.

9. Having regard to all relevant circumstances, I granted the application. Ms Begum is therefore no longer the Litigation Friend in these proceedings and the applicant shall no longer have anyone appointed in that capacity.

The applicant's case in summary

10. In essence, the applicant's challenge is twofold. First, it is said that the respondent's age assessment was carried out in a procedurally unfair manner because no proper "minded-to" process was followed. In other words, relevant adverse matters were not put to the applicant before the final decision was made, thereby depriving him of an opportunity to address concerns. In this way, the resulting age assessment was not in accordance with the well-known Merton principles (R (B) v London Borough of Merton [2003] 4 All ER 280).

11. Second, the applicant asserts that the reasons put forward by the respondent for disputing his claimed age are insufficient and based upon a flawed approach as regards a number of relevant factors. Particulars, supported by references to case-law, are set out in the grounds of challenge and I do not propose to recite them here.

The respondent's case in summary

12. The respondent asserts that a "minded-to" process was adopted in this case and there was no procedural unfairness. This is so even if certain adverse points had not been raised with the applicant prior to the final decision being made.

13. As to the applicant's substantive challenge, the respondent contends that the various factors relied on in the age assessment were all valid, and that the social workers were fully entitled to take them into account when reaching their overall conclusion.

The evidence

14. The written evidence in this case is contained within a comprehensive agreed bundle, indexed and divided by tabs 1-34. What follows is by way of a summary of the written evidence. Similarly, the oral evidence is set out in very condensed form (a full note is contained in the record of proceedings). Relevant aspects of the written and oral evidence will be dealt with in greater detail when I set out my assessment and conclusions, below.

The applicant's written evidence

15. There are four witness statements from the applicant, dated 15 August 2018, 14 February 2019, 4 September 2019, and 10 September 2019.

16. Without reciting this evidence at length, the general thrust of the statements is as follows. The applicant says that he is from a rural area of Eritrea, where he lived with his parents and two younger siblings. His father was in military service and therefore did not reside with the family very often. The applicant did not attend school. During his time in Eritrea he was unaware of his age, as this was not an issue of any importance in that country, or at least within his community. In 2016, the applicant and his friend were playing outside when they were arrested by soldiers who suspected them of attempting to leave the country illegally. The two were taken to an informal detention centre and held for a day before being released. Approximately a week later there was a religious festival in the applicant's village. The applicant knew that this event took place on 21 January every year because the church used the "Geez" calendar. The applicant also new that it was 2016. When leaving the festival, the applicant and his friend saw soldiers approaching. Afraid that they might be arrested again, the two walked until they entered Ethiopia. From there a lengthy journey to the United Kingdom ensued. In summary form, this was as follows:

    i. in Ethiopia for approximately 6 months;
    ii. in Sudan for a total of just over 6 months;

iii. a journey to Libya of 3-4 weeks;
iv. remaining in Libya for approximately 3 months;
v. a relatively brief journey across the sea to Italy;
vi. remaining in Italy for 1 month;
vii. approximately 3 months in France;
viii. an unknown period in Germany;
ix. a further period of some 3 months in France;
x. arrival in the United Kingdom in the afternoon of 31 January 2018.

17. The applicant states that he was 14 years old when he left Eritrea in January 2016. This is based on information about his date of birth provided by his mother when he spoke to her during his time in Italy. She told him that he had been 14 years old when he left his country and that he was 16 years old at the time of the telephone conversation. Whilst the statements assert that he has had no further telephone contact with his mother since that point, in oral evidence the applicant said that he did speak to her in July 2019.

18. A significant part of the applicant's second witness statement is taken up by his responses to reasons relied on by the respondent when concluding that he was a good deal older than he claimed. He strongly disagrees with the respondent's view that he looks and acts like an adult. He denies that he has been inconsistent in his evidence about past experiences and his age in general. He also denies certain statements attributed to him by the relevant allocated social worker (Ms Jackson-Royle), including that he had given the years 2012 and 2014 for his imprisonment in Eritrea. He does not accept the views apparently expressed by a former foster carer that he acted like an adult by requesting razors for shaving, watching 18-rated films, and wishing to sit with other adults in a restaurant.

19. In the applicant's third witness statement he states that he did not get on with Ms Jackson-Royle, and expressed the view that he was being treated differently from other people in respect of his allocation

of cash and vouchers. Finally, he states that he had gone to stay with a friend in Manchester during the Easter holidays of 2019. His friend apparently lived with a foster mother.

20. The applicant's fourth and final witness statement responds to the witness statement of Ms Jackson-Royle, dated 2 September 2019. He takes issue with a number of criticisms she has of his evidence and his non-disclosure of certain information. The applicant states that he did not feel comfortable being asked questions by Ms Jackson-Royle, going so far as to say that he did not trust her.

The written evidence of the applicant's witnesses

21. DT is an Eritrean national with an attributed date of birth of 1 January 2002, apparently accepted by the relevant Local Authority. He states that he first met the applicant in September 2018 in Derby. He saw the applicant on an almost daily basis and they played together. The two of them have a group of friends of a similar age. The witness states that he has no reason to doubt the applicant's age and he himself believes the applicant to be under 18 years old. He states that there are a number of similarities between the two of them which support his belief.

22. EG is also Eritrean. He asserts that he is 17 years old, but has been age assessed as 18. He is in the process of challenging this assessment. EG states that he first met the applicant when they were both dispersed to Newcastle. At the time of his witness statement, the witness had known the applicant for approximately 5 months. It is said that the two played together and had a group of friends of approximately the same age. They all went to the park together. It is said that he and the applicant were learning to cook and shop together. The witness' guess is that the applicant is 16 years old. He had been told by the applicant that he (the applicant) was born in 2002, although the witness has never asked him what his date of birth is.

The written evidence from the applicant's solicitors

23. There are two witness statements from Ms Rhiannon Salisbury, a paralegal employed by the applicant's solicitors. The first, dated 22 August 2018, deals briefly with the progression of the judicial review claim during the course of 2018. The second, dated 13 September 2018, addresses the particular issue of the applicant's claim to have been imprisoned in Eritrea. There is an issue as to whether he has been inconsistent as to when this allegedly occurred: the years 2012, 2014, and 2016, are recorded in various documents. Ms Salisbury's witness statement asserts that the applicant informed her prior to the drafting of his statement, he had not said that the detention took place in either 2012 or 2014.

24. There is a witness statement from Mr Stuart Luke, dated 6 March 2018. This deals exclusively with the initial judicial review claim and has no material bearing on the issues with which I am now concerned.

The written evidence of Ms Laura Jackson-Royle

25. There are four witness statements from Ms Jackson-Royle, dated 6 March 2018, 7 September 2018, 2 September 2019, and 6 September 2019. The first statement is very brief and relates to a visit made by Ms Jackson-Royle to the applicant's accommodation on 27 February 2018. It is said that the applicant informed her that he was 16 years old at that point. The author's comment is that, if the applicant's date of birth is indeed 2 July 2002, he would, at the time of the visit, have been 15 years old.

26. The second statement relates to the question of whether there was ever a "minded-to" stage in the age assessment process. Ms Jackson-Royle states that on 22 June 2018 she and another social worker visited the applicant at his accommodation and put three issues of concern to him (with the assistance of a telephone interpreter). In addition, reference is made to a further visit to the accommodation on 10 July 2018, at which the finalised age assessment report was read out to the applicant with the assistance of

an interpreter. On this occasion, the applicant was also apparently informed of comments made by the former foster carer.

27. The third witness statement is relatively detailed. It sets out what are said to be a number of inconsistencies and omissions in the applicant's evidence over the course of time, with particular reference to what was said during the age assessment meetings and what is stated in the Home Office screening interview of 1 February 2018. By way of example, it is said that the applicant had failed to provide details of his background and journey to the United Kingdom during the age assessment process, whereas this information did appear in his witness statements. It is said that there are internal inconsistencies in relation to issues such as his lack of education, when he was allegedly detained in Eritrea, and the timeline of the journey to this country.

28. The final witness statement is a response to the applicant's third witness statement. Ms Jackson-Royle states that the applicant had not been treated unfairly, had been provided with adequate support by the respondent, and had himself declined aspects of assistance. In addition, it is confirmed that the respondent was unaware of the applicant's friend said to have been living in Manchester. Having undertaken checks, the address to which the applicant apparently went in that city was unknown as a registered foster placement, and if the applicant had travelled there, it was without the respondent's knowledge.

The Home Office evidence

29. Following the making of a Subject Access Request in October 2018, partially redacted extracts from the Home Office database (referred to as the "GCID") have been disclosed. I do not propose to set out this evidence in detail, but will refer to relevant aspects of it when providing my conclusions and reasons on the core issues in this case, below. I do note, however, that there appears to be confirmation contained in the GCID notes of the applicant having been fingerprinted

in both Italy (5 June 2017) and Germany (22 October 2017). There is no further evidence from the authorities of either country before me.

30. As mentioned previously, I have a copy of the Home Office screening interview which occurred on 1 February 2018 (described as the "Initial Contact and Asylum Registration Form"). Again, I will not set out the contents of this document in detail here. Suffice it to refer to a couple of matters. First, it records the applicant's admission that he had indeed been fingerprinted in Italy and Germany. Second, and in relation to alleged events in Eritrea, the following is said at Questions 5.2 and 5.4:

> "In Eritrea back in 2012 I was imprisoned as I did not want to do my Military service. After being Imprisoned I was trained by force to become a Soldier. I did not take part in a fighting during my time in the Military.
>
> In Eritrea I was imprisoned as I did not do my Military service. After being Imprisoned I was trained to become a Soldier."

The Social Care records

31. These records cover the period from the initial contact between the applicant and the respondent in February 2018 to the beginning of July 2019. Amongst other matters, there are references to the following: visual observations of the applicant; alleged inconsistencies as to his date of birth and stated age; the applicant becoming upset; instances of what may be described as tensions between the applicant and Ms Jackson-Royle; and a reference to the applicant intending to stay with a friend in Manchester in April 2019.

The age assessment report

32. The age assessment report itself provides information on the four meetings held in its preparation, the assessors (the lead being Ms Jackson-Royle), and other basic information. In terms of substance, there are eight areas of assessment which led to the overall conclusion that the applicant is an adult. These are: physical appearance and demeanour; interaction with the assessors; social history and family composition; developmental considerations; independent/self-care

skills; education; health and medical assessment; and information from documentation and other sources. Adverse inferences are set out, with particular reference being made to the way in which the applicant claims to have discovered his age/date of birth, and the evidence relating to the claimed detention in Eritrea and his age at that time. Ultimately, it is concluded by the assessors that they "firmly" believed the applicant to be an adult, and that he was "clearly" over the age of 18 years old. He was deemed to be aged 20 years old.

33. The assessors' handwritten notes are also before me. Parts of these are poorly copied.

The applicant's oral evidence

34. In examination-in-chief, the applicant adopted his four witness statements. He gave evidence about, amongst other matters, a tradition in Eritrea of rounding-up one's age, the circumstances in which he had been told his date of birth by his mother when he was in Italy, the contents of the screening interview in relation to his detention in Eritrea, the reasons for leaving that country, and his current studies at college.

35. The applicant was then cross-examined at length. There was a focus on what had been said to the Home Office and Ms Jackson-Royle during interviews, in particular relating to what had happened in Eritrea and the circumstances surrounding the departure. Specifically, the applicant denied that he had been imprisoned in Eritrea in 2012 and asserted that he and a friend left illegally when they saw soldiers approaching following a religious festival in a neighbouring village. Further information was given surrounding the telephone call received from the applicant's mother when he was in Italy. He also said that he had spoken to her once more in July 2019. There were a number of questions concerning the age assessment process. Evidence was given about the applicant's day-to-day life in this country and his friendship with his two witnesses.

36. In re-examination, the applicant gave further evidence about what happened immediately after his arrival in the United Kingdom. He said that his mother, together with the mother of his friend, had themselves been detained when they try to see the applicant and his friend in the detention centre. Additional information was provided about the age assessment process and what the applicant had said in his screening interview. He re-affirmed his claim that he left Eritrea on 21 January, and that he had been arrested in 2016.

37. At this stage I record a matter that arose during the applicant's evidence relating to the Tribunal-appointed Tigrinyan interpreter. At two points during the evidence, Ms Benfield, on instructions, raised a concern that the interpreter was not fully translating the entirety of the applicant's answers to certain questions. These concerns were properly raised at the time (see TS (interpreters) Eritrea [2019] UKUT 00352 (IAC)). Following a short break in proceedings, I reminded the interpreter of the importance of ensuring full translation and the utility of asking the applicant to pause during the giving of his answers in order to make the relaying of the evidence easier. No subsequent concerns were raised by Ms Benfield. In all the circumstances, I was satisfied both the applicant fully understood the interpreter and that there were no material deficiencies in the interpretation and relaying of the applicant's evidence to me.

The witnesses' oral evidence

38. In examination-in-chief, DT adopted his witness statement. He confirmed that following a favourable age assessment, the Home Office had now accepted his age and that he had been granted refugee status in the United Kingdom. He gave evidence about his friendship group, his knowledge of their ages, and his view that the applicant is what he described as "underage".

39. In cross-examination, DT stated that he knew the dates of birth of some of his friends, but not others. It was accepted that maturity did not depend just on age, but could be based upon the nature or

character of the individual. DT gave evidence about why he thought the applicant was not an adult. He said that he and the applicant would go to a park, ride bicycles, and spent time at an Eritrean cafe after church services on Sundays.

40. There was no re-examination.

41. EG adopted his witness statement. He confirmed that he currently lives with the applicant. He has known the applicant since June or July 2018. His belief that the applicant is "underage" is based mainly on the things that the two of them have in common. EG stated that if the applicant were much older, they would not have anything in common.

42. In cross-examination, EG was asked about what he considered to be "childish" things that he and the applicant did. It was said that activities such as football and volleyball are played by children. These can be started as a child and then carried on. EG confirmed that since he turned 18, his relationship with the applicant had not changed. He confirmed that he was friends with DT as well. Although DT is younger, the gap was not big. The witness did not accept that he could be friends with older people, only with those close to his own age.

43. There was no re-examination.

Ms Jackson-Royle's oral evidence

44. Ms Jackson-Royle adopted her four witness statements. There was no additional examination-in-chief.

45. In cross-examination, Ms Benfield asked a number of questions relating to the age assessment process. Ms Jackson-Royle did not recall having specific training before undertaking the age assessment report for the applicant. She recalled undertaking a visual inspection of the applicant during a visit on 28 February 2018. She was first

allocated to the applicant following the Order of Green J. She was aware that two other social workers had had temporary conduct of the applicant's case early in 2019. These changes have occurred due to the breakdown of the relationship between her and the applicant. When asked about her understanding of the phrase "clearly an adult", Ms Jackson-Royle explained that this meant that it was more likely that the applicant (or the subject of any assessment) was over 18. She accepted that it could be difficult to determine age based solely upon physical appearance.

46. When asked about support provided to the applicant following initial placement, Ms Jackson-Royle stated that she believes that he had not been placed as a child. She accepted that at the start of the age assessment process, she had formed an initial judgment that the applicant was in fact an adult. She believed that the local authority had also formed that view. Ms Jackson-Royal believed that the Merton process had been followed from the outset. She could not recall precisely why the second age assessment assessor, Melissa Andrews, had not been at the meeting with the applicant on 22 June 2018. This meeting was the "minded-to" meeting. It was said that the final age assessment decision had been made by her and Ms Andrews. It was said that there was no real difference between the roles of lead and second assessors. She confirmed that the comments of the foster carer, Mr Singh, had been used when making the outcome decision. When asked whether the comments of Mr Singh should have been put to the applicant, Ms Jackson-Royle stated that she did not think that any response from him would have changed her decision. At that time, she said, her view was that the applicant was "firmly an adult". Ms Benfield put a number of matters to Ms Jackson-Royle, which were described as flaws in the age assessment process. In response, it was said that the final decision on the applicant's age was not made until the full age assessment had been carried out.

47. In re-examination, Ms Jackson-Royle stated that she and Ms Andrews had thought that the applicant was aged between 18 and 21

years old initially, and the age of 20 was decided on later. She did not believe that the meeting on 22 June 2018 would have been different if Ms Andrews had been present. She had informed the applicant that she was aware of the Home Office screening interview in which it was recorded that he has said he was imprisoned in Eritrea in 2012. In response, the applicant has said that he was 14 when arrested.

The parties' respective submissions

48. Mr Parkhill relied on his skeleton argument. He submitted that any argument from the applicant that there needed to be firm grounds and reasons for rejecting the claimed date of birth, was flawed in light of the decision of Knowles J in R(F) v Manchester City Council [2019] EWHC 2998 (Admin), at para 64. The current proceedings were not concerned solely with whether or not the age assessment was flawed: the evidence had to be considered as a whole. In addition, it was submitted that there had been no actual procedural unfairness to the applicant as a result of either there being a different social worker at the meeting on 22 June 2018, or because of a failure to put the foster carer's comments to the applicant. In respect of the first point, the meeting on 22 June 2018 had in fact occurred, and the points set out in Ms Jackson-Royle's witness statement were accurate. As to the second point, the applicant had had ample time to provide a response to the foster carer's comments.

49. Mr Parkhill submitted that there had been material inconsistencies in the applicant's evidence about what had occurred in Eritrea. These related to, amongst other matters, whether he had been caught by the authorities when trying to cross the border illegally, when he was imprisoned, and why soldiers wanted to arrest him again. The applicant had clearly stated that the year of claimed imprisonment was 2012. The applicant had now accepted telling his solicitors that he had never said 2012 to Ms Jackson-Royle, when in fact he had given this year, but on the basis that he was angry with her. This point went to his overall credibility. It was submitted that according to the claimed date of birth, the applicant had either been

imprisoned when he was 10 years old or 14 years old. If the latter, the applicant was now aged 21.

50. It was said to be incredible that the applicant did not ask his mother for proof of his age when he spoke to her in July 2019. There was no reasonable explanation for this failure. In respect of the two witnesses, Mr Parkhill said that it was “unrealistic” of them to hold the conviction that the applicant was definitely not 18 or over. The assertion that they all lived a “child-like” lifestyle was not borne out by the evidence. Overall, their evidence should carry little, if any, weight.

51. Ultimately, Mr Parkhill urged me to find that the applicant was 20 years old when assessed and is now 21 years old.

52. Ms Benfield relied on her skeleton argument and written closing submissions. The “firm grounds and reasons” point taken in her skeleton argument came down to the need to provide sound reasons when producing an age assessment report. Reliance was placed upon decisions cited in the skeleton argument, in particular VS [2014] EWHC 2483 (Admin), and MVN v London Borough of Greenwich [2015] EWHC 1942 (Admin). A sympathetic approach should be taken to the evidence as a whole, having due regard to the applicant’s vulnerability as a young person and his arduous journey from Eritrea to the United Kingdom. The applicant had been consistent about his date of birth and how he found this out. The idea of rounding up one’s age was plausible in cultural terms. Although the statement of 2012 as the year of the imprisonment was an inconsistency, the applicant had accepted this to be the case. In respect of the Home Office evidence, I was asked to consider the fact that the interviews took place very soon after his arrival in this country. It was possible that the applicant had made genuine errors. These errors were not fatal to the applicant’s overall credibility. I was asked to find that the applicant had not been imprisoned in 2012, but in 2016. The extract from the Home Office Country Policy and Information Note on Eritrea (an extract of which was provided at the hearing), confirmed that legal exit was not possible. Thus, it was plausible that the applicant had been detained

when encountered in a border area. The ill-treatment in detention was also plausible. Given that the applicant had not attended school, it was plausible that he had not been caught trying to evade military service, as it was normally those aged 17 who are in school that were the subject of forcible recruitment before the age of 18.

53. Ms Benfield criticised the age assessment process as being flawed in a number of respects, and with reference to case-law including VS. The evidence that the applicant had not been treated as a child following the Order of Green J was consistent with the pre-determination by the assessors that the applicant was an adult all along. She highlighted the absence of evidence from the respondent other than that of Ms Jackson-Royle. This was described as “striking”. The Home Office’s visual assessment of the applicant being significantly over the age of 18 in 2018 was of little, if any, value. By contrast, Ms Benfield urged me to find the evidence of the two witnesses to be credible. Their evidence had not been substantially challenged. They both had longer-term experience of the applicant.

54. Ms Benfield asked me to find that the applicant is currently aged 17, and his date of birth is in fact 2 July 2002. Even if I were to find that this is not the case, the applicant is certainly not 21 years old.

55. Mr Parkhill briefly clarified a couple of matters. First, he accepted that the applicant had provided a response to the meeting of 22 June 2018 in his second witness statement. Second, it was to be noted that there has been no application to enforce any of the Court Orders in respect of the applicant’s support.

56. At the end of the hearing, I reserved my decision.

Assessment of the evidence and conclusions

57. I have assessed the evidence before me as a whole. Thus, whilst I have dealt with various aspects of it under sub-headings for the purposes of structure, this is not an indication that I have artificially

viewed matters in isolation from one another.

58. At its core, this case concerns the reliability of evidence going to the issue of the applicant's age. My consideration of this issue is not, however, confined to what he himself said about his age, but involves a wider assessment of credibility. Importantly, and perhaps stating the obvious, the assessment of age is far removed from an exact science.

Physical appearance and demeanour

59. As is made abundantly clear from numerous authorities, there is a significant danger in attempting to accurately assess age by virtue of physical appearance and/or demeanour. That is not a trap into which I intend to fall. I make it clear that I have placed no material weight upon the applicant's physical appearance and/or his demeanour at the hearing.

The respondent's evidence

60. Whilst I do not doubt the good faith of Ms Jackson-Royle in any way, I am bound to say that there are in my view real difficulties with her evidence and the age assessment decision-making process as a whole.

61. Ms Jackson-Royle candidly accepted that prior to undertaking the age assessment process for the applicant, she had not received any specific training. She also acknowledged that this particular age assessment was only her third, the previous two having occurred during the course of some four years.

62. I found this aspect of her evidence troubling. It is unclear why there had been no formal training, but that is not a matter with which I am concerned. The fact that the designated lead assessor in the age assessment process had received none runs contrary to guidance set out in case-law and certainly undermines the weight which I attach to the respondent's conclusion that the applicant is an adult with a date of birth of 2 July 1998.

63. I have no evidence that the second assessor, Melissa Andrews or the “stand-in” social worker, Ms Voila Chisvo, had been age assessment trained.

64. A second area of concern relates to what in my view was a very firm view taken of the applicant’s age by Ms Jackson-Royle, and in all likelihood other colleagues as well, at an early stage in proceedings. It is clear to me that having made a visual inspection on 27 February 2018 (the date of 28 February was mentioned in oral evidence, but nothing turns on this), Ms Jackson-Royle formed a strong view that the applicant was clearly an adult. This view was, self-evidently, based solely upon physical appearance, a factor that is notoriously unreliable when attempting to assess age. Indeed, Ms Jackson-Royle acknowledged this in oral evidence. Although she did state that the visual inspection had not led her to a final decision prior to the writing of the age assessment report, there was, I find, a strong view held throughout the interaction between the applicant and the respondent that the former was an adult.

65. An example of what in my view was something close to a pre-disposition in favour of a conclusion that the applicant was an adult all along, is the fact that when asked why the foster carer’s comments were never put to the applicant, Ms Jackson-Royle stated that such a step would probably not have made any difference to the outcome of the assessment. Given that Mr Singh’s comments were cited as a material source upon which the final decision was based, this candid acknowledgement bears real significance.

66. The respondent’s view may well also have been influenced in part by Home Office documentation produced after the initial contact with the applicant by that department on 1 February 2018 and subsequently seen by Ms Jackson-Royle (I will return to this evidence, below).

67. The third area of concern in respect of Ms Jackson-Royle’s evidence relates to the compiling and evaluation of information prior

to the final age assessment report. Given that the lead assessor, Ms Jackson-Royle, was not age assessment trained, it seems to me all the more important to have had the same two assessors present at all relevant meetings with the applicant. This did not occur: Ms Andrews was absent from the meeting on 22 June 2018. There has been no clear explanation as to why this was the case. Given that the meeting in question was, I find, the "minded to" stage of proceedings, the value of having the same assessors should have been apparent. Whilst I take account of Mr Parkhill's submission that the absence of Ms Andrews from the meeting really made no difference at all, it does go to my overall view of the robustness of the age assessment procedure and, in turn, the weight attributable to the conclusion on age.

68. Bringing together the matters discussed above, I conclude that the age assessment process was flawed and the weight I place upon that assessment and the respondent's ultimate conclusion on the applicant's age is substantially reduced.

69. As a contingent issue, I have a concern about the particular way in which the applicant has been treated by the respondent during the course of the age assessment process. Ms Jackson-Royle told me that the applicant had not been placed as a child, notwithstanding the relevant Order from the Administrative Court of 6 March 2018. Having said that, it is right that there is no evidence of any further proceedings to enforce the Order.

70. Having set out a number of criticisms of the respondent's evidence, there are other aspects of it which I find to be reliable and of greater value. Although Ms Jackson-Royle was initially rather confused about the nature of the visit on 22 June 2018, I accept that this did in fact constitute the "minded-to" meeting. I am satisfied that the three matters set out in para 2 of Ms Jackson-Royle's second witness statement were in fact put to the applicant. It follows that I do not accept the applicant's evidence that nothing was said to him by her on this occasion, and that he only found out information from a paralegal at his solicitors' firm afterwards. I do not accept the implication that

Ms Jackson-Royle has simply made up the contents of her witness statement. In saying this, I also note that the applicant accepted in oral evidence that he recalls making the comment about not being 18. As this comment is recorded in the statement, it is unlikely that the matters immediately preceding it are entirely inaccurate. It may be that the applicant's relationship with Ms Jackson-Royle has been so poor that he has simply declined to listen to what she has had to say at various stages of the process.

71. I find that although, for reasons set out above, the opinion of the assessing social workers as to the applicant's age carries much reduced weight, there are factual matters which have been reliably recorded. Specifically, and based on the contents of Ms Jackson-Royle's statements, the legible parts of the handwritten assessment notes, and in part on what the applicant has accepted, I find that the applicant informed the social workers, amongst other matters, of the following:

    i. that he was 16 years old when spoken to on 27 February 2018;
    ii. that he had been imprisoned in 2012 when aged 14;
    iii. that he left Eritrea on 21 January 2016 following a religious ceremony and was aged 14 at that time;
    iv. that his date of birth was 2 July 2002 and he was told this by his mother when he was in Italy.

72. There is no evidence from the former foster carer, Mr Singh. Whatever the reason for this might be, the consequence of this absence is that I place no material weight upon the comments apparently made by him to Ms Jackson-Royle concerning the applicant's behaviour. I note that the applicant has in fact commented on the assertions apparently made by Mr Singh (the second witness statement), and there is no good reason for me to reject the relevant responses. The upshot of this is that the reliance placed upon Mr Singh's assertions in the age assessment compounds the reduction in

weight I attach to that report.

73. There is no evidence from any other social worker, any key worker, or the applicant's college. Although Ms Benfield described this as a "striking" omission, it seems to me as though at least one of those sources, the college, could have been approached by the applicant for potentially supporting evidence. In any event, as a matter of fact, there is no additional evidence from other sources to support the respondent's assertion as to the applicant's age.

74. As mentioned earlier, there is no evidence before me from either the Italian or German authorities regarding their interaction with the applicant. Whether or not any such evidence would have been probative to the issue of his age, it is somewhat odd that it does not appear as though there has even been an attempt to obtain this.

The Home Office evidence

75. I will deal with the substance of this evidence when considering the applicant's evidence, below. At this point, I make the following observations. The initial interview with the applicant occurred at 5am on 1 February 2018, having arrived in this country at approximately 5pm the previous day and having been encountered by the authorities at 3.30am. It is also the case that there is no full transcript of that interview. In all circumstances, I treat what is stated in the GCID note of the interview with caution.

76. It is not the case, however, that the interview took place immediately upon arrival in this country. I find that the applicant did provide information with the assistance of an interpreter. I find that the information recorded in the note is accurate in so far as it reflects what the applicant in fact said, namely that, amongst other things, his mother had been arrested when the authorities went looking for him to complete military service and that he did not wish to undertake that service.

77. Turning to the screening interview conducted at 9am on 1 February 2018, I again treated this evidence with caution given the nature of such information-gathering exercises. They are meant to obtain further evidence about the individual's family details and their journey to the United Kingdom, together with a relatively brief description of why they are seeking protection in this country. They are not in-depth asylum interviews (as far as I am aware, no such interview has yet taken place). I also bear in mind the fact that whatever age the applicant is now, he was obviously fairly close to two years younger at the time of that interview.

78. The screening interview was conducted approximately four hours after the initial interview. I am satisfied that the applicant was able to understand the interpreter throughout (as recorded at the end of the interview) and that he confirmed that he was ready to be interviewed at the time.

79. On balance, I find that the record of the screening interview accurately reflects what was in fact stated by the applicant, save for one specific point. It is likely that the date of birth recorded at question 1.2 as 2 July 1994, was in fact not expressed by the applicant himself, but was derived from the Home Office official's visual assessment of his age and recorded on other documentation issued by them. I find that the applicant did state that:

i. he left Eritrea in January 2016;

ii. that he had been imprisoned in Eritrea in 2012 for not wanting to undertake military service;

iii. that after the imprisonment, he had been trained to become a soldier, although he had not taken part in any fighting.

The applicant's own evidence

80. In assessing the applicant's evidence, I have had at the forefront of my mind the possibility that he is either still a child or, at most, a young adult. I have taken account of the fact that he has been going through a lengthy legal process and is (as he expressed during

the hearing) frustrated that matters have not yet been resolved. I also take account of the fact that the applicant's relationship with his allocated social worker, Ms Jackson-Royle, has been strained. Aspects of his evidence provided to the Home Office and the respondent soon after his arrival in the United Kingdom must be viewed in the context of what preceded that event: whatever his actual age may be, he had undertaken a lengthy journey from Eritrea to this country, with all the difficulties and dangers that this would have entailed.

81. Without pre-judging the issue of his actual age in any way, I have treated the applicant as a vulnerable witness within the meaning of the Joint Presidential Guidance Note No.2 of 2010. Having reflected carefully on the hearing itself and the oral evidence presented, I am satisfied that the applicant was not materially inhibited in putting forward his evidence, notwithstanding his vulnerability. I have factored into my assessment the fact that the applicant has been asked many questions on the same or similar subject-matter over the course of time, and it is right to say that his oral evidence at the hearing was lengthy (although I emphasise that the questioning was all perfectly proper).

82. At the outset of his evidence I ensured that he fully understood the interpreter and vice versa. I gave a full introduction. I am satisfied that the applicant had no difficulties in communicating his evidence at the hearing and that he was fully able to engage with proceedings. In respect of the concern raised by Ms Benfield during oral evidence about the interpreter, I am satisfied that there is been no material prejudice to the applicant's ability to convey what he wanted to say.

83. Even applying all of the cautionary criteria and latitudes applicable to a person in the applicant's situation, and adopting a "sympathetic" approach, there are significant difficulties with material aspects of his evidence.

84. Before turning to these, it is important to say that he has been consistent on certain matters. In particular, he has consistently stated

that he left Eritrea on 21 January 2016 at the time of a religious festival in his (or a nearby) village, that his date of birth is 2 July 2002, and that he acquired this information from his mother whilst he was in Italy because the authorities there were requesting it. This thread could indicate one of two things: first, that he has been consistent because he was being entirely truthful about these matters and others; second, that his consistency relates to only three limited aspects of his evidence, and may amount simply to a recitation of elements of a fabricated account. It might not take very much more of a favourable view of his overall evidence to conclude that the consistency weighs heavily on his side of the balance.

85. There are obvious inconsistencies in the applicant's evidence as regards when he was allegedly imprisoned in Eritrea: the years 2012, 2014, and 2016 have variously been stated. In essence, the applicant's explanation is that he had been confused at the relevant times. I fully appreciate that confusion can occur and mistakes may be made by a child or young adult when faced with questions from those in authority (and I would include legal representatives in that category). However, I have nonetheless found it very difficult indeed to understand how the apparently significant confusion could have genuinely arisen, particularly in light of other evidence surrounding the issue of dates. In his first witness statement, the applicant denied ever having said that he was imprisoned in 2012 or 2014. That denial appeared to be disavowed in oral evidence, where the explanation was based upon confusion only. Yet even in that oral evidence, the applicant told me that he had informed the social worker (presumably Ms Jackson-Royle) that the imprisonment occurred in 2016, not 2012. I have already found that the year 2012 was in fact stated to Ms Jackson-Royle (see above). Later in evidence the applicant seemed to shift his position somewhat accepted that he "might" have said 2012 to her. Then when asked about a passage in the witness statement of Rhiannon Salisbury, the applicant suggested that he had deliberately told her an inaccuracy (namely, that he had never told the social worker that he was imprisoned in 2012) because he was angry and

frustrated with Ms Jackson-Royle. Whilst I accept that he had felt frustration, this particular point, in combination with others, undermines the applicant's overall credibility in respect of the imprisonment issue and more generally.

86. The inconsistency on the year of claimed imprisonment is also related to the clear statements made by the applicant in response to two questions in the screening interview that he was taken for military service training after release. This self-evidently runs counter to other aspects of the evidence in which he has denied ever even being asked to undertake service. This point adds to a general sense of incoherence within the applicant's account.

87. The applicant's evidence about why he was allegedly imprisoned and his reasons for leaving Eritrea are also highly problematic. He has told the Home Office he was imprisoned because he did not want to (or did not do) military service. Leaving aside the problem with the date of claimed imprisonment, the applicant's evidence was clear, repeated as it was in two questions within the screening interview. I cannot see any plausible reason why the applicant would have been genuinely confused when providing this answer. Beyond this, the applicant also stated in the screening interview that he feared a return to Eritrea because he did not want to undertake military service. Yet in oral evidence, this proposition (which might in many circumstances be a plausible one, given the country situation in Eritrea) was repeatedly disavowed. When pressed on the contents of the screening interview, the applicant responded with what I am bound to say were rather evasive answers, claiming for example that it was difficult to answer the question and that he could not remember certain parts of responses.

88. Related to the preceding point is the applicant's evidence on the circumstances of the claimed arrest prior to the imprisonment. In his first and second witness statements, he asserts that he had been "playing" with a friend near to the border with Ethiopia when they

were picked up by soldiers on suspicion that they were about to leave the country. Not only does this contradict what was said in the screening interview, but it flatly contradicted what he said in several answers in examination-in-chief and cross-examination. He clearly stated that he had been arrested whilst trying to leave the country illegally. I acknowledge that later in his oral evidence the applicant reverted to the claim that he and his friend had simply been playing at the border when the soldiers picked them up. He then denied that he had in fact been trying to illegally cross the border at that time. The applicant's evidence has once again been inconsistent and lacking in coherence.

89. Another inconsistent response arose when the applicant told me that he eventually left Eritrea because he had been "caught" trying to cross the border illegally during the religious celebration. This ran against other evidence in which he had stated that he and his friend decided to leave because they saw soldiers approaching and did not want to be imprisoned again.

90. In light of the particular difficulties discussed above, there is real force in Mr Parkhill's submission that the applicant has sought to disassociate himself from previous evidence relating to the reason for why he left Eritrea because that evidence may lead to an indication that he was older than he says at that particular juncture.

91. At para 16, above, I have set out in summary form a chronology of the applicant's journey from Eritrea to the United Kingdom. I have derived the details of this journey largely from the applicant's second witness statement, together with what is set out in the screening interview. Whilst there are one or two gaps, my overall view is that the applicant's account, at least in so far as the timing is concerned, essentially stands up to scrutiny. On his evidence, the journey was arduous and involved significant logistical and, no doubt, emotional obstacles. If, as claimed, the applicant was born in July 2002 and left Eritrea in January 2016, he would have been just 13 years old for the first 6 months or so of his journey. Although the applicant states that

he was placed into an "underage" group of refugees in Ethiopia, he later describes being placed with adult males at one stage in Sudan in what, on my calculation, would have been the autumn of 2016, when he would, on his case, have been 14 years and a few months old. In my view, his evidence of the journey does not provide any particular support for his asserted date of birth and age. In more general terms, it is possible that such a young boy could have made the journey. Having said that, it is more plausible that the applicant's ability to deal with the numerous difficulties in his path (including, for example, being imprisoned, escaping from custody, arranging for payment by his mother of smugglers fees, and suchlike) was down to him being older than claimed.

92. In her written closing submissions, Ms Benfield relies on the country guidance decision of the Upper Tribunal in MST and Others (national service - risk categories) Eritrea CG [2016] UKUT 00443 (IAC). This is clearly supportive of an assertion that a young man in Eritrea will not, in all but exceptional circumstances, be able to leave that country legally. It is also the case that the Eritrean authorities are vigilant to prevent illegal border crossings. Ill-treatment in detention, as the applicant alleges occurred, is plausible. Finally, the evidence considered by the Upper Tribunal indicates that children within the education system are often recruited into military service in the final year of school, at which point they are normally aged 17.

93. These basic propositions may be said to be supportive of the applicant's case. However, in my view, when placed in the context of the evidence as a whole, they add little to the particular account put forward. Being arrested for trying to cross the border (or being suspected of doing so) would potentially apply to someone aged 17 or 18 as much as one aged 13 or 14. As to the school issue, the fact, as I find it to be, that the applicant did not attend school, does not of itself suggest that he would necessarily have been liable for conscription at an earlier age. In any event, as discussed previously, the applicant has expressly, and rather implausibly, rejected the suggestion that he left Eritrea because of a fear of the almost inevitable call-up to military

service.

94. In his interactions with Ms Jackson-Royle, the applicant has stated that he was older than his date of birth allowed for. For example, when first visited by her on 27 February 2018, he stated that he was 16 years old when in fact he would have been 15 years and 6 months. This claim was also made when the applicant was interviewed by social workers on 13 March 2018 as part of the age assessment process. In his first witness statement, the applicant stated that he was 14 years old when he left Eritrea. If that event took place in January 2016, he would have been 13 years and six months old. When asked about this aspect of his evidence in examination-in-chief, the applicant said that it was common in Eritrean tradition to round-up one's age. There is no expert evidence to that effect. Even putting that to one side, in the light of the evidence as a whole, I have a material concern that he had never sought to qualify his age by reference to his claimed date of birth, even when providing evidence to his solicitors when drafting the first witness statement. In addition, the claim that it was common to round-up age does not sit particularly well with the applicant's contention that dates of birth were insignificant in Eritrea and that age was not spoken of as it was deemed to be unimportant: rounding-up implies a knowledge of one's date of birth or at least age by year. Further, as the date of birth and age became extremely important as matters progressed in the United Kingdom, it is implausible that the applicant did not provide what would, on his claimed date of birth, have been the correct age.

95. A final but connected point on the date of birth and stated age relates to the oral evidence on what occurred in Italy. The applicant told me that his mother has said to him that he was "turning 16" at the time she informed him of his precise date of birth. Having gone through the evidence relating to the applicant's journey from Eritrea to United Kingdom with care, the chronology places him in Italy in approximately mid-August 2017. At that time, he would, on the claimed date of birth, have been just over 15 years old. That is some

way off turning 16.

96. In the course of oral evidence, it transpired that the applicant had been able to contact his mother in July 2019. Although it has not appeared in either of the two most recent witness statements, I am prepared to accept that this contact occurred. The evidence relating to this event causes the applicant further difficulties. In all the circumstances, it is not credible that the applicant would not even have asked his mother for possible proof of either his precise date of birth or age. He told me that he did not want to worry his mother by making such a request. However, it was abundantly clear to the applicant at this stage that his age was of critical importance to his case. Further, unlike when he had previously contacted his mother (first in Sudan to seek payment of smugglers fees, and then in Italy), his overall circumstances in July 2019 were much less precarious and, as a consequence, much less likely to lead his mother to unduly worry about his well-being. Indeed, in my view the contrary would be the case: her son had reached a final, safe destination and any assistance she could have provided is highly likely to have been offered, if a request had been made.

The witnesses' evidence

97. I find that both DT and EG have provided honest evidence in the sense that they both hold a genuine belief that the applicant is, as they have described it, "underage". Their oral evidence was essentially consistent with the witness statements. What they have said about factual matters within their own knowledge (for example, undertaking certain leisure activities, going out in Derby town centre, and "hanging out" at an Eritrean cafe) has been broadly consistent and plausible.

98. However, their evidence does not assist greatly with my overall assessment of the applicant's age. DT is now nearly 18 years old. He confirmed that his friendship group were of a "similar" age and all were, to the best of his knowledge, under 20 years old. He accepted

that he has not seen proof of age for any of his friends aside from at most three. I appreciate that he clearly believes that the applicant is not over 18, but, in all the circumstances, I am only able to place limited weight upon what is, on any view, an entirely subjective standpoint. The witness may be "familiar" with the applicant to an extent, but his determination that the latter's character proved him to be under 18 is not a reliable evidential platform. An individual's character, particularly when dealing with age bands of, for the sake of argument, 17-20 or 18-21 years of age, is so inherently variable that even a friend's view will be highly prone to error. In addition, there is of course no expert evidence on the applicant's age (including any assessment of his character and behaviour).

99. What EG has said suffers from similar difficulties. There is nothing problematic with he and the applicant sharing "common things", but these have been described as leisure activities such as football, volleyball, and bicycling. There is nothing inherently childlike in these pursuits: they may be undertaken by children and young adults alike. Further, EG accepted that he got on well with DT, who is a year younger. Therefore, even on the witnesses' own evidence, it is apparent that people can get on very well with others who are either younger or older than themselves. I would accept that a significantly wider age gap may lessen ties or even prevent them from being created in the first place. However, even putting the respondent's case at its highest, the gap between the applicant and his witnesses would only be approximately three years.

100. In summary, the witnesses' evidence does not undermine the applicant's assertions as to his date of birth and age, but nor does it materially support them.

Overall conclusions

101. In bringing together all of the matters set out at some length, above, I reiterate the emphasis I have placed on a holistic view of the evidence. On my assessment thereof, this is a case in which there are clearly significant problems on both sides. The age assessment

process was flawed and the resulting decision carries little weight. On the other side, the applicant's own evidence is in many respects unreliable.

102. Conversely, there are aspects of the evidence which are supportive of the parties' respective positions. Certain purely factual matters have been accurately recorded within the respondent's evidence, and information provided by the applicant to the Home Office has played a relevant part in my assessment. From the applicant's perspective, there has been consistency on certain issues, and there is no decisive evidential element against him.

103. Following from the above, this is not a case in which I am able to agree with either party's asserted dates of birth for the applicant.

104. I make the following core findings of fact, all based of course upon an application of the appropriate standard of proof.

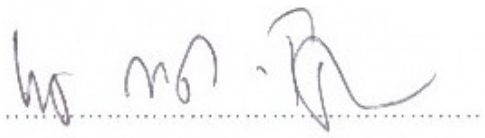
105. I find that the applicant was not arrested and imprisoned by the Eritrean authorities in January 2016, or at any other time. I base this on the cumulative effect of the significant inconsistencies and other deficiencies in his evidence, as highlighted previously. In particular, the evidential problems relating to the year of claimed detention, the reasons for the claimed arrest, and the reasons for wishing to leave Eritrea, are too great for me to accept this aspect of the applicant's account.

106. It is more likely than not that the applicant and a friend of similar age, decided to leave Eritrea illegally out of a (justified) fear of being conscripted into military service within a relatively short timeframe. It is likely that they used the cover of a religious festival to make the border crossing. The applicant was entering, what may be described as the age-related "danger zone" for conscription, as indicted by the country information contained in the Home Office's Country Policy and Information Note (version 5.0, July 2018). I find that he did in fact leave Eritrea illegally. It is more likely than not that he did this at the

age of 16, but with his 17th birthday on the horizon, as it were. My view on this is strengthened by the fact that the applicant had always been aware of his father's conscription and open-ended military service, a fate which it is highly likely he wished to avoid at any cost.

107. As to the claimed date of birth provided by the applicant's mother, there are three distinct possibilities. First, that the applicant knew his date of birth (or at least his approximate age) whilst in Eritrea. This would appear to be consistent with the importance of the threat posed by conscription into military service at the age of 18. Second, that the applicant's mother did provide the date of birth of 2 July 2002, but that this was knowingly inaccurate in order to make him appear younger than he in fact was. Third, that the mother provided an accurate date of birth (not 2 July 2002), but the applicant himself then changed this in order to lower his age. Whilst these scenarios are speculative, the fact is that I have rejected important aspects of the applicant's evidence as it relates to the date of birth and age he has put forward. Ultimately, it does not matter whether any of the three possibilities represent the "true" picture or not.

108. In the final reckoning, I conclude that the applicant is an adult with an attributed date of birth of 2 July 1999. It follows that the applicant arrived in the United Kingdom at the age of 18, was aged 18 at the time of the age assessment, and is currently 20 years old.

Signed: 

Upper Tribunal Judge Norton-Taylor

Dated: **3 January 2020**

UTIJR6

JR/6410/2018

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen on the application of T T

Applicant

v

Derby City Council

Respondent

Before Upper Tribunal Judge Norton-Taylor

ORDER

UPON consideration of all documents lodged and having heard the parties' respective representatives, Ms A Benfield, of Counsel, instructed by Bhatia Best Solicitors, on behalf of the applicant and Mr L Parkhill, of Counsel, instructed by the respondent, at hearings at Field House, London on 23 September and 12-13 December 2019.

AND UPON handing down the Decision in this application for judicial review on 6 January 2020, at which neither party attended.

IT IS DECLARED THAT the applicant's attributed date of birth is 2 July 1999, and on his arrival in the United Kingdom on 31 January 2018 he was 18 years of age.

AND IT IS ORDERED THAT

1. This application for judicial review is refused.

2. The Order for interim relief is discharged.

Permission to appeal
There has been no application for permission to appeal to the Court of Appeal. In any event, I refuse permission on the basis that my decision does not contain any arguable errors of law.

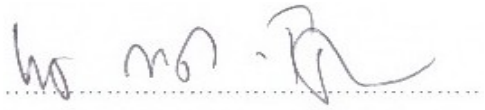
Costs

(1) The applicant shall pay the respondent's reasonable costs, to be assessed.

(2) The applicant having the benefit of cost protection under section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the amount that he is to pay shall be determined on an application by the respondent under regulation 16 of the Civil Legal Aid (Costs) Regulations 2013.

(3) There shall be a detailed assessment of the applicant's costs in accordance with the Civil Legal Aid (Costs) Regulations 2013.

Whilst the applicant indicated in his draft order that there should be no order as to costs, save for a detailed assessment of his own, no basis for this course of action has been put forward. The applicant has been unsuccessful on the substantive issue of his age, as that relates to the assertion that the respondent has had, and continues to have, obligations towards him under the Children Act 1989.

Signed: 

Upper Tribunal Judge Norton-Taylor

Dated: **6 January 2020**

Applicant's solicitors:
Respondent's solicitors:
Home Office Ref:
Decision(s) sent to above parties on:

Notification of appeal rights

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

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

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