



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

JR/1726/2020

In the matter of an application for Judicial Review

The Queen on the application of

LD
(Anonymity Order made)

Applicant

and

Islington London Borough Council

Respondent

ORDER

BEFORE Upper Tribunal Judge O'Callaghan

HAVING considered all documents lodged and having heard Ms. A Benfield of counsel, instructed by InstaLaw Solicitors for the Applicant and Mr. M Paget of counsel, instructed by Islington Legal Services, for the Respondent at a hearing held at Field House on 27 and 28 May 2021

UPON the Applicant having issued judicial review proceedings in the Administrative Court and having been granted permission to apply for judicial review by that Court and her claim having been transferred to the Upper Tribunal (Immigration and Asylum Chamber) for a fact-finding hearing to determine her age

UPON the Upper Tribunal having found the Respondent's age assessment dated 3 March 2020 to have been procedurally unfair for failing to conduct a lawful minded-to process

AND UPON the Upper Tribunal having found the Applicant to have been 17 years of age, with a date of birth of 20 September 2002, upon her arrival in the United Kingdom on 2 December 2019

IT IS DECLARED THAT:

1. The Applicant's date of birth is 20 September 2002.
2. The Applicant is presently aged 18.

IT IS ORDERED THAT:

- (1) The Applicant shall not be identified either directly or indirectly.
- (2) The Respondent shall pay the Applicant's costs on a standard basis.

- (3) There shall be an order for public funding assessment of any residual costs not otherwise borne by the Respondent.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Dated: 22 June 2021

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

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

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

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

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

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



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

Case No: JR/1726/2020

Field House
Breams Buildings
London, EC4A 1WR

22 June 2021

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

LD
(ANONYMITY DIRECTION MADE)

Applicant

-and-

LONDON BOROUGH OF ISLINGTON

Respondent

Antonia Benfield (instructed by InstaLaw Solicitors) for the Applicant
Michael Paget (instructed by Islington Legal Service for the Respondent)

Hearing dates: 27 and 28 May 2021

JUDGMENT

Judge O'Callaghan:

The Tribunal confirms the anonymity order in the following terms:

Unless the Upper Tribunal or a Court orders otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the applicant. This direction applies to, amongst others, the applicant and the

respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

I so order to avoid a likelihood of serious harm arising to the applicant from the contents of her protection claim being publicly known.

Introduction

1. By an order dated 22 May 2020 (CO/1275/2020) John Howell QC, sitting as a Deputy Judge of the High Court, granted the applicant permission to apply for judicial review against the respondent's decision as to her age and transferred the claim to the Upper Tribunal.

Issue

2. The applicant seeks a declaration that she was born on 20 September 2002.
3. The primary issue for me to resolve in these proceedings is the applicant's age, which is in dispute between the parties. In resolving this issue, I am required to identify the applicant's age as at the date of the respondent's age assessment which was provided to the applicant on 3 March 2020.
4. The applicant asserts that she was born on 20 September 2002 and so was aged 17 both when she entered the United Kingdom on 2 December 2019 and at the date of assessment on 3 March 2020. She asserts that she is presently 18. She has been consistent as to her claimed date of birth throughout.
5. The respondent assessed the applicant to be aged over 18 and likely to be aged 19 at the date of assessment. Her date of birth was considered by the respondent to be 29 September 2000. The respondent now considers her to be aged 20.
6. A 2-year margin of dispute arises between the parties as to the applicant's age.
7. There is no dispute between the parties that the applicant is now an adult. The applicant seeks a declaration as to her age to establish that the respondent is required to continue to provide support and accommodation to her as a 'former relevant child' pursuant to its duties under the Children Act 1989. In such circumstances, I am satisfied that if I were to grant a declaration in the terms sought, it would serve a useful purpose.

Anonymity

8. By his order of 5 April 2020, Mr. Justice Robin Knowles issued an anonymity order and neither representative before me sought to set it aside.
9. Upon considering rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the 2008 Procedure Rules) and the general principle underlying para. 13(1) of the Upper Tribunal (Immigration and Asylum Chamber) Guidance Note 2013, No.1 concerned with anonymity, I am satisfied that it is

presently in the interests of justice that the applicant is not publicly recognised as someone seeking international protection. I am satisfied that the applicant's protected rights as established by article 8 ECHR enjoy greater weight than the open justice principle protected by article 10 of the ECHR: *re Guardian News and Media Ltd and Others* [2010] UKSC 1, [2010] 2 AC 697.

10. I confirm above the order made in relation to the applicant.

Background

11. The applicant asserts that she was born in Eritrea. Her stated personal history is detailed below.
12. The applicant's mother died in childbirth, and she was raised by her father. At the age of 5 she relocated to Sudan with her father who had secured employment in that country. Father and daughter remained in Sudan until August 2017 when the applicant was aged 14, with the applicant attending school from the age 6 until returning to Eritrea. She was taught in the Amharic language.
13. Upon returning to Eritrea, the applicant resided with both her father and her grandmother. She did not return to school, instead carrying out housework and caring for her grandmother.
14. She asserts that she was required to flee Eritrea consequent to fears arising from her being a Pentecostal Christian. A friend was detained by the Eritrean authorities in December 2018 consequent to her adherence to Pentecostal Christianity and the applicant feared that she too was at risk of detention. Her father arranged with an agent for her to leave the country. She initially travelled to Sudan, where she remained for 9 months, before flying to Paris. She then travelled onto Belgium where she was the victim of a serious assault.
15. The applicant entered the United Kingdom on 2 December 2019. She was not accompanied by any family member. She presented herself to the police and informed them that she was a minor. She was subsequently referred to the respondent and placed in foster care.
16. By a letter dated 17 December 2019 the Home Office identified the applicant's physical appearance and demeanour as 'not very strongly' suggesting that she was aged over 25 and so confirmed that it would treat her in accordance with the processes designed for handling asylum claims from children.

Age assessment

17. The respondent conducted an age assessment over two meetings held on 13 and 24 January 2020. The two social workers undertaking the assessment were Mrs. Wisbeach and Ms. Gooden-Smith. A decision was subsequently made by the respondent to bring forward the 'minded-to' meeting to 3 March 2020, it being considered that the applicant was exhibiting distress as she awaited the conclusion of the assessment. The respondent further decided that the minded-

to meeting would not be conducted by either of the assessors, but by Ms. Couchman whose professional role is identified as 'Project Manager and Specialist Advisor'. I was informed at the hearing that Ms. Couchman is a qualified lawyer and not a social worker.

18. The assessment concluded on 3 March 2020 with the assessors determining that the applicant was then aged 19. Appendix A of the assessment is dated 3 March 2020 and was presented to the applicant on this date. It provides the following conclusion as to the applicant's age:

'[The applicant] has the appearance and demeanour of a young woman significantly over the age of 17.

[The applicant] has also given inconsistencies in her account that indicate she is over the age of 18.'

19. Such conclusion was reached despite neither assessor attending the minded-to meeting. I address the minded-to meeting below.
20. Appendix B of the assessment was provided to the Home Office and states, at para.6:

6. Islington Children Services have assessed the person to be 19 and to have the date of birth of 29/09/2000. The reasons for this are the following:

- [The applicant's] appearance and demeanour indicate that she is a young woman who is significantly over 18 years old.
- [The applicant] has provided an account that has inconsistencies consistent with her being over 18, albeit not significantly over.
- [The applicant] has been unable to provide details and memories of her day-to-day life outside of her schooling despite many approaches to establish this information. This inconsistency with her memory and yet her ability to give a relatively consistent timeline gives doubt as to whether her timeline has been learnt.
- Professionals who have seen and assessed [the applicant] including the Home Office interviewing officer at her screening interview have observed that her appearance and demeanour is consistent with someone significantly over the age of 17.'

21. Consequent to the establishing of the assessed date of birth the applicant was transferred from the care of the respondent, provided under section 20 of the Children Act 1989 (the 1989 Act), to support and accommodation provided by the National Asylum Support Service (NASS).

The legal framework

22. Thornton J observed in *AB v. Kent County Council* [2020] EWHC 109 (Admin), [2020] P.T.S.R. 746, at [18]:

- ‘18. The law requires a wholly different treatment of young asylum seekers depending on whether they have passed their eighteenth birthday. This is of course in itself an entirely artificial and inflexible dividing line, bearing little relationship to human reality but it is built into the structure of not only domestic law but international law in this area and it has to be applied as best as can be (Underhill LJ in *BF (Eritrea) v Secretary of State for the Home Department* [2019] EWCA Civ 872 at §52). Thus: a number of rights and obligations under the Children Act depend upon the distinction. Local authorities are under a general duty to safeguard and promote the welfare of children within their area who are in need (section 17). This includes the provision of accommodation (s20). ‘Child’ means a person under the age of eighteen (s105). It is unlawful for the Secretary of State to detain asylum seeking children.’
23. There is no statutorily prescribed way identifying how local authorities are obliged to carry out age assessments. The law proceeds on the basis that the most reliable means of assessing the age of a child or young person in circumstances where no documentary evidence is available is by the so-called ‘Merton compliant’ assessment: *R (B) v Merton London Borough Council* [2003] EWHC 1689 (Admin)(*Merton*), confirmed by the Court of Appeal in *BF (Eritrea)* [2020] 1 All E.R. 396, at [53].
 24. Lady Hale confirmed in *R (A) v. London Borough of Croydon* [2009] UKSC 8, [2009] 1 W.L.R. 2557, at [51], that the question whether a person is a child for the purposes of section 20 of the 1989 Act is a question of fact which must ultimately be decided by the Tribunal and the process must be one of assessment. This involves the application of judgment on a variety of factors and however difficult it may be to resolve the issue it admits of only one answer.
 25. As it is a question of fact, ultimately the question must be a matter for the Tribunal. This requires me to effectively act in an inquisitorial role determining, on the balance of probabilities, whether the applicant was or was not a child for the purposes of the 1989 Act at the date of the age assessment. The approach to be taken and the burden of proof to be applied were confirmed by Stanley Burnton J in *Merton*, at [37] - [38].
 26. Once the Tribunal is invited to decide upon jurisdictional fact it can do no more than apply the balance of probability to the issue without resorting to the concept of discharge of a burden of proof: *R (CJ) v Cardiff County Council* [2011] EWCA Civ 1590, [2012] 2 All E.R. 836, at [21] and [23]. I am therefore required to decide whether, on a balance of probability, the applicant was or was not at the material time a child.
 27. Consequent to the claimed age, I proceed to consider whether the applicant was a young person aged under 18 at the date of assessment. I proceed on the basis that it may well be inappropriate to expect from the applicant conclusive evidence of age in circumstances in which she has arrived unaccompanied and without original identity documents. The nature of the evaluation of evidence

depends upon the particular facts of the case. In the absence of any corroborative documentary evidence as to age, the starting point is the credibility of the evidence placed before the Tribunal, as confirmed by Aikens LJ in *R (AE) v. London Borough of Croydon* [2012] EWCA Civ 547, at [23].

28. I am not confined to choose between the positions of the parties: *R (W) v. London Borough of Croydon* [2012] EWHC 1130, at [3].

Evidence

29. The parties filed two bundles, which were placed by the Tribunal in one lever arch file, containing 324 pages.
30. I have had the benefit of considering the totality of the evidence upon which the parties seek to rely, whether expressly referred to me or not at the hearing. The applicant attended the hearing and gave evidence, as did her former foster mother, Ms. Ghebreamnak. Mrs. Boyd, a lecturer at the applicant's college, gave evidence remotely as did Mrs. Wisbeach, a social worker employed by the respondent, who was one of the two age assessors in this matter. I have also considered the two witness statements of Mr. Luke, the applicant's solicitor. In addition, I have considered various documents filed with the Tribunal, including a case note, a health referral assessment form and various documents authored by the Home Office.
31. I have also been aided by the very helpful submissions provided by counsel who attended Field House on both days of the hearing.
32. The applicant relied upon the '*Age assessment guidance to social workers and their managers on undertaking age assessments in England*' which was published by the Association of Directors of Children Services in October 2015 (the '*ADCS guidance*'). Section 7 of the Local Authority Social Services Act 1970 is not applicable to this document, but as observed by Lavender J when considering its relevance to local authorities in the conduct of age assessments in *R (S) v. London Borough of Croydon* [2017] EWHC 265 (Admin), at [41] and [50], the authors of the guidance possessed considerable experience in the field. I have given appropriate consideration to this guidance.
33. The applicant is presently seeking international protection and so I do not detail the substance of her claim in my decision, nor do I make any findings or observations upon the core of the claim. That is a matter to be considered by the Home Office by application of a different standard of proof to that which is to be applied in this matter. Such approach was identified to the representatives at the hearing and no complaint was made.
34. For the avoidance of doubt, before I embark upon the search for an answer to the question now to be addressed as to the applicant's age and date of birth, I confirm that I have done so without any '*predisposition*' that the applicant is or is not a young person.

Vulnerability

35. When assessing the applicant's credibility, I have had particular regard to the *Joint Presidential Guidance Note No. 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance*, and my assessment has been considered in the round, taking due account of the evidence presented and giving due allowance for the fact that many child asylum seekers and victims of trafficking will have problems in presenting a coherent account of their personal history and travel to this country.

Decision

Preliminary application.

36. I initially address a request made by Ms. Benfield at the hearing to advance a submission that the minded-to meeting was not procedurally fair consequent to the failure by the respondent to appoint an independent appropriate adult. Such complaint did not form part of the original grounds. It is appropriate to observe that the applicant's concern arose from Mrs. Wisbeach's oral evidence presented on the second day of the hearing, in which she confirmed for the first time that the applicant's appropriate adult at the minded-to meeting held on 3 March 2021, Ms. Goldberg, was a former Manager of Children's Active Involvement Service (CAIS), a service provider used by the respondent in respect of all children who have social workers, children 'Looked After' by the respondent under the 1989 Act and care leavers. Ms. Benfield sought to rely upon a one-page print out as establishing that persons connected to CAIS lacked independence. Mr. Paget informed me that to address this issue the respondent would be required to secure further evidence, including a witness statement, and it would not be fair to adjourn proceedings to another day. At the hearing I refused the applicant permission to orally amend her grounds so as to rely upon a new ground not previously identified to either the Tribunal or to the respondent. Being mindful of the overriding objective as established by rule 2 of the 2008 Procedure Rules and the requirement that a case be dealt with fairly and justly, I was satisfied that the one-page document proffered by Ms. Benfield was insufficient for me to make a reasoned decision upon the proposed amended ground. Further, I accepted Mr. Paget's contention that further evidence would have to be secured by the respondent to establish both Ms. Goldberg's professional position and the structure and role of CAIS vis-a-vis the respondent. I was satisfied that an adjournment to permit the parties to further address this issue was not compliant with the overriding objective and was not an appropriate use of resources. I was further satisfied that on the facts arising in this matter, consideration as to Ms. Goldberg's engagement in this matter would ultimately be peripheral to my consideration.

Minded-to meeting of 3 March 2020.

37. I turn to the minded-to meeting conducted on 3 March 2020. As a short-form assessment was not undertaken, the respondent was required to permit the

applicant a fair opportunity to respond to the assessor's provisional view. I observe Stanley Burnton J's conclusion in *Merton* that such step is mandatory, at [55].

38. It is well-established 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 her case which may weigh against her: *VS v. Home Office* [2014] EWHC 2483 QB, at [78(13)].
39. Box 10 of the age assessment form used by the respondent in this matter expressly reminded the assessors that a young person must be given a chance to comment on an adverse provisional view as to their age. Two typed paragraphs were entered into this box consequent to the minded-to meeting. The applicant is recorded as reconfirming that she is aged 17 and asking if there are alternative means that would enable her to establish her age. She was asked at the meeting whether she possessed a birth or baptism certificate and also whether she could contact a family member who may be able to help corroborate her age and/or help obtain supporting documents. She stated that her birth certificate was in Eritrea, but she did not have access to it or know anyone who could help her obtain it.
40. Box 11 of the assessment form identifies the attendees at the two assessment interviews in January 2020. The applicant, Mrs. Wisbeach, Ms. Gooden-Smith and other named attendees are recorded as attending. However, there is no reference as to attendees at the minded-to meeting held on 3 March 2020. I asked Mr. Paget at the commencement of the hearing on 27 May 2021 to clarify who conducted the March meeting. In response to my request, the respondent took steps to secure a second witness statement from Mrs. Wisbeach and to arrange for her attendance on the second morning of the hearing. Mrs. Wisbeach confirmed, as detailed above, that a lawyer, Ms. Couchman, had conducted the minded-to hearing. I was informed by Mrs. Wisbeach that though Ms. Couchman has experience in dealing with sensitive matters, she was not experienced as to conducting age assessment meetings.
41. The first issue of concern arises in respect of the minded-to meeting not being conducted by the two assessors. Indeed, neither of them attended. Whilst the respondent appears to have been concerned to expedite matters because of the applicant's distress at ongoing delay, which is laudable, a decision was made to conduct an important element of the assessment process in the absence of the actual assessors.
42. Thornton J confirmed in *AB*, at [20] that there is no statutorily prescribed way in which local authorities are obliged to carry out age assessments and the Courts have given guidance as to the approach to be taken to establish the basic requirements of an interview or assessment process compliant with necessary safeguards of inquiry and fairness, or '*Merton*' compliant. As confirmed at [21] of the judgment in *AB* relevant guidance includes an assessment being required to be undertaken by two experienced social workers who are properly trained,

and an applicant being given the opportunity to explain any inconsistencies in their account or anything which is likely to result in adverse credibility findings.

43. I observe the confirmation in *VS*, at [78 (13)]:

‘(13) It is “axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him”: *FZ* per Sir Anthony May P at [21]. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant “with their conclusions without first giving him the opportunity to deal with the adverse points”: [22]. See also *J* per Coulson J at [15]; *AAM* per Lang J at [94(c)]; and *Durani* per Coulson at [84–87] (in particular, at [84]: “Elementary fairness requires that the crucial points which are thought to be decisive against an applicant should be identified, in case the applicant has an explanation for them”).’

44. The minded-to meeting is undoubtedly a core part of the assessment, not an ancillary meeting, and so there is a requirement that it is conducted by the assessors. To be otherwise diminishes the notion of it constituting a fair and proper opportunity for the applicant to address potentially adverse points that may weigh against him or her.

45. Such conclusion is supported by Stanley Burnton J’s conclusion in *Merton*, at [55], that the minded-to meeting is a mandatory mechanism by which an applicant can explain themselves to the decision maker, namely the assessors, before a final view on age is formed.

46. I am therefore satisfied that the undertaking of a minded-to meeting requires the attendance of the two assessors. I observe that in its true form such meeting is not a one-way conversation, with an applicant simply providing observations on expressed issues of concern without more. There is an expectation that further questions will be asked of the applicant for clarification purposes, and the totality of the evidence presented will be considered in respect of important points that may provisionally weigh against the applicant. In the circumstances, being a core part of the assessment, both assessors would be required to attend. If the meeting on 3 March 2020 truly constituted a minded-to meeting the failure of both assessors to attend can only properly be considered to be a material irregularity and procedurally unfair, the applicant not having been provided with an adequate opportunity to address issues of concern with the assessors before the decision was made.

47. Before me, the respondent confirmed that it considered the meeting of 3 March 2020 to be a minded-to meeting. However, a further matter of concern arises from the evidence of Mrs. Wisbeach as presented at the hearing. Mrs. Wisbeach explained her understanding that Ms. Couchman read the analysis section of the age assessment form, which runs to almost 3 pages, to the applicant. She further explained that if the applicant ‘had brought forward something, then

we would not have made a decision'. It was explained to me that responsibility fell upon Ms. Couchman to decide whether the applicant had raised a matter or matters that could properly bring the meeting to an early conclusion, with a new meeting to be arranged with the assessors attending at a later date. As previously observed Mrs. Wisbeach candidly accepted that whilst Ms. Couchman possessed experience in dealing with matters of sensitivity, she did not have experience of conducting age assessment meetings.

48. The identified arrangement is much closer to a sift assessment than a minded-to meeting. The arrangement was for the applicant to be provided notice of the provisional decision, to be asked for observations and for a sift to be conducted by a lawyer, not a social worker, as to whether a further meeting conducted by the assessors was required. Consequently, if the applicant did not provide information considered by a non-assessor to be potentially relevant to the assessment, then the meeting was a simple mechanism to serve the prepared assessment with no additional consideration by the assessors. In such circumstances the responses of the applicant were to be simply noted in box 10 of the assessment form and subject to no consideration by the assessors. I observe that the decision as to whether the assessors should be asked to revisit their provisional assessment at another meeting and to consider the applicant's response was one to be made by a person with limited, if any, understanding of the social work element of the assessment process, with there being no clear indication of what guidance was provided to the non-assessor, no clear identification as to what hurdle was to be crossed by the applicant in respect of information she provided and ultimately no clarity as to what range of new information may be considered to be relevant.
49. I observe the confirmation of the High Court in *AS v. London Borough of Croydon* [2011] EWHC 2091 (Admin), at [19], that the procedural safeguards set out in *Merton* and *R (FZ) v. London Borough of Croydon* [2011] EWCA Civ 59 are the 'minimum standards' of fairness, and I am satisfied that the sift nature of the meeting held on 3 March 2020 fails to meet minimum standards. It simply failed to adhere to the basic requirements of a minded-to meeting. That Ms. Couchman was empowered in accordance with her own judgment to bring the meeting to a conclusion and to arrange a subsequent meeting between the applicant and the assessors further establishes the sift nature of the meeting. That the decision was to be served unless and until a lawyer, not a qualified and experienced social worker, decided that the assessors should attend to conduct further enquiries fails to meet the minimum standards established in age assessments. I am satisfied that the procedure adopted was unfair, denying the applicant the instrumental value of contributing relevant information to the decision-maker(s). The process adopted by the respondent to the assessment process was therefore unlawful.
50. Having found that the meeting of 3 March 2020 was conducted in a procedurally unfair manner, and therefore unlawfully, I am not required to further consider as to whether Ms. Couchman provided the applicant with a

true opportunity to address issues of concern. I do not have evidence on this issue from Ms. Couchman and in such circumstances consider it inappropriate to make a detailed finding of fact on this matter. However, it is appropriate that I observe the contents detailed in box 11 to be unusual for a minded-to meeting as beyond the applicant re-asserting her age, the focus is upon her ability to secure corroborative documentary evidence as to her age. No reference is made to the applicant addressing relevant matters of adverse concern identified in the analysis section of the assessment, said to have been read to her by Ms. Couchman, even to the limited extent of the applicant stating her agreement or disagreement with the individual matters of concern raised. The applicant was clear in her oral evidence before me that the conclusion, or analysis, section of the assessment was interpreted to her over a 'very short period of time'. She was explicit that she was not provided an opportunity to provide comment upon the contents of the assessment. Whilst the applicant's evidence may be consistent with the recording in box 11 as to her primarily answering questions as to whether she could secure corroborative documentary evidence, I have decided that I have insufficient evidence before me to make a finding on this matter. However, the respondent should always be aware that a minded-to meeting permits an applicant a fair and proper opportunity to deal with important points adverse to their case and that elementary fairness requires that crucial points that are thought to be decisive against an applicant should be identified and an applicant permitted, and encouraged, to provide an explanation for them.

Consideration

51. The fact that I have found the age assessment to have been conducted unlawfully does not mean, *per se*, that the applicant succeeds. I am required to consider the question posed in my inquisitorial role, and so proceed to consider the rest of the evidence relied upon by the parties.
52. I turn to the core observations contained within the age assessment:
 - The applicant has the appearance of a woman aged over 25 years.
 - She has signs of aging on her face: lines around her eyes, smile lines, and 'what may be' age spots. It is accepted the age spots 'could be' moles.
 - *'It could be that childhood sun exposure and the difficult experiences of LD's last two years have contributed to signs of aging. However, it is unlikely that it would have contributed to LD looking over the age of 25 years ...'*
 - The applicant's level of emotional regulation, insight and reflection into her life and experiences was quite advanced for someone who is 17 years, though 'this may in part' be due to the applicant having lived alone with her father for most of her life and 'perhaps' needing to learn emotional regulation early on in life.

- The applicant stated in her interview and when she first presented in December 2019 that her appendix was removed in 2012, when aged 10, whilst in her medical health assessment she stated that she was 12 years old.
 - There is a discrepancy as to when the applicant injured herself playing football: aged 10, 10 or 11, 12.
 - There is a discrepancy as to when the applicant completed school: Grade 10 when aged 14 in 2017; Grade 9 when aged 14 in 2017. However, the assessors accept:
 - *'all further information regarding her schooling was in line with her completing up to Grade 9. It could have been she made a mistake in the first interview.'*
 - The applicant's ability to disclose and very quickly access support following her sexual assault in Belgium is identified as being 'advanced' for someone aged 17 though:
 - *'it may be that growing up with her father has allowed LF to mature faster and therefore also be more able to act confidently in times of need.'*
 - Inconsistency was identified as to the applicant's independence skills with her stated limited ability to cook and wash clothes contrasted with her history of carrying out housework in Eritrea.
 - Concern is raised as to the recollection of certain periods of the applicant's life:
 - *'Having spent 9 years living in Al Demi, one may expect a more detailed description of her life especially as she recalls school so clearly. Moreover, LD spent 9 months in Bahri but has almost no information to provide for her time there. LD's lack of knowledge/recall about her time [in] Bahri may also be due to it being a difficult time having separated from her father and being uncertain about her future of safety. However, this is at odds with LD's ability to clearly recall her journey from Sudan to the UK, which [was] also a significantly stressful time in her life.'*
53. The assessors identified the applicant as shaking mildly at times, though it was unclear if this was due to nerves.
54. The assessors further accepted that the applicant was generally consistent as to her timeline of events. As to the identified inconsistencies, the assessors accepted that they were small and could be attributed to a number of factors: not understanding the Western calendar; not celebrating her birthday (prior to turning 15) and therefore not having a clear recollection of her age at different times; or simply due to poor memory of earlier years. The assessors confirmed that 'regardless of the reasoning, these inconsistencies would only make [sic]

count for a difference of 1 – 2 years, in which case we would give the benefit of the doubt’.

55. Ultimately, the primary reason relied upon by the respondent is that the applicant has the appearance of a woman aged over 25, in part identified by signs of aging on her face. Though demeanour is also relied upon, it is done so hesitantly. Before me Mr. Paget also relied upon the applicant’s ongoing failure to take steps to secure her birth certificate or any document that would establish her age.
56. As to the assessment, I agree with Mr. Paget that in this matter I am able to place weight upon the evidence recorded in the assessment, and the observations of the assessors, though such weight must take into account the unlawfulness of the procedure adopted. I accept Mr. Paget’s observation that by means of her witness statement and her oral evidence the applicant raises few complaints as to the provisional observations reached by the assessors as detailed above, at [52]-[54]. I observe at [21]-[28] of her witness statement the applicant confirmed that she does not precisely know when her appendix was removed but believes it to have been when she was aged 10. Her reference at a health assessment to it having occurred when she was aged 12 was simply a mistake consequent to the passage of time and her being reduced to guessing to answer the question. She confirmed that her command of the English language is not as great as that concluded by the assessors. As for her exuded maturity, she confirmed that responsibility fell upon her consequent to her circumstances in Eritrea and Sudan. Her maturity and independence is said to have further grown when she was required to care for her grandmother.
57. I had the opportunity to hear the applicant give evidence, as well as read her written evidence. Mr. Paget skillfully cross-examined her, which she accepted with good grace. No inconsistencies in evidence arose. Upon careful consideration, I found her to be a truthful witness. I was particularly struck by her evidence to Ms. Benfield, in re-examination, that she had sought to telephone a number provided to her by ‘Abraham’, who was helping her on her travels, which she believed may have enabled her to contact her father. She explained that she tried to phone the number whilst she was in Belgium, but she found that it was not working. She must have been aware that such admission could potentially have an adverse effect upon my assessment of her credibility, but she provided it willingly. It struck me at the time that it was the answer of an honest person. Having been subject to a serious physical assault in Belgium, it is entirely understandable that she would want to contact her father. I am left in no doubt that if she had contacted him, she would have informed me.
58. My primary focus is on the credibility of the applicant’s evidence concerning her age, but I am permitted to have regard to credibility more generally, provided that my primary focus is not forgotten.

59. Having heard the witnesses give evidence, I found them all to be credible and honest. However, they are not capable of providing determinative evidence as to the applicant's age, so I consider their evidence in relation to the respondent's observations detailed above.
60. Mrs. Ghebreamnak was ultimately unwilling to identify what age she believed the applicant to be, explaining that her role as a foster mother was to assume that those who came to her were children and she did not make further enquiries on the issue. I am satisfied to the requisite standard as to Ms. Ghebreamnak being accurate in her evidence that in the house the applicant rarely used the phone provided to her and that she did not use her phone to access social media. I further find that Ms. Ghebreamnak was truthful when recounting that the applicant had confirmed that her father remained in Eritrea, and she did not have a telephone number to contact him. I accept Mrs. Ghebreamnak's evidence that the applicant presented as studious during the months she resided with her and did not have many friends.
61. Mrs. Boyd gave evidence in support of the applicant and confirmed that she attended English language lessons with her at college from December 2019 to March 2020. At the commencement of lockdown resulting from the present pandemic college lessons reverted to being held online and so the applicant attended remotely. During the short time college attendance was in person Mrs. Boyd did not consider the applicant to be older than claimed. Whilst it is not possible for Mrs. Boyd to cogently confirm whether the applicant was 17 or 19 at such time, I am satisfied that she did not have concerns that the applicant was a woman who appeared to be aged 25. I accept that if Ms. Boyd had been concerned that the applicant was older than claimed she would have escalated such concerns to college management.
62. Turning to my consideration, I observe that the application of the benefit of the doubt in an age assessment matter is nothing more than an acknowledgement that age assessment cannot be concluded with 100% accuracy, absent definitive documentary evidence, and as in the case of unaccompanied asylum-seeking children who may also have been traumatised, unlikely to be supported by other evidence. On such basis, its proper application is that where, having considered the evidence, it is concluded that there is doubt as to whether an individual is over 18 or not, then in those circumstances, it should be concluded that the applicant is under 18. Thus, the benefit of the doubt is not of use where a specific date or age has to be determined except insofar as it requires a sympathetic assessment of the evidence: *R (AS) v. Kent County Council* [2017] UKUT 446 (IAC), at [20] - [21].
63. I am mindful as to the caution that is to be exercised in respect of the applicant's evidence, as noted by Stanley Burnton J in *Merton*, at [28]:

'Given the impossibility of any decision maker being able to make an objectively verifiable determination of the age of an applicant who may be in the age range of, say, 16 to 20, it is necessary to take a history from him or her with a view to determining whether it is true. A history that is

accepted as true and is consistent with an age below 18 will enable the decision maker in such a case to decide that the applicant is a child. Conversely, however, an untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for reasons unconnected with the applicant's case as to his age, for example to avoid his return to his country of origin. Furthermore, physical appearance and behaviour cannot be isolated from the question of the veracity of the applicant: appearance, behaviour and the credibility of his account are all matters that reflect on each other.'

64. I find that the applicant is consistent as to her timeline of personal events. I have found her to be an honest witness and accept that she made a mistake when asserting in a medical assessment that her appendix was removed when she was aged 12, rather than 10. Her credibility is not impacted by her inability to precisely recall when she was injured playing football. The incident was several years ago, when she was young. I observe that the assessors accepted that the applicant may have made an error as to when she completed school, in light of the overall general consistency in answers concerned with her education.
65. I can identify no cogent basis for the assertion that the applicant acted in an 'advanced' and mature manner, beyond that expected of a 17-year-old, following a serious assault to which she was subjected in Belgium. No cogent explanation has to date been provided by the respondent as to why an adult level of maturity is required for a female victim of a serious crime to disclose events to others and to seek to access support. There is no reasonable basis for concluding that the taking of such steps leads to the conclusion that the applicant was not 17 years of age at the time. This 'concern' should not have been relied upon, particularly when the assessors proceeded to acknowledge that her 'advanced' maturity may have been founded upon her family circumstances.
66. I place no weight on the purported inconsistency in the applicant enjoying limited ability to cook and wash clothes in this country when she carried out housework in Eritrea. The failure by the assessor to ask the pertinent question as to whether she used electrical appliances in Eritrea is striking.
67. I agree with Ms. Benfield that the reliance upon the applicant being unable to recollect much of her 9 months in Bahri wholly fails to engage with the fact that she was separated from her father, living with others and did not leave the property. I place no weight upon this identified observation of the respondent.
68. I understand the concern of the respondent, which may well be shared by other local authorities, as to the perceived lack of effort made by some undocumented minor asylum seekers to secure relevant documents from home that would be determinative as to their age. However, people fleeing persecution are often unable to bring corroborative evidence with them. I have considered the applicant's evidence with care and taking it in the round I am satisfied that she is genuine and honest in her assertion that she has no ability

to secure the documentation required by the respondent. I accept the evidence of Mrs. Ghebreamnak that the applicant was not in contact with her father whilst living with her, nor active on social media. This strongly suggests that the applicant was not in contact with family or friends in Eritrea. I further accept that the applicant was honest in her evidence to me that she sought to contact her father in Belgium but the number she was provided did not work. I further accept that there is no means of contacting her father by post. In the circumstances, I place no adverse weight upon her inability to secure her birth certificate, or any other document that would establish her true age.

69. The respondent opines that the applicant was aged 19 at the date of assessment. It is clear from the assessment that the assessors believed the applicant to possess an appearance identifying her as being aged 25 or older. This was in part their own visual assessment, but also imbued with the erroneous understanding that the Home Office believed her to be aged over 25. Mr. Paget acknowledged this error before me. I note that the assessors did not conduct a short-form, or abbreviated, assessment as permitted if they concluded that she was an adult aged 25 years or older: *AB*, at [35].
70. Mr. Paget asked me to conclude that the applicant is aged over 25 years by my own visual reference. Whilst it may be open to me to rely upon a visual reference in respect of someone significantly older than 18, for example aged 25 years or older, and Ms. Benfield did not submit that I could not adopt such a course of action, I remind myself that it could only be in a clear-cut case where such approach could be considered appropriate. The respondent's position by means of her assessment is that the applicant was aged 19, and so on the respondent's case I was observing her at the time of the hearing as a 20-year-old. The assessment was conducted by the assessors in January 2020, some 17 months ago. Therefore, I was not considering her appearance as it presented at the date of assessment. This is not a clear-cut case. I therefore do not undertake the task proposed by Mr. Paget.
71. The purpose of the respondent's assessment was to establish the applicant's chronological age based upon information derived from her and an assessment of the credibility and plausibility of that evidence. If the chronological information is consistent, plausible and believable then no apparent observation about chance appearance and demeanour is likely to tip the balance against the age stated by the child or young person: *R (AM) v London Borough of Croydon* [2011] EWHC 3308 (Admin), at [44], as cited in *R (BM) v. London Borough of Hackney* [2016] EWHC 3338 (Admin), at [44(iii)].
72. I have observed that the applicant has been consistent as to her claimed age throughout and consistent to the circumstances in which she was informed as to her age. I have found the applicant to be an honest and credible witness. She is consistent as to her chronological timeline. The evidence of Mrs. Ghebreamnak and Mrs. Boyd satisfactorily answer a number of concerns raised by the respondent. I have found the applicant to be honest as to why she is not in possession of her birth certificate and as to why she is presently unable to

secure it, or other documents that may be determinative as to her age. The respondent's concerns as to demeanour are incapable of having anything other than limited weight placed upon them. Being mindful as to the standard of proof, the respondent's concerns as to the applicant's appearance do not tip the balance as to age.

73. I am satisfied to the requisite standard that the applicant is truthful as to her date of birth and therefore as to her age.
74. Though critical of the approach adopted by the respondent as to the minded-to meeting, I wish to take this opportunity to observe that it is clearly apparent to me that the assessors, Mrs. Wisbeach and Ms. Gooden-Smith, conducted the meetings in January 2020 with great sensitivity being mindful that the applicant reported being the victim of a serious criminal offence some four months previously. This Tribunal can, and should, properly acknowledge the skill and care that is evident in the approach adopted to the January meetings in light of the applicant's particular circumstances.
75. To the requisite standard I find the following:
- i. The applicant was born on 20 September 2002.
 - ii. The applicant was aged 17 at the date the respondent's assessment was handed to her on 3 March 2020.
 - iii. The applicant was aged 18 at the date of the hearing.
 - iv. The applicant is presently aged 18.

Summary of Decision

76. It is declared that the applicant's date of birth is **20 September 2002**.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 22 June 2021