



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

JR/885/2021

In the matter of an application for Judicial Review

**The Queen on the application of
JRZ (by his litigation friend Maria Houlihan)**

Applicant

versus

Liverpool City Council

Respondent

ORDER

BEFORE Upper Tribunal Judge Blundell, sitting at Field House, London.

UPON hearing evidence on 29 and 30 March 2022

AND UPON hearing Counsel for the Applicant and Counsel for the Respondent

IT IS ORDERED that:

1. There shall be a declaration that the Applicant's date of birth is 27 February 2004.
2. That the Respondent shall pay the Applicant's costs, to be subject to detailed assessment if not agreed.
3. There shall be detailed assessment of the Applicant's publicly funded costs.
4. Permission to appeal to the Court of Appeal is refused as there is no arguable legal error in the judgment. (Permission was not sought at the handing down on 22 April 2022 but was nevertheless considered pursuant to rule 44(4B)).

Signed: **M.J.Blundell**

Upper Tribunal Judge Blundell

Dated: **22 April 2022**

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): *25 APR 2022*

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).



Case No: JR/885/2021

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

22 April 2022

Before:

UPPER TRIBUNAL JUDGE BLUNDELL

Between:

THE QUEEN
on the application of
JRZ (by his litigation friend Maria Houlihan)

Applicant

- and -

LIVERPOOL CITY COUNCIL

Respondent

Vijay Jagadeshm

(instructed by Greater Manchester Immigration Aid Unit), for the Applicant

Kuljit Bhogal

(instructed by Liverpool City Council Legal Department) for the Respondent

Hearing date: 29-30 March 2022

JUDGMENT

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the applicant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the applicant, likely to lead members of the public to identify the applicant without that individual's express consent. Failure to comply with this order could amount to a contempt of court. This order is made because the applicant is an asylum seeker.

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Judge Blundell:

1. The applicant is an Iranian national who asserts that his date of birth is 27 February 2004. Following a 'brief enquiry' which was conducted shortly after the applicant's arrival in the UK, the respondent council decided not to accept the applicant's claimed date of birth and attributed to him a date of birth of 27 February 1996. The only issue to be determined by the Tribunal is the applicant's probable date of birth.

Background

2. I am able to take much of what follows from the Agreed Statement of Facts and Issues which was filed at an earlier stage in these proceedings.
3. The applicant left Iran on or around 28 December 2020, at the direction of his maternal uncle, and travelled with the assistance of agents arranged by his uncle. The applicant is believed to have arrived in the United Kingdom on or around 25 January 2021, concealed in a lorry.
4. On the same day, the applicant was arrested by the police after bringing himself to the attention of staff at a petrol station in Liverpool. He claimed to be sixteen years old and was placed in accommodation for children provided by 'Active8', under the direction of the respondent council. On 26 January 2021, two of the respondent's social workers attended upon the applicant and completed a 'brief enquiry' to assess his age. They used a telephone interpreter and a member of staff from Active8 was said to be present as the appropriate adult. Following the interview, the social workers left the room and then returned and informed the applicant that they did not believe his claimed age. They asked him to sign a typed piece of paper on which they had written his name, but the applicant declined to do so because he did not accept their decision.
5. Subsequently, on 29 January 2021, the applicant was taken to what appears to have been the Liverpool Screening Unit of the Home Office. He underwent a screening interview. He stated that he was only sixteen years old and that the respondent's age assessment was wrong. He gave details of his journey to the UK. He stated that he had left Iran because he had been working as a smuggler ('kolbar' or 'kolber') on the Iranian border and had been encountered by the Iranian authorities whilst carrying goods for the Kurdish peshmerga and was in fear of returning.
6. The applicant was taken to adult accommodation after the interview. On or around 16 February 2021, he was moved to a house shared with adults. He remains in that property to date.
7. On 4 February 2021, the respondent council disclosed a copy of the brief enquiry to the applicant's solicitors, Greater Manchester Immigration Aid Unit ("GMIAU"). A Letter Before Action was sent, challenging that assessment on 9 February 2021. A letter from Maria Houlihan, a social worker employed by GMIAU was appended to that letter.
8. On 19 February 2021, the respondent responded to the Letter Before

Action, maintaining the decision under challenge. It also provided an email from the member of staff (Laura Crockett) who had attended as the applicant's appropriate adult during the brief enquiry. On the same date, the applicant's solicitors requested further disclosure from the respondent, including Ms Crockett's written notes of the interview and any social services records retained by the respondent.

9. On 23 February 2021, the applicant issued this application for judicial review in the Administrative Court. Directions as to the filing of written submissions on interim relief were given by Dove J on 3 March 2021. On 21 April 2021, permission was granted by David Pittaway QC, sitting as a Deputy Judge of the High Court. The Deputy Judge refused the application for interim relief and ordered that the proceedings be transferred to the Upper Tribunal 'for a fact-finding assessment of age'.
10. On 25 May 2021, Steven Kovats QC, sitting as a Deputy Judge of the High Court, refused a renewed application for interim relief. The Upper Tribunal made case management directions on 29 June 2021 and the case was managed in the Upper Tribunal from that point onwards.

The Respondent's Decision

11. The 'brief enquiry' document which was provided to the applicant's solicitors on 4 February 2021 is in tabular form and occupies four pages of A4. It begins with biographical information about the applicant. There are then sections dealing with matters such as the applicant's physical appearance, his schooling and other relevant information. The conclusions reached by the local authority are recorded in the final section, which I reproduce in full:

In respect of [JRZ's] physical appearance he looked significantly older than his claimed age of 16. He had the strong developed features of an adult aged 25 years plus and not the features of a 16 year old child.

He had a clear unshaven presentation yet it was clear he had been shaving for some years. When asked when he began shaving he was unable to give us an answer, only stating that he 'couldn't put a date on this' and that he has been shaving for two years.

He had coarse hair, frown lines and a well-developed and prominent Adams apple. Although [JRZ] was not tall, he was physically well developed, with thick set features, a strong developed chin and nose, dark thick eyebrows and his ears were also well developed and large fitting a person much older than 16 years of age and it was also clear and obvious that he was an adult who was at least 25 years of age. Please also note that his demeanour throughout the interview was that of an adult and not of a child including at the end of the enquiry when he became quite surly and wanted to continue to dispute his age on the basis that 'he knows he looks older' than his claimed age of 16.

He told us that he knows his date of birth because his family told him when he was growing up but then explained that neither he nor his family celebrate birthdays.

As stated already when we explained to [JRZ] that we were going to assess him as being an adult, he told us that he is aware that he 'looks older' than the age he gave to us and also stated to us that he will 'do what is necessary'. It was not clear what he meant by that he didn't offer any explanation as to why he looked older than his claimed age. This was at the end of the interview and he also became quite surly, if not hostile towards us.

It was clear and obvious that he was an adult who was at least 25 years of age.

The Applicant's Case

12. The applicant makes various criticisms of the procedure adopted, and the conclusion reached, by the respondent. I will consider those submissions in due course. At this stage, however, it is 'informative to describe what is said by the applicant and two other individuals who have made witness statements in support his case.
13. The applicant has made two witness statements. The first is dated 19 February 2021 and was therefore made at an early stage in these proceedings. In that statement, the applicant stated that he could not read or write in his own language (Kurdish Sorani) and that he had attended only two years of school in Iran. He gave details of his rural upbringing with his parents and his eleven year old brother. He thought he had started school at the age of six and finished at the age of eight. He had then worked as a shepherd, alongside his father. His mother stayed at home, keeping the house clean and preparing meals. In his spare time, he played football with his friends. He had occasionally helped out with other agricultural work around the village.
14. The applicant gave details of his work as a kolber. He had only smuggled goods twice before he had to leave Iran. He had done it to bring in extra money during the winter. The first time he had transported cigarettes and there were no difficulties. On the second occasion, when the applicant was carrying alcohol, they had been shot at by the authorities. Other people had joined them on this trip. They were not kolbers. The applicant suspected that they were peshmerga. The applicant had not been captured but others in the party had been. The applicant later found out that the applicant had been identified to the authorities by those who had been caught, and that they had stated that he had been helping the peshmerga. His uncle decided that he should leave and made arrangements accordingly. The applicant then made the journey from Iran to Liverpool. It took around a month, much of which was spent concealed in different lorries.
15. The applicant described being very hungry when he arrived in the UK. They had left the lorry and walked towards a petrol station, where they were given some food and the police were called. The applicant and

another boy from the lorry were taken by the police to children's accommodation. They were visited by social services, who said that they would be asked questions about where they were from and how they came to the UK. They were not told that they would be asked about their ages.

16. The applicant recalled the way in which the brief enquiry had been carried out. He was told in English to wait upstairs whilst they spoke to his friend. He sat on the stairs, but they then told him to go into his bedroom, which he did. He had not realised that they had expected him to go into his bedroom and he had not been trying to listen to what his friend was asked. When the applicant was called into the room, there were three adults. He did not recognise two of them. The third was a woman who he did recognise; she had been at the accommodation the night before. She did not say anything. He was asked questions via an interpreter on the telephone.
17. He had given the interviewers his date of birth in the Iranian calendar (8 Esfand 1382, which translates to 27 February 2004 in the Gregorian calendar). He said that he knew his date of birth. His parents had told him. He had no identity documents at that time, having lost his national identity card en route when it was taken by a people smuggler. He was not asked whether he had previously had an identity document. He had answered all of their questions about the route he had taken to the UK and other such matters. He thought it had taken about an hour in total. At the end of that time, the interviewers left to have a conversation in another room, after which they returned to state that they did not accept the applicant's claimed age. They had been out of the room for two or three minutes, he thought. They said that they had spoken to other young people of his claimed age and that he did not look like them. The applicant suggested that he might look older because he had always worked in Iran. He refused to sign the paper he was given because it did not have his correct age or date of birth on it.
18. The applicant had not been moved immediately. He was taken to the Home Office around three or four days later and underwent a screening interview. After that, he was taken to adult accommodation in Liverpool. He had been nervous and there were only two other Kurdish speakers there. He had made contact with GMIAU. The solicitor with whom he spoke had explained that she would seek a copy of the respondent's decision and it was only after this was received that he had learned of the reasons that he had been treated as an adult. His solicitor had explained that it was based mostly on his physical appearance and his behaviour during the assessment.
19. The applicant thought that he might look older than expected because he had been working outside for many years. He thought he might have been shaving for two years but this was not unusual in his family. He had not pretended to cry (as had been suggested at one stage of the assessment); he had been scared. He did not understand why it was thought to be strange that the journey had only taken 27 days and that he had not seen the police during that time. He wished to claim asylum and he did not know how the system worked in the United Kingdom. He had not been hostile or surly towards the officers. They had said that he

could contest their assessment if he found a solicitor and he said that he would do so.

20. The applicant had been moved to a shared house on 16 February 2021. There were three other men living there, all of whom were 'much older'. One was a Kurdish Sorani speaker. The applicant had little knowledge of cooking and the only thing he could do was to fry eggs. He had mostly been eating biscuits and occasional take away food since living in this house. He could not wash clothes or use public transport. He was assisted in these respects by the Kurdish man in the house. He hoped that he would be able to move back to children's accommodation.
21. The applicant's second statement was made on 22 September 2021, after the proceedings had been transferred from the Administrative Court to the Upper Tribunal. He was still living in the same shared accommodation. The Kurdish man who he had mentioned in his first statement was still there too. He named him as Hardi. The two other people in the house were black men with whom the applicant only communicated in a limited way. He avoided them when he could. Hardi continued to help him in various ways but the applicant thought that he was growing tired of doing so. He helped the applicant with cooking and washing clothes and he took him out to do the shopping. Hardi went out of the house during the day, as did the two other men, and the applicant was mostly at home on his own. He would sit in his room and watch cartoons or football on his mobile phone. He was very bored and felt that it would be better if he could return to children's accommodation.
22. The applicant stated that he had been out with other young people as part of a group. This had been organised by Maria Houlihan, the social worker at GMIAU. He had gone to Manchester for this. Hardi had helped him buy the bus ticket and had told him which bus to board. He had enjoyed playing football and mixing with other young people, particularly a Kurdish boy named Mohammed. The second time he had been to Manchester there was a different group of young people and Mohammed was not there, which disappointed him. The applicant described his dependence on Hardi and questioned how he would have been able to manage without him. He was very unhappy that he could not spend more time with young people.
23. The applicant's friend Hardi¹ has also made two statements in connection with these proceedings. They were also made in February and September 2021. In the first, he said that he was from Iraq and was claiming asylum in the UK. He was living in a shared house in Radcliffe with the applicant and others. He had lived with the applicant for three days at the time that he made the first statement. The applicant had told him about the dispute as to his age. He had been helping the applicant by preparing food for him and taking him to the shops. The applicant would not go out without him. Hardi believed the applicant to be a child because of the way he behaved. He considered it was 'very clear' that the applicant had never had to look after himself before. He could not wash or cook and he was 'always' asking for Hardi's help. The age which the applicant had been given by the council was a few

¹ Since this gentleman is currently claiming asylum in the United Kingdom, I have not recorded his full name in this judgment and will refer to him by his first name throughout.

months older than Hardi, who did not accept this at all. It was very clear from the way that the applicant behaved that he was significantly younger than Hardi.

24. In his second statement, Hardi recalled that he had lived with the applicant for seven months at that point. He was sure that the applicant was a child. He considered it 'obvious' as a result of the applicant's actions. He could still not wash clothes and he still required Hardi's help to do a weekly shop. The applicant could fry eggs, having been taught to do so by Hardi, but he could do nothing more by way of cooking. The applicant was reluctant to go out of the house without Hardi and when he had been to Manchester, it was Hardi who had bought his ticket and showed him where to get on the bus. Hardi confirmed the applicant's account of remaining in his bedroom most of the time. He thought that the applicant was very isolated. He was not able to continue playing such a significant role in the applicant's life as he had his own problems to deal with.
25. Two statements have also been made by Maria Houlihan, the applicant's litigation friend and the Young People's Service Manager at GMIAU. She is a qualified social worker who works with those between 13-21 who are claiming asylum in the UK. Her service is separate and independent from the legal services provided by GMIAU. She qualified as a social worker in 2012 and had been a Care Coordinator in a Community Mental Health Team for three years before moving to GMIAU. She was bound by the code of ethics and professional standards of her profession. She had worked with many young people and had advocated for them to ensure that their rights were upheld.
26. Ms Houlihan had first met the applicant by video phone on 4 February 2021. She had spoken to him at length and felt that the brief enquiry relied too much on the applicant's physical features. She thought that he should be afforded the benefit of a full Merton² compliant age assessment. She was concerned that JRZ had not been supported by an appropriate adult who was clear and confident in their role as an independent person there to support the young person. She was concerned that Ms Crocket had not done so. The applicant accepted that he might look older than his claimed age but, as she had stated in the letter which was sent with the Letter Before Action, it was 'not impossible' that he was the age he stated. She thought it was possible that he was a child of nearly 17 years and that he should be given the benefit of the doubt by conducting a full Merton compliant assessment. Nothing in her interaction with the applicant had suggested that his claimed age was inaccurate. She noted that he had said that he had worked outdoors from a young age. She was concerned that he was accommodated in unsuitable accommodation, shared with adults, and that he was not managing well in this environment. In summary, she thought that he was a frightened and anxious young person who was adamant that he was 16 years old. Too much weight had been placed on his age and she did not accept that he was dearily and obviously an adult.

² See Stanley Burnton J's judgment in R (B) v London Borough of Merton [2003] EWHC 1698 (Admin); [2003] 4 All ER 280.

27. Ms Houlihan made her second statement in September 2021, by which stage she had met him twice, in addition to their contact by phone and Whatsapp. She had met him on two trips she had organised in June and August 2021. He had also attended an 'online conversation club' once. When she had met him on the first occasion, her immediate reaction was that he looked younger, and she thought he had a 'plump baby face look'. The applicant had got on well with the other 13 boys when they were playing football. He had got on particularly well with a boy whom Ms Houlihan knew to be sixteen years old. His interaction with the other participants had been 'that of a young person'; he still had stamina at the end and had relished the camaraderie of the other youngsters. The applicant was less able to participate in the second event as there were no other Kurdish speakers there, but he had taken part in a penalty shootout and a game of table football which became 'competitive and boisterous'. On both occasions, he had interacted in the same way as other children in their late teens. He was often quiet and low in mood, but he had come out of his shell around the other children. Nothing made her doubt that he was his stated age.

Oral Evidence

28. I heard oral evidence from the applicant and Ms Houlihan. Hardi was due to give evidence before me on 29 March 2021 but he did not attend. The applicant was treated as a vulnerable witness, in that questions were asked in a particularly clear and concise manner and regular breaks were taken. Mr Jagadeshm did not suggest, in answer to a direct question, that any further measures were necessary or desirable in order to obtain the best evidence from the applicant.
29. I do not propose to rehearse the oral evidence given by the applicant and Ms Houlihan and will instead refer to it insofar as it is necessary to do so to explain the conclusions I have reached.

Submissions

30. Skeleton arguments had been filed and served in compliance with directions. Counsel relied on their skeleton arguments and made oral submissions which might be summarised as follows.
31. For the respondent council, Ms Bhogal submitted that the Upper Tribunal's decision was not about the brief enquiry. The Tribunal's role was instead one of fact finding and it was an inquisitorial process. The process nevertheless remained one of judicial review and it was appropriate to have regard to the views of the social workers who had completed the brief enquiry. The respondent maintained that this was a clear and obvious case in which the applicant was self-evidently over 25 but the critical question was whether the applicant was an adult at the date of the assessment. That was a question of fact for the Tribunal to determine and would require the applicant's date of birth to be February 2003 or earlier.
32. There had been a great deal of reference, Ms Bhogal noted, to the benefit of the doubt. The principle applied to the local authority but not to the Tribunal: R (AS) v Kent County Council [2017] UKUT 446 (IAC), at

[17]-[21]. Much had been said about the local authority's reliance on the applicant's physical appearance but it had been established since Merton that this was a relevant matter. Nothing said since then had cast doubt on what Stanley Burnton J had said at [20]. Appearance was not determinative, but relevant. Here, the applicant's physical appearance supported the respondent's decision, not only because of the features noted in the brief enquiry but also with reference to the applicant's notably hairy hands. (I had not noticed that the applicant's hands were so hirsute. Nor had Mr Jagadesham, although he did not seek to contest what was said in this respect by Ms Bhogal.)

33. Ms Bhogal was unable to direct me to a case or anything else in support of her submission that the particular types of features upon which the respondent relied were relevant to the assessment of age. She reiterated that these matters were not said to be determinative; it was a common-sense point.
34. Ms Bhogal made 6 specific observations on the evidence before the Tribunal. She submitted, *firstly*, that the applicant had given an unsatisfactory account of how he knew his date of birth. He had said that birthdays were not celebrated and he had been unable to give any examples of recalling his age at specific events. He had not been told that he was shortly to undertake military service when he left Iran. He had failed to mention that he had been issued with a national identity card and that it had been taken from him en route to the UK. The Home Office's background note³ showed, at 10.2, that such documents were issued to every permanent resident of Iran over the age of 15.
35. Ms Bhogal submitted, *secondly*, that the applicant's evidence about significant life events had been unsatisfactory. There had been no mention of having celebrated the Kurdish New Year (Newroz) and he had been rather vague in his descriptions of celebrating Ramadan and Qurban, the festival of sacrifice. This point linked to the *third* submission, which was that the applicant's account of being given gifts at these events made little sense. He had said that he was given money when he was younger but that this had stopped when he might actually be able to spend money. The applicant had also given inconsistent evidence about whether he was given money by his father. He had said that he was given pocket money by his father but also that he had been given money only for specific purposes, when requested.
36. Ms Bhogal's *fourth* submission on the evidence was that the applicant's account of his reading, writing and schooling had varied. It was clear that he had been using WhatsApp and Facebook in the United Kingdom but he had been reluctant to divulge this information. He had given a 'guarded set of answers' on this subject, suggesting that he was seeking to conceal his level of education or understanding.
37. Ms Bhogal submitted, *fifthly*, that the applicant's life skills were rather greater than he had claimed. That was particularly apparent when it came to his ability to cook and to use public transport. He had said that he had been able to cook eggs in Iran. He also knew how to make a

³ Home Office *Country Background Note: Iran*, version 6, October 2019

sandwich for himself and his brother and he could use a knife to cut fruit. These abilities had been downplayed in the applicant's first and second witness statements. Those statements stood in contrast to the applicant's oral evidence and what had been said by Hardi, about teaching the applicant to fry eggs. The applicant was clearly more able than he was prepared to admit. The same was true of his ability to use public transport. By August he had travelled from Liverpool to Manchester twice. He had since been to Manchester on several more occasions but he was consistently reluctant to discuss his ability to use the bus and his ability to use Google maps on his smartphone.

38. Ms Bhogal's final observation on the evidence was that the applicant's account of his journey to the UK was problematic. He had said that he had not made contact with his family. He could have tried to trace them through the Red Cross or otherwise. His answers in this respect were not credible and credibility was a live issue in the case.
39. Ms Bhogal's final observations concerned the absence of Hardi and the evidence of Ms Houlihan. It was not clear why Hardi was absent and he was due to give evidence. The applicant suggested that he had known for months that Hardi would not attend and it was not clear why his name had been included on the witness template. The Tribunal should give his witness statements limited weight in light of the fact that he had not been tendered for cross examination.
40. As for Ms Houlihan, Ms Bhogal initially sought to submit that she had given evidence in many cases. She accepted that she had no evidence in support of that submission, however, and chose to withdraw it. She submitted instead that Ms Houlihan's evidence should be treated with caution because she had not volunteered that she had no age assessment training and because she had not stated categorically that she believed the applicant to be 16. Her turn of phrase in her initial witness statement (that it was 'not impossible' that the applicant was his stated age) was a 'very odd use of language'. Ms Houlihan's observations about the applicant's interactions with others were to be seen in the context of her having no training on age assessments. In reality, the applicant's interactions with other young men took matters no further; he was playing football with young men and the way they reacted to goal scoring and penalty taking might be true of a teenager or a man in his twenties, or older. Ultimately, the Tribunal was left merely with what the applicant himself said about his age, which was unsatisfactory for the reasons Ms Bhogal had already set out. There was a final point about military service. The first mention of this was in Ms Houlihan's recent notes, which had been filed as an addition to the trial bundle. Nothing had been said to the social workers or was mentioned in the witness statements. It was not clear why the applicant had not volunteered this information (that he was approaching draft age) when he was asked how he knew his age. The point weighed against the applicant due to its late mention.
41. In response to my questions, Ms Bhogal indicated that she was content to withdraw allegations which had been made against Ms Houlihan at [32](e) of her skeleton argument. The allegations were that the respondent had 'never seen a situation where Ms Houlihan has accepted

that a person was in fact [an] adult' and that she adopted a 'blanket policy' to treat as children those who asserted that they were.

42. For the applicant, Mr Jagadesham submitted that the applicant's evidence should be evaluated as that of a vulnerable witness and that it was appropriate to adopt a sympathetic approach to his evidence. In his submission, the applicant had been consistent in his evidence despite lengthy cross-examination, and he had given straightforward answers in which he had attempted to assist the Tribunal. This was despite the temperature in the hearing room and the applicant's statement that he was very tired, having slept poorly on the night before the first day of the hearing. Ms Bhogal had been wrong to submit that the applicant's answers had changed in any material respect and she was also wrong to submit that the applicant had been reluctant to volunteer information. Nor was there anything implausible about the applicant's account, whether that was in connection with what he had said about his limited education, or about his parents having told him his date of birth.
43. Mr Jagadesham urged caution in respect of the submissions made about the celebration of festivals, particularly in the absence of background material on the events in question and in light of the fact that the applicant had been asked nothing about Newroz. Equally, the Tribunal should be cautious before holding against the applicant things which he had supposedly failed to volunteer at an earlier stage. Into that category fell the respondent's reliance on the applicant's 'failure' to mention that he had been issued with an identity card; it was clear from the record of the interview that the applicant had been asked whether he had an identity document, not whether he had had one in the past.
44. The applicant had also not been challenged on various material assertions. He had stated when examined in chief that he had not undertaken military service but he had not been challenged on that point. It was only Ms Houlihan who had thought of the significance of this point, and it was one facet of questioning which had been altogether omitted from the brief enquiry.
45. The applicant had been asked numerous questions about life skills and nothing he had said had been inconsistent with his written account. He had stated from the outset that he had been able to cook eggs, for example. Much had been made of the fact that he could prepare a sandwich and cut fruit but this was not cooking, properly so called, and it took matters no further. The same submission was made in respect of the applicant's ability to use public transport. As for the applicant's lack of contact with his family, there were proper reasons that he might be scared to make contact with them, not least of which was the Iranian regime's propaganda about its ability to hack Facebook and other such media. It was in any event to be recalled that the task of the Upper Tribunal was not to consider the applicant's asylum claim.
46. Mr Jagadesham submitted that Ms Houlihan's evidence was deserving of weight. She had been able to observe the applicant with children of his claimed age and it was clear from the authorities that such observations might be of use. She had seen the applicant on seven occasions and

had an informed view. Whether or not she had age assessment training, she had relevant experience and knowledge and it was to be recalled that there was no nationally validated age assessment training.

47. The brief enquiry was deserving of little weight, Mr Jagadesham submitted, because there was nothing to show that the assessors had any relevant training or experience. Ms Bhogal interjected at this point, asking me to note that the response to the Letter Before Action made clear that the team was a dedicated one that had a consistent caseload of 300 or more young people, and that there had been no direction for a statement setting out the qualifications or experience of the assessors. Nor had there ever been any suggestion that the assessors were insufficiently qualified or experienced.
48. Mr Jagadesham submitted that there were many cases in which the Tribunal or the Administrative Court had been apprised of the qualifications or experience of those who undertook the age assessment under challenge. In this case, there was no such evidence. The Tribunal was not invited to find that the assessment was unlawful, nor did it need to do so. It was at liberty to make its own assessment of the applicant's age, taking account of the brief enquiry. Due to the failings in the brief enquiry, however, it would not be appropriate to accede to the respondent's submission that it should be accorded significant weight. It was also wrong to submit, as Ms Bhogal had at [33] of her skeleton, that the assessors had met the applicant more than once. (Ms Bhogal accepted that this was an error on her part.)
49. It was quite clear that the respondent had relied too heavily on physical appearance and demeanour. It was trite that physical features were an unreliable indicator of age and no account had been taken of cultural variations or ageing factors such as working outside. It was relevant to recall the margin of error described in the authorities. It was also relevant to recall that the applicant had been seen by the assessors only the day after arrival, which was likely to skew rather than to improve the assessment. There was no basis for the observations that the applicant was surly or hostile with the assessors and it was apparent that the appropriate adult had not discharged her obligations to the applicant. The process had been flawed, as was the conclusion reached.
50. For her part, Ms Houlihan had been very careful to explain exactly what training she had and had not had. Nor had she adopted what might be described as an entrenched position. The ADCS guidance did not exclude observations from relevant individuals, into which category Ms Houlihan clearly fell.
51. Mr Jagadesham invited me to attach what weight I saw fit to Hardi's witness statements. He accepted that the weight which could properly be attached might be reduced in light of his absence from the hearing. The evidence was nevertheless relevant and fell to be considered.
52. Ms Bhogal sought permission to reply briefly. I permitted her to do so, having ascertained that Mr Jagadesham did not object. Her concern was to press her point about the expertise of the

respondent's department not being within the scope of the Tribunal's enquiry. So much was clear, she submitted, from email correspondence between the Tribunal and the parties. The assessment was required, she submitted, to speak for itself. There had never been any suggestion that the social workers were not appropriately qualified or experienced. It would be well known to GMIAU, Ms Bhogal submitted, that the department was appropriately qualified, and there had been no 'trigger' for the department to set out the qualifications of the authors of the brief enquiry. As a secondary point, Ms Bhogal submitted that what had been said in the authorities about lay observations of young people's behaviour related to observations by foster carers and teachers over long periods of time, not to someone like Ms Houlihan.

53. I reserved judgment at the end of the submissions.

Legal Framework

54. Part III of the Children Act 1989 ("the 1989 Act") imposes a range of duties on local authorities in respect of children within their area who are in need. Section 17 of that Act, for example, obliges local authorities to safeguard and promote the welfare of such children and to provide a range and level of services appropriate to their needs. Section 20(1) of the Act requires that every local authority 'shall provide accommodation for any child in need within their area'. And, by section 23C of the Act, a local authority may continue to be obliged to perform certain functions in respect of a 'former relevant child' (or a person who should be treated as such⁴) even after that individual has attained the age of eighteen.
55. By section 105(1) of the 1989 Act, 'child' means a person under the age of eighteen. In R (A) v London Borough of Croydon [2009] UKSC 8; [2009] 1 WLR 2557, the Supreme Court held that whether a person is a child is a question of precedent or jurisdictional fact to be determined by the courts: per Lady Hale at [32], with whom Lords Scott, Walker and Neuberger agreed, and Lord Hope at [51].
56. There is a good deal of learning on the way in which that task is to be performed by the Administrative Court and, more recently, by the Upper Tribunal. Fifteen authorities of the Upper Tribunal, the Administrative Court and the Court of Appeal appear in the bundle of authorities. More are cited in the comprehensive skeleton arguments prepared by counsel. I shall not attempt a review of all the relevant case law at this stage of my judgment. For the moment, I propose to mention only one authority, which is the decision of the Court of Appeal in R (CJ) v Cardiff City Council [2011] EWCA Civ 1590; [2012] PTSR 1235. In his judgment, Pitchford LJ (with whom Laws LJ and Lloyd Jones J agreed) held that the nature of the court's enquiry under the Children Act is inquisitorial and that it was inappropriate to speak in terms of a burden of establishing a precedent or jurisdictional fact: [21]. The court is required, Pitchford LJ continued, to apply the balance of probability without resorting to the concept of discharge of a burden of proof, and a 'sympathetic assessment of the evidence' is appropriate.

⁴ GE (Eritrea) v SSHD & Bedford Borough Council [2014] EWCA Civ 1490; [2015] 1 WLR 4123 refers

Analysis

1. The appropriate starting point for my consideration of the applicant's age is the decision made by the respondent council. That is because conventional judicial review principles continue to play a relevant and important role in deciding the weight to be afforded to the local authority's assessment of a person's age and because the better the quality of the initial decision-making, the less likely it is that the court will come to any different decision on the evidence: R (MVN) v London Borough of Greenwich [2015] EWHC 1942 (Admin); [2015] ACD 141, at [47], per Picken J and R (A) v Croydon LBC, at [33], per Lady Hale.
57. I have referred thus far to the local authority's assessment as a 'brief enquiry', since that was the name given to the process by the respondent. Logically, that was the term used by counsel before me when referring to the process and to the decision under challenge. It is a convenient short-hand for a process and a conclusion which is not 'Merton compliant'. This type of abbreviated assessment has been considered in other cases and has been known by different names. In the Merton case itself, Stanley Burnton J expressly acknowledged that there may be 'very obvious' cases in which 'there is normally no need for prolonged enquiry': [27] refers. More recently, Thornton J considered a challenge to what she described as an 'abbreviated assessment' in R (AB) v Kent County Council [2020] EWHC 109 (Admin) [2020] PTSR 746. Thornton J concluded, on the particular facts of that case, that the abbreviated assessment based upon the claimant's physical appearance and demeanour was unlawful in that it had failed adequately to acknowledge the potential margin for error and give the claimant the benefit of the doubt. (I note that the defendant council in that case subsequently undertook a Merton compliant age assessment in which it concluded that the claimant was an adult, a conclusion with which UTJ Stephen Smith ultimately agreed: R (AB) v Kent County Council [2021] UKAITUR JR/1947/2020).
58. Bennathan J recently reached a similar conclusion on the facts of the case in R (SB) v Royal Borough of Kensington & Chelsea [2022] EWHC 308 (Admin). The assessment in that case was described as a 'short form age assessment'. Bennathan J underlined that the court should allow flexible and practical procedures to be deployed by local authorities and should not insist that every procedural box was ticked: [31]. He said that the depth of the enquiry required was not 'binary' and gave examples of cases (a young child at one end of the spectrum, a middle aged person at the other) in which a shortened process of enquiry would be appropriate. The court concluded, ultimately, that the process followed in that case had been unlawful due to the absence of an interpreter; the absence of an appropriate adult; and the absence of a proper 'minded to' process (during which particular points of concern should have been put to the claimant for comment or response).
59. No survey of recent authority on short-form assessments would be complete without reference to the judgment of the Supreme Court in BF (Eritrea) v SSHD [2021] UKSC 38; [2021] 1 WLR 3967 although, as both counsel noted before me, that decision concerned the lawfulness of the Home Secretary's policy that an asylum seeker who claimed to be a

child could be treated as an adult where their 'physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age and no other credible evidence exists to the contrary'. The Supreme Court held that the guidance was lawful since it did not direct immigration officers to act in a way which was in conflict with their legal duty, such that it satisfied the test in Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112, HL. There is obviously no policy challenge before me and the assistance to be derived from BF (Eritrea) v SSHD is limited.

60. I turn to the weight which I can properly attach to the conclusions reached by the respondent. In my judgment, it is very limited indeed. I say that for the following reasons.
61. Firstly, and most importantly, the brief enquiry relies too heavily on the applicant's physical appearance and the conclusions reached do not follow logically from the assessors' observations about the applicant's appearance. Ms Bhogal was undoubtedly correct to state that physical appearance was recognised in Merton to be a relevant consideration and that nothing in the subsequent authorities has suggested otherwise. That might be so, but what is apparent from Merton and all of the subsequent authorities is the caution which must be exercised in relying on physical characteristics in making a decision such as this. Stanley Burnton J noted at [23] that '[d]ifferent people living in the same country, with the same culture and diet, mature physically and psychologically at different rates' and that the difficulties 'are compounded when the young person is of an ethnicity, culture, education and background that are foreign, and unfamiliar to the decision maker': [24]. In R (AB) v Kent Country Council, Thornton J stated at [24](7) that physical appearance is a 'notoriously unreliable basis for assessment of chronological age'. In reaching that conclusion, she cited what was said by Blake J at [27] of NA v Croydon LB [2009] EWHC 2357 (Admin), that the unreliability of physical appearance was clear from all the materials and the authorities, just as it was for anyone with 'non expert knowledge of young people whether as a parent or otherwise'.
62. The signal feature of the conclusions expressed in the brief enquiry is the absence of any reference to the caution which must be employed before drawing conclusions as to age based (in significant part) on physical appearance. In any event, the physical features described in the assessment do not begin to justify the conclusion that this was a clear case in which the applicant was an adult, and in which no Merton compliant assessment was required. I consider the physical characteristics in turn:
- (i) *'Strong developed features of an adult aged 25 years plus'*. In itself, this observation is meaningless and was presumably intended to encompass what followed.
 - (ii) *'A clear unshaven presentation yet it was clear that he had been shaving for some years'*. The applicant told the assessors that he had been shaving for two years. At the time, he was claiming to be nearly seventeen years old. The decision gives no indication of why it was

thought to be implausible that the applicant might have been shaving since he was fifteen years old, or (in the alternative) why the extent of the applicant's facial hair suggested that he was significantly older than this. I need no expert evidence to state that some boys start shaving in their early teens, and some start shaving significantly later. No consideration was given to the potential significance of ethnic and genetic factors which might have been relevant in this connection. The Home Office guidance on assessing age⁵ notes at page 13 that 'it is normal in some cultures for boys to have facial hair at an early age'. No consideration was given to such matters. I cannot see how the presence of facial hair, or the fact that the applicant had been shaving for some time, was capable of assisting one way or another in deciding whether the applicant was nearly seventeen.

- (iii) '*Coarse hair*'. The applicant has thick, black hair. I do not understand how the assessors adjudged it to be 'coarse', or why, if it was coarse, that is said to be relevant to the assessment of age. If (and there is no evidence of this before me) the texture of a boy's hair changes as he matures into adulthood, the assessors did not consider whether that change might be influenced by factors such as ethnicity and exposure to the elements. Again, the basis upon which hair texture was said to be relevant is wholly unclear.
- (iv) '*Frown lines*'. At first blush, this factor might seem to be based on common experience and logic; the development of frown lines, or wrinkles, is an indication that the youthful elasticity of the skin is decreasing⁶. Again, however, the difficulty with the observation is that it was made without any thought being given to the applicant's background. He is said to have been a shepherd, and to have spent his life from the age of eight exposed to the elements whilst tending sheep. It might be thought that this exposure to the elements was a relevant matter for the assessors to consider but, again, no thought was given to it.
- (v) '*Well-developed and prominent Adams apple*'. I do not understand the basis upon which this was thought to indicate that the applicant was older than his claimed age. Again, there is no reason provided for the conclusion and the development of a prominent Adam's apple indicates nothing more, in my judgement, than progress through puberty. A boy of fifteen might well have a more prominent Adam's apple than a man in his forties.
- (vi) '*Physically well developed, with thick set features*'. Having spent the whole of 29 March with the applicant, I do not agree with the observation that he was 'physically well developed with thick set features'. Be that as it may, the same point applies to this observation as to those I have considered above; it might apply equally to a boy of nearly 17 years old as it does to a man who is

⁵ The version provided to me is version 5, as issued on 14 January 2022. It was not suggested that the version in force at the time of the decision differed, or that it was inappropriate for me to consider the current version.

⁶ *R (A M) v Wirral MBC* [2021] UKAITUR JR/00670/2020, at [103]

significantly older. Again, the assessors overlooked the applicant's background in reaching this conclusion; the fact that he had (or said that he had) spent nearly a decade working in the fields of Iran, was evidently relevant to the development of his musculature but was overlooked by the assessors.

(vii) *'A strong developed chin and nose, dark thick eye brows and his ears were also well developed and large, fitting a person much older than 16 years of age'*. I do not understand the basis upon which the size of the applicant's chin, nose or ears or the colour and thickness of his eyebrows was relevant to the question at hand. To state an irrefutable fact, some people have larger and more pronounced features than others. A child may have larger ears than an adult. A teenager may have a larger nose than an adult. To suggest that these features somehow contributed to the decision that the applicant was significantly over 25 is misconceived and put me in mind of the thoroughly discredited methods considered in cases such as R (A) v LB Croydon & SSHD [2009] EWHC 939 (Admin); [2010] 1 FLR 193 and R (R) v LB Croydon [2011] EWHC 1473; [2011] BLGR 691. If anything, the statistical methods applied by the discredited paediatrician in those cases had a more solid evidential foundation than these observations from the assessors. To take the observation about the applicant's ears as an example, it is not clear to me how large the assessors expected the ears of a 16 year old to be, or how much larger the applicant's ears were thought to be, or why that size of ear was thought to be more commensurate with an adult who was more than 25 years old.

63. With these concerns in mind, I asked Ms Bhogal to refer me to any authority she knew of in which physical features such as those listed above had been accepted to bear cogently on an assessment of age. She was unable to direct me to a single case, beyond reminding me that physical appearance was still considered to be relevant. As previously stated, I accept that to be so, but the particular physical features considered in the brief enquiry offer very little if any rational support for the conclusion that the applicant was significantly over eighteen. That is so whether those features are taken individually or cumulatively.
64. The assessors also relied on the applicant's demeanour, which they found was 'that of an adult, not of a child'. At [21](8) of R (AB) v Kent County Council, Thornton J said that this was also a 'notoriously unreliable' indicator which, 'by itself, constitutes only somewhat fragile material'. The applicant was said to be 'surly' and indicated that he would dispute the assessment by doing 'what is necessary'. The applicant disputes this version of events to an extent, in that he does not agree that he was surly (or hostile) and merely indicated that he intended to instruct a solicitor to dispute the assessment. Putting that dispute to one side for a moment, and proceeding on the basis that the assessors' description is accurate, I do not see how these observations militate in favour of a conclusion that the applicant is significantly older than eighteen. If anything, hostile, surly and argumentative behaviour in the face of an authority might rationally be thought to belong more to an inexperienced teenager than to an adult who had greater experience of navigating such circumstances.

65. In my judgment, the extent of the assessors' reliance on physical appearance and demeanour and the obvious flaws in their reasoning are such that I should attach little weight to the brief enquiry. Mr Jagadesham nevertheless invited me to consider additional flaws in the process. I can express my conclusions on those points fairly briefly, since they do not represent a necessary step in my decision to attach limited weight to the assessment.
66. I accept that the weight to be attached to the assessment is less than would be attached to a full, Merton compliant assessment. I need cite no authority for that conclusion, which flows naturally from the absence of the procedures and processes required by the full assessment.
67. I accept that the decision also suffers from a failure to recognise the considerable margin of error which there might be in such cases, as recognised from [22] of Merton onwards.
68. I accept that features of the assessment rendered it unfair. Bennathan J noted in R (SB) v RBKC that a 'shortened process must be permissible, but it still needs to be fair'. In this case, unlike in SB, an interpreter was provided (via telephone) and there is no reason to think that the interpretation was inadequate. In common with that case, however, I consider there to be valid criticisms about the appropriate adult. Bennathan J set out the role of the appropriate adult in such cases at [36] of his judgment. The role includes ensuring that the subject of the interview 'understands what is happening to them and why' and to 'ensure that the detained person understands their rights and that you have a role in protecting their rights'. As Mr Jagadesham submitted, there is no indication on the face of the interview notes (or in her subsequent email, for that matter) that Ms Crocket's role in the interview was explained or that she took anything other than a passive role in the process. There is no evidence to show that the purpose of having an appropriate adult was even explained to the applicant, in compliance with [21](13) of AB v Kent County Council.
69. The absence of evidence that Ms Crocket discharged her obligations as an appropriate adult ties in with a further point made by Mr Jagadesham. In common with R (SB) v RBKC, he submits that this is a case in which the applicant was given no proper opportunity, via a 'minded to' process, to 'deal with important points adverse to his age case which may weigh against him', as Thornton J put it at [21](18) of AB v Kent CC. No such opportunity was given in this case. The interview record shows that the officers left the room after asking their questions before returning to tell the applicant 'we believe you are an adult and that you are above age 18. When the applicant sought to disagree with that assessment (his answer is recorded as 'I am below age of 18'), he was told that the assessors 'work with children' and that they understood 'what a 16 year old looks like'. He was told that he could access free legal advice but no opportunity was given to address the concerns which were in the minds of the assessors.
70. As will be apparent from my summary of the submissions, and of Ms

Bhogal's response in particular, there was some argument before me concerning the expertise of the social workers who conducted the brief enquiry and of the team in general. In the latter respect, I accept Ms Bhogal's submissions at [10](a)-(b) and [11] of her skeleton argument, based as they are on the statistics which were provided by the respondent council in response to the Letter Before Action. The team is an experienced team with a substantial caseload of UASCs, which has accepted that the vast majority of those claiming to be children are in fact children.

71. In respect of the specific individuals who conducted the assessment, the position is rather more difficult. Very little is known about them. The first individual (Christina Stirrup) has made a witness statement in which she exhibits her notes of the brief enquiry and the conclusions reached. She describes herself as a 'social worker with Liverpool's specialist Unaccompanied Asylum Seeking Children's Team'. She states that she and her colleagues carry caseloads of twenty or more children who are exclusively minors, many of whom are Kurdish and from Iran': [7]. No further information is given about her qualifications or her experience. The other individual (Rashid Khashy) who conducted the assessment is named at [3] of the statement but nothing more is said about him. It is not even clear whether he is a qualified social worker or a lay member of the team, although I note that he was said to be a social worker in the interview transcript.
72. As I listened to the submissions, I was attracted to the conclusion that it was the respondent council which submitted that the social workers are 'extremely experienced in carrying out age assessments' (skeleton argument, at [10](c)) and that it was for the council to substantiate that submission. In the absence of evidence to show that the social workers were sufficiently trained or experienced, I originally thought that I should attach even less weight to their conclusions. I am grateful to Ms Bhogal for her application for permission to reply to Mr Jagadesham's submissions, however, as her reply made me reconsider my provisional conclusion. She was able to demonstrate, with reference to the pre action correspondence, the pleadings and the case management stages of this application, that the applicant had never called into question the qualifications and experience of the assessors. Considering that the process remains one of judicial review, founded upon the grounds for judicial review and case managed in a way which focuses on the issues therein identified, I have concluded that it would be wrong to hold against the council the absence of evidence on these points. I am prepared to assume, therefore, that the assessors - who are members of a specialist team dealing with UASCs - were themselves appropriately trained and qualified to undertake the assessment. To proceed on the alternative basis would be to allow Mr Jagadesham to profit from a point which was never squarely placed in issue before the hearing.
73. Notwithstanding that conclusion, I do not accept Ms Bhogal's submission that I should attach weight to the brief enquiry in my own assessment of the applicant's age. I reach that conclusion because of the over-reliance on physical appearance and demeanour. I also accept that the process itself was not fair when judged by the requirements set out at [21](13) and (18) of R (AB) v Kent Country Council.

The Applicant's Evidence

74. The applicant gave evidence for a significant proportion of the first day of the hearing. He adopted his statements and was asked one supplementary question by Mr Jagadeshm. The majority of the time he spent giving evidence was under cross-examination from Ms Bhogal. The questions asked were clear and fair but there was a degree of repetition, as Ms Bhogal pressed the applicant by seeking clarification and then putting her case to him again, often in a slightly different formulation from the one used before. I do not suggest for a moment that there was anything unfair or oppressive about the questions themselves or the way in which they were asked; there was merely an acceptable degree of persistence in the questioning.
75. I was able to form an informed view of the applicant as a witness. My view of him accords significantly with the submissions made by Mr Jagadeshm. The applicant answered questions in a straightforward and rather naïve manner. I had no sense that he was attempting to tailor his answers in order to present a better case, nor that he was attempting to anticipate the direction of travel in Ms Bhogal's questions. Notably, he was perfectly content to volunteer information which might have been thought to undermine his case that he is significantly younger than the respondent council believed him to be. Into this category falls an answer that he gave about cooking. He had been asked a great deal of questions about his ability to cook when he arrived in the UK. At the end of those questions, Ms Bhogal indicated that she wished to move on to ask the applicant about a new topic, which was his ability to wash clothes. Having asked two questions on that theme, she returned to questions about cooking, asking the applicant what he was able to cook now. By this stage, it would have been quite obvious to the applicant that his ability to cook for himself was to be a theme in the respondent's case. Undeterred, he volunteered that he was now able to cook rice, stew, meat and potatoes, having been taught to do so by Hardi. My impression of the applicant as a result of these and other answers was that he was content to volunteer truthful information, even when it might have been thought to be detrimental to his case. Insofar as Ms Bhogal submitted that he was a reluctant witness from whom information had to be extracted, I do not accept that submission. My impression of the applicant's answers was precisely the opposite.
76. Before I turn to the specific points taken against the applicant by Ms Bhogal, I should note that she asked no questions and made no submissions on the applicant's behaviour at the time of the assessment. It was suggested in the brief enquiry assessment that the applicant had attempted to eavesdrop on the earlier assessment and that he had mimicked his friend when he pretended to cry. In his statement, the applicant explained that he was not attempting to eavesdrop and was sitting on the stairs in compliance with what he thought he had been told to do. He also states that he was genuinely upset during the interview as he thought that the assessors represented a threat.
77. It is not surprising that Ms Bhogal chose not to cross-examine the

applicant about these matters. The account of him sitting on the stairs must be seen in its proper context. He states that the assessors gestured to him to go upstairs and spoke to him in English. That must be correct as the interpreter who had been arranged was working remotely, via the telephone. It is hardly surprising, in those circumstances, that the applicant went up the staircase and waited there. There is no real basis to think that he was attempting to listen to what passed between the assessors and the other young person in the property. Nor, when the allegation is considered in context, is there any reason to think that the applicant was not genuinely frightened of the assessors. He had not been in the United Kingdom for 24 hours. His journey to the UK had been spent mostly in lorries with people he did not know. He had been accommodated in unfamiliar accommodation and was confronted with two people who he did not know, who has sent him up to his bedroom so that they could speak to the other young person. When his friend emerged, it was clear to the applicant that he had been crying. I note that the applicant is recorded to have said 'Please don't hurt me' in the opening stages of the interview. All things considered, it is perfectly plausible that the applicant was genuinely scared and that his distress was not a ruse. Ms Bhogal wisely chose not to advance a contrary case.

78. I have set out the detailed submissions Ms Bhogal made on the evidence above, and I will evaluate those submissions in the order in which they were made. As a summary, however, I offer the following observation. I considered none of the points made to be at all persuasive, whether in advancing a positive case that the applicant is the age determined in the brief enquiry or in advancing a negative case that he is not the age he claims. That is not a criticism of Ms Bhogal. The reality of this case is that she had very little to work with and her cross-examination of the applicant was necessarily more of a fact-finding exercise than an opportunity to put points of concern to him. That is necessarily the case where, as here, there has only been a brief enquiry. The more detailed information which is elicited as a matter of course in a Merton compliant process is absent, and the job of the respondent's advocate is rendered all the more difficult as a result.
79. Ms Bhogal asked me to note that the applicant had hairy hands. I was surprised by this submission, partly because I had not been asked to take note of the point whilst the applicant was actually before me and partly because it served to compound the difficulties with the respondent's heavy reliance on appearance and demeanour in this case. On the applicant's case, he is now just over eighteen years old. On the respondent's case, he is just over twenty six years old. There is no evidence before me to show that a twenty six year old male is more likely to have hairy hands than an eighteen year old male. As a non-expert, I find it wholly unremarkable that a male of any ethnicity has hairy hands at the age of eighteen. I simply do not know whether a Kurdish male from Iran is more or less likely to have hairy hands at the age of eighteen. The point simply has no proper evidential foundation, in the same way as many of those which I have already considered above.
80. A range of points were developed about the applicant's ability to recall his birthdate. His account all along has been that he was told the date

by his parents and that he had remembered it. Ms Bhogal noted that birthdays were not celebrated in the applicant's family, and that he had not been able to recall his age at a specific point in time (whether at a religious ceremony or otherwise). But a child might enquire of a parent about their age for reasons unconnected to birthdays and bar mitzvahs. Children have siblings and peers and age is an important aspect of their personal identity which feeds into the establishment of a pecking order. I find it unsurprising that a child would ask their birth date, and would recall it, even where they do not celebrate it.

81. It is all the more likely that an individual would recall their date of birth when they have been issued with a formal identity document bearing that date. I am grateful to Ms Bhogal for her citation of the Home Office's background material, which shows that identity cards are issued to all Iranian citizens at the age of fifteen. On either side's case, therefore, the applicant would have been issued with a national identity card in the years running up to his departure from Iran. Ms Bhogal submitted that the applicant had failed to mention that he had been issued with an identity card, and that this was a point which had only been made in response to the respondent's decision. I accept Mr Jagadeshm's submission on this point, however, which is that the questions in the brief enquiry simply did not serve to elicit information about what documents the applicant had previously held. The question was 'Do you have any documents for your DOB' and the applicant's answer was 'No, nothing'. That is a straightforward answer to a straightforward question and it would be unfair to expect the applicant to have volunteered additional information about the past situation.
82. There was a rather faint suggestion in Ms Bhogal's submissions that the applicant would not have received formal schooling only between the ages of six and eight, as he has claimed from the start. She pointed to background evidence which shows that schooling is compulsory in Iran from six to eighteen. Mr Jagadeshm invited me to consider the US Department of State Human Rights Report for 2018, however, which is one of the documents cited in the Home Office report on which Ms Bhogal relied. Turning to page 43 of that document, I note that 'Although primary schooling is free and compulsory for all, media and other sources reported lower enrolment in rural areas, especially for girls.' Given the humble, rural existence the applicant claims to have lived, it is entirely plausible that he was withdrawn from education at a young age in order to help his father tend the sheep.
83. I am not able to attach any significance to the point that the applicant had not been told by his parents that he was shortly to undertake military service. I have considered the background material to which I was referred. I note that all Iranian men must (subject to exemptions) report for call-up upon reaching the age of 18. On the applicant's case, however, he was not going to turn eighteen for more than a year before he left Iran. Even assuming that his parents were cognisant of the requirement that he would have to serve in the army, the point of call-up was not for another year or more. It is unsurprising that neither they nor anybody else had thought to mention it to the applicant before Ms Houlihan broached the subject in this country.

84. There was nothing vague, hesitant or evasive in the applicant's evidence about religious festivals. He said that he and his family had celebrated Ramadan. He volunteered that they had also celebrated a festival called Qurban, which the interpreter stated was the festival of sacrifice. Ms Bhogal asked numerous questions about the gifts he was given at these times. He said that he had been given money when he was younger but that this had stopped when he got older. Ms Bhogal's point about this was that it seemed odd that the applicant had received money when he had no use for it but that it had stopped when he was older, and could have bought things with it. It was clear from the applicant's evidence, however, that the amounts of money he received were very small. He suggested at one point that he might have received a sum which equated (counsel agreed) to around twenty pence. He said that he would buy some sort of little treat with this money. When he became older, however, he was treated more like an adult and expected to work for his money, so the gifts were discontinued. This had the ring of truth to me, given the impoverished agrarian lifestyle the applicant described.
85. Ms Bhogal submitted that the applicant had given discrepant evidence about receiving money from his father. There was no such discrepancy. The applicant's account was that he had received money from his father when he asked for it or when he needed something. The expression 'pocket money' was used but only, in my judgment, as a shorthand to refer to payments which were not wages.
86. The applicant's evidence about using Facebook and Whatsapp caused me no concern whatsoever. He described his very basic literacy and his ability to exchange messages over these platforms. He did not at any stage suggest that he was able to converse freely in written English or Kurdish Sorani, and he consistently explained that most of his interactions were oral, due to his limitations with the written word. Given the applicant's description of his daily life, which involves little more than sitting in his bedroom watching things on his telephone, it is entirely feasible that his ability with the written word has improved since his arrival in the UK more than a year ago. The evidence which he gave frankly and honestly about his ability to exchange limited messages over social media did not suggest to me either that he is older than his claimed age or that there was a difficulty with his credibility.
87. I do not consider that the applicant sought to 'downplay' his culinary abilities at any stage. He was asked nothing about this during the brief enquiry. In his first statement, he said that he was able to fry eggs because his 'mum would be cooking for me and all the family'. The point he was making at this point in the statement was that he had very limited ability to cook. The fact that he stated at the hearing that he was able to cut fruit with a knife and to prepare a sandwich is not an indication that these 'skills' were withheld in his statement; it is merely that they were not mentioned because they were not relevant to the point of that paragraph. I do not lose sight of the fact that there is potentially a point of contradiction between the applicant's statement and Hardi's, in that the applicant stated that he was able to fry eggs before he came to the UK, whereas Hardi stated that he had 'taught him how to fry eggs'. I attach no significance to the point. It is entirely

feasible that Hardi meant that he had taught the applicant to fry eggs in this country, using a hob with which he had previously been unfamiliar. Either way, the point is a minor one which has no real bearing on the substantive issue before me. If the applicant was able to cut fruit, make sandwiches and fry eggs when he arrived in the UK, that has little if any bearing on his age. A reasonably responsible and intelligent pre-teen could carry out these tasks without any difficulty.

88. The applicant was not 'reluctant' to give evidence about his ability to use Google maps or to navigate his way to Manchester to meet Ms Houlihan. He responded to direct questions with direct answers. His evidence has consistently been that he finds it difficult to use public transport and has been heavily reliant on Hardi in this respect. It is Hardi who ensures that he buys the right ticket and boards the correct bus. Ms Houlihan and Hardi ensure that his mobile phone contains a clear indication of where he should disembark, and he does so at the appropriate time. These are not particularly advanced life skills, and do not even involve any particular ability to read street names. As any user of satellite navigation knows, the device will alert the user when they have reached their destination, usually with an oral and a visual prompt. I do not accept that the applicant was reluctant to disclose his 'life skills', such as they are, and I do not accept that those life skills militate in favour of a conclusion that he is older than his claimed age.
89. The fact that the applicant has not attempted to make contact with his family is not a matter of concern. He gave a convincing and consistent account at the hearing of how he had been able to speak to his uncle en route to the UK but that he did not keep his number. Mr Jagadeshm submitted, with reference to XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC), that it was entirely plausible that the applicant might feel concerned about doing so. I accept that submission as it is clear from XX that the Iranian government has issued a formidable amount of propaganda about its ability to see the private communications of its citizens. Whilst the Upper Tribunal found that ability to be unproven, certainly as regards Facebook, it is plausible that the propaganda might have influenced the applicant's willingness to make contact with his family from the UK.
90. In sum, I found the applicant to be a credible witness who gave his evidence in a straightforward manner and was not guarded, vague or evasive in any respect. There was a certain bluntness and naivety to his answers and I found that difficult to reconcile with the observations that he was surly or hostile with the assessors. For the reasons I have already given, I consider that the applicant's behaviour at the assessment was misinterpreted. I consider the applicant to have given an account of his age which rings true and which has not been undermined in any way by the observations in the brief enquiry or by the points taken against him by Ms Bhogal at the hearing.

Hardi's Evidence

91. I attach limited weight to Hardi's statements because he did not attend to give evidence. He might have been an important witness and I accept

Ms Bhogal's submission that no adequate explanation has been given for his absence from the hearing. The consequence of **his** absence is that none of his assertions could be tested in cross-examination. That is particularly so in respect of the point about frying eggs to which I have already referred. Insofar as Hardi opines that the applicant is the age he claims, I attach limited weight to that opinion on account of his absence from the hearing.

Maria Houlihan's Evidence

92. I attach rather more weight to Ms Houlihan's evidence. I accept the point made by Ms Bhogal about her not having any formal age assessment training, although I note that she mentioned that she had been to training about age assessment litigation delivered by solicitors. The point really cannot go any further than that, however. Insofar as Ms Bhogal submitted that Ms Houlihan had not volunteered the fact that she had no formal age assessment training, and that she had used an odd turn of phrase in her first statement, I reject those submissions. As for the first of those suggestions, it was not incumbent on Ms Houlihan to volunteer that she had had not formal age assessment training. It should have been reasonably clear from her professional background (firstly in care, then in GMIAU) that she would not have had such training. Ms Houlihan never professed to have conducted an age assessment on the applicant; she merely offered observations on the conclusion of the brief enquiry. And there was nothing 'odd' about her turn of phrase in her first witness statement, in which she suggested that it was 'not impossible' that the applicant was nearly seventeen. It was not for her to state (as Ms Bhogal suggested at one point) that the applicant was certainly sixteen. She was not qualified to offer such a definite opinion and, given the accepted margin of error, it is difficult to see how anyone could be. Her focus, instead, at the time that she wrote that statement in February 2021, was to support the lawyers at GMIAU in their suggestions that the applicant was not certain to be significantly over 18 and that he should be afforded the benefit of the doubt and given a Merton compliant assessment.
93. I do not accept the submission Ms Bhogal made in attempting to distinguish R (AM) v Solihull [2012] UKUT 118 (IAC), in which the Upper Tribunal spoke about the potential value of 'observations of demeanour and interaction with others made over a long period of time by those who have opportunity to observe an individual going about his ordinary life'. Ms Bhogal submitted that these remarks were directed specifically to teachers or foster carers who were able to observe an applicant over a length of time. I do not accept that the Upper Tribunal's observations were restricted in that way. It is correct to observe that specific reference was made to teachers and family members at [20] but the ultimate point made is a common sense one that various individuals with whom an applicant has contact might be able to cast light on who he interacts with, and how. A young person is more likely to gravitate towards those of a broadly comparable age, at a broadly comparable state of maturity. The value of Ms Houlihan's evidence is that the applicant got on well with boys below the age of eighteen and that he related, in particular, to one Kurdish boy who was 16 years old. Ms Bhogal makes the point that young men between the ages of fifteen and

thirty might celebrate goals or penalties in the same, boisterous way, but Ms Houlihan's evidence taken as a whole was of a young man who is comfortable in the company of others who are around his claimed age. That is an observation which is deserving of weight whether or not it comes from a witness who has formal age assessment training. Despite the initial indications in the skeleton argument that it might be suggested that Ms Houlihan was incredible, whether through partiality or credulity, Ms Bhogal put neither suggestion and quite properly abandoned them in her closing submissions. In all the circumstances, I consider it appropriate to attach weight to Ms Houlihan's evidence.

Conclusion

94. Drawing all of these threads together, I conclude as follows. The brief enquiry is deserving of little weight for the reasons given at [57]-[74] above. The applicant was a consistent, straightforward and credible witness for the reasons given at [75][91] above. Whilst I give little weight to the untested evidence of Hardi, I attach weight to the supporting evidence of Ms Houlihan, for the reasons given at [92][94] above. I accept the applicant's account of his age. I find it more likely than not that the applicant is the age he has claimed and there shall accordingly be a declaration that his date of birth is 27 February 2004.
95. I will invite written submissions from counsel on costs and any other consequential matters.

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