



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

JR/1053/2021

In the matter of an application for Judicial Review

The Queen on the application of
(on the application of MA)
(ANONYMITY DIRECTION IN FORCE)

Applicant

versus

Kent County Council

Respondent

ORDER

BEFORE Upper Tribunal Judge Stephen Smith

HAVING considered all documents lodged and having heard Ms S. Akinbolu of counsel, instructed by Duncan Lewis Solicitors, for the applicant and Mr L. Johnson of counsel, instructed by Invicta Law, for the respondent at a hybrid hearing on 5 and 6 April 2022

AND UPON handing down the reserved judgment in this matter on 3 May 2022, pursuant to (i) the parties being notified on 12 April 2022 that judgment would be handed down on 3 May 2022, with neither party to attend provided there were no consequential matters to be dealt with; and (ii) the draft judgment being circulated to the parties under embargo terms on 25 April 2022; and (iii) neither party providing any typographical or other obvious corrections to the judgment, or providing a nil return, by the time requested, or at all; and (iv) neither party attending the hand down hearing on 3 May 2022

IT IS DECLARED THAT:

1. The applicant was born on 3 January 2000, for the reasons given in the judgment handed down on 3 May 2022.

Costs

2. I make no order for costs.

Reasons

3. Neither party applied for costs. Nothing in this order affects the ability a party may enjoy under rule 10(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to make an application for costs within the period prescribed by rule 10(6).

Permission to appeal

4. There was no application for permission to appeal to the Court of Appeal and I refuse permission. There is no arguable case that I have erred in law or there is some other reason that requires consideration by the Court of Appeal.

Signed: Stephen H Smith

Upper Tribunal Judge Stephen Smith

Dated: 3 May 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): 03 May 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/1053/2021

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

3 May 2022

Before:

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between:

THE QUEEN
(on the application of MA)
(ANONYMITY DIRECTION IN FORCE)

Applicant

- and -

Kent County Council

Respondent

Ms S. Akinbolu, Counsel
(instructed by **Duncan Lewis**), for the applicant

Mr L. Johnson
(instructed by Invicta Law) for the respondent

Hearing date: 5 - 6 April 2022

J U D G M E N T

Upper Tribunal Judge Stephen Smith:

1. MA is a citizen of Ethiopia. She claims to be 19 years old, with a date of birth of 2 January 2003. That is disputed by the respondent council, which has assessed her date of birth to be 2 January 2000. It is the role of this tribunal in these age assessment proceedings to determine the applicant's probable age and date of birth.

Anonymity

2. In light of the applicant's status as a rape victim, and given her claim for asylum is yet to be determined, I make an order for anonymity. Where necessary, I have anonymised the names of those who work at the applicant's accommodation, to avoid jigsaw identification.

Factual and procedural background

3. It is agreed between the parties that the applicant is from Jiamma, Ethiopia. It is also agreed that during her childhood there she was beaten and raped by her stepfather. For reasons that are the subject of her asylum claim to the Secretary of State for the Home Department (which is yet to be determined), the applicant fled Ethiopia with the help of her maternal uncle and travelled first to Libya, where she was ill-treated. She travelled to Italy, and then to Germany, where she claimed to be 20 years old. She was fingerprinted by the German authorities on 10 June 2015, who assessed (or assumed: it is a matter of dispute) her age to be 19.
4. The applicant remained in Germany for around four years. Her asylum claim was refused, and she commenced appeal proceedings, but abandoned them and travelled to the United Kingdom via Belgium. She arrived in this country clandestinely on 19 June 2020 and gave her age as 17. The Home Office disputed her age, and she was placed in the care of Kent County Council in order for her age to be assessed.
5. The respondent conducted an age assessment on 23 September, 6 October, and 3 November 2020. Its report dated 26 January 2021 assessed the applicant to be 21 years of age, and it is that decision which is formally challenged in these proceedings.

The Merton age assessment

6. It is not necessary to outline the *Merton* age assessment in much depth, in light of the primary fact-finding function of the tribunal in these proceedings. The assessing social workers based their conclusions on the applicant's physical appearance, inconsistencies in her account of when she left Ethiopia, and her journey to the United Kingdom, and inconsistencies in the accounts she had given of how she claimed to know her age. The applicant had changed her story, they said, including when questioned in the age assessment itself. She had failed to provide satisfactory answers when challenged about what were perceived to be the shifting parameters of her account. The applicant must have been at least 14 to have been fingerprinted in Germany in 1995, based on background materials concerning the Eurodac EU database of fingerprint records.

Procedural background

7. Permission to challenge the respondent's age assessment was granted by Dan Squires QC, sitting as a deputy judge of the High Court, on 16 June

2021. He granted the applicant interim relief on the same day, requiring the respondent to treat the applicant as a former looked after child. The proceedings were transferred to this tribunal for a fact-finding hearing to take place.

8. The proceedings were subject to a number of case-management directions upon their transfer to the Upper Tribunal. By an order dated 19 July 2021, the parties were directed to serve all documents relevant to the determination of the applicant's date of birth, the original deadline for which was 15 August 2021. On 8 September 2021, the applicant had provided the details of a number of social media accounts she uses to the respondent, and based on that information, the respondent conducted further research, which revealed what it considered to be a number of social media accounts related to the applicant. By an application dated 28 February 2022, over five months after conducting the initial social media research, the respondent applied to vary the 19 July 2021 directions, to enable it to rely on a number of social media materials said to be linked to the applicant out of time. I refused the application, for reasons given in a reasoned order dated 4 March 2022. In summary, the attempted reliance on the new social media material at that late stage was a significant breach of the directions dated 19 July 2021. I considered there to be no good reason for the breach, in light of the fact the applicant had disclosed her social media details to the respondent in early September 2021, meaning that an application could and should have been made at that stage, rather than over five months later. I observed that it was by no means clear that the images in the social media materials were of the same person, or even this applicant. None of the materials featured any dates of birth or other information that could have assisted the determination of the sole issue before the tribunal. I decided that I could determine the application for relief from sanctions justly by refusing the application

9. Mr Johnson renewed the respondent's application to rely on those materials at the outset of the hearing before me, for essentially the same reasons as the respondent sought to rely on them in the first place. He submitted that, while the materials did not specifically speak to the applicant's age, they went to her credibility, as they demonstrated that she had not been open with the age assessors, and that they "provide a picture of her as a whole". I refused the application and said that I would give reasons in my substantive reserved judgment. Those reasons were essentially the same reasons as those given in my reasoned order dated 4 March 2022. The respondent had been in possession of the bulk of the social media materials in September 2021. While the respondent revisited the applicant's social media accounts again several times before making the 28 February 2022 application, I considered that there was no good reason for an application to vary the directions dated 19 July 2021 not to have been made at the time when most of the materials came into the applicant's possession, namely in September 2021. That would have enabled the potential significance of the materials to have been addressed before, and at, the case management hearing which took place before Upper Tribunal Judge Smith on 26 October 2021, and to have enabled provision in the trial timetable to be made for the witness exhibiting those materials, Mr Stringer, to have been tendered for cross-examination if necessary. Procedural rigour is important in public

law proceedings. The renewed application provided no basis for the materials to be admitted at that late stage.

Vulnerability of the applicant

10. While there is some disagreement between the parties as to the extent of the mistreatment the applicant has been subject to, it is clear that she has suffered horrific abuse at the hands of others. In addition to being raped by her stepfather in Ethiopia, she was subject to FGM, as confirmed by the report of Dr Love dated 11 September 2020. The attack she sustained in Libya appears to have been a blunt force trauma to one of her breasts; the applicant's account is that she was hit with the butt of an AK47 machine gun, causing internal tissue damage for which she later received surgery in Germany. An initial health assessment conducted here on 9 July 2020 confirmed the presence of healed scarring in the area in question. I treated the applicant as a vulnerable participant within the meaning of the Joint Presidential Guidance Note No. 2 of 2010. I ensured the applicant was able to take regular breaks during her evidence and intervened during Mr Johnson's cross-examination at several points to ensure that the tone and manner of his questions were appropriate.

The law

11. The legal principles are well settled, and there was no dispute before me as to the approach I should take. They are well summarised at paragraphs 8 and 4 of the skeleton arguments of Ms Akinbolu and Mr Johnson respectively. Mr Johnson's summary is admirably succinct:

"A person's age is a question of precedent fact to be determined by a court if there is a substantial dispute between the parties: *R (A) v Croydon LBC* [2009] 1 WLR 2557. The standard of proof is the balance of probabilities: is it more likely than not that at the time of the age assessment, the claimant was a child."

12. In his closing submissions, Mr Johnson additionally took me to paragraph 28 of *MVN v London Borough of Greenwich* [2015] EWHC 1942 (Admin), in which Picken J recognised what appeared to be common ground before him as to the applicability of certain principles drawn from authorities concerning assessing credibility in asylum claims to age assessment cases. Where relevant, I adopt the approach in those authorities to my own credibility findings.

The hearing

13. The hearing took place on a face to face basis at Field House on 5 and 6 April 2022. The applicant gave evidence in Oromo through an interpreter. At the outset, I clarified that the applicant and interpreter were able adequately to understand one another and communicate through each

other. On the second day, I heard evidence from three further witnesses: JM, the manager of the applicant's initial semi-independent accommodation, on behalf of the applicant; Sharon Bass, the applicant's social worker, and KE, the manager of a subsequent accommodation centre at which the applicant has been housed, which I shall refer to in these proceedings as "R". The latter two witnesses were called by the respondent. All witnesses adopted their statements and were cross-examined.

14. I will set out the salient aspects of the written and oral evidence to the extent necessary to reach, and give reasons for, my findings below.

Discussion

15. At the outset of my analysis, I emphasise that I have, of course, considered the entirety of the evidence in the round, to the balance of probabilities standard. I have made particular allowances for the vulnerability of the applicant, and the difficulties in recalling a coherent account likely to be experienced by any young person having endured the horrific mistreatment experienced by this applicant at different stages throughout her childhood.
16. The following preliminary observations are necessary.
17. First, I have not made, and nothing I say should be taken as indicating that I have made, any findings concerning the applicant's asylum claim made in this country. I accept that the basis of her claim is different to the claim she advanced to the German authorities, but, in light of the fact her claim made in this country is yet to be determined, and neither claim relates expressly to her age, that is not a factor capable of having the significant detrimental impact on her credibility Mr Johnson invited me to find that it was. Her claim in Germany was made at a time when she was, on the respondent's analysis, a child. Both claims relate to events that took place when she was a child, on the respondent's analysis of her age. The asylum claim the applicant has made here may yet be accepted by the Home Office, meaning that it would be premature for the fact of it differing to her earlier claim being treated by me as a significant factor harming her overall credibility.
18. Secondly, I do not find the applicant's credibility to be harmed by what appears to be her changing account of her mistreatment in Libya. The applicant claims that the people responsible for conveying her to Europe mistreated her horrifically. I have set out the injuries she sustained due to blunt force trauma, said to be from the butt of an AK47, above. She claims she was tortured through the removal of her toenails: see her GP notes at 181. She also claimed to her social worker, Teena Sanders, on 3 and 27 July 2020 that she had been raped in Libya, whereas in paragraph 7 of her statement prepared for these proceedings dated 14 September 2021, she said that she was not raped, and that she was not sure why she had been recorded as saying that she had been raped. Mr Johnson placed considerable emphasis on these inconsistencies when cross-examining the applicant, and in his closing submissions.

19. In my judgment, it is important to recall that it is an agreed fact that the applicant was a victim of rape when she was a child. It is plain that she has been horrifically mistreated in Libya, on any view. It is also important to recall that victims of such horrific crimes, especially child victims, will experience stigma and shame, and difficulties in recalling what happened and when, if later pressed to give an account. There are many reasons why victims of such crimes minimise their accounts or confuse events. For example, the applicant claimed in her initial health examination not to have been subject to FGM, yet, as Dr Love's examination revealed, she had been subjected to the process. Strikingly in light of his insistence that his cross-examination on this topic was appropriate, one of the propositions in *MVN* that Mr Johnson later invited me to apply is that summarised at paragraph 28(5), which states:

"Allowances should be given to the fact that asylum seekers (and similarly victims of trafficking) may have problems giving coherent accounts of their history..."

20. That this applicant, an accepted child victim of rape, has given subsequent, apparently inconsistent, accounts of being raped on further occasions when she was a child is not a factor that would be appropriate to hold against her. To do so would rely on stereotypical assumptions about the way victims of rape respond to their trauma and assumes that the only motive for the lack of coherency and consistency is her incredibility. I do not, therefore, hold against the applicant the fact that she changed her account of having been raped in Libya. It is not relevant to her age specifically, and as a factor going to her overall credibility, it is an unreliable guide.
21. Thirdly, some of the analysis in the age assessment, and the evidence of Sharon Bass concerning the applicant's physical appearance attracted less weight. While I accept that, in principle, the physical appearance of an individual is of potential relevance, the same cannot be said of the broad generalisations about the appearance of black women that feature in the above evidence. For example, in part 4 of the age assessment, under the heading "*Conclusion on age issue*", one finds the following:

"[The applicant] is of curvy build and has a petite stature, she has medium dark complexion skin and lacks expected youthful looks for his [sic] claimed age of 17 years old."

In relation to the claimed absence of the youthful looks that would ordinarily be expected of a child her age, the applicant would have been 18 at the date of the age assessment report and would have been nearly 18 at the age assessment meetings, the final of which was held on 9 December 2020. The applicant's initial accommodation manager, JM, was struck by the applicant's youthful appearance (see paragraph 5 of JM's statement dated 9 September 2021, "...her initial impression to me was that she was a young girl, she had a baby face and a very small tonal voice"). For my own part, having observed the applicant in court and giving evidence over a number of hours, it is far from the case that the only valid view of her appearance is that she lacks the youthful appearance of someone her claimed age. It is

genuinely very difficult to tell this applicant's age from her physical appearance alone.

22. Further, in her statement, Ms Bass said the following, at paragraph 4.2:

"[The applicant] has clear skin and there is no sign of blemishes or acne which could indicate that she has passed through her teenage years where these are often present. I am also mindful that culturally, black African females typically have a higher oil content which leaves the skin looking hydrated and could therefore explain [the applicant's] smooth complexion."

23. Ms Bass maintained her view in relation to the applicant's skin complexion, and the skin complexion of black women generally, under cross-examination by Ms Akinbolu, adding that her own children were of dual heritage, giving her additional experience and expertise in this area. In my judgment, and with the greatest of respect to Ms Bass, this is a broad generalisation to which it is difficult to ascribe much significance, as submitted by Ms Akinbolu. Ms Bass is not a dermatologist, and, in expert evidence terms, is not competent to give evidence concerning the skin complexion of African women and children, although I do not doubt that her opinion in this respect is honestly held. Her evidence on this issue is not entirely consistent with the description of the applicant in the age assessment, which states, under the heading "*Physical Appearance, Demeanour*" (B11 of the bundle), that the assessors:

"observed that the area around [the applicant's] mouth has darkened around the lips. Based on the assessors' own work experience with working with young black female people they observed [the applicant] as showing sign [sic] of ageing around her mouth."

24. Taken at their highest, my concerns in relation to this aspect of the age assessors' opinions, and those of Ms Bass, are that they are not consistent. They highlight the difficulties inherent to placing much emphasis on an individual's physical appearance; one's reaction to the physical appearance of a putative child is, to a degree, subjective. What one person sees as smooth skin characteristic of African females looking younger than they are, another views as an individual lacking the expected youthful looks of a person their claimed age.
25. Fourthly, although there was relatively extensive discussion at the hearing of the applicant's ability to look after herself, cook, travel into Canterbury to go shopping and for language lessons, and, more recently, arrange and attend a course of study in London, I find these issues to be of peripheral relevance to her age. One can readily envisage a 17 or 18 year old girl being able to undertake all such tasks with aplomb; indeed, there will be many younger girls who are able to do many of these things without a great deal of assistance, once, as was the case with this applicant, an adult has shown them the ropes. Similarly, the observations in the age assessment, and of Ms Bass, concerning the clothing the applicant sometimes chooses to wear, and her make-up, shed little light on her age. Again, many girls

younger than the applicant's claimed age will often look much older, and dress in a way which makes it difficult to distinguish them from young women. There is evidence that the applicant pushed back against some of the oversight extended to her in her semi-independent accommodation; she sometimes would not be open about where she was going, or did not return when she said she would, and said (in English) that she did not want to be treated as a child. The same could be said of many 17 year olds. Nothing turns on this.

26. Evidence relating to other aspects of the applicant's demeanour and behaviour is also largely neutral. For example, in July 2021, the applicant reported to her social workers that she thought she might be pregnant. She is recorded as having said that she wanted "her tummy checked". Ms Akinbolu submitted that that was "relatively childlike" language, indicative of her being her claimed age. Mr Johnson submitted that the exact phrase used by the applicant could have been lost in translation, inviting to me to ascribe little significance to her reported expression for that reason. Nothing turns on the phrase, in my judgment. There are any number of reasons why that term may have been used, such as cultural or familial reasons. It could have been a euphemism for being pregnant, used by the applicant to broach what she perceived to be a taboo topic in conversation. On any view, news of an unwanted pregnancy for any young woman would be a major event, and all sorts of language or terminology could be used upon discovering the news. Nothing turns on the applicant using this term.
27. Similarly, while Ms Bass' evidence was that she was impressed with the maturity with which the applicant approached her unwanted pregnancy, thereby treating her reaction as an indication of her being the assessed age, again little turns on this. The applicant's care notes paint a different picture in some respects, and suggest that she was very worried about the pregnancy at the time; see the R notes for 2 to 9 July 2021 ("[MA] has been a little shell shocked this week which could be due to moving back into semi-independent living and discovering she is pregnant"), and for 10 to 17 July 2021 ("[MA] is very confused about her pregnancy and is not sure if she wishes to proceed with it or not..."). It is hardly surprising that a young woman - whether aged 17 or 21 - would identify that she would struggle to bring up twins as a single parent. I accept that Ms Bass will have experienced other young women who, in her terminology, could be said to have a "fairy-tale" impression of pregnancy, but the fact that this young woman had a more realistic view of being a single mother to two babies is of minimal assistance in placing her either side of the age of majority, given the proximity of her claimed age at the time, namely 17 and a half, to 18.
28. Fifthly, I should address the age assessment itself, from a procedural perspective. The applicant's evidence was that the assessing social workers had already made up their mind about their conclusion. To the extent that this amounts to a criticism of the process itself, the applicant's appropriate adult did not appear to raise any concerns at the age assessment meeting. Certainly, the notes of the meeting appear to record the applicant being confronted with inconsistencies in her account, and that may well have made her feel uncomfortable. The focus of these proceedings is not a public law challenge to the age assessment, but a fact-finding exercise, which may draw upon the age assessment as part of the

evidential landscape. In my judgment, nothing in the applicant's criticisms of the tone and manner of the age assessment meetings provides a basis to ascribe less significance to what she said in those meetings, as part of my overall analysis.

29. In light of the above observations, the focus of my analysis lies primarily with the accounts the applicant has given of her age, to different people, at different stages, and in relation to the views of those who know her well. At the time of her arrival in the UK, even on the respondent's assigned age, the applicant would have been 20 years old, and so within the indicative age bracket identified by Stanley Burnton J at [28] of *R(B) v Merton London Borough Council* [2003] 4 All ER 280, [2003] EWHC 1689 (Admin), making it necessary to consider her "history".
30. It is necessary to address the applicant's time in Germany. She arrived in the country in 2015, and claimed to be 20, by her own admission. There is a striking age gap, on any view, between a girl of 12 years (as the applicant claims she then was) and a 19 or 20 year old woman; 19 being the age the German authorities "assigned" to her. It is not clear whether there was a formal age assessment or not, but that is of less relevance. I find that the applicant's evidence that she was, as a 12 year old girl, treated as though she were 19 by the German authorities, to lack credibility. I treat with circumspection her evidence that she was 12 years old at the time, while successfully maintaining the pretence that she was a 19 year old woman. In isolation, this is not determinative, but it is a factor of some relevance.
31. I found the applicant's evidence before me concerning her age, and how she knows her date of birth, to have been vague and inconsistent. In her witness statement, the applicant said that she attended school in Ethiopia from the ages of six until twelve. She said that was aware of her date of birth because her mother told her, and that she saw her birth certificate because her mother used it to enrol her at school. In addition, she said that she received annual certificates from the school which featured her date of birth. In her oral evidence before me, the applicant varied her account. She said that there was never a birth certificate, but she did have a school identity card which featured her date of birth. She had a school certificate which featured her date of birth, and she was presented with that certificate at the end of each year. Under cross-examination, when pressed in relation to whether she had a birth certificate or not, she initially said that she did not know, but then later accepted that she did not have a birth certificate and had not seen it. That contrasted with what she told the assessing social workers in the age assessment, which was that her mother *did* have her birth certificate. Under cross-examination, she changed her account: her mother did not have a birth certificate, but merely told her school what her date of birth was verbally. I found this aspect of the applicant's evidence unpersuasive, even making allowances for her vulnerability.
32. At an age assessment meeting on 9 December 2020, the applicant informed the assessing social workers that she started school in 2008, at the age of six. She is recorded as having been certain about those details. However, that would have given her an age of 19 at the time of the age assessment. When informed of those implications, the applicant maintained that she was

17. I consider this to be an example of the uncertainty and inconsistency in the applicant's account of her age.
33. KE is the manager of the applicant's current accommodation centre in Kent. Her centre has accommodated a number of unaccompanied asylum seeking children. Since July 2021, the applicant has been living at KE's centre. In her witness statement, and in her oral evidence, KE gave a number of examples of the applicant's behaviour which, she contends, demonstrate that she is older than her claimed age. For the reasons set out under my preliminary observations, above, many of the examples of such conduct are largely neutral. However, there is one incident which, in my judgment, sheds a significant degree of light on the applicant's claimed age.
34. In July 2021, the applicant reported to staff at the centre that she thought she might be pregnant: she wanted to have "her tummy checked", as set out above. She gave some details of the relationship that had led to the pregnancy, which had been brief. She was no longer in touch with the father. With the support of the staff at the centre, and the support of Ms Bass, the applicant decided to terminate the pregnancy. On 19 August 2021, the applicant attended a Marie Stopes abortion clinic for the procedure to take place. She was asked, in English, by the receptionist to give her date of birth. KE reports that the applicant gave a date of birth in 2000. The receptionist queried the date she gave, as it contrasted with her claimed date of birth in 2003, which was on the clinic's system. Upon the third time of asking, the applicant clarified that her date of birth was, in fact, 2003. The procedure went ahead, and the twin pregnancy was terminated.
35. In KE's view, the applicant was able adequately to understand the question that was put to her and had been able to reply in English. An Oromo interpreter was in attendance, but, due to the nature of the booking in process, had not been able to provide interpretation at that point. When the applicant had been asked about her appointment at the clinic that day in her oral evidence (both in additional questions in chief, and under cross-examination), she denied having had any conversation at all. She said that she only told her social worker and her key worker, and KE, and denied having had the exchange with the receptionist at all. The applicant maintained that position under cross-examination, and, when pressed, said that KE must have been mistaken.
36. Of course, it could be said that the applicant's English skills were such that her remarks on that occasion should themselves attract little weight. However, the applicant's evidence is *not* that she did not know what she was saying, or that she made a mistake when speaking in English, or that some detail was lost in translation; her evidence was that she *said nothing at all*, still less something that could have been misunderstood.
37. KE's evidence on this issue under cross-examination, which I accept, was that the applicant's English was quite developed at this stage. At times, said KE, the applicant's English could be fluent, whereas at others, it is less so. However, at the time of the appointment, KE said, the applicant's English was "very clear".

38. The evidence of Ms Bass concerning the applicant's English skills was to similar effect: the applicant's English has improved considerably in the time that she has been here. She has received English tuition and most of her interactions with the staff at her accommodation are in English, and many of the interactions with her social worker, Ms Bass, are also in English, albeit not with the fluency of an English speaker. Ms Bass said that the applicant would leave voicemail messages for her, and send text messages, in English, which she responded to in English.
39. The Kent Refugee Action Network provided English language tuition to the applicant from 14 October 2020 until 21 April 2021, and she was allocated to the beginner level class. In a letter dated 15 September 2021, the applicant's tutor wrote that one of the reasons she was allocated to the beginner class was because the other class, held in the morning, mainly comprised 17 to 18 year old males who live in independent accommodation, whereas the applicant "seemed naïve and vulnerable". That, at least in part, explains the initial allocation to a basic level class for the applicant's English tuition. In September 2021, the applicant began to attend sessions with an organisation called *Compass Collective*, a non-profit theatre company working with asylum seekers. It runs online English classes which the applicant attended. She was allocated to the "beginners" Zoom breakout room, as opposed to the other class, which was for "those who have a higher fluency in English." See the letter dated 4 March [2022] at I480 of the bundle. In my judgment, merely not having "a higher fluency in English" is not a basis to conclude that the applicant could not have understood something as basic as her date of birth. By way of comparison, for example, in her GP notes for 10 November 2021, the doctor records that "pt [patient] speaks minimal English", rather than *no* English, and with the assistance of her support worker, rather than an interpreter, the applicant was able to convey the condition that she was experiencing at the time and was given medical advice over the telephone.
40. Drawing the above together, I find that the applicant's English skills were sufficient to enable her to understand a question about her date of birth and give an answer in English when she attended the Marie Stopes clinic as part of the abortion procedure.
41. In my judgment, the applicant's account of the conversation at the clinic lacks credibility, primarily by virtue of the fact she denied that the conversation took place at all. KE compiled contemporaneous notes of the exchange, and an account that is consistent with her written and oral evidence is at page G13 of the bundle. I accept KE's evidence of this exchange and find that the applicant instinctively told the clinic that her date of birth was in 2000. The applicant's bald denial that she spoke to the receptionist at all, in the face of contemporaneous documentation from the time, and KE's written and oral evidence, is not credible. I find that she denied having the conversation in order to cover up for its impact on her claimed age, and in doing so harmed her credibility.
42. JM is the manager of the accommodation centre where the applicant was initially placed. It houses 16 to 17 year olds, and is approved to take older young adults, but in practice it has not done so under JM's management.

JM's written evidence was that the applicant presented as somebody of her claimed age, and that she had no reasons to doubt that. See paragraph 10 of her statement dated 9 September 2021:

"I feel taken [sic] into account the [applicant's] presentation, behaviour and appearance she appeared to me as a 17-year-old and feel she is her claimed age. She did not appear to me as a 20-year-old."

JM saw the applicant for six days each week, for around seven months. In principle, the views formed over that time, carry weight. However, when Ms Akinbolu asked JM to expand on the basis upon which she reached the above conclusion in additional evidence in chief, JM attributed her opinion primarily to the applicant's physical appearance. She looked very young, she said; she has a baby face. It was hard to say whether the applicant was young or not, JM added, because she has a baby face. There was nothing in the applicant's behaviour that suggested she looked older.

43. JM said at paragraph 7 of her witness statement that she had not managed to speak in depth to the applicant about her family situation or past experiences in Ethiopia. It follows that JM views concerning the applicant's age were reached based primarily on her demeanour and appearance, without considering her history. I return to JM's evidence, below.
44. There are other materials provided on behalf of the applicant, but they are of little assistance. I accept that, based on her physical presentation, her GP and other medical professionals has not queried her claimed date of birth. That does not take matters much further, as there is no empirical or medical method of assessing age, especially in light of the relatively minor, in developmental terms, difference between the applicant's claimed and assessed age. There is a statement from Shalini Mehta, a children's psychological therapist, dated 9 September 2021. Ms Mehta states that during her therapeutic interventions with the applicant, she consistently presented as developmentally and emotionally younger than her stated age, while also acknowledging that she presents skeleton argument mature in some areas, a factor Ms Mehta attributes to the applicant's life experiences. However, in the same paragraph Ms Mehta also stated that, "[a]s I am not specialised in age assessments, I cannot offer any suggestions in regards to [AM]'s age..." Ms Mehta was not called to give live evidence and was not cross-examined. I consider that her evidence adds little to the overall analysis of the applicant's age.
45. I find that the applicant has been inconsistent throughout the age assessment process, with her social workers, and in the proceedings before me in relation to key dates and events in her narrative. Her account has been internally inconsistent, for example whether she was aged six in 2008, as claimed during her age assessment. She has changed her account of whether she had a birth certificate, how her mother registered her at school, and whether she was presented with a certificate bearing her date of birth annually, or only when she graduated from the fifth to the sixth grade. Using adequate English, she instinctively informed the receptionist at the Marie Stopes clinic that she was born in 2000, and only corrected

herself to 2003 on the third time of asking. When confronted with such inconsistencies, as she was under cross-examination before me, she denied having had the conversation at all, an approach which lacked credibility.

46. As set out at part 4 of the age assessment, the applicant has given different accounts of when she left Ethiopia. For example, she initially informed an out of hours social worker that she left Ethiopia in 2019. She later informed her allocated social worker that she left in 2017. The information she gave to the medical team examining her was that she left Libya in 2015/16. While I am not making findings concerning her departure from Ethiopia, the applicant's age at the various stages of her history to the United Kingdom are relevant to her age. I find that she sought to minimise the length of her journey to the United Kingdom in an attempt to overcome the impact on her narrative of how old she would have been, if her claimed age were accurate, upon her arrival in Germany, namely 12, something which I find to be highly unlikely.
47. While some of those who have known the applicant outside the age assessment or social work processes, such as JM, formed the view that her claimed age was accurate, those views were reached without the benefit of considering the evidence in the round, as I have been able to do. JM, while a witness of credibility, based her analysis primarily on the applicant's physical appearance. The applicant was housed at JM's facility some 20 months ago, and so would have appeared then even younger than she does now. But, as Stanley Burnton J held in the *Merton* case itself, it is impossible objectively to verify the age of someone in, say, the 16-20 years bracket, as this applicant then was, on the basis of physical appearance alone.
48. Drawing the above analysis together, doing the best I can, I find to the balance of probabilities standard that the applicant's account of her date of birth at the Marie Stopes clinic on 19 August 2021 is her correct date of birth, namely 3 January 2000. That date is consistent with my analysis of the applicant's "history", and consistent with the physical presentation and demeanour of the applicant.

SUMMARY OF DECISION

49. It is determined that the applicant's date of birth is 3 January 2000 so that on arrival in the United Kingdom on 19 June 2020 she was 20 years old.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Stephen H Smith

Date 3 May 2022

Upper Tribunal Judge Stephen Smith