



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

JR-2022-LON-
000455

In the matter of an application for Judicial Review

The King on the application of

**AY
(by his litigation friend Francesco
Jeff of the Refugee Council)**

Applicant

versus

Essex County Council

Respondent

FINAL ORDER

BEFORE Upper Tribunal Judge Norton-Taylor

HAVING considered all documents lodged and having heard Ms. A. Benfield of counsel, instructed by Osbornes Law, for the Applicant and Mr. O. Jackson of counsel, instructed for the Respondent at a hearing held on 22, 23 and 25 November 2022

AND UPON the parties agreeing that the effect of the Tribunal's determination of the Applicant's age is that he is a former relevant child and entitled to leaving care support under the Children Act 1989 accordingly

IT IS ORDERED THAT:

(1)The Applicant's claim for judicial review is allowed.

(2)The order for interim relief made on 2 December 2021 is hereby discharged.

(3) An anonymity direction is made, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

IT IS DECLARED THAT:

(1) The Applicant's date of birth is 1 August 2004, such that he was 16 years of age when he arrived in the UK on 29 April 2021 and aged 18 at the date of this Order.

Costs

(1) The Respondent shall pay the Applicant's reasonable costs of the claim on the standard basis, to be assessed if not agreed.

(2) The Respondent shall make a payment on account of costs in the sum of 60% of the Applicant's bill of costs within 21 days of receipt of the same.

(3) There shall be a detailed assessment of the Applicant's publicly funded costs.

Permission to appeal

No application for permission to appeal to the Court of Appeal has been made. Pursuant to rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008, I refuse permission to appeal in any event, there being no arguable errors of law in the judgment handed down.

Signed: *H Norton-Taylor*

Upper Tribunal Judge Norton-Taylor

Dated: 12 December 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): 12/12/2022

Solicitors:

Ref No.

Home Office Ref:



Case No: JR-2022-LON-000455

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breems Buildings
London, EC4A 1WR

12 December 2022

Before:

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between:

THE KING

on the application of

AY

(by his litigation friend, Francesco Jeff of the Refugee Council)

Applicant

- and -

ESSEX COUNTY COUNCIL

Respondent

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Ms A Benfield, Counsel (instructed by Osbornes Law), for the Applicant

Mr O Jackson, Counsel, (instructed by Essex County Council Legal Services) for the Respondent

Hearing dates: 22, 23, and 25 November 2022

J U D G M E N T

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

Judge Norton-Taylor:

Introduction

1. It is trite that the assessment of a person’s age in proceedings such as the present is not a precise science. That may, in many cases, be considered something of an understatement. In the absence of particularly strong evidential elements counting for or against a young person’s claimed age, the assessment

involves an often difficult evaluation of numerous strands of information, including the opinions of professionals based on their impressions, testimony from potentially vulnerable young people, cultural differences, and the way in which people have behaved, or are perceived to have behaved.

2. This case illustrates the inherent difficulties in attributing an age and date of birth to an individual where there is a relatively significant amount of evidence both in support of and against the claimed age.
3. My task has been made somewhat easier by the excellent preparation and presentation from both legal teams. I am very grateful to Ms Benfield and Mr Jackson for their sensitivity and all-round courtroom excellence. In addition, the solicitors on both sides have clearly worked hard to ensure compliance with directions and the clear presentation of the documentary evidence.
4. The claimed date of birth in this case is 1 August 2004, currently making the Applicant 18 years old, but placing him at 16 years old when he arrived in United Kingdom in April 2021. The Respondent's position is that the Applicant was over 18 when he arrived here and that he was then probably 20/21 years old or more, with an estimated date of birth of 1 August 2000.

The Applicant's background prior to arrival in the United Kingdom

5. The Applicant is a citizen of Sudan. In respect of these proceedings, there is no dispute that he originates from the Darfur region and is a member of the Zaghawa tribe. He was born in a village in the vicinity of Saraf Omra and subsequently moved to another location within the same district. He lived

there with his parents, siblings (three brothers and three sisters) and

6. It is well-documented that the Darfur region of Sudan was in a state of conflict in the early to mid-2000s, a conflict during which the Sudanese authorities, or at least those acting on their behalf, committed serious human rights abuses against a number of ethnic groups, including the Zaghawa tribe: see, for example, MM (Zaghawa, Risk on return, Internal Flight) [2005] UKIAT 69.
7. On an unknown date, the Applicant's two older brothers were killed during a militia attack. The Applicant attended school for some time and then a khalwa (a traditional place of education at which students learn the Quran) for a further year. In 2015, his father disappeared and has not been seen or heard of since.
8. At some point thereafter (the Applicant asserts that he was aged 14 the time, but this is of course disputed by the Respondent), the Applicant was taken by a militia to be recruited into their ranks. Having refused, the Applicant was detained and ill-treated. A toenail was removed, part of his left ear cut, and he was burnt on an elbow. The Applicant relented and agreed to join the militia. He was allowed to return to see his mother. Upon doing so, arrangements were put in place for him to flee Sudan.
9. The journey was made up through Libya. As appears to be unfortunately common for people pursuing this route, the Applicant was detained by a Libyan militia and detained with others, whereupon they were kept in very poor conditions. The Applicant was then sold by his captors to an individual in order

that he would work on a farm without remuneration (this can only properly be described as slavery). This went on for approximately three months, at which point the Applicant managed to escape. He encountered a Sudanese person who took him in for a while. The Applicant then moved on to stay with other Sudanese people for a further five months or so. These people had made arrangements to leave Libya by boat. They paid for the Applicant to make the perilous sea journey. This was undertaken, the boat was encountered (presumably by the Italian Navy or Coast Guard) and all the passengers taken to Italy. Having stayed there for approximately ten days, the Applicant travelled with others to France, eventually arriving in Calais. The Applicant gained some assistance from a charity operating at a 'camp'. He was smuggled onto a lorry and in this way made the journey across the channel. On arrival in this country, the Applicant left the lorry and asked someone for assistance. The police were called and they detained the Applicant on 29 April 2021.

The background to these proceedings

10. Following detention by the police, a referral was made to the Respondent. On 30 April 2021, a "short-form" age assessment was conducted (contained in a Brief Enquiry form). That concluded that the Applicant presented as someone "significantly older" than the age claimed, namely 17. It was recorded that the Applicant stated his date of birth to be 1 January 2003 or 2004. As a consequence, the Applicant was placed in adult asylum support accommodation. Following the Applicant's instruction of solicitors and subsequent correspondence, the Respondent withdrew the "short-form" assessment and he was placed in care under section 20 of the Children Act 1989 pending further assessment. The full age assessment process was conducted by two social workers

(Matthew Smith and Caroline Sello) on 7, 9, 13, and 15 July 2021. On the last date, the Applicant was informed that his claimed age was not accepted and he was deemed to be an adult of “21+ years of age”. He was attributed a date of birth of 1 August 2000. Support and accommodation were terminated on 21 July and the Applicant was returned to asylum support accommodation in a hotel in London. The age assessment report was signed off on 29 July 2021.

11. Following pre-action protocol correspondence, on 3 September 2021 the Applicant made this claim for judicial review in the Administrative Court. On 9 September, Cutts J granted interim relief, requiring the Applicant to be returned to the Respondent’s care. Applications for expedition and anonymity were also granted.
12. Permission to seek judicial review was refused by Collins-Rice J on 4 October 2021. The application was renewed and permission was granted on 30 November 2021 by Andrew Thomas, KC, sitting as a Deputy High Court Judge. The judicial review claim was transferred to the Upper Tribunal for a fact-finding hearing, in line with usual practice.
13. On 17 January 2022, a referral was made by the Respondent to the NRM for an assessment as to whether the Applicant was a victim of modern slavery, having regard to his experiences in Libya. By a decision dated 24 January 2022, the NRM concluded that there were reasonable grounds to believe that the Applicant was indeed a victim of modern slavery.
14. This judicial review claim then began its case management journey in the Upper Tribunal. Directions were issued by an

Upper Tribunal Lawyer on 4 April 2022. A case management hearing was conducted by Upper Tribunal Judge Mandalia on 26 July 2022. Amongst other matters, he refused the Applicant's application to rely on a second witness statement from Mr Edward Taylor (the solicitor at Osbornes Law with conduct of the case), ordered that relevant disclosure be made of the Applicant social media accounts, and fixed the fact-finding hearing for 22, 23 and 25 November 2022.

15. Additional case management matters were dealt with prior to the fact- finding hearing.

The relevant legal framework

16. There is no material dispute between the parties as to the applicable legal framework in this case. The parties' respective skeleton arguments helpfully distil the relevant principles. In summary, these are as follows (I do not propose to cite the authorities which are referred to in the skeleton arguments):

- (a) There is no burden of proof on an individual to prove their age. I am not bound to choose one or other of the parties' positions;

- (b) A Merton-compliant age assessment requires procedural fairness, which in turn relates to the provision of a suitable interpreter (where necessary), the absence of any predisposition as to age, the presence of an appropriate adult, adequate reasons for conclusions reached, an acknowledgement of the limited utility of relying on appearance and demeanour, and having a "minded-to" procedure in which the individual is given an

opportunity to respond to concerns prior to a final conclusion being reached;

(c) All relevant evidence must be considered in the round;

(d) Issues of vulnerability must be taken into account;

(e) The fact that an individual has been untruthful about one aspect of their claim does not mean that the same necessarily applies to the rest of their evidence;

(f) The standard of proof is that of a balance of probabilities.

17. I will address the issue of the “benefit of the doubt” later in the judgment, although it is right to say here that it does not play a significant role in my decision.

The age assessment

18. As noted previously, the age assessment was conducted over the course of four sessions on 7, 9, 13, and 15 July 2021 (an initial session on 29 June had been abandoned due to the level of understanding between the Applicant and the Arabic interpreter). The Applicant confirmed that he could understand the replacement Sudanese Arabic interpreter on each of the four dates in question. An appropriate adult was present throughout.

19. The assessment followed a relatively familiar structure, with defined topic areas being addressed by questions and answers followed by “practitioners comments”. I will address relevant evidence emerging from the assessment later in this judgment. For present purposes, I provide a summary:

- (a) **“Personal details”**. The assessors concluded that the Applicant probably did not know his date of birth because he had given different dates prior to the assessment than that provided at the assessment itself;
- (b) **“Physical appearance and presentation”**. In the assessors’ opinion, the Applicant did not present as a “typical” 16 year old, but rather as an adult. The Applicant was confident in certain respects, displayed a “mature demeanour” and his interactions suggested he was a “competent capable individual”, with the “functioning of an adult between 18 and 22 years of age”;
- (c) **“Interaction of person during assessment”**. The assessors noted that the Applicant made little or no eye contact, appeared frustrated by the questions asked, and was seen “playing on his phone” on several occasions. He provided “adult-like responses” throughout the assessment. His body language suggested a disinterest in the assessment. When informed of the outcome of the assessment, the Applicant became more animated. In the assessors’ view, he was “avoidant in a large amount of the questions being asked of him.”;
- (d) **“Social history and family composition”**. The assessors concluded that the Applicant had avoided giving details about the ages of his parents and siblings in order not to create inconsistencies with his own claimed age;
- (e) **“Developmental considerations”**. The assessors noted the Applicant appeared reluctant to provide detailed

answers. This was demonstrated when he was asked about celebrating Eid. Conflicting information had been provided;

- (f) “**Education**”. The assessors concluded that the Applicant provided very limited information about his education, including the year he started and finished. It was their view that he had avoided elaboration so as to preclude the possibility of conflict with his claimed age;
- (g) “**Independent/self-care skills**”. In the assessors’ opinion, the Applicant presented as a “capable and competent individual, with good skills”. There was nothing to suggest that he was 16 years old, as claimed. The Applicant may have wanted to portray himself in a way so as to appear as younger than he was;
- (h) “**Health and medical assessment**”. The Applicant had been inconsistent in his evidence relating to playing football and his father’s disappearance. There was a lack of detail about when he had left Sudan;
- (i) “**Information from other sources**”. The assessors obtained information about the Applicant, his social worker and a worker at the organisation who supported young people in the accommodation. The assessors’ acknowledged that the information was both in favour and against the Applicant’s claimed age;
- (j) “**Reason for coming to UK/journey/history from arrival in the UK**”. The assessors believed that the Applicant had avoided giving details about his journey in

order to prevent inconsistencies with his claimed age/date of birth;

(k) **Points put to the Applicant regarding adverse matters (in effect, the “minded-to” element of the assessment)**. A number of adverse matters were put to the Applicant, who provided responses. The responses relating to the onset of puberty and his educational history suggested to the assessors that the Applicant was approximately 21 years old;

(l) **“Analysis of information gained”**. The assessors remained of the view that the Applicant was at least 21 years old. They noted a number of adverse matters which had arisen throughout the assessment.

20. The age assessment report was placed into a pro forma document. The Respondent’s decision, based on the age assessment, was formally notified to the Applicant and signed off by the assessors and their team manager on 29 July 2021. That decision stated that the Applicant’s age was deemed to be “21+” with an estimated date of birth of 1 August 2000. In response to this, the Applicant is recorded as saying, “I don’t know if I am an adult, but this is my age. My age is like my name; I cannot change my age. My mum told me my date of birth; this is my age.”

Procedural issues: disclosure and the admissibility of evidence

21. Initially, there was a dispute between the parties as to whether there had been proper disclosure by the Applicant as regards his social media accounts, in particular a Facebook account. It was said by the Respondent that the Applicant may not have

complied fully with the order of Judge Mandalia, which required disclosure following a proportionate search. However, following the handing down of judgment in R (BG) v London Borough of Hackney (JR-2022-LON-000273) and in light of the guidance on proportionate searches and disclosure contained therein, the Respondent now accepts that the search and disclosure undertaken by the Applicant solicitors did indeed comply with the Tribunal's order and the duty of candour. This is no longer a live issue.

22. What remained in dispute was the admissibility of hearsay evidence originating from four individuals: Concorde Munyazaki of Good2Go Care Services (a source of information referred to in the age assessment); Solange Youssef, Lead Volunteer at Care4Calais; Khalwa Benabdjili, a Support Outreach Worker at Good2Go Care Services; and Nadia Sinclair, Manager at Good2Go Care Services. All four individuals had at some stage interacted with the Applicant. However, none had provided witness statements. Initially, the information provided by the second two individuals was to have been included in a second witness statement by Edward Taylor, the Applicant's solicitor. In his order following the case management hearing on 26 July 2022, Judge Mandalia had refused permission for that statement to be adduced.
23. By an email to the Respondent dated 5 August 2022, Mr Taylor set out the information provided by Ms Benabdjili and Ms Sinclair, based on his communications with those individuals. The underlying evidence on which that email was based was also provided.
24. The information from Mr Munyazaki was contained in an observation report dated 23 July 2021, and that from Ms Youssef

was contained in an email from her to Mr Taylor, dated 2 June 2021.

25. The Respondent's argument, as set out in the skeleton argument, was that (a) the information emanating from Ms Benabdjili and Ms Sinclair and contained in Mr Taylor's email was effectively an attempt to "sidestep" Judge Mandalia's order; (b) that the information provided by all four individuals was third-party opinion evidence in the form of assertions, but without witness statements and attendance at the fact-finding hearing. All of this evidence should be excluded.
26. I considered it appropriate to deal with this issue at the outset of the hearing. I heard from Mr Jackson and Ms Benfield. For his part, Mr Jackson emphasised that there was no suggestion of any impropriety on Mr Taylor's part. He submitted that if information provided by the four individuals was, for example, put to one of the Respondent's witnesses, there would be no opportunity to test that information by way of cross-examination. This would be unfair. The case of Bah (EO (Turkey) - liability to deport) [2012] UKUT 00196 (IAC) did not support the proposition that any relevant evidence should always be admitted.
27. Ms Benfield submitted that Judge Mandalia could have, but did not, expressly preclude reliance on any of the underlying evidence from the four individuals. The trial bundle, which included Mr Taylor's email and other correspondence, had been agreed by the parties. The evidence from the individuals was plainly relevant, as it went to the issue of the Applicant's claimed age. The evidence should be admitted and submissions made as to the appropriate weight to be attached to it.

28. I decided to admit the evidence in question, namely Mr Taylor's email, together with the correspondence from the other individuals and the observation report from Mr Munyazaki. My reasons for this are as follows.
29. First, the touchstones for consideration of the admissibility issue were fairness to the parties and the potential relevance of the evidence.
30. Second, as regards fairness, the Respondent's witnesses had had sight of the evidence in question and could be referred to it during the course of questioning. Both parties had agreed the trial bundle, which included the evidence. Thus, the Respondent had not been taken by surprise.
31. Third, whilst Judge Mandalia had excluded Mr Taylor's second witness statement, there was no express exclusion of the underlying evidence from the four individuals.
32. Fourth, the evidence was relevant to the question of the Applicant's claimed age. All four individuals had had interaction with the Applicant at one point or another. I note too that Mr Munyazaki's evidence (the observation report) was in fact considered by the assessors during their age assessment. They regarded it as relevant, at least to an extent.
33. Fifth, it is not uncommon to have evidence from sources who do not appear as live witnesses at a hearing.
34. Sixth, the Respondent, through Mr Jackson, was clearly entitled to make submissions on the question of what, if any, weight should be attached to evidence which was not contained in

witness statements and which could not be tested by way of cross-examination.

The documentary evidence

35. The agreed trial bundle ran to 1405 pages and has been provided in electronic and physical form. Copies were made available to the Applicant and the witnesses.
36. At the hearing, I was provided with the following additional documents: an observation report, dated 7 November 2022, by Francis Rhodes, the Applicant's current allocated social worker; a monthly progress report for January 2022, compiled by Good2Go; and a monthly summary update report from the same organisation covering the period 24 June to 23 July 2022.

The oral evidence

37. In the order in which they were called, I heard oral evidence from:
- (a) Edward Taylor, the Applicant's solicitor;
 - (b) Ms Moji Awopetu, an employee of Aden Homes and the Applicant's Keyworker at the accommodation at which he was residing between 9 September 2021 and 15 October 2021;
 - (c) Ms Sharna Finney, formerly a Support Outreach Worker at Good2Go who had interacted with the Applicant as his Support Worker between early January 2022 and April 2022;
 - (d) Ms Alice Graham, the Applicant's allocated Social Worker between 14 June 2021 and 21 July 2021 and December

2021 until 17 March 2022;

(e) The Applicant;

(f) A Sudanese national, IM, now aged 18, who had previously been accepted as an unaccompanied minor by the Respondent and has been recognised by the Home Office as a refugee. He is anonymized because of this latter status.

38. I need to address three particular issues relating to the Applicant's oral evidence. First, the parties were (rightly) agreed that the Applicant should be treated as a vulnerable witness within the meaning of the Joint Presidential Guidance Note No.2 of 2010. This was on the basis of a psychological report by Dr Alice Rogers, Registered Psychologist, dated 19 April 2022. She diagnosed the Applicant as suffering from moderate-severe PTSD and moderate depression and linked these conditions to, in large part, the Applicant's experiences in Sudan and during his journey to the United Kingdom, particularly the time spent in Libya.

39. I confirm that I have treated the Applicant as a vulnerable witness in respect of the evidence provided to me at the hearing.

40. Second, Dr Rogers' opinion was that, as result of his state of health, the Applicant should not be cross-examined for "any more than 30 minutes to 1 hour [with] breaks... built in every 15-20 minutes..." Mr Jackson expressed a concern that cross-examination would be artificially limited and that the Respondent would be unable to properly test the Applicant's

evidence.

41. I made it clear that I did not regard the timeframe set out in Dr Rogers' report as constituting a hard and fast cut-off point. I was conscious of the diagnoses, the Applicant's overall vulnerability, and the dangers of potentially unseen distress being caused by extended questioning. Having said that, provided that questions were put in a sensitive and focused manner, I would not simply stop Mr Jackson in his tracks on the hour.
42. In the event, a break was taken after approximately 20 minutes of questioning and Mr Jackson acted in a consummately professional manner in relation to his cross-examination. The questioning as a whole was appropriate, fair to both the Applicant and the Respondent, and did not in fact exceed to any material extent the timeframe recommended by Dr Rogers. Neither the Applicant himself, nor Ms Benfield raised any concerns about the nature and/or length of the cross-examination.
43. Third, there was an issue in respect of the Arabic interpreter originally booked by the Upper Tribunal through the relevant company, Translate UK. At all stages during the case management process, the Applicant had requested a "Sudanese Arabic" interpreter, with the interpreter being of Sudanese origin or a background equivalent to this. There had been some claimed difficulties with interpreters during the Applicant's interactions with the Respondent or other bodies during his time in the United Kingdom and Judge Mandalia has specifically directed that a "Sudanese Arabic" interpreter be provided at the fact-finding hearing.

44. However, it transpired that the interpreter who attended on the morning of day 1 of the hearing was of Iraqi origin. When this became apparent, he stated that he had spent time in Sudan and could speak Arabic that would be understandable by someone from Sudan. He told me that he had interpreted in other cases involving Sudanese individuals without any problems. Ms Benfield expressed concern about the situation. Mr Jackson suggested (somewhat tentatively) that oral evidence could proceed and a view could then be taken as to whether there was full two-way understanding between the Applicant and the interpreter.
45. Having considered the matter with care, I concluded that it would not be appropriate to proceed with the interpreter. I made it clear to him that I was in no way seeking to undermine his professionalism. Yet it was imperative in this case for the Applicant to have full comprehension of an interpreter and for him to feel as comfortable as possible when providing his evidence. In saying this, I took account of the Applicant's vulnerability and claimed age (I would not of course be making a final decision as to his age until after the hearing). I therefore requested the Tribunal staff to book a new interpreter, specifying that they should be of Sudanese origin, or otherwise obviously fluent in the particular form of Arabic spoken in that country.
46. On the afternoon of day 2 of the hearing, a new interpreter attended. He was of Sudanese origin. Having provided a full introduction to the Applicant I was satisfied that he understood the interpreter and *vice versa*. I was satisfied that there was full comprehension throughout the Applicant's evidence. Certainly, there were no suggestions by either the Applicant or his representatives that there were any difficulties.

47. I now turn to the oral evidence itself. I set out this in summary form; what follows does not purport to cover each and every aspect of the evidence. It may be that certain specifics not set out in summary are considered when I analyse the evidence and reach my findings of fact later on in the judgment.

The evidence of Mr Taylor

48. Mr Taylor adopted his witness statement, dated 11 October 2021. That statement addressed circumstances in which he first met the Applicant in order to take instructions. He explained that on 28 May 2021 he went to the hotel in which the Applicant was residing. He was unable to get inside the building and ultimately had to conduct his conference outside, with the Applicant standing approximately 25m away from him. This was because the interpreter was “attending” through a mobile telephone and all three were using their devices. Mr Taylor had to stand apart from the Applicant in order to avoid interference. Mr Taylor accepted that according to his attendance note, he had recorded the Applicant’s date of birth as “08/01/2004”, but this could have been a mistake made either by the interpreter or himself (Mr Taylor).

49. In cross-examination, Mr Taylor confirmed that he believed that the Applicant had understood the interpreter during the conference. He could not recall if he had double-checked the date of birth recorded. He could not remember if he had read it back to the Applicant at the time. He told me that the recorded date of birth, namely 8 January 2004, could have been an error on his part, by the interpreter, or indeed by the Applicant. Alternatively, he could have made an error when typing up his notes later. Mr Taylor accepted the possibility that the recorded date could have been that which was in fact stated by the Applicant, although an error on someone’s part was more likely.

50. In re-examination, Mr Taylor confirmed that the outdoors conference had been his first visit to a client during the Covid pandemic. A noisy road had been close by to where he met the Applicant. His notes had been handwritten on a notepad whilst leaning against his car.

The evidence of Ms Awopetu

51. Ms Awopetu adopted her witness statement, dated 19 November 2021. She confirmed that at that point in time she had worked as a Keyworker for Aden Homes for two years and two months. During her engagement with the Applicant in the accommodation between 9 September 2021 and 15 October 2021, she supported him on a day-to-day basis, including helping to meet his health and education needs. She “sincerely” believed that the Applicant looked and behaved like a child of “about 17 years of age”, and that he presented and acted “like others” at the placement, all of whom were within the age bracket of 16-18 years of age. The Applicant required the same level of support as those other young people. Ms Awopetu had “no reason to doubt” that the Applicant was anything other than the age he claimed to be.

52. The responses to cross-examination can be summarised as follows. She had been the Applicant’s Keyworker for five weeks. She disagreed that she would have suggested that the Applicant could have gone to A&E alone, as suggested in a social care record. She would never have said that. She had asked her manager to arrange for someone else to go to the placement while she went with the Applicant. She explained that Ms Graham had promised to give the Applicant a winter voucher for warmer clothing. The Applicant had not asked for this himself. In support of her belief that the Applicant was the age he claimed to be, Ms Awopetu gave an example of the Applicant putting

bread in the microwave and having to be taught how to use a cooker and the washing machine. He had required the same level of support as other young people in the placement. If the Applicant had been 20 or 21 years old, she did not think that he would have required as much support from her. She believed that the way he had interacted and behaved with others showed that he was in the same age bracket as other young people in the placement. She accepted that her written evidence could also be consistent with the Applicant being an adult whilst at the placement.

53. In re-examination, Ms Awopetu re-stated some of the points made previously. She stated that she would have a concern if someone in her care appeared to be older, but she confirmed that it was not her duty to assess age.

The evidence of Ms Finney

54. Ms Finney gave her evidence remotely, without objection by the Applicant. There were no technical difficulties and Ms Finney had access to the trial bundle.
55. Ms Finney relied on her witness statement, dated 8 June 2022. She had worked for Good2Go until 23 September 2022. She had not required specific professional qualifications for the role of Support Outreach Worker and she had received training whilst at the workplace. She had not been trained on age assessments. She had no previous experience in working with unaccompanied asylum seeking children. She started working with such individuals at the end of January or beginning of February 2021. When first meeting the Applicant she had not had detailed discussions with him. She had still been shadowing the previous Support Worker, Mr Munyazaki. Once allocated as the Applicant's Support Worker in early January 2022, she saw

him on a daily basis, five times a week until April 2022.

56. She saw his mannerisms as showing that he was older than the claimed age. As time went on, she became more certain than he that he was older. She had worked with a lot of young people between the ages of 16 and 24 and this experience helped her to reach the conclusion that the Applicant was older than he said. Another reason given was the fact that she had seen the Applicant smoking. As the legal age to buy cigarettes in the United Kingdom was 18 and the Applicant had no form of ID, this indicated that he looked and acted older than the claimed age.
57. Ms Finney confirmed that she was unaware of the Applicant's past experiences when she expressed her view on his age. She accepted that an individual's experiences could affect the way they looked and behaved. She accepted that Mr Munyazaki had been in a better position to give a view on the Applicant age when he was the Support Worker. The Applicant had been disrespectful on a couple of occasions. It had been hard to get him to clean his room. He might also shout other people and not wash up. Ms Finney accepted that such matters would be reported in the monthly reports provided by Good2Go. When shown a report dated 14 March 2022, indicating that there were no concerns about behaviour, Ms Finney said that she had not changed the relevant tick boxes, that the boxes had been completed a day before the relevant meeting, and that she had not completed the form correctly.
58. It was suggested that Ms Finney's views on the Applicant did not correspond with other evidence. She had not seen what was on the social care files and also told me that she had not been permitted to make it seem like the Applicant was aggressive. She had been told by her "boss" not to put in things which

reflected badly on the young person. She said that any concerns about behaviour were probably not in an email, but might have been discussed over the telephone, although she could not recall having had a meeting on this.

59. Ms Finney confirmed that she had been interviewed over the telephone by Dr Rogers when the latter was preparing her psychological report. She had been asked about how the Applicant was on that particular day. Ms Finney was not told of the outcome of Dr Rogers' report. Whilst she accepted that irritability and aggression could have been a result of poor mental health, the Applicant's mannerisms could also coincide with Ms Finney's opinion on his age. Her impression was based on how she saw the Applicant at the time.

60. Ms Finney was asked about the opinions of other people (including those who had not provided witness statements). She accepted that other people could have their own opinions, but she had hers. She confirmed that she had seen the Applicant smoking in the street on a Friday afternoon, just once. She did not know if he had bought the cigarette himself. She acknowledged that she could not be certain about her assessment of the Applicant's age, accepting that he could be 18 or 19 years old.

61. In re-examination, Ms Finney calculated that she had met the Applicant on at least 60 occasions. She had had no doubt about the ages of other young people in the placement. She re-stated her view that the Applicant was at least 21 years old.

The evidence of Ms Graham

62. Ms Graham relied on her witness statement, dated 14 June

2022. She qualified as a social worker in May 2021 and was allocated to the Applicant approximately two months post-qualification. The Applicant had been one of her first clients. She was allocated to the Applicant between June and July 2021, September to October 2021, and December 2021 until 17 March 2022. Ms Graham had undertaken age assessment training.

63. Ms Graham accepted that a person's demeanour and behaviours could be affected by a range of factors. She said that she had had some understanding of the journey made by the Applicant to the United Kingdom and issues relating to his well-being, but had not seen Dr Rogers' report. Ms Graham stood by the impressions she formed of the Applicant at the time they were formed. She placed emphasis on the Applicant's persistent requests for a laptop and a new smart phone. It was, Ms Graham said, the manner in which he had made these requests and acted which indicated to her that he was "very different" from others. She made reference to the way the Applicant had "carried himself". The Applicant's frustration and threats to leave the placement if he did not get what he wanted appeared to be "adult-like" in nature. In Ms Graham's view, young people of the claimed age (i.e. at the time, 16-17 years old) would focus on stability and safety, rather than a desire for technical devices. The Applicant's "tone of voice", "body language", and the "way he carried himself" indicated that he was materially older than others. This impression was gained through the experience of dealing with unaccompanied asylum seeking children.

64. Ms Graham was asked about the Applicant's level of independence. She believed that it was good and above those of the claimed age. He had not required much support to develop his skills and he had been focused on "materialistic things". Ms

Graham had seen a lot of young people with similar experiences to those of the Applicant; they wanted to “settle in” and their priorities were different to those of the Applicant.

65. There were questions on the email from Ms Awopetu, suggesting that the Applicant could go to A&E alone. Ms Graham confirmed that she (Ms Graham) said that someone had to go with the Applicant. She could not confirm what her (Ms Graham’s) email in response was. She accepted that the placement could not be left unstaffed, and that Ms Awopetu had accompanied the Applicant to A&E on other occasions. Ms Graham could not recall if the Applicant or Ms Awopetu had requested the winter voucher. Ms Graham had never seen the Applicant smoking. She confirmed that there had been no concerns raised by the college attended by the Applicant as to his age.

66. Ms Graham confirmed her belief that the Applicant was between 20 and 23 years old. She accepted that assessing age is not a science, but based on her experience and observations and comparisons to other young people, the Applicant was older than he said. She acknowledged the margin of error when assessing age.

67. In re-examination, Ms Graham confirmed that she had undertaken seven visits with the Applicant and spent about one hour on each. In addition to the visits, she had seen the Applicant quite regularly on Fridays when he picked up his allowance. In respect of the Applicant leaving the placement without notice, Ms Graham stated that he had been upset about having to live in Basildon. She believed that the police had brought him back from Harlow.

The Applicant's evidence

68. The Applicant adopted his three witness statements, dated 1 September 2021, 8 November 2021, and 3 September 2022. These set out his family background, the reasons for him leaving Sudan, and his journey to the United Kingdom. He spoke about his circumstances in the United Kingdom, including his movements between placements as the age assessment process developed and the legal proceedings began. He addressed the fact that his Facebook account recorded him as being “engaged”: this related to a childhood betrothal with a cousin, which he stated was common in his culture.
69. The Applicant was questioned in an appropriate manner by Mr Jackson. He had been “very tired, ill, and hungry” when he arrived in United Kingdom. This was why he said that he could not be sure of his date of birth at that time. He had not told social workers that he started school at 8 years old. He could not remember how old he was when he started at the khalwa. He had felt “a bit angry” when asked lots of questions in the age assessment.
70. The Applicant was asked about IM, whom he described as his “best friend”. The Applicant did not think that IM came from a different “part” of Darfur. It had been approximately 20 minutes journey between their respective houses in the Saraf Omra district and they had seen each other “sometimes twice a week or three times a week”. They had sometimes played football or played with mud and grass. They had not watched television together.
71. A break in the evidence was taken. On resumption, the Applicant confirmed that he was happy to continue answering questions. I was satisfied that this was appropriate.

72. The Applicant accepted that he had not mentioned IM in the age assessment or his witness statements. He had had a lot of friends in Sudan. He stated that he did not know what puberty was, but confirmed that he had started growing some hair on his chin when he was about 15 years old. He did not remember saying that this was in the year 2015. In respect of the “engaged” status on Facebook, the Applicant said that he had been asked by the age assesses if he was married, to which he had said “no”. The Applicant confirmed that he had been told his date of birth by his mother before he knew the calendar. The date he was told was the first day of the eighth month in the year 2004.

73. In re-examination, the Applicant said that he had lived on the outskirts of what he described as the “city”, whereas IM lived in the middle. He had not watched television with IM and did not know if IM had had a television in his house.

IM’s evidence

74. IM adopted his witness statement, dated 28 May 2022. This gave some information about the claimed friendship in Sudan. IM stated that he used to spend “a lot of time” with the Applicant and that they played football. IM’s mother had told him that the Applicant was approximately two weeks older than he was. IM confirmed that he was now 18 and that the Home Office had made a positive decision on his asylum claim.

75. In response to questions from Mr Jackson, IM confirmed that the Applicant had been his best friend. IM knew his own date of birth as he went to school and his mother told him that information. IM had learned to write his date of birth in a book or when he had results, both of which were connected to his education. IM said that he had had a “national identity card”. IM

believed that the Applicant had been born in Saraf Omra and then sought to clarify that for as long as he had known the Applicant the latter had lived in that place. Their respective houses were about 20 minutes apart. IM had had a television at his house and it might have been that the Applicant did not remember them watching television together. Mr Jackson fairly put it to IM that he had not known the Applicant whilst in Sudan. IM stated that he said he had because it was true.

76. In re-examination, IM confirmed that the Applicant used to visit his house. He could not remember the date when he met the Applicant in Harlow.

The parties' submissions

77. I was provided with helpful skeleton arguments by Ms Benfield and Mr Jackson in advance of the hearing and I had read these carefully prior to the commencement thereof. In addition, they both drafted clear and concise written submissions during the free day between the end of the evidence and the oral submissions. I am grateful for their endeavours.

78. The oral submissions were well-structured and certainly assisted me in my task. Here, and without intending any disrespect, I will only summarise their submissions. I intend to deal with more specific aspects when analysing the evidence and setting out my findings later in the judgment.

79. The central elements of Mr Jackson's submissions were as follows. First, there was no error by the age assessors in not giving the Applicant "the benefit of the doubt". Second, there had been no procedural unfairness in respect of the age assessment. Third, the opinions expressed in Dr Rogers' report

had to cut both ways: if they potentially went to support the Applicant's case, there could equally count against the reliability of his evidence as a whole. Fourth, the evidence of Ms Finney and Ms Graham was crucial. It came from two professionals who were well-placed to have reached reliable impressions of the Applicant over the course of time. Fifth, the evidence from and relating to IM was highly implausible. Sixth, the evidence from other individuals who had not appeared as witnesses should be given no, or at most minimal, weight. Seventh, Ms Awopetu's evidence should not carry any real weight. Her evidence might have lacked reliability and impartiality because of her "mothering character" and her role in supporting the Applicant and not considering his actual age.

80. Mr Jackson urged me to accept that it was "plainly more likely than not" that the Applicant is and was an adult and is currently approximately 22 years old with an attributable date of birth of 1 August 2000.

81. Ms Benfield's arguments can be summarised as follows. First, there was little, if any, difference between the parties in respect of the legal principles. A number of points taken by the Respondent were in fact of neutral impact. Second, Dr Rogers' report was a crucial element of the evidence in this case. It provided the proper context in which to view the Applicant's evidence and behaviour at material times. Third, and connected to the preceding point, the age assessors and Ms Finney and Ms Graham had been unaware of the real nature of the Applicant's mental health when forming their impressions as to his age. Fourth, the evidence from Ms Awopetu, IM, and others (who had not appeared as witnesses) should carry real weight. Fifth, the evidence from Ms Finney and Ms Graham was not as strong as made out by the Respondent. The reasons underpinning their

opinions were, on analysis, “weak”. Certain aspects of Ms Finney’s evidence relating to the Applicants behaviour and manner appeared to be inconsistent with a variety other sources.

82. Ms Benfield submitted that the Applicant was a vulnerable individual who was currently 18 years old and should be attributed with a date of birth of 1 August 2004.

Analysis of the evidence and findings

83. I have considered the evidence in the round. In so doing, I have also taken full account of the written and oral submissions put forward by the parties.

84. I have reminded myself of the legal principles set out at paragraph 16, above.

85. As with any judgment involving a fact-finding exercise, a structure must be employed. In written form, that will necessarily involve a linear approach in the sense that particular aspects of the evidence will be addressed in turn. However, and without wishing to labour the point, I have considered all matters on a cumulative basis. My ultimate finding as to the Applicant’s age and date of birth has only been arrived at following the analysis of the evidence (in the context of the submissions made thereon) and then a further reflection cast back on that analysis.

Factual matters not in dispute

86. A number of relevant factual matters have not been put in dispute. The Applicant has been internally consistent about particular experiences, and, on an objective basis, these are

entirely plausible in light of the well- documented problems which have occurred in Darfur and those which confront many migrants passing through Libya.

87. I find the following matters to have been proven on the balance of probabilities:

- (a) The Applicant is from the Zaghawa tribe in Darfur;
- (b) His two older brothers were killed during a militia attack when he was very young;
- (c) His father disappeared in 2015;
- (d) He was detained for three months by a militia and tortured;
- (e) In Libya, he was detained in very poor conditions, then sold, effectively as a slave, to an individual for whom he was forced to work;
- (f) He undertook a dangerous sea crossing from Libya in an overcrowded boat, seemingly being rescued by an Italian ship;
- (g) He travelled across Europe and stayed in a “camp”, where he lived in difficult conditions and was subjected to a degree of hostility by the French police.

88. A further aspect of the Applicant’s evidence is also of relevance here. In his first witness statement, the Applicant recounted how he had been physically assaulted by a man whilst residing in adult accommodation following the

Respondent's dispute as to his age. The Applicant described a drunk man hitting him and knocking him to the ground. The police were called, but they intimated that nothing could be done. The Applicant felt upset by both the attack and the perceived police inaction.

89. I see no reason to disbelieve this aspect of the Applicant's evidence. It is plausible and I note that the incident was recorded in the placement plan, dated 6 December 2021. I find that the event did take place and that it caused the Applicant real distress.

90. The fact that these matters have been proven does not of course go to demonstrate that the Applicant is the age he claims to be. Nonetheless, it carries some weight in his favour because (a) he is credible about certain past events which are predicated on his own evidence; and (b) he is not a person who has put forward a claim involving a number of elements (leaving aside the claimed age) which have been found to be simply untruthful.

The Applicant as a vulnerable witness

91. Having treated the Applicant as a vulnerable witness at the hearing, I am satisfied that he understood the questions put and was able to present his evidence in an appropriate manner and without being placed under unnecessary pressure. I fully appreciate the potential risk of unseen distress being caused by questioning, but there was certainly no outward signs of any difficulties. The cross-examination was relatively short and he was not asked about details of the more traumatic aspects of his past (for example, his detention by the militia in Darfur and his experiences in Libya, none of which have been disputed). I find that the Applicant's vulnerability did not materially affect his oral evidence.

92. Having said that, in my judgment it is appropriate to take account of relevant aspects of the Applicant's past experiences and symptoms when considering information provided by him to others over the course of the age assessment process. In this regard, his vulnerability is not to be artificially confined to the hearing itself. I say more about this, below.

Dr Rogers' report

93. I regard Dr Rogers' report as a particularly significant, indeed a crucial, aspect of the evidence in this case. In summary, I find that it provides very important contextualisation to the Applicant's demeanour, behaviour, the way that he might have appeared to "carry himself", and the nature and content of the evidence he has provided over the course of time.

94. There is no dispute as to Dr Rogers' qualifications and suitability to have provided professional opinions on the matters set out in the instructions provided by the Applicant's solicitors. I find that Dr Rogers' background indicates that she is well-placed to have assessed and reached conclusions on the Applicant as a young person (whether or not he is in fact the age claimed). I note her significant experience in the London Borough of Hackney CAMHS and her current position at Great Ormond Street Hospital. I am entirely satisfied that she was aware of, and complied with, her duties as an expert.

95. I bear in mind that she took a history from the Applicant and that the reliability of his evidence is, in certain respects, contentious. However, Dr Roge's utilised relevant assessment tools and applied her professional expertise to the Applicant's account and presentation. Even taking into account certain aspects of the Applicant's evidence which I have found to be less than wholly reliable (discussed later in the judgment), I

nonetheless place considerable weight on Dr Rogers' report. It is thorough and focused on issues highly relevant to my task, in particular the likely impact of past experiences on the Applicant's narration of events and his demeanour/manner.

96. Dr Rogers concluded that the Applicant was suffering from moderate-severe PTSD with Dissociation, together with depression at a moderate level. In the section "Summary of Opinion", Dr Rogers states that the PTSD "will have been present at the time of age assessment interview" and that this should be taken into account when assessing the Applicant's responses during that process. She was also of the view that the PTSD had developed prior to arrival in the United Kingdom. In respect of the depression, Dr Rogers was not clear when the episode manifested, but she records the Applicant as reporting that his symptoms worsened since being moved between placements on several occasions and when his age became a matter of dispute. She believed it to be possible that the depression was present on arrival in this country. Having regard to the evidence as a whole, I find it to be highly likely that the symptoms of PTSD and depression were present throughout the age assessment process. I also find it to be more likely than not that they existed at the point at which the Applicant first encountered the authorities after his arrival in the United Kingdom.

97. I turn now to consider the relevant symptoms and their consequences. The Applicant reported having "very poor" memory. Dr Rogers noted that autobiographical memory can be affected by exposure to trauma, leading to a fragmentation of the sequence of events, which in turn "could impact on his ability to fully and accurately reflected experiences during interview, and to be able to provide a clear and coherent

narrative account of his life.” Confusion could result. Dr Rogers opined that traumatic events would be “likely to affect the ability to remember periods of [the Applicant’s] life or events that were traumatic.” She noted that such events had occurred at several stages in the Applicant’s life to date. She emphasised the relevance of feeling under pressure in, for example, an interview setting, and how that could lead to confusion, anxiety, and an inability to provide a clear narrative.

98. Importantly, Dr Rogers also addressed the issue of avoidance, stating that, “Avoidance was indicated at a very high level on the psychometric assessment and [the Applicant] clearly found talking about his experiences too difficult... He described how hard he finds it to talk about his experiences, saying that it makes the memories come strongly and it leaves him feeling very bad. Avoidance is a key feature of PTSD...” The last point is significant because the Respondent has placed a good deal of emphasis on the Applicant’s apparent avoidance of providing certain information during the age assessment.
99. Dr Rogers addressed a wide range of symptoms relating to both PTSD and depression in her report. She was of the clear opinion that these were all entirely consistent with the Applicant’s account of past events and the situation in which he found himself in the United Kingdom.
100. In Dr Rogers’ opinion, the Applicant “has significant mental health difficulties and is very vulnerable.”
101. The significance of Dr Rogers’ evidence is pertinent to virtually all aspects of the other evidence in this case. As I have mentioned previously, it goes to contextualise the Applicant’s

interaction with others and it bears on what he has said and the impression formed of him by them.

The benefit of the doubt

102. There has been a certain amount of discussion and, to an extent, disagreement relating to the concept of “the benefit of the doubt”. The Respondent interpreted an aspect of the Applicant’s Statement of Facts and Grounds as contending that the age assessment was flawed in part because “the benefit of the doubt” was not afforded to his case. In oral argument, I was referred by Mr Jackson to R (HAM) v London Borough of Brent [2022] EWHC 1924 (Admin), at paragraph 39, the effect of which was to show that procedural fairness did not require the benefit of the doubt to be given to and assessed young person.
103. In my judgment, this particular issue takes neither party’s case any further. As in the immigration and asylum context, the concept of “the benefit of the doubt” does not constitute a hard and fast rule of law (see, for example, KS (benefit of the doubt) [2014] UKUT 00552 (IAC)). I accept what Swift J said in Brent and that previous authorities simply articulated the reality of age assessments: they are far from being a precise exercise and a degree of pragmatism is required.
104. In the present case, the assessors (rightly or wrongly) expressed the opinion that they had no doubt that the Applicant was at least 21 years old. I see no error (i.e. procedural unfairness) in the age assessment because of a failure to expressly afford “the benefit of the doubt” to the Applicant.
105. I am not sure that the Applicant was ever seeking to elevate

“the benefit of the doubt” issue into anything more than it was. Ultimately, it is for me to decide the Applicant’s age and date of birth. As part of that exercise, it is for me to decide whether the age assessors took account of all relevant matters (whether these were known to them at the time or not) and to determine the weight attributable to their report.

106. For the sake of completeness, there is nothing material in the Applicant’s assertion that the “margin of error” had any real bearing on the lawfulness of the age assessment, or the potential weight attributable to it.

The Applicant’s evidence as to his age and date of birth

107. The Applicant has stated that he knew about his date of birth because his mother told him when he went to school at the age of 6 and then when he went to the khalwa aged 9.

108. Although different dates of birth have been recorded in the evidence, having regard to my overall findings set out in this judgment (including, in particular, those relating to the “short-form” assessment), I accept that he has been essentially consistent in stating his date of birth to be 1 August 2004.

109. I find it to be more likely than not that the Applicant did attend school and then the khalwa. He has been consistent about the essential fact of his education, although I recognise that there has been some variation in respect of the years stated. There is no evidence before me to indicate that such education was non-existent in Darfur at the time. It is plausible that young children who had completed some form of education would have also then attended a khalwa in an area in which Islam was the dominant religion.

110. I accept that, in principle, where a child was able to attend school, their age and date of birth would have become a relevant matter, at least for administrative purposes. The same applies to attendance at a khalwa. To my mind, that is plausible and is not contradicted by any other reliable evidence.
111. Having regard to the evidence as a whole, in the present case I find it to be credible that the Applicant was told his date of birth by his mother as a result of his attendance at school and then again at the khalwa. There is no evidence to suggest that his mother would have been unable to know that date. In general terms, there is nothing implausible about a child being able to remember that date if they were informed of it aged 6 and then again at 9.
112. Mr Jackson made a strong point at the outset of his oral submissions to the effect that if Dr Rogers report went to support the Applicant's case, it could equally go to undermine it. Problems with the Applicant's ability to recall matters would be likely to undermine his evidence on the date of birth as much as in respect of anything else. Having carefully considered it, I have concluded that it does not fatally undermine the Applicant's evidence as to how he came to know of his date of birth and his ability to have accurately recalled it during the age assessment process.
113. The opinions expressed by Dr Rogers relate in the most part to difficulties experienced by the Applicant in providing a coherent and/or consistent narrative of events (including a dateline) in the context of traumata. As I read her report, there are said to be significant difficulties in respect of avoidance, confusion, the ability to undertake mental calculations, particularly under stress, and a fracturing of autobiographical

memory.

114. These considerations could potentially render unreliable the Applicant's evidence as to his specific date of birth. They could potentially relate to each and every aspect of his evidence about his experiences before arrival in the United Kingdom. However, significant aspects of his history are not in dispute and are credible: in other words, it cannot properly be said that he is an unreliable witness in *all* respects. Further, there is some merit in Ms Benfield's submission that the date of birth was provided to him on two separate occasions (by implication, the second time might have reinforced the date provided on the first) and that he was informed of it prior to the traumatic events which have featured prominently in his account, as contained in his witness statements and Dr Rogers report: the disappearance of his father and, more significantly, his detention by the militia and what happened to him in Libya.

115. I accept that the Applicant did not know the calendar at the time he was given the date of birth. I am satisfied, though, that he accurately recalled the date in the terms "the first day of the eighth month 2004". That he was subsequently able to link the date to the calendar does not undermine the reliability of his evidence.

116. In terms of the evidence contained in the Brief Enquiry form as to the Applicant's age when he started and finished his education, for reasons set out elsewhere in this judgment I have found that this carries very little weight.

117. Having regard to the evidence as a whole and my findings in respect of the relevant aspects thereof, I am satisfied that the

Applicant was told his date of birth by his mother, as claimed, and that that date was 1 August 2004.

118. It might be said that that was an end of the matter in so far as my fact- finding task is concerned. However, it is important to consider the evidence as a whole, in part because it of course informs my assessment of the Applicant's evidence on the date of birth issue, but also because I need to be satisfied that the date of birth provided to him was itself accurate. That still requires me to assess the rest of the evidence as it pertains to his age.

Evidence from initial contact with the authorities in United Kingdom

119. To the extent that the Applicant asserts that the withdrawal of the short- form assessment of 30 April 2021 by the Respondent negates it even being considered, I disagree. It is in truth not really a question as to whether I should have any regard to it at all, but rather the circumstances surrounding it go to the weight attributable to this evidence.

120. The Brief Enquiry report in question was undertaken the day after the Applicant arrived in United Kingdom. He was in police detention at the time. On its front page the report records the date of birth as "1 January 2004", but subsequently records the Applicant is saying "it may be 1 January 2003 or 2004". The Applicant was described as being "calm and confident" with "deep lines across the forehead and an "announced" (sic) Adam's apple". When asked, the Applicant stated that he did not have any identity documents. The next question was, "where are these documents now?", To which the Applicant is recorded as having responded "I don't know".

121. I find it somewhat strange that if the Applicant has said he did not have any identity documents, why he would then have been asked the subsequent question and an answer recorded. It might indicate inconsistent responses by the Applicant because he was being untruthful, or it may very well suggest a degree of confusion or a lack of proper understanding on his part, to which the enquirers were not fully cognisant.
122. More importantly, I regard the following factors relevant to my assessment of weight.
123. First, the report was withdrawn by the Respondent as result of correspondence from the Applicant's solicitors. The Respondent was not bound to have taken that step. It may have been done for purely pragmatic reasons, or it may not. Flaws in the process may have become readily apparent to the Respondent, with a recognition that the report would not stand up to scrutiny. I find that the withdrawal of the report was a strong indicator that the Respondent no longer wished to rely on it as part of her case regarding the Applicant's age and date of birth. Overall, I find that the decision to withdraw the report significantly undermines the weight attributable to it.
124. Second, it does not appear as though there was an appropriate adult present during the brief interview. Further, or in any event, the Applicant was in the detention of the authorities and there is a real possibility that this could have affected his ability to provide and/or consistent responses to questions asked.
125. Third, for reasons I have set out previously, it is highly likely that the Applicant was in a vulnerable state by virtue of a

combination of the journey undertaken just the day before and, significantly, the consequences of his past experiences in Sudan and Libya (with reference to Dr Rogers' report). The two assessors on 30 April 2021 would not have been aware of this relevant background at the time.

126. Having regard to the foregoing and the evidence as a whole, I find that very little weight indeed can be placed on the short-form assessment. I find that the information recorded concerning the Applicant's claimed age and date of birth does not undermine his own credibility to a material extent.

The age assessment

127. The age assessment is a detailed example of such reports. I am satisfied that the two assessors were suitably trained. I am satisfied that the Applicant was accompanied by an appropriate adult and that he understood the interpreter. There was a "minded-to" process factored in to the assessment prior to the final decision being issued. Whilst a number of other matters have been raised by the Applicant against the lawfulness of the age assessment, I regard it as having been conducted in a procedurally fair manner.

128. It is somewhat unusual for there not to be witness statements from the two assessors. In one sense, it rather undermines the Respondent's argument that any information from individuals supporting the Applicant's case should be disregarded due to the absence of witness statements. In any event, the absence of the statements by the age assessors does not, for the purposes of this judgment, result in a material reduction in weight.

129. There are a number of issues arising from the age assessment which potentially count against the Applicant. These include:

- (a) Evidence surrounding his education and dates relating thereto;
- (b) His inability/failure to give precise information about the ages of his parents and siblings;
- (c) His evidence relating to the celebration of Eid;
- (d) His responses about when he reached puberty;
- (e) Whether he was engaged to be married;
- (f) Whether his father disappeared during or after he (the Applicant) finished his education;
- (g) Whether he fasted during Ramadan whilst in the United Kingdom;
- (h) His demeanour, including playing with his mobile phone during the interview and a failure to make eye contact with the age assessors.

130. I have considered the issues arising from the above both individually and cumulatively and in the context of the evidence as a whole. I have considered the particular submissions put by Mr Jackson in writing and orally.

131. There is force in the Respondent's case that the Applicant

appeared to be what was described as “selectively avoidant” in response to questions and that might have been because he did not want to get “caught in a lie”, as it were. On the face of it, I would accept that there are significant difficulties with the Applicant’s evidence provided during the age assessment interviews. It appears to have been convenient that he was unable to give the ages of other family members. Particular dates and ages (in the form of years) were stated, which would have made him older than his claimed date of birth suggested: examples include having started puberty at 15 in 2015, and using the year 2010 as a memorable time in his childhood.

132. On closer analysis, however, the age assessment suffers from a particular difficulty of its own, namely the fact that at all material times the Applicant was suffering from significant mental health problems and was, I find, a highly vulnerable individual. He alluded to “emotional” problems in one of the interviews, but of course at that time there had been no comprehensive assessment of his mental health.

133. Such an assessment was subsequently undertaken by Dr Rogers. Her report is crucial in respect of my evaluation of the age assessment for the following reasons.

134. First, I cannot be sufficiently confident that the age assessors took proper account of his vulnerability (including not simply the two conditions, but the potential impact that it would have had on his evidence), although I accept that they would have been trained to consider such matters if they were known about at the time.

135. Second, and more importantly, Dr Rogers stated in terms

that avoidance was a “key feature of PTSD” and that this symptom was indicated at a “very high level” on the psychometric assessment undertaken on the Applicant. The emphasis of the age assessors on avoidant behaviour and “selective avoidance” must be seen in this context and their conclusions on this issue are materially undermined, albeit certainly not rendered valueless.

136. Third, Dr Rogers’ evidence deals in detail with the Applicant’s memory and ability to present consistent and/or coherent narratives. This assessment must, in my judgment, also have been relevant to what was said by the Applicant during the interviews. I fully appreciate that not all of his responses related to traumatic events or the need to set out a series of events as part of a general narrative. However, it is right to say that a relatively significant proportion of the questioning pertained to matters occurring after he had experienced traumata (for example, after his father disappeared and after he had been detained by the militia). It is also the case that the date of birth issue related specifically to him and his attendance at school: it would not necessarily have been the case that he would have known of other family members’ ages.

137. Fourth, there were questions concerning, for example, the proximity of his birthday to when he left Sudan and then Libya. Those were plainly times in his life when he had just experienced very significant trauma: detention and ill-treatment by the militia and then detention and slavery in Libya. His responses that he did not know how close these events were to his birthday were, I find, entirely plausible. A series of other questions related to timelines, which, in light of Dr Rogers’ evidence, are likely to have caused the Applicant a degree of confusion and/or anxiety, which may have resulted in him giving

inaccurate years or creating inadvertent inconsistencies.

138. In respect of the Applicant's claimed engagement, the question recorded in the interview seems clear enough: was he planning to marry anyone? The Applicant has said that he does not recall being asked that particular question. I find that this is likely to be an example of him seeking to explain, after the event, an inaccurate answer provided at the assessment. It may be that he was not entirely sure about the question, but is more likely that he did not want to say he was engaged as it might have suggested he was older than he claimed. When this aspect of the evidence is placed in the context of the evidence as a whole, it does not materially detract from his case.

139. Notwithstanding the above, I do have concerns about certain aspects of the Applicant's responses. I have doubts as to why he could not, for example, provide a little more information about his parents and siblings (except in relation to their ages).

140. Fifth, I regard the fact that the Applicant was using his mobile phone during the interviews and was not making eye contact with the age assessors to be of very little consequence. Dr Rogers' report suggests that this behaviour was consistent with the Applicant's mental health problems. Further, the use of a mobile phone in such a setting could be indicative of the behaviour of a mid-teenager as much as that of a 21 year old. In respect of eye contact, I place no weight on the apparent views of the interpreter as to what was or was not the cultural norm. Interpreters at age assessments are not some sort of readily accessible source of expert knowledge.

141. Sixth, the interviews all took place in a formal setting,

something which Dr Rogers emphasised would have been problematic for the Applicant.

142. In summary, I am not concluding that each and every aspect of the age assessors' conclusions are flawed and of no worth. I place weight on the fact that they obtained a good deal of evidence across a range of different topics and applied their training and experience to the evidence before reaching a considered conclusion, supported by reasons. I also place weight on the fact that some of those conclusions were consistent with the evidence provided by Ms Finney and Ms Graham (for example, the Applicant being, to an extent, independent and capable).

143. The age assessment carries appropriate weight, but, in light of the various considerations I have set out, it is of less value than it otherwise might be.

Ms Finney's evidence

144. I find that Ms Finney began working with unaccompanied asylum seeking children at the end of January or the beginning of February 2021. She did not possess any specific vocational qualifications relating to this role and had not been trained on age assessments. I accept that she undertook appropriate training prior to and once she started her job with Good2Go.

145. I accept that Ms Finney met the Applicant on a number of occasions between June 2021 and when he was returned to adult accommodation in July 2021 whilst she was shadowing Mr Munyazaki at the placement in Harlow. I find that Ms Finney was allocated to the Applicant as his Support Worker when he returned to the placement and that that role took effect from

early January 2022 and lasted until April 2022, being just over three months in duration.

146. I find that during that three-month period, Ms Finney saw the Applicant on a 1:1 basis five times a week. Mr Jackson calculated that this amounted to 60 direct contacts, equating to approximately 160 hours in total. That is plainly a significant amount of time. I accept that in addition to the 1:1 interactions, Ms Finney would occasionally see the Applicant in group sessions.

147. I regard the extent of the interaction between Ms Finney and the Applicant as an obviously relevant factor. It is supportive of her ability to have formed a considered impression of his behaviours and approximate age.

148. I also take account of the fact that Ms Finney had worked with a relatively large number of other young people aged between 16 and 24 through her employment with Good2Go. This might have assisted her ability to draw comparisons between the Applicant and others (although I will say more about the question of comparisons, below).

149. Ms Finney is no longer employed by Good2Go. In that sense, she is independent of the Respondent. I take this into account when assessing her evidence. It is, however, a fact that she was employed by Good2Go when her impressions of the Applicant were formed. The central thrust of her oral evidence was that she maintained the views originally formed.

150. In light of the factors described above, Mr Jackson urged me to place “very great” weight on Ms Finney’s evidence, describing

her as an “impressive witness”. In addition, her evidence was, he submitted, consistent with that of Ms Graham. Together, their evidence was of much greater value than that put forward by the Applicant.

151. Against this, Ms Benfield highlighted claimed deficiencies in Ms Finney’s evidence, and that the reasons put forward by her for asserting that the Applicant was older than he claimed to be, were “weak”.

152. I turn to consider those reasons, placing them in the context of the evidence as a whole and matters relied on by Mr Jackson in relation to Ms Finney’s direct interactions with the Applicant.

153. The central reason put forward by Ms Finney in support of her clear view that the Applicant was/is at the very least 21 years old was his behaviour towards her and other professionals, his behaviour towards other young people, and his general independence.

154. As a general point, I give Ms Finney credit for certain responses during cross-examination in which she accepted that she could not be certain about the Applicant’s age, that traumatic experiences could affect a young person’s demeanour, and that physical appearance could be an unreliable factor in assessing age. This measured approach was favourable to the weight attributable to her evidence as a whole.

155. Ms Finney stated that the Applicant was at times “abrupt and aggressive”, and that he would “shout at staff and other young people in the accommodation” and could be

“disrespectful when speaking to female staff members which I have encountered personally.”

156. I take the view that this aspect of Ms Finney’s evidence is consistent with certain aspects of Ms Graham’s, although the terminology used was somewhat different. I will address Ms Graham’s evidence further, below, but for present purposes, I take this factor into account when assessing Ms Finney’s evidence.

157. It is the case that the types of behaviour described by Ms Finney are not reflected in the observations of Ms Sinclair, Ms Youssef, Ms Benabdjili, and Mr Munyazaki. However, for reasons I set out later in this judgment, I place very little weight on the observations of the first three individuals. Again for reasons set out later, I place some weight on the observations of Mr Munyazaki because his impressions are contained in an observation report, rather than in third-hand email exchanges. In addition, Ms Finney herself accepted in cross-examination that he had been in a better position than her to have formed an impression of the Applicant whilst he was the key worker before leaving in November 2021.

158. On balance, I accept that Ms Finney did witness the Applicant being abrupt and, at least as she perceived it, aggressive and disrespectful on occasion. I accept that she viewed some of the Applicant’s behaviour and attitude as being “demanding” and that his mood could be “unpredictable”. It is right to say that Ms Finney contrasted the Applicant’s behaviour to that of other young people that she had engaged with. In other words, she adopted, at least to an extent, a comparator approach. That is, on one level, perhaps understandable; she used her overall experience when reaching a conclusion on age.

159. I accept that Ms Finney genuinely believed that other young people in the placement were aged between 16 and 18 years of age and that their age had been accepted.
160. I do accept that on occasion the Applicant did not undertake all of his household tasks (such as cleaning - something Ms Finney stated she had witnessed "a couple of times") and it is likely that he was irritable and even sometimes cross with other young people in the placement. In this regard, such behaviour could, however, apply as much to a 17-year-old as to a 21 year old. I also take account of the context supplied by Dr Rogers' report.
161. I accept Ms Finney's evidence that the Applicant demonstrated a degree of independence in so far as she could see from her interactions with him over the three-month period when she was his key worker. I am willing to accept that he was, at a time when Ms Finney was able to observe or no this in some other way, able to do shopping without requiring significant assistance.
162. Whilst I do place material weight on Ms Finney's evidence as regards the Applicant's age, there are certain matters which, taken cumulatively and in light of the evidence as a whole, lead me to conclude that it is not as significant as the Respondent submits.
163. The first, and most important, is that Ms Finney was unaware (or at least not fully appraised of) the nature of the Applicant's mental health difficulties at all material times. She did not of course have the benefit of Dr Rogers' report, although she had been spoken to by Dr Rogers as part of the psychological

assessment.

164. I do not criticise Ms Finney for not taking account of matters of which she was not (fully) aware. Having said that, I find that the Applicant was, at the time of his direct interactions with her between January and April 2022, suffering from moderate-severe PTSD and moderate depression. In light of Dr Rogers' opinions, as discussed in some detail previously, the Applicant's poor mental health is highly likely to have had a material impact on his behaviour, demeanour, and attitude towards others, in particular professionals whom he is likely to have regarded as representing "the authorities" or "the Council". Indeed, Dr Rogers' report records that the Applicant had felt "tense" most of the time and was "irritable". She was of the opinion that the PTSD had been exacerbated by being moved around whilst in the United Kingdom. I note that Ms Finney's interaction with the Applicant began relatively shortly after he had been returned to the Respondent's care from adult accommodation, but that he had been moved to Basildon, away from the location he had originally been placed in and was happiest, namely Harlow. It is, I find, more likely than not that this also had an effect on the way in which the Applicant interacted with others, at least on occasion.

165. The second issue is in relation to the comparator approach, whether this was adopted by Ms Finney consciously or not. On the evidence before me, and particularly in light of Dr Rogers' report, I cannot see that a reliable comparison could have been made between the Applicant (with all his particular characteristics, including his mental health conditions and past experiences) and other young people whom Ms Finney had interacted with, but did not have similar characteristics (or at least in respect of whom there is no evidence about their

backgrounds).

166. It is not entirely clear to me as to the level of that independence. In her witness statement, Ms Finney confirmed she had “helped” him with how to make healthcare appointments for himself and had spent time in group sessions in the placement where he and others had been obtaining help with cooking, cleaning, homework, and suchlike. That does not indicate a significant level of independence.

167. I have a difficulty with a particular aspect Ms Finney’s evidence relating to a Good2Go meeting report an assessment form, dated 14 March 2022. I need not set out each and every entry in that form. Suffice it to say that it did not indicate any concerns as to the Applicant’s behaviour or attitude. On its face, it appeared to run contrary to Ms Finney’s view that the Applicant’s overall behaviour and attitude went to demonstrate that he was a lot older than claimed. When questioned about this, Ms Finney stated that she had apparently completed the form 24 hours before the meeting and did not complete it correctly. As I understood her evidence, the implication was that the form could and should have been adjusted after the meeting took place. With respect, I do not accept that explanation. It is more likely than not that the boxes ticked represented an accurate record of the assessment made *at that* meeting. It is implausible that the form would have been completed *before* the meeting, with any adjustments to be made subsequently, depending on the outcome of the assessment.

168. In addition, I do not accept the explanation that Ms Finney was told by her manager not to record any “bad things” (in other words, adverse matters) about a young person because it would rest on their file and may have caused difficulties in the

future. Such a practice would be extremely concerning and potentially dangerous.

169. I note that the assessment form recorded that the Applicant was very often “assertive”. I accept that to be accurate at the time. I find that assertiveness does not equate to aggression or disrespect.

170. I have not been referred to any other reliable evidence from Ms Finney to indicate that she reported any poor/inappropriate behaviour by the Applicant.

171. I do not place any material weight on any impression formed of the Applicant’s age simply on the basis of his physical appearance. Physical appearance is a notoriously unreliable indicator and Ms Finney’s evidence did not provide any sufficiently strong description of physical features which I would regard as relevant. I am satisfied that there is nothing in respect of the Applicant which stands out as representing a particularly clear pointer towards him being significantly older than claimed.

172. A further reason relied on by Ms Finney was her witnessing the Applicants smoking in the street on one occasion. This led her to believe that he was older than 17 (his claimed age at the time) because, “the legal age to purchase tobacco in this country is 18. As he does not have any form of ID to be able to show to purchase tobacco, this supports my view that he looks and acts older than the age he is claiming.”

173. With respect, I find this aspect of Ms Finney’s evidence does not stand up to scrutiny in terms of providing sustainable support for her view as to the Applicant’s age. I am prepared to accept

that she did in fact see the Applicant smoking a cigarette on a single occasion. Although other witnesses have not referred to him smoking, I note that the Applicant confirmed in his first witness statement that he had asked someone for a cigarette just prior to being assaulted when at the adult accommodation.

174. However, it clearly does not follow that the Applicant had been purchasing cigarettes from a shop on the basis that he looked so clearly over the age of 18 that no identity document had been required of him by the vendor. That is in my view a significant leap of speculation. Ms Finney accepted that she simply did not know how he had obtained the cigarette. I bear in mind the Applicant's own evidence that he had asked someone for a cigarette at the time of the assault, thereby suggesting that he was not attempting to purchase them from shops. It is fanciful to suggest that another private individual (whether an adult or young person) would only have given him a cigarette on the basis that he looked at least 18 years old.

175. I note that the Applicant was never asked whether he had ever purchased cigarettes at a shop.

176. In summary, the weight I place on Ms Finney's evidence as it relates to the Applicant's age is not "very great". Certain aspects of it are unreliable, and others reduced in their significance as result of what is now known about the Applicant's mental health at the time.

Ms Graham's evidence

177. I find that Ms Graham qualified as a social worker approximately two months before she was allocated to the Applicant, who was one of her first clients. I find that she had

had approximately nine months' previous experience working with unaccompanied asylum seeking children. I accept that she had undertaken age assessment training and that she had in fact undertaken three age assessments in other cases. This background is clearly relevant assessment of her evidence as it relates to the Applicant's age.

178. As noted in Mr Jackson's written submissions on the evidence, Ms Graham remained as the Applicant's allocated social worker throughout his time under the Respondent's care, namely from 14 June to 21 July 2021, then again from 9 September to 15 October 2021, and finally between December 2021 and 17 March 2022.

179. In terms of her direct interactions with the Applicant, on the evidence before me I find that this consisted of seven 1:1 meetings of approximately an hour each, together with relatively brief interactions in between these meetings when the Applicant would collect his allowance. I find that there were also some telephone communications. The overall extent of the interactions was not particularly significant in terms of the number of hours, but it was clearly more than minimal.

180. I take full account of Ms Graham's training on age assessment and participation in age assessments when assessing the value of her impressions of the Applicant's age as result of those interactions.

181. On the other side of the balance sheet, I take account of the fact that she did not have particularly lengthy experience of dealing with young people.

182. As mentioned when addressing Ms Finney's evidence, I take account of a degree of consistency in their evidence. Similarly, Ms Graham was candid in accepting that a young person's demeanour and attitude could be affected by a range of factors and that there was a margin of error when assessing age. I note her evidence that she had taken possible contributing factors into account when forming her impression of the Applicant's age. These matters are favourable.

183. The core reasons put forward by Ms Graham in support of her opinion on the Applicant's age can fairly be summarised as follows: (a) he displayed confidence, assertiveness, and maturity which contrasted with other young people; (b) he was persistent/demanding in respect of requests for, for example, a laptop and a new smart phone; (c) unlike other young people who Ms Graham knew to be under 18, the Applicant was not focused on "stability and safety"; (d) the Applicant's decision to leave the placement and go to Harlow by himself was indicative of adult-like behaviour.

184. I address (a) - (d) in turn, taking full account of Ms Graham's training and experience and overall level of interaction with the Applicant.

185. I accept that the Applicant probably did display certain aspects of what she perceived as assertive, confident, mature, or even confrontational, behaviour. The manner in which Ms Graham has expressed her impressions of the Applicant's behaviour has been measured and considered. In light of this, together with her background, in general terms I place greater weight on her evidence than that of Ms Finney (although I have of course considered the evidence in the round).

186. There is, however, an issue with Ms Graham's evidence which also applies to Ms Finney's. Neither were fully aware of the Applicant's state of mental health or the particulars of his past experiences. Ms Graham did confirm that she had a degree of awareness of his "mental well-being" through some of her meetings with the Applicant, but it is fair to say that these did not disclose the full picture. When this issue was put to her in cross-examination, Ms Graham confirmed that her view on the Applicant's age had been based on her experience and observations "at the time", namely during the period she interacted with him as his allocated social worker. That was an entirely reasonable response. When asked whether that view would now change in light of Dr Rogers' opinions, Ms Graham re-stated her position that her impression was based on what she knew at the time and that it was clear.

187. As with Ms Finney's evidence, I find that the context provided by Dr Rogers' report is significant because it goes to the likely effects of the Applicant's mental health and past experiences on the way in which he interacted with others, in particular professionals, at all material times. As Ms Graham was unaware of the full picture, her view on the Applicant's age was formed without the benefit of what I regard as a highly relevant consideration. The weight attributable to that view is accordingly not as significant as it otherwise might be.

188. Linked to the above is the difficulty in drawing comparisons between the Applicant (whose full history and mental health problems were unknown at the time) and other young people (whose experiences might have been very different).

189. I am willing to accept that the Applicant did repeatedly ask for a laptop and a new smart phone. Ms Graham made it clear

that, in her view, it was the manner in which he made these requests which was relevant to her assessment of his age. I do place weight on this factor because it is based not simply on the fact of the requests, but the way in which they were articulated.

190. However, there is merit in Ms Benfield's submissions as to why this factor is not of particular significance. Ms Graham accepted that the laptop would have been used for learning and that was in my view a reasonable basis for the Applicant (or indeed any young person) for making requests. Making threats to leave the placement if he did not get what he wanted could at least as easily be attributable to immature behaviour as to "adult-like" behaviour. Further, Dr Rogers' report makes reference to the use of technology as providing a distraction to the Applicant in light of his mental health problems.

191. It might be thought of as relatively uncontroversial for a newly-arrived young person to want "stability and safety". Ms Graham placed a good deal of emphasis on what she said was the Applicant's failure to have focused on this. I find that this reason did not have regard to the Applicant's state of mental health and past experiences (including the fact that he had been moved in and out of the Respondent's care relatively shortly before Ms Graham was allocated to him), as set out in Dr Rogers' report. This omission also made any comparison with other young people who may well have had very different characteristics, problematic. In this regard I do not place any material weight on the assertion that other young people had had "similar" journeys to the United Kingdom. There was no evidence before me of any specifics and, in any event, every individual will react differently to traumatic episodes.

192. Overall, I do not regard this particular aspect of Ms Graham's

reasoning as a weighty consideration.

193. I find that the Applicant left the placement in Basildon in December 2021 without informing anyone. I find that he slept rough for three nights in Harlow before presenting himself to the police. Clearly, this indicated a degree of independence in the sense that he got himself from Basildon to Harlow. It also showed determination and disrespect in so far as it went against the “rules” and would have caused others genuine concern for his well-being. On the other hand, a desire to go somewhere to be with a friend (or friends), the lack of any real plan (demonstrated by the fact that he slept rough for three days), and a disregard for the concerns of others, could just as well be indicative of distinct immaturity and child-like behaviour. I do not regard this episode as being materially supportive of Ms Graham’s opinion as to the Applicant’s age.

194. I have previously found that the Applicant has displayed a degree of independence. This must be seen in the context of what he experienced during the course of his journey to the United Kingdom, a point fairly made by Ms Benfield. In addition, the evidence as a whole shows that the Applicant was provided with help, at least initially, in terms of cooking and other matters. I find that the extent of the Applicant’s independence was not particularly indicative of him being 20/21 years old at the time of Ms Graham’s interactions. I also take account of what I have said, below, in respect of Ms Awopetu’s evidence as regards the assistance that she provided to the Applicant within the placement. It is unlikely that Ms Graham (or for that matter Ms Finney) will have seen the Applicant within what may be described as a normal domestic setting for the prolonged periods that Ms Awopetu would have been a witness to. Further to this, it is likely that, as time went on, the Applicant would

have become more independent in respect of certain activities/skills.

195. In summary, Ms Graham's evidence is entitled to a good deal of weight. It is not, however, particularly significant when seen in the context of Dr Rogers' report and other relevant considerations.

IM's evidence

196. I assess IM's evidence in its own right and as it sat together with the Applicant's.

197. I find that IM is currently 18 years old and is a refugee.

198. There are three obvious problems with this aspect of the evidence. The Applicant did not mention IM at the age assessment interviews or his witness statements. This is despite claiming that IM was currently his best friend in the United Kingdom and had, having regard to the tenor of the evidence on the issue, that they were at least close friends in Sudan. I find that this omission has not been adequately explained by the Applicant or IM, with the emphasis being on the Applicant's evidence. If IM had indeed been the Applicant's best friend, or one of them, I find that he would have mentioned him earlier. I find that his failure to do so is not explained by his mental health problems. This finding does not, however, mean that the Applicant did not know IM at all.

199. The second point relates to whether the Applicant watched television with IM. There was an obvious difference in the evidence: the Applicant saying "no" and IM saying "yes". The substance of the activity in question is in my view fairly

insignificant. It does suggest, though, that the Applicant and IM did not spend as much time together as their evidence initially suggested.

200. The final point relied on by Mr Jackson was the apparently implausible coincidence of them meeting again in Harlow. It clearly was a coincidence. I have no idea about the geographical spread of where young people originating from Darfur are placed in the United Kingdom. The coincidence could have been completely remarkable, or it might have been plausible. Overall, I do not regard it as fanciful. I find that nothing turns on this point.

201. It might be that IM had conspired with the Applicant to attend the hearing and lie on his behalf. I regard that as a fairly remote possibility. Having regard to the evidence as a whole, I conclude that the nature of their friendship in Sudan has been exaggerated. I find that they did indeed know each other in the locality of Saraf Omra and that they were of a broadly similar age. I do not accept that they were best friends or spent as much time together as claimed.

Ms Awopetu's evidence

202. The Respondent urges me to place minimal weight on Ms Awopetu's evidence. This is based primarily on four reasons: (a) she had only known the Applicant for five weeks, much less than Ms Finney and Ms Graham; (b), she had not really considered the Applicant's age; (c), she had what Mr Jackson described as a "mothering character", which in turn (and by implication) went to reduce her reliability and impartiality; and (d), she had suggested that Applicant could travel alone to A&E on a particular occasion.

203. I reject the Respondent's overall position in respect of Ms Awopetu's evidence. In respect of the first point, it is certainly the case that she interacted directly with the Applicant over a shorter period of time than Ms Finney and Ms Graham. I take that into account and it does, to an extent, reduce the weight I place upon her evidence. The reduction is limited because during the five week period, Ms Awopetu acted as the Applicant's Keyworker at his placement. I agree with Ms Benfield's submission that, whilst the overall period of time or shorter, the witness saw the Applicant on a daily basis and it is highly likely that she interacted with him in one way or another for significant periods of time during those days. In that respect, I would accept that Ms Awopetu's interaction was, to use Ms Benfield's description, more "intense" than that experienced by Ms Finney and Ms Graham. That intensity in turn lends a degree of reliability to her belief that the Applicant behaved like a child of "about 17 years of age" (as at the time of a witness statement in November 2021). As referred to previously, it has been calculated that Ms Finney spent approximately 160 hours on a 1:1 basis with the Applicant. No such calculation has been put forward in respect of Ms Awopetu's interactions. Yet if one were to very roughly estimate that she was around him for approximately six hours a day over the course of 35 days (five weeks), that would give a total of 210 hours. Even if one reduced the daily hours to only four, the total would only be slightly below that attributable to Ms Finney's contact.

204. The extent of interaction also lends weight to her assertion that the Applicant did require help learning how to use devices such as the cooker and washing machine. Whilst Ms Finney and Ms Graham regarded the Applicant as being very independent, they would not have seen as much of him in a normal domestic setting as Ms Awopetu.

205. As to the second point, Ms Awopetu has never claimed to have been preoccupied with the Applicant's age, nor was it her place to assess that issue. She has never been trained to assess age. She fairly accepted that it was possible that the Applicant was older than she thought. I take that into account. It is also the case, however, that neither Ms Finney nor Ms Graham interacted with the Appellant in a formal role as age assessors. Yet they were both acting in a different role from Ms Awopetu in the sense that they were points of contact for the Applicant to obtain what he needed/requested from "the authorities" (at least as he probably perceived Good2Go and the Respondent to be), or to complain if he felt as though certain things were not right. In contrast, Ms Awopetu played a part in his life, albeit over a relatively short period, whereby she acted as something perhaps akin to a stand-in parent for the young people in the placement; this may be what Mr Jackson had in mind when describing her as having a "mothering character". The different roles played by the three individuals in question, at least as I find the Applicant will have perceived them to be, is a relevant factor (albeit not a particularly significant one). In my judgment it goes to show that the Applicant did not behave/act in a consistently "demanding", "aggressive" or "disrespectful" manner towards other people in general. It militates against a reduction in weight attributable to Ms Awopetu's evidence simply because of her role. At the same time, it militates against increasing the weight attributable to the evidence of Ms Finney and Ms Graham by virtue of their particular roles.

206. Following from the above, whether one could describe Ms Awopetu as having a "mothering character" or not does nothing to undermine her reliability or impartiality. I have no reason to doubt that she was conscientious in respect of her duties as a keyworker. I do not accept the implication that she would in

some way either improperly exaggerate or unquestioningly “stick up” for any particular young person who had been under her care, including the Applicant.

207. On the fourth and final point, I have concluded that Ms Awopetu did not in fact state, or at least intend to say, that the Applicant could travel alone to A&E. The case note, dated 16 September 2021, records that, “Moji [Ms Awopetu] said this [the journey to and attendance at A&E] could take 5 hours and he’d have to go alone. Moji advised she would send over an email for me (Alice Graham, Social Worker) to request this.” On the face of it, I can see the point being made by the Respondent: it might suggest that Ms Awopetu was confident that the Applicant could go alone to A&E, which in turn suggested that she believed him to be an adult. There are two contraindications to this interpretation. The first is that for Ms Awopetu to have made such a suggestion, or to have at least intended it, would have been for her to have clearly disregarded her duties as a keyworker at the placement in charge of young persons in local authority care. It would, it seems to me, have been a breach of either her contract of employment, or the terms of the relationship between Aden Homes and the Respondent. To my mind, it would have been a very serious matter. To make a finding against in Ms Awopetu’s clear denial of the allegation, I would need to see cogent evidence. In this regard, there are no other aspects of her evidence which call her overall credibility into question.

208. The second point relates to the context of the case note as a whole. Prior to the content quoted above, there is a sentence stating that Ms Graham had noted that someone would need to accompany the Applicant to A&E. When this is read together with the sentences quoted above, it is a reasonable

interpretation, and one which I adopt, that Ms Awopetu had initially said that no one could go with the Applicant to A&E because, as she said in evidence, she or someone else would have to remain at the placement. Further, the last sentence shows a confirmation by her that she would email Ms Graham to request that someone was made available to accompany the Applicant. That interpretation is consistent with her oral evidence. It is consistent with what I accept were her duties/obligations in respect of presence at the placement and ensuring the well-being of the young people under her care at the time. The case note in question, together with the follow-up case note to which I was referred, do not provide cogent evidence to undermine her evidence to the extent that it should not be accepted.

209. In light of the above, Ms Awopetu's evidence is to be accorded weight. That weight is, I find, a good deal more than minimal. It is substantial. She interacted with the Applicant for a significant number of hours, albeit only over a five-week period. This interaction occurred within the close quarters of a placement, in which the Applicant resided with three other young people who were in fact aged 16-17. Ms Awopetu was the keyworker for the Applicant and one other young person. It follows, I find, that she would have had a real focus on the Applicant and his actions and behaviours during the period in question. Her experience of the Applicant would not have been simply in a relatively formal setting (for example, interviews or review meetings), but rather in a "normal" day-to-day domestic setting.

210. Ms Awopetu's opinion that the Applicant looked and behaved like a child of "about 17 years of age" is clearly not a precise statement and I bear in mind the obvious margin of error. That

same margin applies, however, to all individuals who have interacted with the Applicant over time. I note that she fairly accepted that her view of the Applicant's age whilst he was at the placement was potentially consistent with him being an adult at the time. However, she was clear in her own mind that the Applicant acted and behaved like other young people who were undoubtedly minors.

211. All-told, Ms Awopetu's evidence is clearly supportive of the Applicant's case.

Mr Taylor's evidence

212. I found Mr Taylor's evidence to be both truthful and reliable. I have no doubt whatsoever that he took his obligations as a witness extremely seriously and that he was conscious of the fact that recalling each and every detail of an event which has taken place some time ago can be difficult, if not impossible. This last point was reflected in his oral evidence. I was impressed by Mr Taylor's readiness to accept that he could not be precise about what exactly had, or had not, occurred in relation to his recording of the Applicant's date of birth as "8 January 2004".

213. I accept that the circumstances surrounding the initial conference with the Applicant were, to say the least, challenging. I find that it took place out of doors, that there was relatively significant background noise (a busy road was close by), that he was approximately 25m apart from the Applicant when taking instructions due to interference with the telephone line, which was used in a three-way conversation with the interpreter, and that Mr Taylor was writing down information on a notebook whilst leaning against his car.

214. Mr Taylor's evidence was that he could have made a mistake in either the original transcription, or whilst he was typing up his notes subsequently. He also stated that an error could have been made by the Applicant himself, or the interpreter.

215. I am satisfied that it is more likely than not that an error did occur in respect of the eventual recording by Mr Taylor of the Applicant's date of birth as "8 January 2004". There is a real possibility that the error occurred in any one of the ways described by Mr Taylor himself. On balance, having regard to the evidence as a whole, I find that the error was a result of Mr Taylor's original recording of the date of birth provided by the Applicant at the conference and conveyed through the interpreter. My alternative finding would be that there was an error by the interpreter, who, after all, was translating over the telephone on a three-way call with a degree of background noise which would have been audible even to him.

216. I find that the error in recording the Applicant's date of birth as "8 January 2004" does not undermine the Applicant's case.

The evidence of non-witnesses

217. I have referred to the observation report from Mr Munyazaki, above. I have placed some weight on this evidence notwithstanding the fact that he did not provide a witness statement and did not attend the hearing.

218. I place no weight on the information obtained from Ms Sinclair, Ms Youssef, and Ms Benabdjili, for the reasons articulated by Mr Jackson in his submissions. The fact that I have adopted this position does not materially detract from the evidence upon which I have placed weight. In other words, the

evidence I have relied on is not dependent upon the information from the three named individuals.

The Applicant's physical appearance

219. Mention is made at certain points in the evidence of the Applicant's physical appearance. For example, the Brief Enquiry form spoke of "deep lines" in his forehead and a prominent Adam's apple.

220. It is well-established that physical appearance is notoriously unreliable as an indicator of age. I appreciate that in some cases it may bear some relevance on the overall assessment. However, in the present case, it carries no weight at all. For what it is worth, my impression of his physical appearance was that he could equally be 18 or 22 years old.

Facebook evidence

221. I find that the evidence relating to the Applicant's Facebook account plays no material part in this case. All it revealed was that his marital status was recorded as "engaged". I have dealt with this issue when considering the age assessment, above.

The absence of contemporary documentation

222. The absence of any contemporary documentation is, in my judgment, of neutral value in this case. This is not a case in which the individual has asserted that he had relevant documentation. Nor is it the case that he could reasonably be expected to have obtained any relevant documentation from Sudan or elsewhere. Thus, the position is that the absence of such evidence clearly cannot assist the Applicant's case, but nor does it detract from it.

Overall finding on the Applicant's age and date of birth

223. Bringing together the analysis and findings already set out, I find that it is more likely than not that the Applicant was born on 1 August 2004 and is currently 18 years old. On entering the United Kingdom and on the initial contact with the Respondent, the Applicant was a child.

224. I have reached this conclusion not without a degree of hesitation in certain respects and very much bearing in mind the absence of a burden of proof on the Applicant. I have not given him the benefit of any doubt. I emphasise that my conclusion is dependent on the body of evidence as a whole. It will be apparent that I have placed significant reliance on Dr Rogers' report as providing an important context to what the Applicant has said and how he has behaved during the age assessment process and these proceedings.

225. The parties are now invited to agree a draft Order which reflects the terms of this judgment and which should include any ancillary Orders sought.

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