

IN THE UPPER TRIBUNAL
(IMMIGRATION & ASYLUM CHAMBER)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

THE KING
on the application of
BDS

Applicant

-and-

ROYAL BOROUGH OF GREENWICH

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 Ms. C. Rowlands of counsel, instructed for the respondent at a hearing held on 23 to 25 January 2024

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

AND UPON the parties agreeing that the Tribunal's determination shall be provided to the Home Office and that the applicant's solicitor will ensure that the determination is sent, noting the applicant's port reference number of KIU/7276495

AND UPON the respondent having applied for permission to appeal to the Court of Appeal

IT IS DECLARED THAT:

(1) The applicant's date of birth is 15 January 2005.

IT IS ORDERED THAT:

- (1) The applicant's application for judicial review is granted.
- (2) The respondent's age assessments dated 15 November 2021 and 28 November 2022 are hereby quashed.
- (3) The applicant and the witnesses referred to in the Tribunal's judgment as "P" and "S" shall not be identified either directly or indirectly.
- (4) The order for interim relief made on 7 December 2022 is hereby discharged.

Costs

- (1) The respondent shall pay the applicant's costs of the application for judicial review, to be assessed if not agreed.
- (2) There shall be a detailed assessment of the applicant's publicly funded costs.

Permission to appeal

- (1) The respondent has applied for permission to appeal to the Court of Appeal.
- (2) The first ground contends that the Tribunal made an error of law by deciding the applicant's pre-hearing application to rely on the ISW report without first giving the respondent an opportunity to make representations. This is said to be a significant error which leads to "an obvious perception of bias" on the part of the Tribunal.
- (3) There was no arguable procedural error in the Tribunal's approach. The issue to be decided on the application was whether the ISW report was *relevant* to the task of determining the applicant's age and date of birth. Matters of *weight* could be (and in fact were) the subject of submissions at the fact-finding hearing itself. Nothing said by the respondent in writing or oral submissions related to anything other than questions of weight.
- (4) The respondent had been served with the ISW report at the same time as the application for it to be admitted was made. The respondent had had ample opportunity to consider the report in advance of the hearing and was plainly in a position to make submissions on it. This was not a case of the new evidence being provided to the respondent the day before the hearing.

- (5) The witness statement from the respondent's social worker was admitted by the Tribunal. This witness statement sought to criticise the ISW report.
- (6) The Tribunal addressed the respondent's submissions and evidence on the weight attributable to the ISW report. Matters of weight are for the fact-finding tribunal to determine.
- (7) Following from this, it is apparent from [112]-[119] of the judgment that the ISW report did not take the applicant's case very much further and attracted little weight in terms of the core issue of the applicant's age and date of birth.
- (8) The question of perceived bias was not raised at the hearing. There is no realistic prospect of an informed observer holding a perception that the Tribunal was biased against the respondent.
- (9) In respect of the second ground of appeal, this again concerns the question of weight. The Tribunal could not have been much clearer as to its holistic approach to the evidence, the attribution of weight, and the fact that the substance of the evidence was more important than procedural matters.
- (10) The third ground of appeal is misconceived. Once again, the question of weight was a matter for the Tribunal. Beyond that, the grounds of appeal overlook the fact that the Tribunal dealt with the various substantive matters considered in the 2022 age assessment report elsewhere in the judgment. That approach was clearly stated at [78].
- (11) In light of the above, I refuse permission to appeal to the Court of Appeal.

Signed: H. Norton-Taylor
Upper Tribunal Judge
Dated 13 February 2024



Case No: JR-2023-LON-001490

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1DZ

13 February 2024

Before:

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between:

THE KING
on the application of

BDS
(ANONYMITY DIRECTION MADE)

Applicant

- and -

ROYAL BOROUGH OF GREENWICH

Respondent

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

Ms C Rowlands, Counsel
(instructed by the Royal Borough of Greenwich) for the
respondent

Hearing dates: 23-25 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the applicant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the applicant or his witnesses, P and S, likely to lead members of the public to identify the applicant or P and/or S. Failure to comply with this order could amount to a contempt of court.

J U D G M E N T

Judge Norton-Taylor:

Introduction

1. The applicant is a national of Iraq, was born in Kirkuk, and is Kurdish by ethnicity. He arrived in the United Kingdom on a boat in the early hours of 27 September 2021. He claims to have been

born on 15 January 2005, whereas the respondent asserts that it is more likely than not that he was born on 15 January 1997.

2. This judgment is therefore concerned with the determination of the contentious question of the applicant's age and date of birth.
3. In undertaking that task, I have been greatly assisted by Ms Benfield and Ms Rowlands, together with their respective instructing solicitors. I would also like to record my appreciation for the services of the Kurdish Sorani interpreter, Mr Sadoon.

Agreed factual background

4. As with many age assessment cases, these proceedings have a relatively protracted history. This is well-known to the parties and is set out comprehensively in the Statement of Agreed Facts. I do not propose to rehearse it in detail here. For present purposes, the core events leading up to the fact-finding hearing can be summarised as follows:

(a) Having been encountered by the Home Office on arrival on 27 September 2021, the applicant was subsequently assessed by the Kent Intake Unit (KIU) as being 24 years old;

(b) Following a referral by the Refugee Council, the applicant was age-assessed by the respondent on 15 November 2021, with the conclusion that he was over 18 years old;

(c) The applicant then instructed his current solicitors and correspondence ensued;

- (d) Between March and November 2022, the respondent undertook a full age assessment (the 2022 age assessment), which ultimately concluded that, although the age assessors believed the applicant to be approximately 27 years old, the stated assessed age was recorded as 25 years old with a date of birth of 15 January 1997;
- (e) Following further correspondence, the current judicial review proceedings were issued in the Administrative Court on 7 December 2022 (CO/4624/2022), together with an application for interim relief. Interim relief was granted on the same date by Johnson J;
- (f) The applicant was provided with accommodation and support by the respondent from 8 December 2022 to date;
- (g) Permission was initially refused and the papers, but was granted at a renewal hearing on 8 June 2023. The case was transferred to the Upper Tribunal for a fact-finding hearing to take place;
- (h) Following transfer, the Upper Tribunal began its case management process, culminating in a case management review hearing on 31 October 2023.
- (i) Amended case management directions were issued on 20 November 2023, with permission being granted for the applicant to rely on an expert report from Dr Alice Rogers;
- (j) By a decision issued on 4 January 2024, I granted permission for the applicant to rely on an Independent Social Worker's report (the ISW report), dated 5 December

2023 and authored by Mr Nana Gyebi and Ms Kemi Omisore;

(k) On 19 January 2024, the usual round-table meeting was conducted without any further material agreement being reached.

The essential legal framework

5. There is little, if any, real dispute between the parties as to the relevant legal framework in this particular case. In summary, the core principles to which I have directed myself are as follows (I do not propose to cite the well-known authorities):

(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 physical 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) At a fact-finding hearing, it is the substance of the evidence which is of primary importance. Matters going to process are very unlikely to be of decisive importance;

(e) Issues of vulnerability must be taken into account insofar as relevant;

(f) 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;

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

6. In respect of (b) and the need for caution when evaluating physical appearance, I note the very recent observations of Fordham J in R (oao Karimi) v Sheffield City Council [2024] EWHC 93 (Admin), at [4].

7. Any reliance on an application of the “benefit of the doubt” should be treated with caution. It is not a requirement of fairness that a person be afforded any such benefit: see HAM v London Borough of Brent [2022] EWHC 1924 (Admin), at [39]. Further, and having regard to the immigration and asylum context (which is in certain respects analogous), there is no substantive principle of law that a person should be given the “benefit of the doubt”: see KS (benefit of the doubt) [2014] UKUT 552 (IAC). Rather, the evidence of a person must be assessed in the round and in the context of any vulnerabilities and other relevant matters which might have an impact on that evidence.

8. I confirm that I have had regard to all of the authorities referred to in the skeleton arguments from Ms Benfield and Ms Rowlands.

The documentary evidence

9. The documentary evidence before me consists of:
- (a) A Trial bundle, indexed and paginated 1-1396 (split between four lever arch files);
 - (b) A supplementary bundle, indexed and paginated 1-142, containing the ISW report and associated documentation;
 - (c) Letter of instruction from Osbornes Law to Dr Rogers, dated 25 July 2023;
 - (d) Additional case notes covering the period 2 August 2023 through to 29 December 2023;
 - (e) A witness statement from Mr Patrick Pondai, dated 16 January 2024, Social Worker employed by the respondent and one of the two age assessors who authored the 2022 age assessment.
10. The application by the applicant to rely on the ISW report and my decision to grant it was the subject of submissions by Ms Rowlands at the outset of the hearing and I now address this issue.
11. The application was made without consent. It was said that the ISW report was relevant to the determination of the applicant's age and date of birth. The report had been served on the respondent on the day the application was made (12 December 2023). In all the circumstances, I deemed it appropriate to make a decision on the papers without requesting

representations from the respondent before doing so. I took this course of action primarily for two reasons. First, the ISW report was in my view clearly of relevance to my fact-finding task. Questions of weight would be a matter for submissions, in writing and/or at the hearing. Secondly, leaving a decision on the application until the first day of the hearing itself ran the distinct risk of an adjournment being sought by the respondent if I had granted it and admitted the ISW report. Making the decision when I did (4 January 2024) allowed the parties to have certainty as to the state of the evidence and to prepare for the hearing accordingly.

12. In respect of Ms Rowland's submissions, they were, as a matter of substance, all about the weight which I should attribute to the ISW report. A series of criticisms of that report were made, but none of them satisfied me that it was wholly irrelevant. There was some merit as to certain limitations relating to weight, but that is a separate matter.

13. I therefore declined to set aside my decision of 4 January 2024. The ISW report and associated documentation has been admitted in evidence.

14. Without objection from the applicant, I also admitted the witness statement of Mr Pondai. He sets out a critique of the ISW report and it was appropriate for his evidence to be considered.

The oral evidence

15. The applicant was called to give evidence. I confirmed that in light of the expert report from Dr Rogers I would treat the applicant as a vulnerable witness within the meaning of the Joint Presidential Guidance Note No.2 of 2010. The applicant was

accompanied by an appropriate adult during the course of his evidence and regular breaks were taken.

16. As with the oral evidence of the other witnesses, I do not propose to recite it here at any length. I have it in full and will deal with relevant aspects of it when setting out my assessment of the evidence in due course. Suffice it to say that the applicant relied on his witness statement, dated 9 January 2023 and was asked questions by both Ms Benfield, Ms Rowlands, and (very briefly) myself. I record here that Ms Rowlands adopted what I consider to be an entirely appropriate position by not asking the applicant specific questions relating to his family (that is a subject which has clearly caused him real distress during the course of his interactions with the respondent).
17. On the applicant's behalf, two friends, P and S, gave evidence. They adopted their respective witness statements and were asked questions.
18. Mrs Sayeeda Ali and Ms Edyta Janczak gave evidence in support of the applicant. Both are ESOL tutors at Croydon College, which the applicant attends. They adopted their respective witness statements and were asked questions.
19. Ms Margarita Fondevila, another ESOL tutor at Croydon College, had been due to give evidence remotely. However technical difficulties prevented this. In the event, Ms Rowlands confirmed that the essential points she would have wished to put to Ms Fondevila had already been put to Mrs Ali and Ms Janczak. She was happy for Ms Fondevila's witness statement to be read.

The parties' submissions

20. The various submissions made in writing and orally are all a matter of record and will be well-known to the parties. Rather than rehearse them here, I deal with those which I consider most pertinent when setting out my assessment of the evidence, below. I emphasise that I have taken all of the points made into account.

Assessment of the evidence

21. In assessing the evidence, I have had regard to the guiding principles summarised earlier in this judgment and also those set out in the skeleton arguments and written closing submissions, and referred to in oral argument.
22. Any holistic assessment must have some form of structure to it. The sub-headings used in what follows are not to be taken as an indication that I have considered the various aspects of the evidence in artificial isolation. Quite the contrary. The different elements are, to a greater or lesser extent, interrelated.
23. I confirm that any specific aspects of the evidence to which reference has been made in writing and/or oral submissions, but which did not expressly feature in my assessment, have not simply been left out of account. Everything has gone into the “pot”.
24. Terms such as “honesty”, “credibility”, “plausible”, “consistent”, and “reliability” can sometimes be used interchangeably, or be intended to have different meanings. I recognise that, for example, an individual can be honest but mistaken; in other words, their evidence is unreliable. In what follows, I have kept in mind that when all is said and done, it is the truthfulness of the applicant’s claim to have been born on 15

January 2005 which is crucial. The various strands of the assessment of the evidence feed into answering that question.

The applicant as a vulnerable witness: impact?

25. Having watched the applicant give his evidence over a sustained period of time and taking full account of Dr Rogers' report and the Presidential Guidance, I conclude that his vulnerability did not have a material impact on his ability to engage with the proceedings and present his evidence.

26. The applicant appeared to understand the great majority of the questions put, and asked for clarification when he did not. He did not appear to have become upset at any stage, although of course I have taken account of the possibility of internal distress. He appeared relatively confident when answering questions and I could not detect any inhibitions which might have been attributable to his vulnerability.

The applicant's account of how he knows his age and date of birth

27. I find that the applicant has been essentially consistent in his account of how he came to know of his age and date of birth. In so finding, I have had regard to all of the evidence pertaining to this issue, including what is set out in the 2022 age assessment report.

28. He has maintained that he had had an identity card in Iraq, which had been kept in the possession of his father. That identity card contained personal information including the date of birth of 15 January 2005. In his witness statement, the applicant asserts that he became aware of his age and date of birth when enrolling at school at the age of 6 in 2011. He claims that it was normal for

people to have an identity card in Iraq and also to be aware of their date of birth.

29. The applicant's evidence sits well in the context of the country information contained within the Home Office's Country Policy and Information Note on internal relocation, civil documentation and returns (version 14.0, published in October 2023). The information contained in section 6 of that document, referred to at paragraph 31 of the applicant's skeleton argument, is supportive of the assertions that: births are administratively recorded; family records are maintained at a local level; civil documentation is required to access a wide variety of services and rights, including access to education; children are required to have civil documentation; civil documentation is required for the enrolment of children in schools.

30. I find that it would have been anomalous if the applicant had not had an identity card in Iraq. It is more likely than not that the identity card would have accurately recorded, amongst other matters, his date of birth. There is no reason why an inaccurate date of birth would have been provided to the civil authorities by the applicant's parents.

31. It is plausible that the applicant would not have been in possession of his identity card when still a child. It is much more likely that such an important document would have been held by his father.

32. It is also plausible that the applicant would have been told about his age and date of birth by his parents when he was enrolled at school. Given the overall importance of identity and personal information in the Iraqi system, I do not regard the age

of 6 as being too young for such information to have been imparted.

33. The applicant has been consistent in terms of when he started and finished school, and the subjects studied during that time.

34. The overall plausibility of the applicant's account of how he came to know of his age and date of birth clearly weighs in his favour when it comes to assessing whether the claim date of birth is accurate.

35. I do of course bear in mind the legitimate point made by Ms Rowlands that a plausible account of how an individual came to know of their date of birth does not necessarily mean that the date of birth put forward on and after arrival in United Kingdom is accurate. What it does do in the present case is to lend support to the applicant's overall credibility, which in turn has an impact on whether he is truthful as to his claimed date of birth.

The absence of identity documentation

36. It has never been suggested that the applicant arrived in United Kingdom with identity documentation and I find that he did not. On his account, he left Iraq with the rest of his immediate family. There is no evidence before me to suggest that he has remaining family members in Iraq who might have been able to obtain a replacement identity document or suchlike. This point has never been put to the applicant. I find that the absence of any identity documentation from Iraq does not damage the applicant's credibility.

The applicant's evidence on his family members, reasons for leaving Iraq, and journey to the United Kingdom

37. I find that the applicant has been consistent in his evidence as to the ages of his parents and younger sister. He plausibly explains how he knew the age and year of birth of his father and mother. I find it credible that he knew the specific date of birth of his sister, as explained in paragraphs 6 and 12 of the applicant's witness statement.
38. There has been no substantial challenge to the applicant's evidence on why he and his family were forced to leave Iraq. It is well-documented that the applicant's home area of Kirkuk was, at least in part, controlled by ISIS (otherwise known as Daesh or ISIL) during much of the period stated by the applicant in his witness statement, namely 2016 to 2018. At least, it is highly likely that the organisation continued to have influence in specific districts even after its general defeat in 2017.
39. The applicant's account that a Shia militia, al-Hasd al-Shaabi (part of what are known as the Popular Mobilisation Units), came into his area after ISIS had left is also credible. Again, it is well-documented that such groups have operated in Iraq. The claimed fear of this particular group is consistent with the applicant's account of his father having worked for Saddam Hussein's regime and participating in the ill-treatment of Shias. It is, in my view, plausible that the group would have had an adverse interest in the applicant's father.
40. The applicant has claimed that he suffered a broken leg after being attacked by members of al-Hashd al-Shaabi. In his witness statement he claims it happened when he was 13 or 14 years old and took place in late 2018 or early 2019. However, it is

recorded in the initial health assessment that the applicant stated he had had no operations, his leg was broken as a result of a “fight” when he was 15 years old. In oral evidence, the applicant denied having said that he was 15 and suggested that a fight was the same as being attacked.

41. I note that in the KIU interview, the applicant did state that his leg had been broken and that he had undergone an operation.
42. It appears to be common ground that the applicant’s leg was in fact broken at some point. It is difficult to assess whether the applicant was lying about certain matters, or simply made errors, or that there was misinterpretation. I accept that an interpreter was present and the third possibility might appear less plausible. It seems a bit odd to me that the applicant would have denied having had an operation, when he clearly had: there would have been no reason for him to have withheld that information. There is a possibility that he had not properly appreciated the nature of the question. It may be that he himself made an error as to his age at the time. I note that the stated age of 15 was not linked to any recording of the year in which the injury occurred. On balance, I am inclined to find that the applicant did make an error at that point and was seeking to divert responsibility for that. To a limited extent, that counts against the applicant’s credibility, but, when considered in the round, this is not of any great significance.
43. In respect of the description of “fight” and “attack”, there can be said to be a difference between the two. On the other hand, to my mind being attacked will often also involve a fight, at least if the victim seeks to resist the assault. This particular point does not materially undermine the applicant’s overall account.

44. At one stage during the age assessment process, it is recorded that the applicant said that he had “joined ISIS from age 11”. I have little hesitation in finding this was an error, probably made by either the assessing social worker or the interpreter. It is inconceivable that the applicant would have stated that he had ever been a member of that organisation, let alone at the age of 11. Even if he has been lying about his account, such bizarre statement would have been highly unlikely.
45. In terms of the journey from Iraq to the United Kingdom, I find that there has been essential consistency and this counts in the applicant’s favour. I mention just one specific aspect of the journey. There is nothing problematic about the evidence of how the applicant became separated from the rest of his family when making the initial sea journey. Although some clarification was made in oral evidence, I accept that in essence the applicant was forced to board another boat and was not then reunited with his family at the other end.
46. It is right to say that a credible account of why family left Iraq and the journey to the United Kingdom does not of itself demonstrate that the applicant is the age he claims to be. Those two aspects of his evidence could be true, but he is simply lying about his age and date of birth.
47. In my judgment, however, it is important to recognise that the provision of a credible account on a variety of matters will often, and in the present case does, lend support to the credibility of the core disputed issue of age and date of birth.

The name “Pana Abdulla” and other dates of birth

48. The respondent has placed a certain amount of significance on the fact that the Home Office initially attributed the name “Pana Abdulla” to the applicant. The applicant strongly refutes that he ever provided that name to anybody.
49. Ms Rowlands posed the question; why would the Home Office officials have recorded that name if the applicant had not in fact provided it to them? At first glance, I saw some force in that point. On reflection, I find it to be more likely that there was an error in the attribution of the name to the applicant. There is merit in Ms Benfield’s submission that a misattribution might have occurred because of the numbers of people being processed at the time and/or the use of a telephone interpreter. Further, it is difficult to see why the applicant would have wished to use a different name (or to have used his correct name and then made up the one he used subsequently): he had no documentation and there appears to be no record of a claim certain details in another country with which the Home Office could have run checks. It is also of some note that the Home Office seemingly agreed without any real objection. There are no contemporaneous notes of any immigration officers or other officials recording that the applicant gave this name.
50. On the same point, Ms Benfield relied on a judgment of the Administrative Court to which reference had not previously been made in writing: R (oao GE (Eritrea)) v SSHD [2015] EWHC 1406 (Admin), with particular reference to [60]. It was said that this case supported the submission that errors can be made by the authorities in respect of an individual’s identity.
51. I did not find GE (Eritrea) to be of any real assistance. First, it was clearly an issue arising on the particular facts of that case

and in no way represents a more general proposition. Secondly, simply as a matter of general experience it is possible that the authorities of any country can make errors in respect of the recording of information, whether that is because of misinterpretation, errors by interviewing offices/police officers, or indeed confusing one individual for another. A claim that an error has occurred is a fact-specific issue and must be considered in the context of the evidence as a whole. That is what I have done here.

52. At one stage, the Home Office documents record the date of birth of "Pana Abdulla" to be 8 September 2004, or 8 September 1997. I cannot see any other references to these dates of birth. There is no underlying evidence to indicate how/when these dates of birth were provided. The respondent has not relied on these when undertaking the age assessment process. The Home Office documentation was subsequently amended without any reference to those dates of birth. Overall, I place no weight on the fact that these two particular dates of birth were at one stage apparently attributed to the applicant. Again, it might be that they were confused with the details of another individual. In this regard I note that at one stage the Home Office had recorded the applicant nationality as Iranian and there is no evidence that he ever made such a statement.

53. The date of birth of 15 January 2001 is of more significance. It appears at various points in the documentary evidence. It is clear that after his arrival in the United Kingdom, the applicant probably disclosed that he had provided the date of birth of 15 January 2001 when encountered by the authorities in an unspecified country on route. He has consistently maintained that this was done under pressure by the smuggler who had told the

applicant that being a child would have led to his onward journey being curtailed. In so far as this aspect of the account is concerned, I find it to weigh in the applicant's favour for two reasons. First, he proactively disclosed information and has consistently stated that 2001 date of birth was false and had been previously provided under duress. Secondly, in my view it is plausible that the applicant would have done what the smuggler instructed him to do. The applicant would have wanted to continue with his journey if for no other reason than to be reunited with his family. Any suggestion that he might be detained by the authorities of another country for being a child would have prevented this.

54. In terms of 2001 being provided as the year of the applicant's birth, the picture is not as clear-cut as the respondent suggests. Having looked for myself at the evidence referred to by Ms Benfield at paragraph 15 of her speaking note, I agree that it does not appear as though the applicant stated that he was born in 2001, other than in the context of confirming that he had given a false date of birth whilst in another country. Stepping back, there is in my view a distinct possibility that confusion arose, leading to a mistaken belief on the part of the age assessors that the applicant had unintentionally stated his year of birth as 2001, which in turn undermined his account. I will return later on to the issue of the applicant's reaction to seeing the year "2001" recorded at one of the age assessment interviews.

55. Amongst the Home Office case notes is the record that the applicant stated that he was "only 17" very shortly after his arrival in this country. As with other points relating to the Home Office documentation, there are no contemporaneous notes relating to how/when this information was obtained. On the

assumption that the applicant did say that he was “only 17”, it would suggest an inconsistency in his account. However, in the context of my overall assessment, it carries very little weight.

Physical appearance and demeanour

56. In this particular case, it is very clear that the respondent has placed significant emphasis on the applicant’s appearance and demeanour. It has featured predominantly throughout the age assessment process and in Ms Rowlands’ submissions.
57. In line with the authorities, I approach the issue of appearance and demeanour with caution, although I do not go so far as to deem these factors to be wholly irrelevant.
58. I start with the applicant’s appearance. The KIU assessors concluded that he was clearly an adult, believing him to be between 24 and 26 years old and ultimately attributing date of birth of 15 January 1997. The assessors observed that the applicant had a deep voice, broad shoulders, a pronounced Adam’s apple, frown lines on his forehead, “broadened and developed bone growth”, and significant facial hair. They stated that the applicant’s physical appearance was “so obvious in terms of age, that there is no doubt about his adulthood.”
59. In the brief age assessment undertaken on 15 November 2021, the assessors noted the applicant’s receding hairline, facial hair, and his “protruding” Adam’s apple, which was “clearly not that of an adolescent.”
60. Pausing there, there seems to me a danger that the assessors at the initial stages of the process had formed such a clear view as to the applicant’s age that this almost acted as a

determinative factor which might have subconsciously closed off any other considerations. Having said that, I appreciate that the assessments did refer to other matters.

61. Leaving aside any potential procedural defects with the KIU and November 2021 assessments, I treat the conclusions on physical appearance with appropriate caution. There is no evidence before me concerning how those from the applicant's particular background "should", or "would normally" look. I have no evidence as to what "broadened and developed bone growth" would look like, or what it inferred as to age. I am unclear as to the chronological significance of a "pronounced" Adam's apple.
62. Having looked at the photograph attached to the Home Office documents issued shortly after the applicant's arrival in this country, it is fair to say that he does not have what might be described as a "young face". On the other hand, the image did not strike me as making it "so obvious" that there was "no doubt" as to the applicant's adulthood. Clearly, I am not a trained age assessor and I fully appreciate that there are margins of error. Yet, I am a fact-finder and assessor of a wide range of evidential sources, which I must consider the context of case-law cautioning against overreliance on physical appearance.
63. The respondent has consistently stated that the applicant was not just an adult at the time, but was probably between 24 and 26 years old. Having regard to the features relied on by the age assessors in the KIU and the assessment on 15 November 2021, I find that the applicant's appearance at that time was not so clear-cut as to justify the attribution of significant weight against his claimed age.

64. I turn to the 2022 age assessment. The respondent has placed emphasis on the fact that the applicant shaved before attending sessions during the process. The suggestion is that he did this in order to appear younger than he in fact was. It does appear from the evidence as a whole that the applicant did not generally ensure that he was always clean shaven. By the time he came to be assessed from March 2022 onwards, it is likely that the applicant would have been aware that the previous brief age assessments had noted his facial hair and that this contributed to their negative view of his claimed age. In my judgment, it is likely that he decided to attend the 2022 age assessment sessions clean-shaven in order to appear as young as possible and that he was being less than entirely frank when he denied this in oral evidence. That being said, the fact that he had significant facial hair when unshaven did not, of itself, demonstrate that he was clearly an adult. Whilst his denial does count against his honesty, it is not a significant matter in the scheme of things.
65. The age assessors did not place reliance on all of the features identified in the KIU assessment. The greatest emphasis related to facial hair. For my part, I do not regard the applicant's facial hair as a particularly reliable indicator of his age. In terms of his voice, the age assessors described it as "not particularly deep", which appears to contrast with the views of the KIU assessors. The prominence of the applicant Adam's apple is noted, but as already mentioned, I have no evidence as to the significance of such a feature. There is nothing before me to indicate that a prominent Adam's apple renders it highly, or even unlikely, unlikely that the applicant is the age claimed.
66. For the sake of completeness, I was obviously able to see the applicant during the course of the hearing. For what it is

worth, by virtue of his appearance only, he could in my view have been anywhere between 18 and about 24.

67. I have taken account of the age assessors' training and experience and have factored in the margin of error. Bringing everything together, including my assessment of the other evidential elements in this case, I do not regard the applicant's physical appearance as representing a strong factor weighing against his claimed age, nor does it add significant weight in support of it.

68. I turn next to the question of demeanour. The age assessors in the 2022 age assessment recorded that the applicant had demonstrated a "high level of reasoning capacity and etiquette one would expect of an adult." His "gentleman and adult like behaviour showing courtesy which can rarely be displayed by children younger in age" was held against him, as it were, as was his overall confident manner. In her submissions, Ms Rowlands urged me to take account of the applicant's charm, charisma, and forceful and argumentative demeanour.

69. I would agree that the evidence as a whole demonstrates that the applicant is a confident individual and probably does have a fairly strong personality. Whilst there might appear to be a tension in describing the applicant as both charming and argumentative, I find that there is no inconsistency. An individual may very well display both traits, depending on the particular situation and their mood at the time.

70. The age assessors were entitled to take the applicant's demeanour at the sessions into account: an evaluation of this will have formed part of their age assessment training. The

respondent is also entitled to rely on the records of interactions by the applicant with other professionals over the course of time.

71. The difficulty with the respondent's position is that the weight sought to be attributed to this particular factor is not, in my judgment, justified on the evidence as a whole. As with physical appearance, demeanour can often be an unreliable indicator of age. Here, I do not agree that the applicant's intelligence, courteous behaviour, and at times forceful expression, represents a particularly reliable indicator that he is much older than claimed. Such traits could in my view readily be displayed by a 16 year old with a particular personality type who had been brought up to respect their elders, or by a 30-year-old with a similar background.

72. The applicant was at times somewhat argumentative during cross-examination. At a couple of points he responded to Ms Rowlands' questions with one of his own. I did get a sense of assertiveness and, to an extent, what might be crudely described as bolshiness. I am astute to the possibility that this was reflective of the mature outlook of someone in their mid-20s who might think they had better things to do and should not be required to answer a lot of questions. Equally, there is the possibility that a fairly mature 19 year old who has not been getting everything his own way (i.e. whose age has been disputed and, previously, whose very name was incorrectly recorded) might present in precisely the same way.

73. Overall, the applicant's demeanour is a relevant consideration and one which perhaps lends some supports the respondent's position (albeit to a materially lesser extent than it

has put forward), but it does not significantly undermine the applicant's claimed age.

The KIU age assessment and initial age assessment of 15 November 2021: general points

74. I have already dealt with the most important aspects of the KIU assessment and that conducted on 15 November 2021 in terms of their substance. I would just add the following.

75. There is merit in Ms Benfield's submissions as to the procedural deficiencies in both assessments. I do not propose to set those submissions out in detail here, but would refer to paragraphs 37-43 of her skeleton argument. In my judgment, both did suffer from material procedural problems, in light of the relevant case-law and the particular circumstances surrounding these two assessments. Whilst I do not accept that the assessment of 15 November 2021 should simply be dismissed out of hand because the respondent withdrew it, it does not carry very much weight in any event.

76. Matters of process can be relevant to the conclusions drawn in any age assessment. Although when it comes to a fact-finding hearing substance is the primary focus, it is not right to say that the outcome of an assessment is all that matters. Such a contention is not supported by the authorities and it stands to reason that compliance with proper procedure is important because otherwise the conclusions reached can be unreliable.

The 2022 age assessment

77. At this stage, I am not primarily concerned with the lawfulness of the 2022 age assessment report. As mentioned earlier, my task now is really more about substance over process.

78. I have addressed the various substantive matters referred to in the assessment (and elsewhere) under other sub-headings in this judgment and do not repeat them here.
79. The procedural criticisms levelled against the 2022 age assessment report by Ms Benfield are that: (a) it did not involve an adequate minded-to process; (b) failed to undertake sufficient enquiries; and (c) failed to provide adequate reasons for the conclusions drawn.
80. As to (a), there is merit in the fact that three particular points were not put to the applicant at the minded-to meeting, namely his position as captain of a football team, watching a named footballer on the Internet, and that he had tried to manipulate the assessment process by stating that he felt suicidal. I cannot see reference to any of the points in the minded-to section of the report.
81. As regards (b), I am satisfied that sufficient enquiries were made from other sources, albeit more could have been done.
82. As regards (c), the reasoning is brief and could have been more extensive. Whilst I have set out my own assessment of the evidence as a whole in respect of the matters relied on by the age assessors, the reasons they provided were intelligible. It is the case, however, that the consequence of my overall assessment is that those reasons do not stand up.
83. I do not discount the evidential value of the report simply because of procedural deficiencies; the weight I attribute is reduced only by a small margin by virtue of this consideration.

The two age assessors did have relevant experience and had been trained. They conducted a number of sessions and addressed relevant features of the applicant's circumstances. They were of course addressing the subject (the applicant's age and date of birth) which involves margins of error and a variety of inter-related considerations.

84. I place weight on the 2022 age assessment, but when viewed in the context of the entire evidential picture and in particular my assessment of the substantive matters addressed in the report, the weight is not significant.

The witnesses' evidence

85. In assessing the witnesses' evidence, I have of course borne in mind the fact that none of them are trained in age assessments, that they appeared in support of the applicant's case, and that there is the possibility that they have been well-intentioned but naïve.
86. In respect of P, I accept that he is a recognised refugee and was born in 2004. He quite properly acknowledged that he had not had much experience of age assessments and that he wanted to support his friend, the applicant. He was consistent with the evidence of the applicant and S in that he had been in the same class the previous year.
87. I find that P gave honest evidence. I accept that he has no doubt that the applicant is the age he claims to be. He has spent a not inconsiderable time in the applicant's company. I accept the evidence that, as far as he was concerned, P has had no reason to think that the applicant is 8 years older than claimed, or indeed any other figure. The weight I attribute to P's evidence is limited

to an extent by the obvious difficulties faced by any layperson in judging the particular age of someone else. Having said that, what he has said is deserving of some weight.

88. Many of the same considerations apply to S's evidence. I find him to have been an honest witness. He was consistent and answered questions in a straightforward manner. He is 19 years old and was a classmate of the applicant in the previous year. As with P, I accept that S has had no reason to believe that the applicant is much older than claimed. I attribute some weight to his evidence.

89. I found Mrs Ali to be an impressive witness. In my judgment, there was no indication whatsoever that she had attended the hearing simply to support the applicant no matter what. It came across strongly that she was a thoughtful and dedicated educational professional who valued her experience in standing. Whilst it is of course impossible to delve into anyone's subconscious, on what I read and saw, Mrs Ali was neither naïve, nor unconsciously inclined to support the applicant because of sympathy or some other position of principle.

90. The witness has what I consider to be significant relevant experience in teaching young people in the cohort 16-19 year-olds, as well as in respect of those undertaking GCSEs. Her witness statement was clear and measured. Her oral evidence in particular stood out and, combined with her statement, leads me to attribute substantial weight to what she has had to say.

91. Mrs Ali explained that she had been the applicant's ESOL tutor at Croydon College for the 2022/2023 academic year and that this had involved 9 hours face-to-face teaching time a week.

Across that academic year, I find that there was significant direct interaction between Mrs Ali and the applicant, notwithstanding absences which she confirmed in her evidence. The amount of interaction is relevant to her ability to provide probative evidence as to the applicant's age in the context of the cohort in which he was learning and she was teaching.

92. Mrs Ali made it very clear that she was aware that age disputes relating to students at Croydon College did occur on an annual basis. She stated, and I accept, that she would give an honest opinion as to age if asked.

93. Mrs Ali was in my view well-placed to provide evidence on the applicant's level of English at the time he enrolled at Croydon College and during her tutelage of him. She explained that the designation of "hi pre-entry level" for the ESOL course meant that the applicant knew his alphabet, two-letter words, consonants, his name, where he was from, and his age. She described his progress as "outstanding" and that he was able to pick up English quickly. I regard her evidence on the applicant's level of English for the period September 2022 until June 2023 as more valuable than that of the age assessing social workers.

94. The witness gave evidence about the applicant's demeanour and conduct in class. He chatted a lot, particularly with other Kurdish students and would repeatedly use his mobile phone in the classroom. Mrs Ali explained that she had to repeatedly ask him to speak English and not to be distracted by his device. She stated that she did not regard the applicant as a "leader" as many of the students were loud. Mrs Ali's evidence was that the applicant had been confident in providing answers and asking for help if necessary, that he was fairly intelligence,

and that he had always acted in a respectful manner towards her. I find all of this evidence to be reliable.

95. Mrs Ali was asked about the applicant's attendance. She accepted that there had been absences. The suggestion underlying this line of questioning was that the applicant might have been working, which in turn suggested that he was older than claimed. I found Mrs Ali's response to this to be convincing. I accept that tutors were trained to assume that low attendance could be a result of a student working: that inference was a default position. I accept that she had noticed that the applicant had a skin condition and that this had been corroborated by a prescription. I accept that she contacted the applicant social worker, as required. I also accept that the skin condition in question arose in the spring term and that attendance had been "impeccable" between September and December 2022. There is no inconsistency in the evidence.

96. Finally, Mrs Ali's evidence as to her ability to give an opinion on anybody's age was strong. She candidly accepted that her observations of the applicant's behaviour in class did not necessarily make him the age he came to be. However, in the context of her overall experience, there was probative value in her response that someone who was 25 years old would, for example, have stopped using their mobile phone in class, whilst a teenager would probably need constant reminding. More importantly, during re-examination, Mrs Ali emphasised her safeguarding responsibilities as a tutor. She was permitted to teach only those in the 16-19 age cohort and was absolutely clear that if a student appeared older than appropriate, contact with the college's safeguarding team was required. She explained that such contact did occur, most often in September when students

first enrolled on the ESOL course. The fact that Mrs Ali had no concerns about the applicant's place within her class during the 2022/2023 academic year is of relatively significant evidential value in my assessment and I place real weight on it.

97. Overall, taking full account of the fact that Mrs Ali is not a trained age assessor, her experience, standing, interaction with the applicant over time, and the candid approach to her own evidence, I find that what she has had to say provides strong support to the applicant's case.

98. I find that Ms Janczak provided honest evidence. She answered the questions put to her candidly and did not seek to embellish anything. The significance of her evidence relates more to her position as a foster carer than her role as a tutor at Croydon College. I find that she was the foster carer for M, a young Kurdish man who was born in 2004, until he moved away in September 2023. I find that M was friends with the applicant and that Ms Janczak had witnessed them interacting at her home as well as at college (she was a tutor there, although she only caught the applicant for a short time). It seems to me that Ms Janczak would have had M's best interests at the forefront of her mind as his foster carer and that if she had had any concerns that the applicant was much older than M, she would have communicated these, or at least would not have agreed to be a witness on the applicant's behalf. I reject any suggestion that she would have given positive evidence no matter what her view of the applicant's age was. I place a fair amount of weight on Ms Janczak's evidence.

99. Ms Fondevila did not of course actually give evidence. Her witness statement evidence was not tested and that does reduce

the amount of weight I might otherwise have given to what she has said. It is fair to say, however, that she had interacted with the applicant for a not insignificant period of time between January and July 2022 and then from September 2022 until the end of the academic year 2022/2023. I have no reason to find that her written evidence is untruthful or otherwise wholly undermined by naïveté and/or a desire to help the applicant no matter what. I place some weight on Ms Fondevila's evidence.

The evidence from others with whom the applicant has interacted

100. In my judgment, there is real merit in Ms Benfield's submission (set out at paragraph 54-58 of her speaking note) that during the course of a little over 2 years during which the applicant has been in the care of the respondent, no professionals involved in his care have raised any concerns as to his age.

101. Having gone through the evidence referred to for myself, I conclude that Benfield's analysis is accurate and the essential point she makes carries real weight, acknowledging as I do that these individuals were not subject to cross-examination.

102. It must be remembered that the respondent's case is that the applicant is very much older than he claims; a margin of 8 years. Having regard to the range of individuals who have had contact with the applicant over the course of time, together with their responsibilities, experience, and the duration of the interactions, it is improbable that none of them have raised concerns.

103. I say this having had regard to the fact that they are not age assessors, nor have they been trained in that particular field. Yet they include those in charge of the placements at which the

applicant has lived, his allocated social worker, his key worker, and the independent reviewing officer. It is of course possible that the applicant has pulled the wool over their eyes, as it were, or that they have all been naïve and much too credulous. That is, however, an unlikely state of affairs.

The applicant's mental health

104. There is no challenge to the expertise of Dr Rogers. In my view it was appropriate for the applicant's representatives to commission her to prepare a report. Whilst the evidence in general about the applicant's mental health is not entirely consistent, there was certainly a sufficient basis on which to hold concerns.
105. I place weight on Dr Rogers' report. She was provided with all relevant documentation and clearly undertook a careful assessment of the applicant's mental health according to relevant diagnostic tests.
106. I accept that Dr Rogers' assessment and opinions are not necessarily probative of age. I also accept that the applicant himself has stated at various points that he did not require mental health support and this appears to have been the view of a GP in February 2022. The applicant was in fact discharged from CAMHS in July 2022. These are relevant considerations.
107. The value of Dr Rogers' report is that it provides expert opinion on the existence of emotional dysregulation, as opposed to depression or PTSD, and the relevance of this in the context of the applicant's presentation and conduct during, for example, age assessment meetings.

108. As I read her report, Dr Rogers' summary opinion was as follows. The combination of factors, including separation from his family, the applicant was likely to have been suffering from emotional dysregulation, which in turn would lead to stress and impulsive behaviours. Whilst he was not actively suicidal, his behaviours were likely to the result of his poor emotional state rather than manipulative conduct.
109. I regard that opinion as being relevant to a particular issue relied on by the respondent in this case, namely the applicant's threat to have jumped out of a window during the course of an age assessment meeting in March 2022. The respondent urges me to conclude that this behaviour was manipulative and undertaken in order for the applicant to get his way and effectively subvert the process.
110. I find it to be more likely than not that the applicant was prompted to make the threat in question as a result of emotional dysregulation and impulsive frustration, rather than due to considered and manipulative intent. I have previously addressed the issue of the lack of clarity in the interview notes as to whether the date of 15 January 2001 being referred to was the claimed date of birth provided in another country, or whether the applicant had given that year to the age assessors as actually being correct. I accept that the applicant did look at the interpreters notes and did see that "2001" had been recorded. In light of his general personality and Dr Rogers' opinion, it is of no surprise to me that this made him intensely frustrated and then said what he said. Having acted out of what I consider to be a reliably explained underlying cause, I see no inherent inconsistency with the applicant accepting in cross-examination that he wanted "2001" to be deleted from the record. From his

perspective, and again in light of Dr Rogers' opinion, the aim to have the record "corrected", as it were, was understandable.

111. There is no certainty about any of this. It might be that the applicant simply slipped up and provided what might possibly be his true year of birth - 2001. As with everything else, it comes down to a holistic assessment of the evidence, applying the balance of probabilities. Having done so, I find that this particular issue does not significantly count against the applicant's honesty.

The ISW report

112. I have already stated that the ISW report is relevant evidence. Having considered it in light of the rest of the evidence, I find that it does not in fact add very much more to either the applicant's or the respondent's respective cases by way of probative weight.
113. Before explaining why this is the case, I address some of the criticisms levelled against it by the respondent. I reject the suggestion that the two social workers undertook their task in order to "do the bidding" of the applicant. That is, with respect, an entirely unwarranted criticism. It is beside the point that the interview was conducted at the solicitor's office, as too is the fact that the interview notes are on the solicitor's headed paper. There is no requirement for joint instruction of ISWs. There was no need for a minded-to process because the social workers were not disputing the applicant's age. The two social workers concerned had relevant experience in order to undertake the task for which they were instructed. They were provided with all relevant documentation in advance. I find that the two social workers were independent and not act as advocates for the applicant.

114. I have taken account of the criticisms of the ISW report set out in the witness statement of Mr Pondai.
115. What the report says about physical appearance and demeanour carries with it the same limitations applicable to the respondent's 2022 age assessment (and indeed all others).
116. I see nothing in the report which raises any material inconsistencies with other evidence provided by the applicant. It might be said that the interview had given the applicant another opportunity to state a consistent account, or to try and rectify any difficulties in his previous evidence. I take that into account, but it really adds nothing to the overall evidential picture before me.
117. The report was prepared in December 2023, just over a year after the conclusion of the respondent's age assessment process. The applicant was a year older (whatever his true age) and seemingly further integrated into life in this country. That much is unsurprising.
118. It is of some relevance that the social workers carried out their task in light of Dr Rogers' opinion, but they did not purport to go back in time and provide a critique of the respondent's age assessment report. Nor would that have been a viable task.
119. The analysis section is relatively brief. It is said that the "benefit of the doubt" was afforded to the applicant. But might be so, but this does not really take matters any further. Overall, the analysis and conclusion is not particularly helpful one way or the other. To an extent, it provides some reinforcement of the applicant's case and offers nothing to suggest that he is very much older than claimed. On the other side, it is perhaps

something of a rehearsal of evidence previously given, together with an update of the applicant situation.

Other specific issues relating to the applicant's credibility

120. This sub-section addresses miscellaneous points not covered elsewhere and said to be relevant to the applicant's honesty and/or reliability.
121. The respondent has suggested that the applicant has had a very good level of English from the outset and that this in turn suggests that he either had been in school in Iraq for longer than claimed, or that he might have been in the United Kingdom for longer than claimed.
122. As to the first point, I have already found that the evidence from the tutors at Croydon College is of more value than the opinions of the age assessors: the former were better placed to provide a more reliable view than the latter. Further, there is nothing inherently improbable about a particular individual being able to pick up and progress in the ability to speak another language more quickly than others. Finally, interpreters have been used throughout the applicant interactions with the respondent.
123. As to the second point, the applicant was encountered by the immigration authorities in a boat. It is, in my view, fanciful to suggest that the applicant had been in the United Kingdom for some unspecified period before that encounter.
124. In principle, it might be that an individual taking on the role of captain of a football team might be indicative of a certain age. Plainly, everything will depend on the particular facts. If the

football team in question is made up of adults within a wide age bracket, say anywhere from 18 to 30, it is less likely that an 18 or 19-year-old would be chosen as captain. By contrast, if the team contains only 18 to 21-year-olds, having an 18 year captain is a good deal less unlikely. That is particular so if the individual is talented and has a relatively confident personality. I have not been referred to any evidence which placed the applicant within the first example I have just described. All-told, I simply do not see that the applicant's position as captain of a football team "further suggests maturity" (in the words of the age assessment), thereby materially undermining his claimed age.

125. I do have a real concern as to the applicant's evidence that he was unaware of any benefits of being a child. It seems to me fairly unlikely that the general advantages would not have been known, whether through interactions with professionals or discussion amongst a cohort of friends and acquaintances.

126. Reflecting on the applicant's oral evidence on this issue, it is not entirely clear to me whether his responses were deliberately untruthful, or just based on how he perceives his current position. He did say that he had no knowledge of the benefits or advantages, but then went on to tell me that he did not have a formal identity card showing his claimed date of birth. In a sense, he is right to have said that he did not have the benefit/advantage of possessing an identity card. On the other hand, it is more likely than not that he was aware that being a child required the authorities (in this case, the respondent) to provide accommodation and support, even if there was dissatisfaction on the levels of that provision. On balance, I find that the applicant was not being entirely truthful in his answers,

but this does not carry particular weight in my overall assessment.

127. I do not accept the respondent's submission that the applicant lied about his accommodation and support in December 2021. I have considered the specific references in the evidence cited by Ms Rowlands and Ms Benfield. I find that the evidence, in particular the respondent's case records covering the beginning of December 2021, indicate that the applicant had informed his key worker that he could not cook and then been shown how to prepare a basic dish, and also that no other young person had been in his flat at the time.

128. Similarly, there is nothing of substance in the suggestion that the applicant had been ungratefully demanding money. The evidence to which I have been referred rather suggests that the applicant did request funds, but was not ungrateful or otherwise acting in a manner which somehow indicated that he was older than claimed.

129. There is nothing of any substance in respect of the applicant watching a particular footballer on television. To my mind, it is entirely plausible that there was simply either a failure by the applicant to clearly express himself, or, more likely, that the age assessors misconstrued what was being said. I accept that the applicant had said, or intended to say, that he had watched a famous Iraqi footballer on the Internet. It is, I would have thought, uncontroversial that platforms such as YouTube contain videos of what had been "live" matches. Viewers then watch those "live" matches back, albeit after the event.

Conclusions

130. Bringing together everything set out in my assessment of the evidence, applying the balance of probabilities, and reminding myself that I need not simply choose between one party's case and the other's, I conclude that the applicant has provided a true account of his age and date of birth.

131. I find as a fact it to be more likely than not that the applicant was born on 15 January 2005, was 16 years old on arrival in United Kingdom on 27 September 2021, and is now 19 years old.

Anonymity

132. There is no dispute between the parties as to the appropriateness of an anonymity direction in this case. Having full regard to the important principle of open justice, I conclude that a direction is indeed appropriate on the basis that the applicant has a pending protection claim.

133. In addition, it is appropriate for the anonymity direction to cover the applicant's witnesses, P and S. The former is a recognised refugee in this country, whilst the latter has a pending appeal against the refusal of his protection claim.

Relief

134. I would invite the parties to draw up an agreed Order which reflects the terms of my judgment. The order should also deal with ancillary matters such as any application for permission to appeal and/or costs.

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