



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

Appeal Number: AA/09934/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26<sup>th</sup> June 2014  
Prepared on 3<sup>rd</sup> July 2014**

**Determination Sent**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**MKZ  
(ANONYMITY MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G. Loughran of Counsel

For the Respondent: Mr T. Wilding, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Afghanistan. He states that he was born on 28<sup>th</sup> January 2000 but the Respondent contends that the Appellant was born over a year earlier on 28<sup>th</sup> January 1999. He appealed against a decision of Judge of the First-tier Tribunal Monson sitting at Taylor House on 25<sup>th</sup> February 2014 who dismissed the Appellant's appeal against a decision of the Respondent dated 23<sup>rd</sup> October 2013. That decision was to refuse the Appellant's application for asylum at a time when the Appellant had existing discretionary leave until 23<sup>rd</sup> April 2016. This leave had been

granted in accordance with the Respondent's published asylum instruction on discretionary leave as the Appellant was an unaccompanied child for whom the Respondent was satisfied that adequate reception arrangements in Afghanistan were unavailable. The Appellant was referred to Kent Social Services for an age assessment which was completed on 28<sup>th</sup> June 2013 in accordance with the **Merton** guidelines (**B v Merton London Borough Council [2013] EWHC 1689**) which found that the Appellant was in fact aged 14 years old, born on 28<sup>th</sup> January 1999. This was deemed to be an authoritative age assessment and was accepted by the Respondent.

2. The Appellant's claim was based on a fear of the Afghan Taliban. The Appellant's uncle was a member of the Taliban and the Appellant was told that this uncle wanted to kill the Appellant. Sheep belonging to the Appellant's (second) uncle had been killed by the Appellant's (first) uncle who also wanted to kill the Appellant. The second uncle arranged for the Appellant to come to the United Kingdom.
3. Shortly before the substantive asylum interview took place, Ms Ann Parnell, the Deputy Head of a Virtual School in Whitstable, Kent made an educational assessment of the Appellant, noted the Appellant's schooling in Afghanistan and that the Appellant could communicate in both Pashtu and Dari. Through looks and demeanour the Appellant seemed most appropriately placed in the category 14 to 16 years old. He engaged in the educational assessment with little hesitation and demonstrated an ability to work independently.
4. The Appellant was interviewed by the Respondent on 30<sup>th</sup> July 2013 in Pushto. The Appellant said that he knew he was 12 years old because he had had a vaccination about a month before he left Afghanistan and it was written in the record card that he was 12 years old. The Appellant's representatives raised concerns as to whether the Appellant might have a learning disability and did not consider it appropriate for the Appellant to be questioned further after the interview.
5. In the refusal letter the Respondent described the Appellant's account as being inconsistent and vague. It was not accepted that he was at risk upon return to Afghanistan or that the (first) uncle was in the Taliban. The claim was rejected in its entirety. When the Appellant made an application for asylum he claimed that he was 12 years old but had failed to produce any satisfactory evidence to substantiate this claim. Although the Respondent doubted that the Appellant was from Afghanistan removal directions would be set for Afghanistan unless information was received to confirm the Appellant's true nationality.
6. The Appellant made a statement after both his interview and the refusal letter (it was signed and dated at court) disclosing for the first time that he had been sexually abused in Afghanistan by older boys and also by the agents who had brought him to the United Kingdom. He had been unable to say this in his screening and asylum interviews as he went along with

what the agent had told him to do. He did not understand his own sexuality.

7. When the Appellant's appeal first came before the First-tier Tribunal the matter was adjourned to enable the Appellant to obtain a psychiatric report from a child and adolescent psychiatrist Dr Victoria Holt. She saw the Appellant for two hours on 18<sup>th</sup> January 2014 and produced a report dated 21<sup>st</sup> February 2014. She had not read the Respondent's refusal letter. The Appellant told Dr Holt that his father had been shot as a result of a feud (as opposed to having died in an accident, see questions 64 and 65 of the asylum interview) and that people had paid him and his paternal uncle for the Appellant's sexual services. It was his maternal uncle who was worried that the Appellant would be killed and told the Appellant to leave Afghanistan. The Appellant said he did not like girls. Dr Holt found that the Appellant's mood was objectively and subjectively depressed. The Appellant's presentation and report of symptoms might indicate that he was suffering from PTSD as well as depression. He would benefit from support regarding his sexual orientation. She advised that the Appellant be referred to a child and adolescent mental health service in order for his mental health to be assessed and supported.

### **The Substantive Hearing at First Instance**

8. At the outset Counsel for the Appellant (who did not appear before me) asked for an adjournment on the basis that the Respondent had not formally considered the Appellant's present claim (that he had been sexually abused) nor had the recommendations of Dr Holt (that the Appellant be referred to a mental health service for assessment) been acted upon. The detailed age assessment had not been provided by Kent Social Services only a pro-forma of the age assessment report carried out by Val Mulholland, Social Worker working for Kent County Council's Children's Services (see paragraph 1 above). This pro-forma represented a summary of a more in-depth assessment. According to the pro-forma as quoted by the Judge:

"The Appellant's physical appearance and demeanour strongly suggested that he was a young person. Other factors taken into account in assessing the Appellant as having a date of birth of about 28<sup>th</sup> January 1999 were: observation of interaction with peers; family and social history; education; independent self-care skills; self-disclosure; interaction of person during assessment; cultural or linguistic skills; maturity and developmental consideration; and health or medical considerations if any."

9. The Judge was not prepared to adjourn the matter. The case had been adjourned once already to obtain the report from Dr Holt. The dispute over the Appellant's true age had little or no bearing on the asylum claim. He was on any view a vulnerable minor. Dr Holt's recommendations were not for the purpose of verifying the Appellant's core claim of sexual abuse. The Judge noted in passing that it was open to the Appellant to withdraw his present appeal against the asylum claim and making a fresh claim

based on sexual abuse and/or sexual orientation sometime before the expiry of his discretionary leave to remain in 2016. The Respondent was not prepared to accept the Appellant's current claim of sexual abuse as there has been no physical examination of the Appellant and no real evidence that the sexual abuse had happened. The application for an adjournment was then renewed but the Judge refused it again holding that it was doubtful whether a physical examination report would advance the Appellant's case. Dr Holt's recommendation was not a forensic one but in order to check whether the Appellant had any ongoing physical trauma or infection as a result of being repeatedly raped. The matter proceeded on submissions only as the Appellant was not called to give evidence.

10. The Judge dismissed the appeal stating that whilst the psychiatric report of Dr Holt had some independent probative value in that she was persuaded the appellant was making a genuine disclosure to her it was also necessary to consider the genesis of the sexual abuse claim and the degree to which there was internal consistency in its presentation. The claim of abuse did not surface until one week after the Appellant's original asylum claim had been rejected by the Respondent. The Judge found that delay to undermine the claim. It was not credible that an agent would encourage the Appellant to sabotage the asylum claim by preventing the Appellant from presenting a plausible and coherent account. It was far more likely that the agent would have given the Appellant a plausible cover story to follow. The Judge rejected the Appellant's claim that what he had said in his asylum interview was simply what the agent had told the Appellant to say.
11. The claim that the Appellant was suffering from some form of cognitive impairment when first presenting his claim at interview had now been totally dispelled (particularly in the light of Ms Parnell's evidence). The reason why the Appellant presented as being slow in answering some of the questions was not because he did not understand them but because he was working out how he should answer them. It followed that the Appellant's new case was a series of lies. The Appellant had not given a hint in interview of what was now said to be the real foundation for his asylum claim saying only when asked if he had been personally attacked that his friends had been a little bit mean to him. What he had told Dr Holt did not match what he had said in his appeal statement. The Appellant's presentation on arrival in the United Kingdom was not that of one of someone who was likely to have been in a deeply traumatised state having been repeatedly raped by agents on the journey to the United Kingdom.
12. By contrast Ms Parnell who had seen him had described the Appellant as polite, co-operative and enthusiastic. The evidence pointed very strongly to the Appellant being sent to the United Kingdom by his family for economic reasons not because he was genuinely in any danger. The Appellant had not known the answers to questions about Afghanistan not because of any learning disability but because that was not where he came from. As Pakistan had generally been more peaceful than Afghanistan in the last ten to fifteen years it was reasonable to question

the plausibility of the Appellant's family moving from Pakistan to Afghanistan when the Appellant was aged 4 or 5 rather than the reverse, the Judge noting at paragraph 113:

“Of particular significance is the Appellant's ignorance of Afghan currency which is not consistent with his claim that his abusers would give his uncle money in exchange for being allowed to use the Appellant as a sex slave.”

Even after a liberal application of the benefit of doubt there were no substantial grounds for believing that the Appellant was sexually abused in Afghanistan or sent by his family to the United Kingdom because his maternal uncle wanted to kill him.

### **The Onward Appeal**

13. The Appellant appealed against that decision in grounds settled by Counsel who had represented him at first instance. The first ground was that the Judge had erred in law by failing to adjourn the hearing. Social Services had not engaged with the Appellant since the report of Dr Holt due to the illness of the allocated social worker. There was however to be an appointment with Social Services the day after the hearing (that is to say 26<sup>th</sup> February 2014 as the hearing was on 25<sup>th</sup> February). According to the grounds, at this meeting:

“It was anticipated that Social Services would facilitate his referral to other professionals specialised in dealing with the survivors of childhood sexual abuse. It was anticipated that the context of expert therapy and support would enable [the Appellant] to make fuller and more reliable disclosure of his history of sexual abuse.”

14. Counsel for the Respondent had not objected to the Appellant's application for an adjournment. By refusing the application the Judge had erred by directing himself that there was a high threshold under paragraph 21(2) of the Tribunal Procedural Rules. In fact that test was that the Tribunal had a duty to ensure that proceedings before it were fair and the grounds cited **SH Afghanistan [2011] EWCA Civ 1284**. The First-tier Tribunal had erred in failing to consider whether it was in the best interests of the Appellant, a child, to be granted an adjournment in circumstances where he was due on the very next day to meet with Social Services with a view to his onward referral to professionals who would be assisting in disposing the traumatic events of his childhood. The Judge had not mentioned when giving his reasons in his determination for refusing the adjournment that this meeting was to take place on the next day. The aim of the appeal should be a collaborative endeavour to get the truth by the best available means (**AK Iran [2008] EWCA Civ 941**). The Appellant's representatives could not question the Appellant about the sexual abuse and therefore the best available means would be for the Appellant to be given time to make disclosure to the relevant professionals. The Judge should have given his reasons for refusing the adjournment request in line with the requirements of Section 55 of the 2009 Act.

15. The second ground of appeal took issue with the Judge's conclusions that the Appellant's account of sexual abuse was not credible. It was an unattractive proposition to say that the child who had a very strong inclination to suppress the truth would nevertheless give hints of the abuse. Ms Parnell, described in the grounds as "an untrained expert", was not in a position to detect symptoms of PTSD. No weight was given to Dr Holt's detailed and unchallenged psychiatric report which described the Appellant as suffering from post traumatic stress disorder and a depressive disorder. The Appellant's account of being hired out as a sex slave for money was consistent with the country background material. A child making an asylum claim could not be expected to have the same understanding of his or her history as an adult would. The Appellant have given a very poor account of himself at interview. The possibility that the Appellant suffered from cognitive impairment had not been excluded, the failure to grant the adjournment had prevented the acquisition of any further evidence about it. The Judge had placed insufficient weight on what the Appellant had said in his statement about why he had not disclosed the abuse. Case authority suggested that most asylum seekers depended on the agent's advice and followed their lead. The inconsistencies in the Appellant's account were assessed without reference to the Appellant's age.
16. The third ground was that the Judge had taken a series of points against the Appellant which had not been raised at the hearing or by the Respondent. These included the lack of trauma which the Judge thought the Appellant had displayed to Ms Parnell, that the Appellant's solicitor had seen nothing in the Appellant's demeanour which suggested that the Appellant might be suffering from PTSD and that the Appellant's claim of homosexuality was inconsistent with the fact that he had been able to conceal that sexual identity and make friends with other Afghan boys. Further the Judge's conclusion that the notion of cognitive impairment had been totally dispelled had not been put to counsel. The fourth ground was that the Tribunal had acted irrationally in rejecting the Appellant's account of his true age. The age assessment was non-**Merton** compliant.
17. Accompanying the grounds of appeal was a statement from the Appellant's solicitor Ms Bezzano. She stated that she had seen the Appellant on 16<sup>th</sup> July 2013 and went through the Appellant's screening interview with him. From the first time she met the Appellant she was of the view that he was a deeply troubled young person and this was reinforced during her meetings with foster carers. She raised her concerns about that at the interview. Commenting on the determination of the Immigration Judge she stated that she had at all stages had difficulties in obtaining instructions from the Appellant which included the meeting on 16<sup>th</sup> July 2013. She had not assumed that the Appellant had been sent to the UK for economic reasons. She had assumed rather that he was genuinely in danger of his country of origin. The Appellant's troubled presentation concerned her enough to feel that professional attention was warranted. This statement was dated 14<sup>th</sup> March 2014 the same date as the Appellant's grounds of onward appeal settled by Counsel. What was

noticeable about the statement was that it made no reference to the meeting that was said to be due on 26<sup>th</sup> February 2014 and which featured prominently in the grounds of onward appeal.

18. Permission to appeal was refused at first by First-tier Tribunal Judge Shimmin on the papers on 24<sup>th</sup> March 2014 because it was lodged out of time. The application was then renewed on the same basis to the Upper Tribunal where it came before Upper Tribunal Judge Reeds on 22<sup>nd</sup> April 2014. She granted permission to appeal stating that ground 1 (the failure to adjourn) raised a point of general importance concerning the approach to adjournment applications in circumstances where the best interests of a child are potentially relevant. "Whilst the remaining grounds submitted may in some respects give the appearance of being a disagreement with the findings of fact made, I grant permission on all grounds." She then gave directions for the hearing which was to be confined to the issue of whether there was an error of law. If it was found that there was an error of law and it was considered that the decision could be remade on the evidence that was before the First-tier Tribunal the Tribunal could proceed to do so at the hearing.
19. Responding to the grant of permission, the Respondent wrote to the Upper Tribunal on 21<sup>st</sup> May 2014 that the Respondent opposed the Appellant's appeal.

"While the lengthy grounds of challenge are persuasive to some extent it is considered that a reading of the equally lengthy determination shows that the Judge has in fact directed himself appropriately and come to conclusions that were open to him on the evidence."

The Judge had given a very thorough and fair consideration of the application to adjourn. He was entitled to conclude that an adjournment was not necessary in line with the guiding principles of the Procedure Rules cited. Having acknowledged that late disclosure of sexual abuse was by no means uncommon and should not be held to be damaging to credibility per se, the Judge was nevertheless entitled to find on the particular facts of this case that the Appellant's account could not be believed for the detailed reasons he gives.

### **The Hearing Before Me**

20. In oral submissions Counsel stated that she relied on the grounds of appeal. I queried with Counsel what had happened at the meeting on 26<sup>th</sup> February 2014 as it was not mentioned at all in the solicitor's statement. Counsel stated that the meeting had taken place and that the Appellant was receiving ongoing support from Social Services. He now saw his social worker on a regular basis. There were in fact no referrals made as a result of that meeting on 26<sup>th</sup> February 2014. The solicitor had not referred to the meeting as her statement was directed towards ground 3 of the grounds of onward appeal (taking a point against the Appellant not raised

at the hearing in relation to what the solicitor did or did not infer from the Appellant's presentation).

21. Counsel argued that the adjournment should have been granted because the full age assessment was required and had not been provided. Failure to adjourn was not in the Appellant's best interests. It was not clear from the determination on what basis the adjournment had been sought. There was no prejudice to the Respondent in adjourning and the Respondent had not objected to the adjournment.
22. In relation to ground 2 the Judge had failed to give weight to Dr Holt's report that the Appellant was suffering from PTSD. As to ground 3 the Appellant's solicitor's witness statement made clear that she did have concerns about the Appellant's presentation and points had been taken against the Appellant not previously raised. The solicitor had responded to the Judge's point that she had said nothing about encountering any difficulties in taking the first witness statement from the Appellant. From that it was to be inferred that there was nothing about his demeanour that indicated to her that he was suffering from PTSD whereas his presentation had concerned her. In relation to ground 4 the Appellant had given a credible account of his age. The Appellant had been unable to obtain the detailed age assessment report.
23. In reply the Respondent stated that although permission had been granted on all grounds it was clear that the Upper Tribunal Judge was most taken with ground 1, the failure to adjourn. The difficulty for the Appellant was that he could not show what material difference there would have been if the case had been adjourned. Four months on the Appellant now has a specified social worker but no further evidence has been submitted as to the meeting that took place the day after the hearing. It was therefore not known what more could have been obtained from Social Services. The Judge was aware that the Appellant was a vulnerable minor and was conscious of his duty under Section 55. The Judge had listened to the submissions. It could not be said that he was materially wrong. Although Kent Social Services had still not provided the detailed age assessment the Appellant could have obtained one of his own either before or since the hearing. It was not right to say that there was no evidence that went against the Appellant's assertion of his age.
24. The Judge's findings were open to him and Grounds 2 to 4 were merely a disagreement with them. The Presenting Officer at first instance had put the Appellant on notice that his new claim of sexual abuse was disputed. Just because the Respondent did not oppose an application for an adjournment did not mean that the Judge's refusal to adjourn was a perverse decision. An application by the Appellant not opposed by the Respondent was different to a joint application by both parties for an adjournment. Ground 1 had little merit. Discrepancies between the Appellant's account in his statement and what he said to Dr Holt were not subtle, they leapt off the page. At one point the Appellant said he was at school in Afghanistan for five years, another that he was not at school for seven. That was a glaring discrepancy. The Respondent had raised the



issue of whether the Appellant really was from Afghanistan in the refusal letter. The Judge had engaged with the evidence. The determination was sound.

25. In response Counsel argued that there was a material difference between the situation now and the circumstances at the time of the hearing before the First-tier as the Appellant now had regular contact with a named social worker. If there was to be a fresh substantive hearing evidence could be provided resulting from that. That evidence would have been before the First-tier if the adjournment had been granted. Without further evidence of age it was perverse not to accept the Appellant's account of his age. It was not being submitted that to refuse an adjournment where there was no objection to the adjournment from the Respondent was itself perverse, rather there was no reason not to grant the adjournment because there was no prejudice. There was no explanation why in the absence of prejudice it would nevertheless be in the Appellant's best interests to refuse the adjournment. The entire determination was flawed by the failure to adjourn. It was not lawful for the Judge to say that he understood why there might be a late disclosure of sexual abuse but nevertheless the Appellant should have mentioned it earlier. The determination should be set aside and the matter re-heard.

## **Findings**

26. The issue I have to decide is whether there was an error of law in the Judge's determination such that it should be set aside. If I find there is not, then the decision will stand. It is fair to say that the main thrust of the Appellant's appeal against the determination of the First-tier Tribunal was the refusal of the First-tier to adjourn the hearing on 25<sup>th</sup> February 2014. In turn the main thrust of that ground is that a meeting was to take place the next day on 26<sup>th</sup> February which might result in referrals or other steps being taken that could obtain more evidence that would be of assistance to the Appellant in his asylum claim. He might then be able to make further disclosures about what had happened to him. By refusing to adjourn the Judge had prevented the Appellant from obtaining that evidence.
27. There are a number of difficulties with this line of argument. In granting permission to appeal Upper Tribunal Judge Reeds was concerned as to whether in the light of the duty upon the Tribunal imposed by Section 55 of the 2009 Act the best interests of the Appellant as a child required the Tribunal to give the Appellant the opportunity to obtain further evidence about his claim. I do not read Judge Reeds grant to mean that arguably the Appellant should have been granted an adjournment to enable therapeutic work as such to continue with the Appellant. Whilst that therapeutic work may well be in the Appellant's best interests (depending on the view one takes of the Appellant's case), that is a matter outside the Tribunal proceedings which were concerned with the evidence that could be put to the Tribunal in support of the Appellant's claim. The only basis therefore on which the Judge could have adjourned the hearing on 25<sup>th</sup> February was if (adopting the test in **SH Afghanistan**) it was fair to give

the Appellant an opportunity to obtain further evidence which might flow from the referrals for example recommended by Dr Holt.

28. Importantly no such referrals were made. Indeed the meeting on 26<sup>th</sup> February appears merely to have restored the status quo in that the Appellant now had regular meetings with his social worker which he had not had prior to 25<sup>th</sup> February because of the illness of the allocated social worker. What did not happen at the meeting on 26<sup>th</sup> February is that any referrals whether those recommended by Dr Holt or otherwise, had taken place. The Judge was entitled to conclude that Dr Holt's recommendations which have not yet been acted on were not for an evidential purpose that is "to verify the Appellant's core claim of sexual abuse" as the Judge put it at paragraph 83. Whilst it is correct that the Judge does not refer in his determination to the fact that he was told that the meeting was to take place the next day on 26<sup>th</sup> February, it is evident from a fair reading of his determination that he had in mind what Counsel had said and that he could see that no useful purpose would be served by an adjournment in such circumstances.
29. In fact as matters turned out the situation was less persuasive than the one presented to the Appellant since no referrals were made at the meeting on 26<sup>th</sup> February. The case would thus have been in no different a position at the end of a period of adjournment than it was on 25<sup>th</sup> February. In that context the Judge's remark that it would have been more in the Appellant's interests to withdraw his current asylum claim and to in effect start again nearer the time when his existing discretionary leave was about to expire made far more sense. It was far more likely to be in the Appellant's best interests (assuming that there was merit to the Appellant's claim of having suffered sexual abuse) to withdraw his claim and start again rather than proceed with what on any view was a muddled account.
30. As the Respondent did not accept the Appellant's second claim of suffering sexual abuse it was for the Appellant to establish to the lower standard that there was a reasonable chance that his account was true and that he would therefore be at risk if now returned. Whilst it might have been more helpful for the Judge to have referred specifically to **SH Afghanistan** in terms rather than rely on the provisions of the Procedure Rules (which had not featured prominently in the Court of Appeal decision in **SH**) it cannot be said that the Judge in considering the application for adjournment did not have in the back of his mind that the test was one of fairness. He carefully listened to the arguments and he gave sound conclusions for his reasons as to why the case should proceed. If the Appellant wished to proceed with his appeal on the grounds of sexual abuse, there was little purpose to be served by an adjournment so as to enable the meeting on 26<sup>th</sup> February to take place. With the benefit of hindsight that decision of the Judge's is if anything reinforced. Indeed the grounds of onward appeal have a very noticeable gap by referring to the meeting that was to take place on 26<sup>th</sup> February without stating what the outcome of that meeting was. The grounds to that extent gave a misleading impression of the importance of the meeting on 26<sup>th</sup> February.

31. The fact that the Respondent did not object to the application for an adjournment was not a decisive factor. As the Judge made clear the Respondent was not asking for an adjournment, e.g. to obtain further reports etc., but was simply not opposing the Appellant's application. The burden still fell on the Appellant to justify why an adjournment should take place in the light of the Tribunal's overriding objective to conduct proceedings fairly and expeditiously. The Judge was not satisfied that the Appellant was able to demonstrate this and subsequent events have proved the Judge was right.
32. In relation to the remaining matters considered of less importance by Upper Tribunal Judge Reeds, it is difficult to see how they amount to anything more than a lengthy disagreement with the Judge's findings. The Judge was conscious that he was dealing with a vulnerable minor and was also conscious that there might be quite understandable reasons why the account had come out in the way that it had as opposed to being disclosed immediately. However the assessment of the evidence which was before the Judge was a matter for him. It was for him to decide what weight he placed on the evidence. He was concerned about inconsistencies which were quite unexplained between the Appellant's witness statement and what he told Dr Holt. He was concerned about why the family should move from the relative safety of Pakistan to the more dangerous environment of Afghanistan in the context of the fact that the Appellant appeared to know little about Afghanistan including its currency. The Appellant had told Dr Holt that he had not gone to school from the age of 7 whereas he told Ms Parnell he had attended a state run school for five years in Afghanistan. Even given the Appellant's age these were matters for which it was reasonable to expect the Appellant to show some degree of consistency. It was open to the Judge to draw an adverse inference from such matters.
33. Whilst the grounds of appeal sought repeatedly to portray Ms Parnell as being non-expert, she was a Deputy Head of a school and thus experienced in dealing with children. She was not giving an expert opinion on whether the Appellant had suffered from PTSD. What she was doing was recording her observations (inter alia) on the Appellant's demeanour. The denigration of her evidence in the grounds of appeal was therefore misconceived. The Judge was entitled to place weight on her observations of the Appellant's demeanour and to draw a conclusion from that that that too damaged the credibility of his late claim of sexual abuse.
34. The third ground raised is that the Judge took a series of points not raised at the hearing or by the Respondent. This ground has very little to it. The Judge's criticism of the solicitor's evidence about the asylum interview was that there was a strong element of subjectivity. It was obvious from the transcript of the interview that the Appellant had no apparent difficulty in answering questions about his family circumstances. It was for the Judge to draw a conclusion on the Appellant's apparent inability to answer questions in a way which advanced his asylum claim. The witness statement taken earlier did not disclose a viable asylum claim. The

concern that the Appellant might be suffering from a learning disability flowed from his failure to be able to answer simple questions about Afghanistan. If indeed the Appellant had a learning disability that should have been apparent for example from Dr Holt's report. While she expressed concerns about the Appellant's mental health, she stated there was no evidence of a learning disability. It was also evident from the evidence of an experienced educationist Ms Parnell that the issue of the Appellant suffering in some way from a cognitive disorder had been resolved. The Appellant's solicitors had persisted with the claim that the Appellant might be suffering from a learning disability because of his failure to answer questions about Afghanistan. The Judge's conclusion was far simpler; the Appellant was unable to answer questions about Afghanistan because he was not from Afghanistan. He had no learning disability at all. If the Appellant's representatives wished to advance the argument that the Judge had taken a point against the Appellant not raised at the hearing that was decided on submissions it was incumbent upon the Appellant's representatives to provide some evidence that the Appellant really was suffering from a learning disability but beyond a concern by the solicitors no such evidence has been provided. In those circumstances the conclusions of the Judge were open to him and there was no unfairness in the conduct of the proceedings.

35. The final ground is that the Judge acted irrationally in rejecting the Appellant's account of his age. Although it is correct that the Judge accepted the evidence contained in the pro-forma (supported by Ms Parnell) it was open to the Judge to state as he did at paragraph 115 that the argument over the Appellant's age did not impact to any significant degree on the asylum claim or the Appellant's general credibility. The difference between the age assessment conducted by Kent Social Services and the Appellant's claimed age was only one year and given that at all relevant times the Appellant was clearly below the age of 15, it is difficult to see how much weight could be placed on a finding either that the Appellant was correct in what he said or he was not. The argument as to the Appellant's age was something of a red herring which distracted from the issues in the appeal. As the Judge put it at paragraph 115 the finding that he had just turned 15 as opposed to being currently 13 "does not impact adversely on the Appellant's general credibility". That ground in short does not take matters significantly further.
36. The Judge gave very careful consideration to the relevant issues in this case but the case was never going to be entirely straight forward given that the account which the Appellant was now putting forward differed significantly from the one which he had given in interview to the Respondent. In those circumstances it was the task of the Judge to analyse the evidence which he did scrupulously fairly bearing in mind both the effect of age on an assessment of credibility and the Tribunal's duty under section 55. The Judge gave cogent reasons for the conclusions that he arrived at which were open to him on the evidence before him. Subsequent events have borne out that the Judge was quite right in the approach that he adopted towards the hearing. I find that there is no

material error of law in this determination and I dismiss the Appellant's appeal against it and uphold the decision of the First-tier Tribunal.

**Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it. I dismiss the Appellant's appeal.

Appeal dismissed.

I continue the anonymity order made by the First-tier Tribunal.

Signed this 28th day of July 2014

.....  
Deputy Upper Tribunal Judge Woodcraft