



JR-2022-LON-000100

IN THE UPPER TRIBUNAL
IMMIGRATION & ASYLUM CHAMBER

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW

BETWEEN:

**THE KING on the application of
F (by his litigation friend Daniel Smith)**

Applicant

-and-

LONDON BOROUGH OF BRENT

Respondent

ORDER

BEFORE Upper Tribunal Judge Rimington

HAVING considered all documents lodged and having heard Ms. A Benfield of counsel, instructed by Bhatt Murphy Solicitors for the Applicant and Mr. J Swirsky of counsel, instructed for the Respondent at a hearing held on 31 August and 1 September 2022

IT IS DECLARED THAT:

(1) The Applicant's date of birth is 1 August 2001 such that he was 19 years of age upon entry to the UK on 20 May 2021.

IT IS HEREBY ORDERED THAT:

(2) The application for judicial review is dismissed in accordance with the judgment attached.

(3) The Applicant shall not be identified directly or indirectly.

(4) The order for interim relief made on 1 June 2022 is hereby discharged.

(5) The Applicant shall pay the Respondent's costs of the claim (including the costs reserved) not to be enforced without the permission of the Tribunal and subject to an assessment of the Claimant's ability to pay under the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, s26. Any costs shall be the subject of a detailed assessment, if not agreed.

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

Permission to appeal to the Court of Appeal is refused. Neither representative attended hand down of the judgment and no grounds were raised at the hand down and I consider there to be no arguable error in my judgment.

Signed: *Helen Rimington* **Upper Tribunal Judge Rimington**

Dated: 4th October 2022

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 04/10/2022

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

IAC-FH-CK-V1

IN THE UPPER TRIBUNAL
JUDGMENT GIVEN FOLLOWING HEARING

JR-2022-LON-000100

Field House,
Brems Buildings
London
EC4A 1WR

2nd September 2022

**THE QUEEN
(ON THE APPLICATION OF F)
(BY HIS LITIGATION FRIEND DANIEL SMITH)**

Applicant

and

THE LONDON BOROUGH OF BRENT

Respondent

BEFORE

UPPER TRIBUNAL JUDGE RIMINGTON

- - - - -

Ms A Benfield, instructed by Bhatt Murphy Solicitors appeared on behalf of the Applicant.

Mr J Swirsky, instructed by the London Borough of Brent appeared on behalf of the Respondent.

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ON AN APPLICATION FOR JUDICIAL REVIEW

APPROVED JUDGMENT

- - - - -

JUDGE RIMINGTON: The applicant is a Sudanese national from Katila in Darfur who states he entered the United Kingdom on 20th May 2021 and maintains that he was a child of 16 years at the time, born on 20th December 2004 and that he is currently 17 years old. He is 'age-disputed' and the sole issue before the Tribunal is the applicant's date of birth. The London Borough of Brent contests that he was an adult when he entered the UK.

2. After entry into the UK on 20th May 2021 the Home Office issued the applicant with an IS97M (a form given if the applicant registers as less than 18 years of age and the UK Borders Agency (Home Office) disputes this) and a BP7 stating that his age had been disputed for the purpose of his asylum claim on the basis that his physical appearance and demeanour very strongly suggested he was 25 years of age or over. He was ascribed a date of birth of 1st August 1995.
3. The respondent conducted a short form age assessment ("the first age assessment"), and this was finalised on 13th September 2021 and concluded that the applicant was "20 or over". It was asserted that the assessment did not comply with the 'Merton' principles and was unlawful.
4. The applicant attended an asylum screening interview at Croydon AIU on 23rd May 2021. He was then referred by Dr Ashi Hameed as a vulnerable child and on 9th July 2021 was referred by the Salvation Army to the National Referral Mechanism ("the NRM"). On 13th July 2021 the NRM determined that there were reasonable grounds to believe that he had been the victim of modern slavery in Libya.
5. Following permission for judicial review being granted by Her Honour Judge Walden-Smith on 17th December 2021, the respondent took the applicant into care of its own motion

and conducted a further age assessment (“the second age assessment”) on 10th, 17th and 21st January 2022 with a further session on 14th February 2022. That age assessment concluded that the applicant was an adult of 23 years and gave him a date of birth of 20th December 1998.

Legal Framework

6. In the leading case of **R(B) v The London Borough of Merton [2003] 4 All ER 280** Stanley Burnton J set out detailed guidance on the process to be followed by local authorities when assessing age which has been repeatedly endorsed. The High Court in **VS v The Home Office [2014] EWHC 2483 QB2** summarised the relevant legal requirements of an age assessment at [78] as follows:

“Drawing on Miss Luh’s helpful summary of the Merton guidelines in her skeleton argument (a summary with which Mr Hansen did not take issue), albeit with some modifications in relation to the authorities which were cited, the relevant guidelines can be summarised as follows:

78. The purpose of an age assessment is to establish the chronological age of a young person.

79. The decision makers cannot determine age solely on the basis of the appearance of the applicant, except in clear cases: Merton per Stanley Burnton at [37].

*80. Physical appearance is a notoriously unreliable basis for assessment of chronological age: **NA v LB of Croydon [2009] EWHC 2357 (Admin)** per Blake J at [27].*

81. Demeanour can also be notoriously unreliable and by itself constitutes only 'somewhat fragile material': **NA** per Blake J at [28]. Demeanour will generally need to be viewed together with other things. As Collins J stated in **A and WK v London Borough of Croydon & Others** [2009] EWHC 939 (Admin) at [56]:

'... What is meant by the observation that he appeared to be comfortable in his body? It is difficult to follow what this does mean and how a discomfort with a changing body can manifest itself. Nonetheless, the assessment of his physical appearance and demeanour coupled with the discrepancies and inconsistencies in his account of how he knew his age could justify the conclusion reached.'

82. There should be 'no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child': see **Merton** per Stanley Burnton at [37-38]. The decision, therefore, needs to be based on particular facts concerning the particular person.

83. There is no burden of proof imposed on the applicant to have to prove his or her age in the course of the assessment: see **Merton** per Stanley Burnton at [38]. This is confirmed also by **R(CJ) v Cardiff CC** [2011] EWCA Civ 1590, in which, at [21], Pitchford LJ said this:

'It seems to me that once the court is invited to make a decision upon jurisdictional fact it

can do no more than apply the balance of probability to the issue without resorting to the concept of discharge of a burden of proof. In my view, a distinction needs to be made between a legal burden of proof, on the one hand, and the sympathetic assessment of evidence on the other. I accept that in evaluating the evidence it may well be inappropriate to expect from the claimant conclusive evidence of age in circumstances in which he has arrived unattended and without original identity documents. The nature of the evaluation of evidence will depend upon the particular facts of the case.'

84. In similar vein, benefit of any doubt is always given to the unaccompanied asylum-seeking child since it is recognised that age assessment is not a scientific process: see **A and WK** per Collins J at [40].
85. The two social workers who carry out the age assessment should be properly trained and experienced: **A and WK** per Collins J at [38].
86. The applicant should have an appropriate adult, and should be informed of the right to have one with the purpose of having an appropriate adult also being explained to the applicant: see **FZ** per Sir Anthony May P at [23-25]; **J** per Coulson J at [14]; and **AAM** per Lang J at [94(a)].
87. The child should be told the purpose of the assessment see **FZ** per Sir Anthony May P at [3] (summarising **Merton**).

88. The decision 'must be based on firm grounds and reasons' for it 'must be fully set out and explained to the applicant': **A and WK** per Collins J at [12].
89. The approach of the assessors must involve trying 'to establish a rapport with the applicant and any questioning, while recognising the possibility of coaching, should be by means of open-ended and not leading questions'. It is 'equally important for the assessors to be aware of the customs and practices and any particular difficulties faced by the applicant in his home society': **A and WK** per Collins J at [13].
90. It is 'axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his case which may weigh against him': **FZ** per Sir Anthony May P at [21]. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant 'with their conclusions without first giving him the opportunity to deal with the adverse points': [22]. See also **J** per Coulson J at [15]; **AAM** per Lang J at [94(c)]; and **Durani** per Coulson at [84-87] (in particular, at [84]: 'Elementary fairness requires that the crucial points which are thought to be decisive against an applicant should be identified, in case the applicant has an explanation for them').

91. Assessments devoid of details and/or reasons for the conclusion are not compliant with the Merton guidelines; and the conclusions must be 'expressed with sufficient detail to explain all the main adverse points which the fuller document showed had influenced the decision' (FZ per Sir Anthony May at [22])."

7. In **R (AM) v Solihull Metropolitan Borough Council (AAJR) [2012] UKUT 00118 (IAC)** the Vice President of the Upper Tribunal confirmed at [15] that:

"Almost all evidence of physical characteristics is likely to be of very limited value. ... There is no clear relationship between chronological age and physical maturity in respect of most measurable aspects of such maturity",

and at [19]: "Most assessments of mental development are, in essence, an assessment of whether the individual is at average, or below or above average, for his chronological age."

8. In **R (FZ) v London Borough of Croydon [2011] EWCA Civ 59** Sir Anthony May P confirmed that social workers could in the course of an age assessment

"be able to judge a putative child's general appearance and demeanour, and to make a general credibility judgment from the manner in which he answered their questions. It does not follow that the court would be bound to make the same judgments." ([29]).

9. In **MVN v London Borough of Greenwich [2015] EWHC Civ 1942 (Admin)** Picken J noted at [27]:

“It would, therefore, appear that the primary focus is on the credibility of the person's evidence concerning his or her age, but that it is permissible to have regard to credibility more generally provided that, in looking at credibility more generally, the primary focus to which I have referred is not forgotten... ”

It was emphasised that all material should be taken into account and further that “allowances should be given to the fact that asylum seekers (and similarly victims of trafficking) may have problems giving coherent accounts of their history”.

10. In **R (AE) v Croydon LBC [2012] EWCA Civ 547** the court held that in the absence of documentary evidence the starting point was credibility.

The Grounds of Challenge

11. In summary, it was asserted that:
 - (a) No weight should be placed on the first age assessment on the basis that the applicant was not informed that he was entitled to an appropriate adult. The importance of an appropriate adult being in attendance was confirmed in **R (FZ) v London Borough of Croydon [2011] EWCA Civ 59** at [24]. This was part of the necessary elements of a fair and appropriate process and applied equally to an initial age assessment. In **R (HAM) v London Borough of Brent [2022] EWHC 1924 (Admin)** Swift J concluded that whether an appropriate adult was required depended on the circumstances of the case as opposed to it being a legal requirement [20]. In this case the applicant was clearly vulnerable, having been accepted as a potential victim of modern slavery.

- (b) There was no minded to process in the age assessment, and R (HAM) confirmed that it was necessary for adverse points to be put to the young person so that they may have an opportunity to respond.
- (c) There was a failure to take into account that F was a victim of modern slavery despite the NRM finding on 13th July 2021. This was contrary to the ADCS Guidance.
- (d) The reasoning fell short of the requisite firm grounds and reasons for the decision reached. It was submitted that in R (HAM) Swift J held that the distinction between a full Merton assessment and a short form assessment was legally irrelevant and what is required in all cases was for the principles identified in Merton to be applied in respect of “reasonable investigation and fair process” which included that adverse matters were put, [31] and [32]. It was submitted that the first assessment could not stand as a reliable assessment of age.

12. In relation to the second age assessment, conducted on 10th, 17th and 24th January 2022 with a further session on 14th February 2022, the assessing social workers were Monday Osagie and Elga Batala. The applicant had filed a position statement also challenging the second age assessment on the following grounds:

- (1) The assessment was conducted without an interpreter of the correct language and dialect, in direct conflict with the ADCS Guidance.
 - (i) The respondent was informed prior to the age assessment conducted on 13th September 2021 that the applicant spoke Arabic Sudanese, but the

respondent failed to ensure that a suitable interpreter was appointed. The applicant could not be expected to identify the extent of the impact of this failure on the assessment. The applicant recorded in his statement that the first interpreter had told him she was from Algeria and the interpreter for the final session was from Iraq. This was at odds with the witness statement of Elga Batala, who stated that an Arabic Sudanese speaking interpreter was provided (C433 [7]). The interpreter booking forms did not specify the dialect.

- (ii) The interpreter herself raised that the applicant was using terms that the interpreter did not understand and referred to "maybe, it is not classical Arabic" (B295). It was made known to the assessors that there was an issue in understanding. The applicant's solicitor raised this issue in the course of the age assessment again (E39) but no attempts were made to remedy the issue.
- (2) The assessors failed to take account of the fact that the applicant was a potential victim of trafficking as recognised by the NRM, and the ADCS Guidance acknowledged that those who had been trafficked were likely to have had experiences which had an impact on their ability to participate fully and openly in an age assessment. The age assessment failed to grapple with the applicant's traumatic/trafficking history.
 - (3) There was a failure to gather and take account of relevant information and evidence that was available to the age assessors. This was notwithstanding that

the respondent had confirmed receipt and confirmed that it was available to the social workers. The social workers were provided with the applicant's first witness statement that set out his history and background in detail, the NRM reasonable grounds decision and information from Daniel Smith.

- (4) The social workers did obtain two opinions from individuals employed or contracted by the local authority. The first was Bahja Abdi, who was a Total Care support worker who had known the applicant from 23rd December 2021 to 7th February 2022 and confirmed that he considered the applicant to be between 17 and 19, based on his observation and interaction. The second was Rachel Gross, a social worker who confirmed that she had met the applicant on five occasions, three face-to-face and two virtual meetings, and considered him to be 18 to 25, based on his physical appearance and behaviours. It was incumbent upon the social worker assessors to consider, analyse and identify why the opinions of professionals who had interacted with the applicant outside of the formal age assessment meetings fell to be rejected.
- (5) The age assessment and notes of the meeting failed to disclose an effective 'minded to' process. The notes of Jessica Costar of Young Roots at B334 noted that at the start of the meeting the assessors informed the applicant that they would give decision on age. Brief questions were asked before his age was disputed. This suggested that he was not told that the assessors had reached provisional conclusions and that he was given a fair opportunity to respond.

(6) The reasons relied on to support the conclusion that the applicant was 23 were weak and did not amount to firm grounds and reasons in accordance with **VS v The Home Office [2014] EWHC 2483** at [78].

(a) The assessors disputed the timeline but the applicant had explained that he did not know his date of birth until he arrived in Libya but “knew his rough age”. He thought he was about 14 or 15 when he left Sudan in 2019 and so it was clear that he was not certain of his age. There was no inconsistency in him saying he was 15 in 2019 and nor was it incredible in him being unable to provide information on his life narrative.

(b) It was accepted that he had provided

“a consistent narrative unassisted regarding his family and his childhood development activities and journey to the UK [...] This was consistent with the account of his life and journey to the UK. However, there were vague areas in his time line.”

These vague areas were not adequately explained to allow the applicant to respond to them and further, a vague account could often be a result of a young person’s traumatic experience.

(c) In his second witness statement the applicant stated that he was around 6 when his father died in 2010 but his mother remarried in 2013 and his brother Yasin was in year 2 when the applicant left Sudan and his brother was 8 years old. The assessors concluded that school age in Sudan started at 6 years for children in school (B263)

but it was confirmed that children could attend pre-school in the UNICEF Report All in School: Middle East and North Africa Out-of-school children initiation: Sudan - Country Report. Children could attend pre-school from the ages of 4 to 5 years old and the official entry age of primary school was 6 and some are in school including Khalwas from the age of 5. The timeline constructed by the assessors on the basis of the brother's age was not reliable.

- (d) The assessors considered that his demeanour and appearance during the age assessment was inconsistent with other young people who matched his cultural and religious background, but this was so vague and opaque as to be nonsensical. Clearly, 17 year old Muslim and Sudanese or Darfuri children did not look or act in a homogenous way and that should be rejected.

Documentation

13. In terms of the evidence before me, there was an agreed core bundle, three further supplementary bundles and the authorities. The applicant had produced three witness statements dated 13th October 2021, 31st March 2022 and 18th May 2022, together with witness statements from Daniel Smith of Young Roots dated 19th May 2022 and 6th July 2022, together with letters dated 4th October, 11th March and 5th May 2022, a witness statement dated 17th May 2022, from Fiori Haile support worker at Total Care, letters dated 3rd November 2021, 7th February 2022 and 9th May 2022 from Dr Angeliki Argyriou, clinical psychologist at the Helen Bamber Foundation and additionally social media evidence.

The Hearing

14. The applicant, Mr Daniel Smith and Ms R Gross attended the hearing and gave oral testimony. I have not set out in this decision the extent of the oral evidence because it was recorded but have referred to relevant parts of the evidence in my findings below.

15. On behalf of the respondent, Mr Swirsky submitted that the thrust of the evidence produced by Brent overwhelmingly pointed to the applicant being an adult. He submitted that although the applicant maintained that he could now read and write there was no obvious way that he would know the date when he lived in the village and despite his best efforts he was not able to give an explanation of the days of the week and did not know Arabic months. He did not celebrate birthdays and came from a rural background which had no electricity. He apparently only discovered his date of birth when passing through Libya. He stated in his written evidence that he at all times had some idea of his age, although not sure of his date of birth but that was not the evidence that was presented in court. The evidence given was that he did not know his age in Sudan and only found out later on. He clearly only had a vague grasp of the concept of his age at the first assessment and Dan Smith had worked his age out for him. At bundle 3, page 4 the applicant had stated the first time he had asked his mother he was in Libya and the second time in France and there was no reason why he had asked a second time. He was not able to give a satisfactory explanation of how he was able to contact his mother in Libya and involved a convoluted way of making contact. More importantly, how would his mother know his age? She came from the same village and was said to be uneducated, and the applicant did not know about his

father. The mother had not given a statement. It was unusual for someone to be in regular contact and thus it would have been easy to obtain a statement from her.

16. In cross-examination the applicant had stated he was not even sure that she would give the right answer if she did produce the statement. His knowledge of dates was unreliable, but he claimed to know exactly when he arrived in Libya (9th August 2019) when he left Libya (26th August 2020) and when he arrived in the UK (20th May 2021), see [40] of the applicant's first witness statement. He gave detail on these dates and stated this was important to him but in fact in his interview when he arrived, he gave different dates to the Home Office of when he left Sudan (January 2020).
17. The other dates that he gave were the dates of the death of his father (2010) and the date the mother remarried (2013).
18. He gave approximate timelines since he left but he could not remember any other instances of passages of time. That was not credible.
19. He stated his mother remarried in 2013 but could not give any estimate of the birth of a sibling following that remarriage and the inability to expand on his life story undermines his account.
20. At the hearing Mr Swirsky accepted that the date of birth identified by the Home Office as 1995 at his first interview was that ascribed.
21. In that interview, Mr Swirsky submitted, there were various inconsistencies. The applicant denied he had a French phone number and when asked for contact details he said he had none and did not even give an email address

that he had said in oral evidence he had already created. In that witness statement he said nothing about his fears of his stepfather and both in the Home Office interview and the application to the NRM the reason for seeking asylum was his said fear of instability in Sudan.

22. He had not told a consistent story of why he had come to the UK.
23. There was also a contrast between his oral evidence and his detailed witness statement.
24. It was not credible that he would be able to travel on his own to Khartoum to meet his cousin and persuade him to take him to Europe at the young age he claimed.
25. On two occasions when he had arrived in Italy and claimed to have told the Italian authorities that he was a child, having given a date of birth of 15, he simply decided to leave the shelter for a life on the road. The same pattern was repeated in France. The applicant stated that the accommodation was better, but he still preferred to leave. It was not credible that a boy of 15 who had come to the attention of the authorities who had had a terrible journey through Libya would simply move on.
26. Four social workers had assessed the applicant and concluded that he was over 20 at the time of his assessment. Although there were criticisms of the assessment all the social workers came to the same conclusion.
27. Daniel Smith was not a neutral witness but saw his role as an advocate and concluded that the best interests of a young person trumped that of the public good. It was submitted that he had crossed the line with his criticism of the appropriate adult, stating that she was

unprofessional and asserting that the appropriate adult had attempted to bribe the applicant to carry on with the assessment when he did not want to. Daniel Smith had lost his independence and his evidence should be seen through that prism.

28. The keyworker Fiori Haile had given a statement but was visiting Eritrea during the process of this hearing and thus her evidence could not be tested under cross-examination. There had been no permission granted from the Eritrean government to give evidence from abroad.

29. Rachel Gross gave careful and thoughtful evidence and, having reflected, considered that the applicant was approximately 20. It was accepted she was not a trained assessor but had extensive experience of young people.

30. The second age assessment considered the view of another keyworker who gave an age range of 17 to 19 but there was no statement.

31. Even if one accepted the dates and years given by the applicant, he cannot be the age he claimed.

32. He stated that he was 6 when his father died but three years later his mother remarried, so he had to be 9 when his mother remarried. There was then a sister called Yasmin, which would have taken nine months or so, and then, with a small gap, a further sibling by the name of Yasin was born. It could reasonably be estimated that there were two years for the two half-siblings to be born although the applicant refused to put a timeframe on this. That made him 11 when Yasin was born and if, as the applicant stated, Yasin was in year 2 at school when he left Sudan and that school started at 6 or 7 and if Yasin was 7 when he went into year 2, (taking the lower age

possible) that would make the applicant 18 when he left Sudan and not 14 and if he left Sudan in August 2019 it would make him 21 now.

33. It was simply not possible for the applicant to re-organise his claimed age. No matter how he rejigged it, he was an adult when he left.
34. The claim should be dismissed and there should be a declaration that the applicant was an adult when he came to the UK.
35. In relation to the interpreter, there was no evidence that the interpreters for the second age assessment were not comprehensible to the applicant or vice versa and at the hearing he had confirmed that he could understand them and nothing specific about the misinterpretation was evidenced or particularised.
36. In relation to the appropriate adult, her evidence should be accepted. She had not been required to attend to give evidence. The law had subtly changed as to what constitutes a fair assessment and it was no longer a matter of just ticking boxes. Her presence was fair in the context of the particular case and none of the criticisms of this age assessment were sustainable. Merely because people took too long to get coffee was not relevant to the core issue.
37. Ms Benfield submitted that on the totality of the evidence the applicant should be assessed as being 17. That was the evidence from Young Roots, Ms Haile and the Helen Bamber Foundation. The applicant himself was a vulnerable child of 17 and, she submitted, he did have knowledge of the passing of time and was able to articulate the passage of days and years and he understood

the passing of the new year, that he would become a year older, and he did explain what the day and the month and year was. The applicant was part of a farming community and attended a religious mosque and thus the passing of the seasons and time would be common knowledge. It was very common for months to be known as numbers. He had confirmed that his parents were able to read the Koran and he had demonstrated a level of literacy. However, age was just not important and so his ability to articulate his age at a particular time was limited and he also had additional vulnerabilities.

38. He could remember consistently without embellishment the core events in his childhood and the death of his father in 2010. He had tried his best to give evidence on dates and was careful to explain when it was an estimate. He did not advance something outside his knowledge. It was not inconsistent that he did know the passage of time and he did have a concept of age but just did not know the precise age at a particular time.
39. He simply made a mistake when he told Mr Smith initially that he was 17 because he did not appreciate the calculation, which had the hallmark of a person with limited knowledge.
40. The applicant had been consistent about what he had been told by his mother and the point as to him being told in Libya and in France did not assist. His account of contacting his mother was not convoluted and the way he was able to contact his mother was consistent, such that he contacted somebody he knew in Sudan, and he facilitated a call. How his mother would have known his age at all falls close to being based on a Eurocentric assumption. Ms Benfield accepted that there were birth certificates in

Sudan. In relation to the mother failing to give evidence, she submitted that the applicant did not consistently have contact with his mother and was correct when he put in his first witness statement, he had not spoken to his mother since being in the UK because at that stage he did not have contact with her.

41. The applicant had given a clear explanation for the dates of his journey and there should be no reliance placed on the inconsistencies given at the screening interview, which had only taken 23 minutes and had an interpreter on the telephone. He was told to be brief and case law had confirmed that caution should be exercised when looking retrospectively at reasons given in a screening interview, particularly where somebody had undergone a long journey. The applicant had not given the date of birth 1995 at his screening interview. It had been given to him.
42. The calculation of the age of Yasin, his brother, when the applicant left Sudan was merely speculative and could not carry weight and this was not a basis on which the applicant could be 18.
43. The applicant had given detailed information in his witness statement and was likely to be more fluid in a safe environment as compared with the multiple meetings for the age assessments. It was inappropriate to assume fluidity of a vulnerable witness in a formal environment in a court process.
44. It was doubted that how he left Sudan was credible, but the applicant had already stated that he had previously met his cousin and his brother had arranged to give him his cousin's phone number. It was simple that he had merely hitched a lift to the capital.

45. In terms of his journey through France and Italy, it was clear that he was moving with a group of people, and it was a common narrative that people wanted to move on to the next country. That was consistent with him being an adolescent. Those points were not good in terms of credibility.
46. Ms Benfield submitted that the evidence of those who had worked with groups of young people and had interaction with their daily lives over a sustained period was more useful and consistent with the guidance. Mr Smith had relevant experience working with asylum seekers and victims over five years and had professional experience and had explained why he had come to a considered view. He had also referred to a growth spurt.
47. Mr Smith's evidence should be accorded weight. That he was an advocate for the applicant and acted as a litigation friend did not make him impartial. He attended to give evidence and that was grounded in his own observations.
48. Ms Haile was his keyworker for three and a half months and she too thought he was 16 to 18 at the time. Her evidence should be given positive weight and she considered that his independence and confidence was that expected of someone of 17 and that he was good at following rules and boundaries.
49. Mr Abdi's statement that he was between 17 and 19 was more helpful to the applicant because this pushed him to the lower end of the age range.
50. Dr Argyriou treated those between the ages of 11 and 25 and her evidence should also be given weight.

51. The evidence of Ms Gross should be given no weight. It was based on merely three meetings although she accepted there may have been four. Her assessment was based on appearance and demeanour, which had been accepted as being highly unreliable. The assessment given by the Home Office in the IS97 should be accorded limited weight because it was based on appearance and demeanour.
52. Turning to the age assessments, the first age assessment was unlawful. Despite HAM the court was very clear that there was a minimum standard of fairness to provide an appropriate adult. What was required was a fair procedure and the first assessment was not a fair procedure. Swift J had stated in HAM that what was fair was based on the facts, but the local authority knew that the applicant had a reasonable grounds decision on trafficking and further, the assessment was not conducted in accordance with best practice.
53. The second age assessment could be criticised because the issue of the interpreter had not been properly grappled with by the local authority. The applicant had raised the issue of the correct language and dialect in his witness statement and although the applicant's solicitors had attempted to find out from the agency what the nationality of the interpreter was there had been no clarification. The interpreter herself had referenced that she was speaking classical Arabic. Ms Benfield did acknowledge that Mr Smith did not take any issue with the interpreter at the time despite the fact that he was present at all the relevant meetings of the second assessment.
54. Ms Benfield submitted that after the screening interview on 30th June 2021 there was nothing in the social care

material that detailed the decision to conduct a short form assessment and that appeared to be unjustified. There was a referral from Dr Ashi Hameed and a second referral of Daniel Smith to the effect that he was a vulnerable child. Ms Benfield agreed, however, that there was no indication of whether Dr Ashi Hameed had in fact assessed the applicant or whether this was merely an assessment by phone or email.

55. Ms Benfield submitted that the second assessment again was not a fair procedure. There were issues with the interpreter and the 'minded to' process and the gathering of opinions. There had been a subject access request made of the Italian and French authorities to provide information when the applicant was fingerprinted and stopped going through Europe, but the French request went unanswered, and the Italians responded that they were not authorised to provide information.

56. On balance, he was probably 17 now and had entered the country as a minor.

Analysis

57. In **HAM v London Borough of Brent [2022] EWHC 1924** Swift J confirmed that in relation to the compendia of guidelines set out for example in **VS** *'It would be wrong to regard each item on each list as a requirement of fairness in every case'*. The court should focus on the case before it and, as set out in **HAM**, the principles set out at paragraphs 10 and 11 of that judgment, essentially, there is no burden of proof, the assessment must be made on reasonable enquiry, but this will depend on the circumstances and the enquiry must be undertaken fairly.

58. I have undertaken a holistic consideration of the evidence bearing in mind the legal principles set out above. I take into account the Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance and I note that the applicant was given a positive reasonable grounds decision on trafficking on 13th July 2021 and given 45 days for recovery and reflection period from 13th July 2021 until 26th August 2021.
59. Young Roots, a London-based charity working with young refugees and asylum seekers aged 11 to 25, referred the applicant for assessment to the Helen Bamber Foundation and Dr Argyriou, a clinical psychologist, identified that the applicant was a person who presented with anxiety, low mood and symptoms of post-traumatic stress disorder as a result of traumatic experiences of physical abuse by his stepfather in childhood and forced labour in Libya. The second letter was addressed to his relocation out of London with concerns that his move would interrupt the plan for treatment to enable his recovery. Nevertheless, I have considered the applicant's evidence in the light of his said vulnerabilities.
60. The Home Office Initial Contact and Asylum Registration Questionnaire was completed on 23rd May 2021, shortly after the applicant entered the United Kingdom and although this ascribed the applicant a date of birth of 1st August 1995, I am not persuaded that I can attach significant weight to the year given.
61. It did transpire, however, that a key reason for him departing Sudan was subsequently emphasised to be in relation to his stepfather. There was no mention of that in his screening interview although he may have forgotten.

What he did answer in his screening interview at [1.7] in response to the question "can you ask your family friends or relatives to help you send some documents to help you prove your ID?" was "I can call my mum and ask her if she has something that can prove my ID okay". I note this and return to this issue later in my reasoning.

62. Despite being represented and confirming that he was in contact with his mother through Facebook and WhatsApp no statement was produced. The applicant confirmed in his witness statements and oral evidence that he contacted his mother from both Libya and France, and he confirmed in the first short form age assessment that he did communicate with his mother and siblings by way of sporadic phone calls by WhatsApp and that his family were aware that he was currently in the UK.

63. The short form assessment was conducted on 6th August 2021 and dated 13th September 2021. I was urged to give no weight to this assessment owing to its failure to comply with any of the Merton guidelines and the absence of an appropriate adult but nevertheless it was clear that there was a Sudanese Arabic interpreter in attendance, albeit by telephone. As noted in R (HAM), whether an appropriate adult is required depends on the circumstances of the case as opposed to it being a legal requirement. I note that the first age assessment was conducted nearly three months after his entry to the UK, was conducted by two social workers and that there was a Sudanese Arabic interpreter present. Even if the conclusion can be given limited weight the evidence given by the applicant was detailed, descriptive and lucid. The applicant stated that he used to love listening to stories told by his father and that during Eid the whole family would come together. He also gave evidence that he attended an Islamic school for one

year between 2012 and 2013. At that time he was 10 or 11 years old. Even if I were to give no weight to the reasoning and conclusion, I nonetheless record the detail given by the applicant.

64. The observations of the first two social workers were that the applicant would be at least 20, based on the timeline. I note the criticism that there was no 'minded to process' and that there was an asserted failure to take into account that he was a victim of modern slavery. It was nevertheless acknowledged in this assessment that his journey was more than likely owing to the description a difficult one and it was acknowledged in the report that he would need some mental health support, albeit it was termed as bereavement support on the basis that "his father passed away some years ago".
65. Nonetheless, following the first interview, there was a further age assessment by two different social workers, criticisms of which are outlined above. The question is whether the process was fair overall.
66. What is clear is that the applicant at the second assessment not only had an appropriate adult in attendance, that is Ms Shah, but also the presence of Mr Daniel Smith, who describes himself as an advocate for young people, had acted in the role of appropriate adult and was in attendance at all the meetings. Indeed, it was Mr Smith who had advised and assisted the applicant throughout and took notes (save for the minded to meeting at which Ms Costar was present) and attended to give evidence. The notes of the first meeting of the second age assessment dated 10th January 2022 confirmed that the applicant was given five to ten minutes with the appropriate adult and the Arabic interpreter, and he was

given a copy of a letter explaining the Merton age assessment procedure. The applicant confirmed that he understood the interpreter and the language was Arabic and that he felt fit to undertake the assessment. There appeared to be no complaint by Mr Smith at any point during the meetings despite his notes recording that he intervened on occasions where he felt it was required. There are very detailed notes provided by Mr Smith, albeit that he omits the reference to the interpreter and the handing over of the Merton letter, but he does record the first social worker confirming that "if you don't understand please say. If we ask you questions, and we don't understand your answers we will ask for clarification". It is quite clear when reading through the notes, those of Mr Smith, that the interview flowed without interruption. On a careful reading of the interview it is clear that the applicant did understand the questions because the answers correspond and accord. In that interview, for example, in response to "why did your mum decide to tell you your age when you were in Libya?" the applicant responded, "I asked her for my age because I had a medical prescription". At that point he was asked to "explain more" and he responded, "because the police caught me and asked for a blood test and to do so they needed my date of birth". From the interview it appears that where there were any confusions, and they were few, they were clarified, and I am not persuaded that they were sufficient to undermine the interview as a whole. Certainly, in the notes recorded by Mr Smith, when the applicant was asked "how old were you when your dad passed away?" he replied, "I can't really remember probably about 5 years old or 6". There were various conversations during the interviews between the age assessors, Mr Smith, the interpreter and the applicant and

at no point was there a complaint about the interpreter during the interviews themselves. The applicant was repeatedly asked whether he wished to have breaks.

67. At the age assessment meeting on 24th January the applicant again confirmed that he had no problem with the interpreter. The applicant gave a very detailed timeline including years, months and days of his travels from Sudan through Libya to Italy and France. For example, when he was asked how long it took from Sudan to Libya, he stated they stayed at the border, where there was control for one week and then the journey from the border took one day. He explained that they were detained for fifteen days by the smugglers and, for example, he stayed in Ajdabiya for about five months, When the interview turned to a reference to the "tuk-tuk" the interviewer stated "yes. In Sudan, they use language, words that is not Arabic" and in response to "he is using slang?" the interpreter replied "yes". And indeed, the applicant himself confirmed in English that they were referring to a rickshaw. The interview then flowed again. The applicant then described how he was arrested at sea and taken back to prison in Libya, where, having already remained in Libya for five months, he stayed for a further four months, working in the fields. He described how he was forced to work and how his cousin sadly died. In total, he described that he had been in Libya between "eleven and twelve months" and then clarified "about a year, yes". The passage of the interview did not disclose frequent misunderstanding, halting or miscommunication.

68. In total, Mr Smith's notes comprised 29 pages of closely typed print with minimal interruptions in terms of interpretation and those were insufficient in my view to undermine the interpretation as a whole. In the last

interview a different interpreter was used but there was again no indication that the applicant misunderstood and indeed, when it was put to him that he said that his father had died when he was approximately 6 during the assessment the applicant replied that he had died in 2010. He replied finally during the 'minded to' process that the assessors had calculated wrongly. That does not suggest that the social workers failed to adopt the 'minded to' or that the applicant did not understand because he responded. That the notes of Ms Costar show that the assessors stated that they would give a decision on age does not mean that they were not engaged in the 'minded to' process merely that a decision would be given.

69. Ms Gross confirmed that when she booked the interpreter it was only possible to indicate on the drop-down menu that an Arabic interpreter was required. That said, the witness statement dated 18th May 2022 of one of the social workers in the second assessment, Ms Elga Batala, who was not asked to attend for cross-examination, confirmed that the applicant did have access to an Arabic Sudanese interpreter. I note that albeit in the age assessor notes there is a reference to "maybe it is not classical Arabic" there was no such reference in Mr Smith's very detailed notes, merely a reference made to that to which I have alluded above. Overall, I am not persuaded that the interpretation was defective. Mr Smith's notes record four instances where the interpreter "raised that they did not understand F" but in fact, the interpreter was merely clarifying, and properly so. Those words related to a kind of house, a small house, namely a rotera, a boxi, which is a pickup truck, a dab, which is a house built of bricks in Sennar and the tuk-tuk rickshaw. In sum I do not

accept that the interpretation impeded the fair process of the second age assessment.

70. Nor am I persuaded that the respondent failed to take into account that he was a potential victim of trafficking. The applicant himself was asked about his experience, which he relayed, and he stated that he was forced to work in Libya in order to earn his passage out and because he had no money and he confirmed when asked directly if he was trafficked, he replied "no". He did state "I was tortured in Libya, that's it". Even though the age assessors may not have specifically referred to this in name in the age assessment, they were fully aware of the underlying experiences of the applicant and it is inconceivable that they failed to take this into account when considering his evidence overall, bearing in mind they are experienced age assessors.

71. The skeleton argument of Ms Benfield refers to the respondent confirming receipt of the relevant information and evidence available to the assessors including that the social workers were provided with the applicant's first witness statement, which set out his history and background details. It is clear to me that the age assessors did indeed consider the history maintained by the applicant, which I will come to, and which founded their belief that he was not a minor.

72. The social workers specifically made reference to the **Merton** guidelines during the interviews, engaged in the minded to process and specifically referenced the opinion of Total Care support worker Bahja Abdi, who reported on 7th February 2022 that the applicant was very independent, did his own shopping, laundry and personal hygiene, had learnt the area and went out on his own confidently. In

his view he was aged between 17 and 19 years. As Mr Swirsky observed, there was no witness statement from this witness. The other view taken into account was that of Ms Rachel Gross, who concluded that he was between the ages of 18 and 25, based on his physical appearance and behaviour.

73. It is not evident that the second age assessment failed to make reasonable enquiry or consider relevant material such that the process overall was unfair. The ADCS guidelines are just that, guidelines. There were three interviews conducted with the applicant's advocate present on each occasions and who did not hesitate to contribute when he saw fit. As an experienced advocate who described himself as professional and dedicated to the furthering of young people's rights, I do not accept that he would countenance the continuation of an unfair process.

74. Based on the reasoning given in the final conclusions of the second age assessment in which the applicant states he was 6 years old when his father passed away and which he confirmed orally, I conclude that it was open to the age assessors to conclude that he was older than he was because of the calculation. The applicant himself corrected the age assessors when they concluded that he had taken three years on his journey added to 15 because he arrived in the UK in September 2021 but on the timeline based on his own evidence, including him being 6 when his father died, their assessment was reasoned.

75. I therefore do give weight to this assessment.

76. Turning to the witness statement of Fiori Haile dated 19th May 2022. It was unfortunate that she was unable to attend to be cross-examined. She was the keyworker for Total Care and had been the applicant's keyworker from

January 2022 to April 2022. She described the applicant as "a social, respectable and independent individual that has so much happiness and joy to share". She added that "the tension of his age assessment and fear of being moved around was constantly playing on his mind".

77. She states:

"I taught him how to cook, shop, clean, use the washing machine and to travel around the area. I was still teaching him how to cook, shop and travel his way around the area when he left our service." ([10]).

She added:

"In my opinion, FA presents as a 17 year old because his independence and confidence is what you would expect from a 17 year old and the level of support such as cooking, cleaning and shopping for food was no different than other YPs who are 17 years old."

78. Bearing in mind that this witness had only one year's experience working with vulnerable children and families including unaccompanied asylum-seeking children, appeared to have no training in age assessment and there had been an observation from Mr Abdi that the applicant had been seen shopping himself and quite self-evidently was able to take himself from Thirera to Khartoum, nearly 300 kilometres, on his own, I do not accept that she had a full understanding of the applicant's abilities.

79. The assessment of Dr Argyriou from the Helen Bamber Foundation, which indeed according to the letter heading acts in conjunction with Young Roots, was directed towards the applicant's mental health issues and she merely stated that:

"Given that he presents similarly to other late adolescents, I have no other reason to doubt his claimed age in our time working together and have decided to treat him as his claimed age (17 years) for the purposes of mental health support."

Again, this is not someone who has been trained in age assessment and her role was to support the applicant in his mental health assessment rather than challenge his age as presented by Young Roots, an organisation with which the Helen Bamber Foundation clearly work (shown by the joint letter heading). There was no indication that she was in possession of the full details of his claim and immigration history. I give her statement limited weight.

80. I turn to the assessment of Mr Smith. He described himself as having "a degree in history and politics from Queen Mary University in London" and in his current role offered "practical and emotional support, advice and advocacy to young refugees and asylum seekers". Prior to that he spent sixteen months working as an anti-trafficking advocate in the Modern Slavery Response Team at Hestia and was then a homelessness caseworker at Glass Door for six months. Subsequent to his statements he had undertaken a one-day training in age assessment. He described how he had three one-to-one casework meetings with the applicant which each lasted one hour and had chatted to him informally at youth activities on many occasions. He had accompanied him to a face-to-face meeting with his immigration solicitor which had lasted around two hours. He said: "We are also regularly messaging via WhatsApp several times a week." He concluded that the applicant was a highly vulnerable young person and that the youth activities were primarily attended by young people aged 15 to 19 years old although

he conceded in cross-examination that the group did have adults to the age of 25 but concluded that the applicant was shy and awkward and his appearance was consistent with that of a 16 year old and that he did not look out of place in the group of teenage boys from Sudan.

81. He also cited an endorsement from Upper Tribunal Judge Kamara in his letter of 4th October 2021. In his witness statement of 19th May 2022 he said that he had now had six one-to-one casework sessions with him, and he had compared the applicant's behaviour with other young people and confirmed that he was still in regular telephone contact with him. He believed that the applicant because of his appearance, demeanour and behaviour continued to present as a teenager.

82. He stated that, in his view, the applicant had experienced a growth spurt during the time he had known him. I do not accept this evidence from Mr Smith. There was no accurate measurement from a medical practitioner of the applicant's height. **A v London Borough of Croydon [2009] EWHC 939 (Admin)[25]**, emphasised that for example, height measurements should be based on formal clinical paediatric quantification and can be unreliable unless carried out by a properly trained paediatric auxologist.

83. Mr Smith then in his first statement criticised the appropriate adult, stating that she "first tried to bribe him with a free lunch and then threatened him that he would end up on the street if he did not complete the assessment".

84. Mr Smith also criticised the age assessment meetings, which were said to be conducted in a chaotic and unprofessional way and the applicant was made to wait for fifteen to twenty minutes while the assessors bought

themselves food and coffee from the coffee shop and he was told to buy his own refreshments from the shop next door if he wanted them. He stated that the applicant was not "bright in mood, chatty". He also added that there was "constant confusion between the assessors, the interpreter and [the applicant]".

85. I am not persuaded that his notes bear out that criticism. Those notes do not disclose that there was constant confusion and chaos during the meetings. There may be many reasons why meetings can be delayed, particularly with busy social workers, and there was no criticism by him during the time when he was in attendance that the meetings were chaotic. I do accept that he objected, and rightly so, when there was a proposal to bring in a trainee to observe distressed behaviour but it would appear that that did not occur at his behest.

86. Mr Smith also accused the appropriate adult of regularly referring to her own experience of being a refugee, which was not helpful to the applicant.

87. In his second statement Mr Smith stated that he had *assumed* that Ms Shah was a refugee because she spoke in the breaks about her own experience of hardship, but he noted that that was indeed an assumption on his part. Ms Shah for her own part confirmed that she had never been a refugee and indeed had worked for many years for the Metropolitan Police. I found that much of Mr Smith's view of Ms Shah was subjective. Although criticising Ms Shah for encouraging (he said bribing) the applicant to proceed with the interview, he accepted during his oral evidence that to continue with the interview *was* in the applicant's best interests and there are numerous references to the appellant not wishing to eat. She was clearly attempting

to encourage him to do so. I find the term "bribing [the applicant] with lunch" to be overly emotive in what may be merely misconstruing an attempt to provide an incentive, particularly as Mr Smith also criticises the age assessors for not buying food. Ms Shah pointed out that Mr Smith left and went on his own, to buy himself food.

88. Moreover, I find that the applicant during the course of the interview made clear that he *did* wish to continue with the age assessment process and clearly did not find it so distressing that he could not proceed. Bearing in mind Mr Smith had been an appropriate adult himself on earlier occasions with other interviewees, I repeat, I can only conclude that Mr Smith would have halted the proceedings had he at any point thought that they were conducted in an unfair manner. Indeed, he states that he was acting in the applicant's best interests at all times.

89. I do have reservations about his evidence. He, as he freely admits, is an advocate and I consider that his very active involvement including his accompanying the applicant to his immigration solicitors and the evident friendly nature of his relationship with the applicant, leads me to find his evidence partial and lacking in detachment. Clearly his role is to advocate on behalf of young people and that is laudable, but then Mr Smith was the applicant's advocate and litigation friend which involves not acting against the interests of the applicant. Mr Smith had only recently been afforded training in age assessment and this was one day. I therefore give minimal weight to his evidence.

90. I thought his observations of Ms Shah were overly critical and I note that she was not called to be cross examined on her witness statement in which she confirmed

that she had served as a police officer with the Metropolitan Police Force for 24 years, had herself worked in the Homeless Unit for five years and undertook sensitive roles within the police service such as liaising with bereaved families. She has worked as an appropriate adult for six years with AA UK. She specifically wrote in her witness statement she had never been a refugee and nor did she tell the applicant that he would be thrown out on the streets. The notes of Mr Smith appeared to record that the age assessment was required in order to prevent children from being on the streets. It may be that this again was misconstrued.

91. In relation to the interpreter, Ms Shah confirmed that she asked the applicant if he understood the interpreter and if he was happy with the interpreter and he had stated "he understood him perfectly and there were no communication issues". She further confirmed that she went through the age assessment process and went through the checklist, making sure he understood. She added that the applicant was not provided with food and as a humanist she thought it appropriate and sensible to offer him food and took him to Sainsbury's and bought him a meal. Indeed, she added that "Daniel was his keyworker but at lunchtime Daniel disappeared to get his own lunch making no provisions for [the applicant]". She did not consider that the social workers took too long to get their coffees. I find her evidence balanced when she stated that the applicant was upset during the assessment, which was understandable. I also note in Mr Smith's notes that after the applicant stated he could not eat at the break for lunch, the AA stated, 'I will take him to Sainsbury's', (it was recorded the interpreter gave him some bread to eat) and the 'AA bought him some water from

Sainsbury's'. I do not find that the second age assessment is flawed because of the role of the appropriate adult. It could be said that the applicant had two present.

92. I therefore find that the second age assessment was not flawed through the presence of the appropriate adult, failure in interpretation or a lack of the minded to process and reliance can be placed on the opinion of two experienced age assessing social workers who concluded he was an adult on entry. They put him at 23 years old with a date of birth of August 1998. I do differ from their actual calculations, because his journey took nearly 2 years not 3 and I have placed the ages of children in year 2 at 6/7 (see below) and taken the conservative figure, but I accept the underlying conclusion that he was an adult on entry.

93. The applicant himself stated in his witness statement at [8]: "I know numbers and dates as I grew up knowing this from practical life." When asked during his oral evidence as to why he understood the passage of time subsequent to his departure from Sudan but was unable to give any indication of the ages of his siblings in comparison with each other or to himself, particularly the younger siblings, the applicant had no real answer. I can accept that he is suffering with mental health difficulties but the evidence on which I rely is that given in his written witness statements, which were taken carefully and in a detailed manner by his solicitors under conditions that they obviously reviewed and were satisfied with and his oral evidence. Further in some areas he could give detailed account of the timeline but pre-departure from Sudan he was vague.

94. I also considered his oral evidence and asked him why he had not attempted to obtain a statement from his mother. Bearing in mind that this applicant has been legally represented for over a year and bearing in mind that the applicant has confirmed that he is in contact with his mother via Facebook and WhatsApp, it would have been open to the mother to have provided a statement as to his claimed age. Indeed in his initial interview on entry, as identified above, he stated he could call his mother to obtain documentation. There was no such statement and no attempt to secure one. The applicant throughout his evidence confirmed that it was his mother who had told him his date of birth and when I asked him why he had not asked his mother for a statement he merely stated that documents were not so important and indeed, in relation to his age he simply stated to the court "it was very hard for me to tell whether she knows or not and she might give me false information just to keep me quiet".
95. Although the applicant throughout his oral evidence stated that his father died in 2010 and he stated that in his witness statement I find it is more likely that he was 6 when his father died and that he would have remembered his age of when he was rather than the date because as he states in his witness statement, he herded sheep with his father, remembered him telling him stories and clearly had a memory of his father. I find that the applicant did have an understanding of time.
96. I take the actual day and month of birth from the birth date and month claimed when the applicant first arrived in the UK and presented to the Home Office. That day and month was 1st August. I found there was no reason for the Home Office to ascribe a different day and month, albeit they ascribed the year of 1995. The date of 20th December

2004 was first identified on the Facebook page which, the applicant himself maintains, was created for him in France by someone else.

97. The difficulty for the applicant, independent of the social worker assessments, is that a timeline drawn from his own evidence given in his witness statements and oral evidence undermines his account of his age. He stated that his father died when he was about 6 years old [82] of his second witness statement and that was clearly stated in Mr Smith's notes (second assessment). The applicant states that he remembers his father telling him stories and, in his witness statement, confirms at [43] of his second witness statement, that he used to help his father with the sheep. It is likely that he was indeed 6 years old rather than a younger child who would have had less recall. The applicant then maintains that after his father died his mother had a three year gap before she remarried, which would make the applicant approximately 9 years old when his mother remarried. The applicant then states that his mother had three more children. I do not consider it to be speculation that the first would have been born at the earliest when the applicant was around 10 and the second of those children was born when the applicant was around 11 years old. Indeed, he stated himself during the course of his oral evidence before me that the children were born in Thirera, where the stepfather and mother lived, according to the applicant, after they married. There was no suggestion that they were born prior to the mother remarrying. The applicant then states in his second witness statement, [40], that Yasin (the second child) was in year 2 when he left Sudan. Indeed he confirmed that Yasin was in kindergarten when his older brother left for Libya, thus he was not

referring as suggested to any form of kindergarten but he himself gave evidence that if children start school at 5 or 6 year 2 would be 6 or 7. The applicant was therefore 17/18 (11 years plus the age of Yasin when he left which was 6/7 when he left Sudan), which I conclude to be consistent with his ability to leave home, travel independently to Khartoum to meet his cousin and travel across Europe, albeit I accept that he was sometimes with an agent and other times with a group of young men. According to his witness statement it also took him approximately two years to travel through Libya and Europe, which would make him 19 on entry in May 2021 and 21 now.

98. At [89] of his first witness statement dated March 2022, he stated that it only took him seventeen months from 9th August 2019 to 20th May 2021 to arrive in the UK from leaving Sudan. That contrasts sharply with the timeline given during his age assessment and does not fit with the detail in his own witness statements. He was asked at his second age assessment on 17th January 2022 how many years he had been away from home, and he stated about three years. In the second age assessment meeting on the 14th February 2022, he confirmed that it took him two years to travel from Libya to the UK.
99. Although this is a separate finding, and it stems from the first short form assessment, I also note that he stated he was approximately 10 when he attended the Koran school in 2012 in accordance with his first evidence given at the first age assessment which would make him at least 19 when he arrived in the UK in May 2021, which would make him, again, 21 now (birthday in August).

100. I conclude that this applicant was born in 2001 at the very latest. As such, I find therefore that the appellant was an adult on entry, and I give him a date of birth of 1st August 2001. 0~~~~