



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

JR-2021-LON-
000409

In the matter of an application for Judicial Review

The King on the application of

ABE

(anonymity direction made)

Applicant

versus

Kent County Council

Respondent

FINAL ORDER

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

BEFORE Upper Tribunal Judge Norton-Taylor sitting at Field House

UPON the fact-finding hearing on the applicant's application for judicial review held on 23-26 May 2023

AND UPON hearing Ms Avril Rushe for the applicant and Mr Joshua Swirsky for the respondent

AND UPON the handing down of the substantive judgment on 20 June 2023

IT IS DECLARED that the applicant's date of birth is 1 December 2000 and that he was aged 19 years old on arrival in the United Kingdom on or around 1 September 2020

IT IS ORDERED THAT:

1. This application for judicial review is refused;
2. The order for interim relief made by Mr Richard Clayton, KC, dated 7 May 2021, is discharged;
3. The applicant will pay the respondent's costs of the judicial review proceedings, including the proceedings in the Upper Tribunal, not to be enforced without the permission of the Upper Tribunal;
4. There will be a detailed assessment of the applicant's publicly-funded costs.

Permission to appeal

There has been no application for permission to appeal to the Court of Appeal. In any event, I refuse permission to appeal on the basis that there are no arguable errors of law in the substantive judgment handed down on 20 June 2023, nor are there any important issues of principle or practice.

Signed: H Norton-Taylor

Upper Tribunal Judge Norton-Taylor

Dated: 20 June 2023

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):

Solicitors:

Ref No.
Home Office Ref:



Case No: JR-2021-LON-000409

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
the Breams Buildings
London, EC4A 1DZ

20 June 2023

Before:

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between:

THE KING
on the application of

ABE
(anonymity direction made)

Applicant

- and -

KENT COUNTY COUNCIL

Respondent

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Ms A Rushe
(instructed by Luke and Bridger Law Ltd.), for the applicant

Mr J Swirsky
(instructed by Invicta Law) for the respondent

Hearing dates: 23, 24, 25, 26 May 2023

J U D G M E N T

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

Judge Norton-Taylor:

1. The applicant is a citizen of South Sudan and is a member of the Nuer ethnic group. He claims to have been born on 1 December 2003. The respondent has attributed to him the date of birth of 1 December 1997. Thus, there is a significant difference between the parties' respective positions as to the applicant's age. My task is to consider all of the evidence and attribute a specific date of birth,

whether or not that corresponds with either of the parties' assertions.

2. It is accepted that the applicant arrived in United Kingdom on or around 1 September 2020. He claims to have left South Sudan in 2013, resided in Khartoum for approximately 6 years, and then travelled up through Libya, across the Mediterranean to Malta, from there to Italy, and then through mainland Europe, eventually arriving in northern France. On arrival at Dover, the applicant was apprehended and referred to immigration officers. He had no documentation on him.
3. On first contact with the respondent, the applicant's age was disputed, he was attributed a date of birth of 1 December 1994, and he was initially placed in adult accommodation. On 5 October 2020, the respondent refused to take the applicant into its care or conduct an age assessment.
4. The respondent subsequently revised its position and agreed to take the applicant into its care and to conduct an age assessment. That age assessment was concluded on 10 March 2021, with the respondent concluding that the applicant was born on 1 December 1997 and was then aged 23 and that he was not entitled to Children Act 1989 support. Pre-action correspondence ensued. The respondent maintained its position.
5. This application for judicial review was made in the Administrative Court on 7 April 2021. Interim relief was originally refused, but then granted at an oral hearing, along with permission, on 7 May 2021. In line with usual practice, the case was transferred from the Administrative Court to the Upper Tribunal.

6. The case was then subject to case management and a fact-finding hearing set down to begin on 12 July 2022, with the time estimate of 4 days. Unfortunately, very shortly before that hearing was due to begin, Counsel for the respondent fell ill and the hearing had to be adjourned.
7. Following the adjournment, a number of applications were made by the parties to adduce further evidence. These were dealt with on the papers. The hearing was then re-listed for 14, 15, 16, and 19 December 2022. However, that hearing also had to be adjourned, firstly because it proved inappropriate to use an interpreter who was appearing remotely and secondly because the respondent produced a report by International Counterintelligence Services (ICS) (effectively, a private investigation company based in the US) on the morning of the first day. The ICS report purported to demonstrate that the applicant had failed to disclose certain material information and that his date of birth was in fact 7 July 1997. Perhaps unsurprisingly, the applicant sought time to consider and respond to that report.
8. Following the aborted hearing, a number of applications were made by the parties to adduce new evidence. These were dealt with on the papers, as before. In addition, I directed the respondent to use all reasonable endeavours to obtain further information from ICS relating to the contents of its report.
9. By this protracted route, the fact-finding hearing was eventually re-listed and that hearing proved to be effective.
10. One further aspect of the procedural history is worthy of note. By a decision dated 4 April 2023, the Secretary of State for the Home Department concluded that the applicant was a refugee and

granted him permission to remain in the United Kingdom on that basis.

The relevant legal framework

11. There is no material dispute between the parties as to the applicable legal framework in this case. In summary, these are as follows (I do not propose to cite the well-known authorities):

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

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

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

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

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

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

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

Procedural issues at the fact-hearing hearing

14. At the outset of day 1 of the hearing, the applicant sought to adduce an expert report which apparently dealt with a wide range of issues arising from the ICS report. The application to adduce the expert report was made prior to it actually arriving at Field House. In the event, it did in fact arrive during the course of submissions on the application to adduce it.
15. Ms Rushe submitted that the report was relevant to the issue of the applicant’s age. There had been a delay in seeking to instruct the expert due to lack of communication with the applicant and Ms Rushe being off work.
16. Mr Swirsky objected to the expert report being admitted for the following reasons: firstly, there had been undue delay in seeking to obtain the report and in it being provided; secondly, the

respondent had not been informed of the intention to seek a report at any stage prior to the middle of the previous week; thirdly, even then the identity of the expert had not been disclosed; fourthly, the respondent would need time to consider the report and may well need to seek a further adjournment of the hearing; fifthly, although the ICS report had been provided at a late stage, it was in a different category of evidence from an expert report.

17. I refused the application to adduce the expert report. In summary, my reasons for this are as follows.
18. Firstly, in my judgment there has not been a satisfactory explanation as to why there was such a delay between the adjourned hearing in December 2022 and the letter of instruction, dated 31 March 2023.
19. Secondly, the applicant should have, but did not, put the respondent on notice at the earliest possible stage that an expert report was being sought. In addition, the identity of the proposed expert should have been, but was not, disclosed as soon as it was confirmed.
20. Thirdly, an expert report was of a materially different nature to the ICS report. The latter was effectively a report from a private investigation company in respect of which prior notice of its commission could have prejudiced the utility of its methods and ultimate production (in saying this, I am not suggesting that the applicant or his representatives would have been likely to have engaged in subterfuge or any such misconduct whatsoever; the point made is a general one). On the other hand, an expert report does not carry with it any such considerations.

21. Fourthly, in my view it is highly likely that admitting the expert report in evidence would have led to the respondent applying to adjourn the hearing. It would have clearly required time to consider the report and it would have been only fair and reasonable for there to be an opportunity to adduce counter-evidence on one or more issues arising. This case has been ongoing for a very significant period of time now. It is plainly in the interests of justice generally, but also of course those of the applicant himself, that these proceedings are finally determined. Indeed, Ms Rushe quite properly acknowledged as much during the course of her submissions.

The evidence

22. As a result of the case preparation as a whole, I now set out in summary the evidence which is before me and which I have taken into account when making my findings.

Documentary evidence

23. I have the agreed main bundle, indexed and paginated 1-1868, a first supplementary bundle, indexed and paginated 1-133, a second supplementary bundle, indexed and paginated 1-487, a third, indexed and paginated 1-38, and a fourth supplementary bundle, which is not indexed or paginated.

The witness statements before me

24. Included in the bundles referred to above, I have witness statements from the following individuals:

(a) The applicant;

(b) Sharon Bass;

- (c) Patricia Lawlor;
- (d) Peter Bangout (the applicant's father, unsigned);
- (e) Stuart Luke (three);
- (f) Kim Weir;
- (g) Claire Murphy;
- (h) Ivia Santana;
- (i) Sally Hough;
- (j) Laura Roberts;
- (k) Anne Hardy;
- (l) Gary Ashman;
- (m) Christine Mackenzie;
- (n) Amy Hammond.

Oral evidence

25. I heard oral evidence from the following individuals:

- (a) The applicant;
- (b) Ivia Santana;
- (c) Sally Hough (by remote means);

(d) Claire Murphy;

(e) Kim Weir;

(f) Sharon Bass;

26. In light of the medical report by Dr Galappathie, dated 7 April 2022, it was agreed by the parties that I should treat the applicant as a vulnerable witness within the meaning of the Joint Presidential Guidance Note No.2 of 2010. This I did. I ensured that the applicant fully understood the Nuer interpreter at the outset and I was satisfied that a mutual understanding prevailed throughout the applicant's evidence. Regular breaks were taken and the applicant confirmed that every stage that he was content to proceed. There was no outward sign of any distress or confusion relating to vulnerability. I was conscious of the possibility of disguised distress, but in so far as it was possible to be so, I was satisfied that the applicant was able to participate fully in the proceedings. I noted that at certain points the applicant did ask for some questions to be repeated and/or clarified and this was indicative of engagement with the process. No other specific issues relating to vulnerability at the hearing were raised by Ms Rushe.

27. The applicant's oral evidence is of course a matter of record, as is that of the other live witnesses. I do not propose to rehearse any of it here. To do so will necessarily add to what is already a long judgment. Those aspects of the evidence which I regard as being of particular relevance will be dealt with when setting out my findings, below. I have of course had regard to all of the evidence to which I have been referred.

The parties' submissions in summary

28. I am grateful for the helpful and concise skeleton arguments provided in advance by Counsel.
29. Ms Rushe and Mr Swirsky made well-structured and clear oral submissions. As with the oral evidence, these are a matter of record and I need not set them out in detail here. I have taken the competing arguments into account when assessing the evidence and a number of the particular points made will be alluded to, below.
30. In their bare essentials, the applicant's submissions can be summarised as follows. In the context of this particular case, it is credible that the applicant was provided with the claimed date of birth by his parents. Beyond his own evidence, other sources are supportive of this, or at least do not significantly undermine it. Aspects of the respondent's evidence are deserving of less weight, in part because too much emphasis was placed on physical appearance and demeanour and also because, to an extent, unconscious bias might have contributed to an overly-favourable view of the age assessment report.
31. On behalf of the respondent, it is said that the applicants own evidence is unreliable and, to a large extent, untruthful. There has been a failure to adduce evidence that might have been available to him, or at least he has sought to evade the possibility of obtaining such evidence. Witnesses on the applicant's behalf have not added anything of value to his claim; what they have said undermines it. By contrast, the respondent's witnesses were strong. In essence, the applicant has been provided with a date of birth by unknown persons on route to the United Kingdom and he

has sought to adopt this and restate it during the course of the age assessment process.

Analysis of the evidence and findings

32. As stated earlier in this judgment, I have considered the evidence as a whole. Whilst I have not of course read each and every page of the voluminous amount of written materials before me, I have paid particular attention to the documents to which I have been referred, both in the skeleton arguments and oral submissions. To that evidence, I have applied the balance of probabilities, recognising that there is no burden of proof in cases such as this. My analysis is plainly a highly fact-sensitive exercise.
33. I recognise that consistency and plausibility are generally important components of overall credibility, although in isolation they will often not be decisive. Evidence can be unreliable even if provided honestly. It may be that an individual tells untruths about certain aspects of their case, whilst being entirely truthful about others. I also bear well in mind the fact that formal proceedings can give rise to nerves and that memories are certainly not infallible, particularly when events being enquired into occurred some years ago.
34. It might be said not to require emphasis, but I do bear in mind the particular lack of precision inherent in determining the age of a young person.
35. My use of subheadings, below, is simply a matter of structure. I have considered all of the various considerations cumulatively before arriving at my ultimate conclusions at the end of this judgment.

The applicant's own evidence

36. In respect of the applicant's oral evidence, I was satisfied that any vulnerability that might have existed by virtue of Dr Galappathie's report or otherwise did not materially prejudice the applicant's ability to present his evidence at the hearing. He confirmed to me that he was feeling "well" and "happy" and I had no reason to doubt that.
37. I have taken full account of the possibility that the applicant is now just under 19 ½ years old and was being asked about events which had occurred years previously.
38. In addition, I have assessed the applicant's evidence as a whole in the context of the possibility that he had suffered from mental health conditions during the course of the age assessment process *prior* to the hearing, although I have not been referred to any reliable evidence which indicates that the applicant's mental health has in fact caused him material problems when providing information to the respondent, or indeed the Home Office.
39. I have taken account of the apparent fact that the applicant has not received any significant mental health treatment following Dr Galappathie's report from early April 2022 (there is a brief reference to "seeing someone" in the third witness statement, but no details are provided), although I emphasise that I am not going behind the report's diagnoses.
40. I find that, at least as at the date of Dr Galappathie's report, the applicant was suffering from PTSD and a single episode of depressive disorder at a severe level. For the purposes of this judgment, I am assuming that the applicant still has mental health difficulties.

41. In assessing the applicant's own evidence as a whole, I have taken into account that, at least on his case, he had only limited education before coming to the United Kingdom.
42. I find that the applicant is a citizen of South Sudan and was born and brought up in a village called Yomding, which itself is in what has been described as a "county" called Ulang. I find that this area was near to, but not in, Nasir. I find that the applicant initially lived with both parents, before his mother left due to domestic violence perpetrated by the father. I find that the applicant has two younger sisters, the youngest of whom he has never met because she was born after his mother left the family home.
43. On the applicant own evidence, neither of his parents were educated, and I find that to be the case. Again on his own evidence, birthdays were not celebrated and I accept that to be the case. The celebration of Christmas has been stated in evidence and this is consistent with South Sudan being a predominantly Christian society. I accept that this event was celebrated in the applicant's family home and local community.
44. On his own evidence, the applicant had no idea about calendar dates whilst living in his home area and I find that to be the case. Indeed, it would have been remarkable if he had.
45. There are significant problems with the applicant's underlying account of how he came to know his claimed precise date of birth.
46. Firstly, and perhaps most obviously, it is in my view highly unlikely that his parents would have had any knowledge of a

precise date of birth, or even the ability to have formulated a partially generic date using the first day of a month, in this case December. Neither were educated and there is no reliable evidential basis on which they could have acquired the necessary (albeit basic) knowledge. I appreciate that Christmas would have been celebrated in the family and community, but that does not go to address the applicant's specific case: he has not, for example, said "I was born around Christmas time in 2003", but instead has put forward a precise date. That particular, and important, aspect of his account is inherently improbable.

47. Secondly, the applicant has repeatedly stated that both his father *and his mother* told him about his date of birth. Even putting to one side the point I have made in the preceding paragraph concerning the parents education and knowledge, his case is that his mother left the family home when he was very young. It is highly implausible that the parents would have informed such a young child of a precise date of birth, even assuming they had the ability to do so.
48. Thirdly, and connected to the preceding two points, even bearing in mind the caution applicable to assessing plausibility, it simply makes no sense at all that the parents would have provided a precise date of birth to a very young child who had no conception of calendar dates, seemingly expecting him to "keep it in mind" where there was no need for this in the cultural context in which they all lived.
49. Fourthly, the applicant has claimed that he saw a form with his date of birth written on it when he was sent to school by Simon. I do not accept that to be true. On his account, the applicant was about 7 at the time. It is highly unlikely that he would have seen

the form at all. In any event, it is unlikely in the extreme that the applicant would have been able to comprehend what the date was, let alone to have remembered it thereafter.

50. Fifthly, Ms Rushe's submissions on this particular issue, whilst eloquent, did not alleviate the fundamental problems. For example, whilst there may be some merit in the parents being able to mark the general passage of time by reference to, say, Christmas, this overlooks the applicant's claim that he was provided with a *specific* date of birth. Further, any knowledge the parents might have had in relation to a child starting school at a certain age does not credibly explain why the applicant would have been told of a specific date of birth when so young. After all, the school age matter was for the parents to be aware of, and not the very young child. Finally, if the parents had simply picked the first day of December without knowing the actual date of birth, it begs the question of whether they knew the correct date as a whole, including the year.
51. In light of the above, there is real merit in Mr Swirsky's submission that the precise date of birth claimed, 1 December 2003, might very well have been provided to the applicant on route to the United Kingdom because it was easy to remember and would have placed him as a minor on arrival in this country.
52. The applicant has been relatively consistent in his claim that at a certain age he was sent by his father to go and live with an uncle, Simon, in Malakel. I am prepared to accept that this did in fact occur.
53. The applicant claims that this event happened when he was about 6 years old and that he then went to school for 3 years

between the ages of 7 and 10. This is a relatively important aspect of his account in the sense that it would appear to be consistent with the claimed date of birth. As with the knowledge of the date of birth, there are evidential problems here as well.

54. Firstly, whilst not particularly significant, there was an apparent gap between the applicant going to live with his uncle and then, on his case, starting school. It is unclear why he would have been sent away before actually starting his education.
55. Secondly, independent evidence appears to suggest that children would normally start primary education at the age of 6. This is not entirely consistent with the applicant's claim that he started at the age of 7. It is unclear to me why, if indeed he had been sent to live with Simon for the purposes of attending school, schooling did not begin at the age of 6 instead of up to a year later.
56. Thirdly, the significant problems with the knowledge of the date of birth do reflect on the schooling timeline issue. If the knowledge of the date of birth is unreliable, it has an adverse impact on the reliability of the applicant starting school at the age claimed.
57. Fourthly, I am prepared to accept that there was a primary school in Malakel called John Garang, as this is supported by the Internet article in the fourth supplementary bundle. There is no documentary evidence to confirm the applicant's attendance there, however. I accept that any official records might have been destroyed during the war. The existence of the school potentially weighs in the applicant's favour.

58. Fifthly, and weighing against the point stated in the preceding paragraph, the applicant did not know the name of the school himself, or had claimed to have forgotten it, but was provided with (or reminded of) it by Adek. For reasons set out later in this judgment, I hold significant concerns in relation to the evidence on Adek. For present purposes, I find that Adek is not a reliable source of evidence and that the second-hand knowledge of the school's name does not assist the applicant's case.
59. Sixthly, the applicant has been consistent in his claim to have attended school for only 3 years. To a limited extent, it might have been possible for him to have marked the passage of those years whilst at school. That does not of course mean that he knew his date of birth or even his age when he started and finished that schooling.
60. Seventhly, there is a significant evidential problem which arose out of Kim Weir's evidence. I found her to be an impressive witness, for reasons set out later. In relation to the schooling issue, Ms Weir stated that during a meeting with the applicant on 8 February 2021, he told her that he had started school at 10, and had attended for 3 years. This would have fixed the applicant with a year of birth of 2000. Ms Weir confirmed that she had been satisfied that the applicant and the interpreter used had been fully conversant with each other. The age of 10 when starting school was inconsistent with the applicant's other evidence that he had started aged 7. He expressly denied having told Ms Weir that he started school at the age of 10, with the implication being that either (a) the interpreter had made a mistake; (b) Ms Weir had misunderstood the answer; or (c) she had mis-recorded the answer.

61. I reject the applicant's denial as to the accuracy of the information he gave to Ms Weir concerning when he started school. It transpired during the hearing that the interpreter Ms Weir had used at the meeting (and in the previous meeting) was precisely the same individual who had translated the applicant's very first witness statement from English into Nuer for him. It is quite clear to me that the interpreter spoke Arabic, Sudanese Arabic, and the applicant's mother tongue of Nuer. It follows that any suggestion that the interpreter used was inappropriate was a simple attempt by the applicant to deflect blame from poor evidence provided. Further, I simply do not accept, in all the circumstances, that Ms Weir misheard or mis-recorded what the applicant had said. Whilst a possibility, it is highly unlikely. Finally, there was some discussion over the use of the term "went" in the relevant case note: did it indicate that the applicant said he started school at the age of 10 or that he left (i.e. went from) school at that age? Considering the evidence in the round, I am entirely satisfied that it was the former. That is the ordinary sense of the word used in that context and I find there was no problem with the interpreter or other misunderstanding/misrecording by Ms Weir. Therefore, I find that the applicant in fact stated that he had started school at the age of 10.

62. I appreciate that this did not correspond with his other evidence and that he might well not have known his age at all at that time. However, it might also be that he was aware of his approximate age and simply let slip when he started school in what Mr Swirsky described as an "unguarded moment". Either way, there is an adverse impact on the reliability of the applicant's evidence as to his specific date of birth and age generally

63. Ninthly, the photograph, purportedly of the applicant in school uniform, does not take the case very much further, whether for or against his claimed date of birth. It may or may not be a photograph of him. As mentioned earlier, Adek is a generally unreliable source and it was he who apparently provided the photograph. I agree with Mr Swirsky that it is “very odd” that Adek would have had such a photograph. To pose the obvious, and unanswered questions: why would Adek have the photograph in the first place? How did he obtain it? Why has there been no explanation from Adek as to its provenance?
64. In the first instance, I find that photograph is not in fact of the applicant. In the event that I was wrong about this, and in the absence of any expert evidence, there is no way of reliably assessing the applicant’s age at that time. I might agree that it perhaps does not indicate a 13 or 14 year old, as stated in the age assessment report. Having said that, it probably does not indicate a 7 or 8 year old. The best guess would be a child aged approximately 10 and this would be just as consistent with the applicant starting school at that age as finishing. Assessing the evidence as a whole, the former is more likely than not.
65. I move on to other aspects of the applicant’s evidence.
66. There is a vagueness surrounding the timeline of his journey from Sudan to the United Kingdom, but in all the circumstances I do not regard this as being evidentially significant. Whilst it does not undermine his overall credibility, there is nothing within it that supports his claimed date of birth or age.
67. I find that the applicant probably did acquire some knowledge of dates and the passage of time, at least at a rudimentary level,

during the course of his time whilst living in Khartoum and then on into Libya, across to Malta and then during the journey through mainland Europe. This process does not materially assist his claim to have known his precise date of birth when in South Sudan, however.

68. As regards Malta, it is strange that a completely different date of birth was recorded. A different year is perhaps not uncommon, but here it was the day and month as well. It is possible that there was some confusion in the interpretation. In all the circumstances though, I am satisfied that the applicant might by that time have acquired enough knowledge to have just given a calendar date. The date was not accurate, but that would simply have reflected his ignorance as to his actual date of birth.
69. The applicant has asserted that he only knew he was coming to the United Kingdom when in Calais. I find that to be untrue. It is extremely unlikely that he was only made aware of the final destination at that late point. It is much more likely than not that he intended, probably along with others of Sudanese and/or South Sudanese nationality, to make their way through mainland Europe to Calais in order to then make the crossing to this country.
70. The asylum screening interview is problematic for the applicant. I acknowledge that the interview took place on the day of arrival, with the consequence that the applicant may well have been tired and emotionally drained from the channel crossing. I accept also that an Arabic interpreter was used. Having said that, the applicant confirmed that he had understood the questions asked, something he was not compelled to do. Even applying a good degree of caution, the answers recorded at questions 1.2 and 1.3 raise serious concerns. In respect of the former, the date of

birth of 1 December 1997 is stated. The day and month are consistent with the applicant's claimed date of birth. It is entirely possible that he remembered those parts of the date, but then got the year wrong. That answer is then followed by the response that "this is my true date of birth, I was told to lie when I got in the country." That admission, which I find was accurately recorded, is consistent with the applicant having been provided with a false date of birth prior to arrival. In respect of question 1.3 (whether he had ever used any other names or dates of birth), the applicant then stated (as accurately recorded) that he had earlier given a "fake" date of birth. That cannot have been a reference to 1 December 1994 as recorded on the so-called bail form because it is accepted that that document was only created after the screening interview. It must therefore have related to some other event. That event was confirmed in the applicant's oral evidence: when he was rescued in the channel, he had given the date of birth of 1 December 2003. I find that that was the "fake" date of birth that he said he had provided "earlier" and that it was that date of birth in respect of which he had been "told to lie".

Physical appearance

71. The applicant is undoubtedly very tall. However, that fact carries very little weight in my overall consideration. Even putting to one side what might be thought of as a relatively uncontroversial generalisation that people from a number of ethnic groups within southern Sudan and South Sudan itself are tall, individuals are likely to grow at different times of life. The applicant might be especially tall, or he might not. He might have grown in stature at an early age, or at an average age. His height does not indicate very much of value.

72. Similarly, the applicant's face adds nothing of real relevance. On one view, it might be said that he has a young looking countenance. On the other hand, it might be that young men in their mid-20s from his particular region generally look younger than those of an equivalent age in this country. I have no expert evidence on this from either party. I exercise significant caution before attributing any material weight to physical appearance.
73. Witnesses called by each party relied, to an extent at least, on certain aspects of physical appearance. Whilst I acknowledge that this is easily done - initial impressions often inform someone's view of another person - in this particular case this factor does not enhance their evidence, nor does it significantly detract from it.

Demeanour and behaviour in the United Kingdom

74. Much of the evidence relating to the applicant's demeanour and behaviour whilst in the United Kingdom is of relatively little value when it comes to my assessment of his age and date of birth.
75. There has been evidence about the applicant's willingness to comply with rules, but also to push against them. To my mind, such behaviour could place a young person anywhere from mid-teens to mid-20s.
76. In isolation, the fact that the applicant said that he wished to work and live more independently is not of particular import. At the relevant points in time, he was (on his case) either moving into adulthood, or (on the respondent's case) becoming frustrated with any constraints imposed on those younger than himself. Either way, it takes the parties' respective arguments little further.

77. One particular aspect of the evidence is relevant, however. He was arrested by the police for driving alone, without a licence or valid insurance. His evidence was that the owner of the car, a delivery driver, had been “training” him how to drive. I infer from this that the applicant himself had wanted to work in that capacity, knowing that he was at that point unable to. He confirmed that he had smoked cannabis before driving and that he gave false details to the police when stopped. None of this is clear evidence of being significantly older than claimed, but it is relevant. In my judgment, it was indicative of a person with sufficient self-confidence and determination to go out and knowingly break the law in multiple respects, with an intention to pursue unlawful employment, and also to attempt to evade responsibility by giving false information to the authorities. An 18 year old was capable of doing this, of course, but it is in my view much more likely to have been a course of action undertaken by someone of greater maturity in terms of age and life experience.

Adek

78. The evidence surrounding Adek’s involvement in the applicant’s case is highly unsatisfactory. I have previously referred to certain aspects of this.

79. It is possible, although somewhat unlikely, that this individual was able to contact the applicant on Facebook. Even assuming that this occurred, it was in my judgment obvious to the applicant that Adek was capable of providing important evidence in support of his case. Yet the applicant refused outright to provide contact information in order that the assessing social workers could communicate with this individual. The applicant might have claimed to have been “fed up” with the age assessment process, but taking the evidence as a whole, I find that his refusal was in

truth an attempt to evade contact being made. The provision of relevant information by the applicant was a simple task and, if Adek in fact existed and was thought to be a reliable source of information, such contact would have been beneficial. I do not accept the reasons put forward for the refusal to provide that information.

80. In turn, and even assuming that Adek exists, I find that he is not a reliable source of information.

The evidence of Ms Santana and Ms Hough

81. There is no good reason to doubt the good faith of Ms Santana and Ms Hough. I accept that they have given honest evidence. In respect of Ms Santana, and with all due respect, she has had limited experience working with young people in the position of the applicant. Her interaction with the applicant has been her first and only experience of an age dispute scenario. I fully accept that she has not enquired into his personal history by virtue of the KRAN policy not to do so. I accept that she has experience of dealing with teenage children by virtue of her job as a teacher in Brazil. I also accept that she met the applicant on a weekly basis between July and December 2021, although the interactions were extremely limited after her arrival back in United Kingdom in early 2022. The specific indicators she relied on to support her belief that the applicant is the age he claims (going back to the second half of 2021, this would have put him at nearly 18) were not fanciful. However, fear at receiving the Covid vaccine injection could quite easily have been prompted by the lack of any experience of injections, rather than the applicant being just under 18. Difficulties with navigating certain things in this country could quite easily apply to the position of a refugee adult as well as a

refugee minor. Shyness could be indicative of a younger age, but in my judgment it does not take matters very much further at all.

82. I place some weight on Ms Santana's subjective belief that the applicant was the age he claims to be, but it is really very limited.
83. In respect of Ms Hough, again I accept that her evidence has been honestly provided. I accept she has some experience dealing with minor refugees, although she has been a mentor for only one. Her experience providing ESOL assistance is not irrelevant. I accept that there has been contact between her and the applicant over time, although, as I understand the evidence, this has been limited in frequency since November 2021.
84. I do not criticise Ms Hough for holding a firm belief that those who say they are children are children, particularly where she has had limited or no experience of dealing with young people claiming to be a child but who present as an adult. It is not a concern that she consistently referred to "Sudanese" in her witness statement: I accept that she has always been aware that the applicant is from South Sudan. It is to her credit that she accepted that there was definitely no "bright line" being drawn when an individual turns 18. Having said that, it is the case that demeanour is a generally unreliable means of assessing age. Similarly, "instinctive" feelings might be said to be inherently problematic in relation to the same issue. In my view, it would have been very difficult to be certain, or near-certain, that in 2020, the applicant would have clearly looked younger than, for example 19. The margin of error between 16 and 19, particularly in relation to a tall individual such as the applicant, would have made such a firm assessment inherently fragile.

85. Following on from the above, I do not doubt Ms Hough's conviction that the 30-year-old Sudanese man in the Barracks helped the applicant. It may be that he himself genuinely thought the applicant to be under 18 at the time. However, on the applicant's own case, he would have been approaching 17. It would have been very difficult indeed for anyone to have been objectively correct as to whether a young person was either nearly 17 or, for example, nearly 19. I find that the 30-year-old's involvement was not a material indicator of the applicant's true age at that point in time.
86. I do have certain concerns relating to Ms Hough's evidence on the Napier Barracks and Matt's interactions with the applicant. She inferred from Matt's special involvement with the applicant at the Barracks that he believed the applicant to be a minor at the time and this had been demonstrated by the fact that he had only provided such treatment to the applicant. There are two difficulties with the inference drawn. Firstly, I find that Ms Hough did not in fact ask Matt whether this was the case. There is no evidence directly from Matt. Secondly, Ms Hough was clear that there were other minors in the Barracks at the relevant time, yet Matt had not seemingly invested any particular attention in them. In turn, this would appear to undermine the strength of the reason why Ms Hough regarded his actions as specifically tied to the applicant's claimed age. Further, there was other evidence to indicate that the applicant had been given a separate small room due to self-harming, not necessarily on the basis that he was a minor.
87. I do place some weight on Ms Hough's evidence. She has had somewhat broader experience than Ms Santana. However, the weight attributable to her evidence is nonetheless relatively limited in all the circumstances.

The evidence of Ms Murphy

88. I do not doubt Ms Murphy's conviction and good faith in appearing as a witness on the applicant's behalf. She is clearly a committed individual who genuinely holds strong opinions on certain aspects of the age assessment process in this country. I find that through her work with the Refugee Council's Children's Section she has fairly extensive experience in dealing with young asylum-seeking people over the course of some years, and that she has been a teacher with all the experience that that brings. I accept that she has experience in dealing with both minors and adults, many of whom will have been through journeys similar to those undertaken by the applicant. I accept that she had fairly regular contact with the applicant during the course of 2021 and then up to July 2022, after which this dropped off.
89. Ms Murphy described the applicant as being very "excited" on the occasion of his claimed 18th birthday party, to which she had been invited. I have no reason to doubt that the event took place and that the applicant was excited. This could have been because he was in fact turning 18, or it could have been that he was celebrating an occasion which he had not experienced whilst outside of this country and was either unaware of his actual age, or knew himself to be older but was prepared to maintain the claim to a younger age. The same point really applies to his particular like of chocolate.
90. I accept Ms Murphy's evidence that she would not base an opinion age solely on demeanour and physical appearance, but that she would conduct a form of "triage", which would include asking questions about, for example, the relevant timeline, resulting in what she described as a "holistic approach". Her

stated position that she had no doubts as to the applicant's claimed age is worthy of respect.

91. I am bound to say, with respect, that certain aspects of her evidence raised a possibility that she lacked a degree of objectivity, or that she had engaged in a degree of advocacy on the applicant's part. In particular, criticisms of the asylum screening process made in her witness statement and her explanation for problems with the identity card did not assist. I was also somewhat concerned by the apparent fact that a statement provided to the respondent had then been effectively transposed into a witness statement for these proceedings. Only to an extent, these points do undermine the weight I attribute to her evidence as a whole.
92. Notwithstanding the above, I accept that she holds a clear view that the applicant is the age he claims to be and that this is based on her experience as well as what he has told her directly.
93. As with other witnesses and the nature of cases such as this, opinions as to age are imprecise. I do place weight on her evidence and have regard to it in the context of everything I have read and been told.

The evidence of Ms Weir

94. I found Ms Weir to be an impressive witness. She was clear and candid in her evidence, fairly accepting that she was unable to comment on certain matters and that she was not in a position to guess about others. She acknowledged that her contact with the applicant had been limited, amounting to only two visits as his allocated social worker.

95. I have referred to an important aspect of Ms Weir's evidence when addressing the issue of the applicant's attendance at school, above. Beyond that, I found her evidence to be generally reliable. I have no hesitation in finding that she accurately recorded what had been said to her by the applicant and that she was satisfied the applicant and the interpreter being used had no difficulties in communication. The fact that there was limited interaction does not detract from the accuracy of what occurred during the visits.
96. As with other witnesses, Ms Weir's view of the applicant's physical appearance and demeanour carries relatively little weight by virtue of the necessary caution attributable to those factors.

The evidence of Ms Bass

97. I found Ms Bass to be an impressive witness as well. She was measured in what she told me. I find that she is an experienced professional who is conscientious in her approach to the question of age. The fact that she had not disagreed with any of the respondent's age assessments of which she was aware (in terms of them placing the young person over 18) did not materially undermine her credibility, as might have been implied by certain submissions put forward on the applicant's behalf. I am satisfied that she carried no unconscious bias in respect of the particular age assessment with which I am concerned. Indeed, her view was that the applicant was, whilst older than he claimed, also younger than the age attributed by the age assessors.
98. I find that she used a Nuer interpreter when interacting with the applicant and that there had not been any miscommunication in that regard.

99. As with the evidence of other witnesses, I place limited weight on her impression of the applicant's physical appearance and demeanour.

100. Beyond that, her candid evidence was that her opinion was based on an overall impression. By implication, she accepted that the applicant could be slightly younger than she thought, or potentially a bit older. I place some weight on her opinion that the applicant was between 20 and 22 as at November 2021 (when she made her witness statement).

The father's evidence

101. There is an unsigned statement from the applicant's father. By virtue of the decision in Agbabiaka (evidence from abroad; Nare guidance) Nigeria [2021] UKUT 286 (IAC) and the lack of any response from the South Sudanese authorities, I was in effect unable to receive oral evidence from him. With that in mind, I do not reduce the weight attributable to his written evidence to nil solely because it could not be tested in cross-examination.

102. However, it is not right that I should attribute full weight to its contents, as if it had been properly tested. It is undoubtedly the case that it is controversial in nature. It is a fact that the statement is unsigned and whilst there may well have been logistical difficulties, it is unclear to me why this could not been rectified over the course of time. In any event, the statement has to be read in context of the evidence as a whole and, significantly, it leaves unaddressed a number of material issues. For example, there is no detail as to the position and the information apparently held by Adek and, significantly, nothing at all on how the father knew the applicant's precise claimed date of birth.

103. In addition, and apparently contrary to the applicant's assertion, I am satisfied that the respondent did in fact make two unsuccessful attempts to contact the father during the age assessment process. Thus, it cannot be said that the respondent did not pursue this relevant line of enquiry.

104. In all the circumstances, I place no material weight on the father's unsigned statement.

The evidence of Mr Stringer and Ms Bhangu

105. As is usual practice in fact-finding hearings, the two age assessors were not called. There has been no application by the applicant for an alternative direction. In so far as their experience goes, I find that they were both in a strong professional position to carry out the age assessment in this case. In respect of Mr Stringer's second witness statement, I deal with social media, below.

106. I place weight on Mr Stringer's and Ms Bhangu's evidence as it relates to the general reliability of the age assessment report itself.

The evidence of Laura Roberts, Anne Hardy, Amy Hammond, Christine Mackenzie, and Gary Ashman

107. The respondent accepted that good reasons for non-attendance at the hearing had been shown for Ms Hardy and Ms Roberts. I agree. Both were working for KRAN and both gave essentially the same evidence to the effect that they had "no concerns" as to his claimed age. Their interactions with the applicant were, I find, relatively limited. I accept that they both essentially believed the applicant to be the age claimed. However, with all due respect, this carries little weight in my assessment. The nature of their

evidence and the imprecision of the assessment of age means that in this case their opinion adds nothing of significance.

108. In respect of Ms Hammond, Ms Mackenzie, and Mr Ashman, the respondent does not accept any good reason for their non-attendance. All three are teachers and although the fact-finding hearing fell within the exam period, arrangements could have been made for them to attend. That may be the case, but it makes no difference to my assessment of their evidence. All three provided what I regard as honest evidence as to their impression of the applicant's age. They all have relatively significant interactions with him in a classroom setting. The impressions formed were as at early July 2022 when their respective statements were signed. I appreciate that they would have been conscious of the need to safeguard all students and that an individual who was much older than the others could have raised real concerns. I do place weight on their collective view that the applicant seemed to interact well with the other students and that the teachers did not harbour any safeguarding concerns.

109. Having said that, as is common with a number of other witnesses, the impressions formed are in relation to an imprecise exercise. Their impressions will have been based largely on appearance and/or demeanour. Overall, whilst placing some weight on their evidence, it is rather limited.

The identity card

110. I have little hesitation in finding that the identity card apparently provided by the applicant's cousin, Kamis, via WhatsApp, is entirely unreliable as to its contents.

111. Its provenance raises material concerns. If, as claimed, the applicant's aunt (Kamis' mother) had been given the card at the border crossing between South Sudan and Sudan in late 2013, there is a real question as to why she would have taken it with her to Egypt, whilst the applicant remained in Khartoum. There is no evidence from the aunt or Kamis on any of this.
112. Even putting those concerns to one side, the obvious and fundamental problems with the document are apparent on its face. Whereas capital letters of a certain font and size are used for most of the contents, under the heading "Sex" is stated "male" in larger font and without a capital "M". The word "December" is either smudged or has been inserted on top of another word. The photograph appears to be at an angle, not fitting within a particular space. In respect of the dates of issue and expiration, it might be right that if re-ordered they could make some sense in terms of the applicant's account of crossing the border at Christmas 2013. However, it is in my judgment significant that the stated date of birth is recorded in the order of day/month/year, as is normal practice in the United Kingdom. If, as claimed, there was a reason for the other two dates being written in a different order, or there had been some sort of confusion, one would reasonably have expected the same to have applied to the date of birth.
113. I have taken account of the possibility of the identity card not having been produced in "ideal circumstances", but this consideration comes nowhere near meeting the flaws in the document.
114. The applicant only sought to provide any sort of an explanation as to the dates set out on the card some 6 months after he had obtained it.

115. Ms Murphy's attempted explanation for the dates carries no weight. With respect, she was simply expressing a speculative opinion on matters entirely outside her field of experience.
116. There is of course no expert evidence from the applicant pertaining to the identity card.
117. It is more likely than not that the identity card is a forgery. I cannot say decisively who created it, but I find that the applicant has known or strongly suspected all along that it is not a genuine document. The fact that he has sought to rely on it undermines his overall credibility, although it is not of the greatest importance.

The age assessment

118. In my judgment, the age assessment was a procedurally fair and thorough process. I note that there were two "minded-to" meetings. I have already found that the two age assessors were suitably experienced. I am also satisfied that an appropriate interpreter was used at the beatings.
119. The various matters arising in the report have in effect been addressed elsewhere in this judgment and I do not propose to unnecessarily repeat what has been said.
120. I place appropriate weight on the age assessment report to the extent that matters relied on therein have either been established by other evidence or have not been undermined by evidence adduced by the applicant.
121. Two specific issues with which I do disagree are: (a) that the school deemed to relate to the applicant's claim was a secondary

school; and (b) that the photograph purporting to show the applicant in school uniform showed him as being in his “early teens”.

The ICS report

122. I acknowledge that the ICS report was different in nature from an expert report commonly seen in this Tribunal. I have material concerns about this evidence and have ultimately concluded that I will not place any material weight on it in this particular case. I say this for the following reasons.

123. Firstly, I accept that the respondent provided further information in its letter of instructions to ICS. I attach no criticism to the respondent in respect of the end product, as it were.

124. Secondly, the additional name of “Throw” included in the report seemingly appears in only one other place within the large amount of evidence before me and even then I cannot ascertain whether it was in fact stated by the applicant himself.

125. Thirdly, whilst the applicant has the same blood group as that stated in the report, there is no evidence to suggest that this is indicative of an identity match. Mr Swirsky fairly accepted that the particular blood group in question is much more common in the continent of Africa than in the United Kingdom.

126. Fourthly, there was no disclosure of fingerprints. These had the potential of being decisive of the applicant’s identity.

127. Fifthly, when further enquiries were made of ICS by the respondent in compliance with directions issued by the Tribunal, the company came back with what I consider to be rather vague

responses, as set out in the witness statement of Patricia Lawlor. There was no information about any school attended by the applicant, it was unclear to me not only who had carried out the investigate work, but more importantly from which official records the information had been obtained.

128. Sixthly, the photograph on the report does bear a resemblance to the applicant, but I am no expert in facial recognition, and this takes the value of the document no further.

129. Seventhly, no information about the individual's place of residence has been disclosed.

130. It is of course possible that the individual referred to in the report is in fact the applicant. I have considered this evidence in the round, and reached a view in this particular case. It is not to say that similar reports could not potentially be of real value in other cases.

Social media evidence

131. The final evidential issue relates to social media. I have to say that I have been left less than clear about what social media accounts are attributable to the applicant.

132. Some of the social media evidence appears, on any view, to be incapable of relating to the applicant, whilst some may well be. I do not propose to deal with this in any detail. Ultimately, it makes no material difference to my overall conclusion in this case.

Conclusions on the applicant's age

133. Having regard to all of the evidence before me, the parties' submissions, and applying the balance of probabilities, I now bring

together everything said previously in this judgment and state my overall factual conclusions.

134. There are, on a cumulative basis, very significant problems with the applicant's own evidence. There is an absence of relevant evidence in certain respects. Other evidence adduced to support his claimed age and date of birth has either been entirely unreliable or only of limited weight. All-told, I do not accept that the applicant was born on 1 December 2003.

135. Ultimately, the truth, in so far as I am able to ascertain it on the evidence before me, lies somewhere between the parties' respective contentions. My primary finding is that the applicant simply does not know when he was born or how old he is, but has been provided with a date of birth by some person or persons unknown prior to his arrival in United Kingdom, probably with the intention of being treated as an unaccompanied minor here. Alternatively, he does know this information, but has chosen (perhaps under the influence of others) to provide a false date of birth in order to achieve the same goal.

136. Some aspects of the evidence adduced by the respondent are also limited in their weight, based as they are on imprecise impressions given by honest witnesses. Ultimately, I find that the date of birth and age be attributed by the respondent to the applicant has been overstated. With the evidence of the applicant's witnesses in mind, I do not accept that he was born in 1997.

137. The evidential pegs on which I am going to hang my attribution of age and date of birth are the references in Ms Weir's evidence to the applicant stating that he started school in 2010 at the age

of 10 and Ms Bass' opinion that, as at late 2021, the applicant was aged between 20 and 22. These are clearly not steadfast and each is by its nature imprecise. Yet they act as a useful guide in what is a case lacking evidential clarity.

138. Whilst having little confidence that the precise day and month are in fact correct, I attribute to the applicant a date of birth of 1 December 2000. Therefore, I find that the applicant arrived in United Kingdom at the age of 19 and that he is now aged 22.

139. The parties are now invited to draft an agreed order to give effect to the terms of this judgment and to include any ancillary matters.

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