



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

In the matter of an application for Judicial Review

The King on the application of

'IMO'

(Anonymity direction continued)

Applicant

versus

Slough Children First

Respondent

Anonymity direction - Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Applicant is granted anonymity, to the extent set out in this direction. No-one shall publish or reveal any information, including the name or address of the Applicant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court. For the avoidance of doubt, the Respondent is permitted to disclose the Applicant's unanonymised identity pursuant to its statutory powers and obligations, including, if requested, by the Secretary of State for the Home Department.

**ORDER**

**BEFORE Upper Tribunal Judge Keith**

HAVING considered all documents lodged and having heard Michael Bimmler, of counsel, instructed by Instalaw Solicitors, for the Applicant and Lindsay Johnson of counsel, instructed by Joint Legal Team (Berkshire), Slough Borough Council, for the Respondent at a hearing on 20<sup>th</sup> and 21<sup>st</sup> December 2022 and handed down on 27<sup>th</sup> February 2023

IT IS ORDERED THAT:

- (1) The application for judicial review is refused for the reasons in the attached judgment.
- (2) This Tribunal makes a declaration that the Applicant was, at the time of the Respondent's assessment of him, and is, an adult, with an allocated date of birth of 1<sup>st</sup> April 1999.
- (3) The orders sought by the Applicant are refused.

**Costs**

- (4) The Applicant has failed in his primary aim in applying for judicial review, specifically a declaration of his allocated date of birth as minor, at the date of the Respondent's assessment. The Applicant has invited me to make no orders as to costs, on the basis that the Respondent filed its Acknowledgement of Service out of time, for inadequate reasons, and was only permitted to file its AoS and participate in the renewal hearing by HHJ Coe KC on 19<sup>th</sup> May 2022. The Applicant points to the wider interests of departing from the usual order, to mark the Respondent's initial

default, irrespective of any prejudice to the Applicant, and relies on R (Dobson) v SSJ [2023] EHCW 50 (Admin), paragraph [26]. He also relies on the limited way in which the social workers' report assisted me in reaching my decision, as relevant to procedural fairness.

- (5) I do not accept the Applicant's submissions. On the first point, HHJ Coe KC made an order (6), "Costs in the case." Her Order was made at a renewed hearing and the Applicant has had the opportunity to address his concerns at that hearing. The case of R(Dobson) does not address a novel principle, that could not have been raised at that earlier hearing, before HHJ Coe KC reached her decision. I see no reason to depart from her Order, as the Applicant has been on notice since that hearing, that if unsuccessful in his claim, he risked a costs award. On the second point, the limited assistance provided by the social worker report does not equate to it being unlawful on public law grounds, whether procedurally or otherwise. It is not the basis for departing from the normal order in these circumstances.
- (6) Instead, I order that the Applicant shall pay the Respondent's reasonable costs, to be assessed, of not agreed, in accordance with the Civil Legal Aid (Costs) Regulations 2013 and CPR 47.18. No costs award shall be enforced without the permission of the court.

#### **Permission to appeal to the Court of Appeal**

- (7) No application has been made for permission to appeal to the Court of Appeal. In any event, permission to appeal is refused, as there is no arguable error of law in my decision.

Signed: J Keith

**Upper Tribunal Judge Keith**

Dated: 27<sup>th</sup> February 2023

**The date on which this order was sent is given below**

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#### **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:

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#### **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).



Case No: JR-2022-LON-000743

**IN THE UPPER TRIBUNAL**  
**(IMMIGRATION AND ASYLUM CHAMBER)**

Field House,  
Breams Buildings  
London, EC4A 1WR  
27<sup>th</sup> February 2023

**Before:**  
**UPPER TRIBUNAL JUDGE KEITH**

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**Between:**  
**THE KING**  
**on the application of**

**'IMO'**  
**(Anonymity direction continued)**

**- and -**

**Slough Children First**

**Applicant**

**Respondent**

Anonymity direction - Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Applicant is granted anonymity, to the extent set out in this direction. No-one shall publish or reveal any information, including the name or address of the Applicant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court. For the avoidance of doubt, the Respondent is permitted to disclose the Applicant's unanonymised identity pursuant to its statutory powers and obligations, including, if requested, by the Secretary of State for the Home Department.

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*Michael Bimmler,*  
(instructed by Instalaw Solicitors), for the applicant

*Lindsay Johnson,*  
(instructed by the Joint Legal Team (Berkshire), Slough Borough Council) for  
the respondent

Hearing dates: 20<sup>th</sup> and 21<sup>st</sup> December 2022 and handed down on 27<sup>th</sup>  
February 2023

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**APPLICATION FOR JUDICIAL REVIEW JUDGMENT**  
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**Judge Keith:**

1. The applicant applied on 2<sup>nd</sup> February 2022 for judicial review of the respondent's decision of 21<sup>st</sup> December 2021 to assign the

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Applicant an age of 22 years old, with an assigned date of birth of 1<sup>st</sup> April 1999. The Secretary of State for the Home Department initially carried out a basic assessment (which is accepted as not being 'Merton' compliant and is not relied upon) and had assessed the Applicant as having an assigned date of birth of 11<sup>th</sup> May 1995.

2. The respondent's decision followed an assessment on 1<sup>st</sup> November 2021 (later withdrawn) by two social workers, followed by a further assessment in meetings on 30<sup>th</sup> November and 1<sup>st</sup> December 2021. The respondent notified the applicant of its decision in a meeting of 21<sup>st</sup> December 2021. Qualified social workers acting for the respondent, which is an agency of Slough Borough Council, carried out the second assessment. A copy of that assessment is at pages [7] to [43] of the agreed bundle.
3. The applicant challenges the respondent's decision on the basis that its assessment of him was procedurally unfair, as he did not have an adequate interpreter. Whilst the interpreter spoke Arabic, they did not speak the Darfuri dialect, so that some of the applicant's answers were misunderstood and his complaints about the quality of interpretation was not recorded.

*These and other proceedings*

4. It is not necessary to recite the full history of the litigation, except to say that the applicant's claim was originally presented in the Administrative Court. In his decision of 24<sup>th</sup> May 2022, HHJ Coe KC, sitting as a Judge of the High Court, granted permission on a partial basis, namely by reference to grounds 1, 3(iii) and 4 of the renewed grounds. She transferred the application for final consideration to the Upper Tribunal. Specifically, the renewed grounds related to arguable procedural unfairness through reliance on inadequate interpretation; an impermissibly adversarial focus on the applicant's general credibility; and the substantive decision on the applicant's age. The applicant's grounds that the respondent had impermissibly formed a view that the applicant's account was scripted; in not providing him with the benefit of the doubt; and by placing impermissible weight on his appearance or demeanour, were not permitted to proceed.
5. I set out below the applicant's case. For the avoidance of doubt, these findings do not bind the Secretary of State for the Home Department, or any First-tier Tribunal when considering a separate claim for asylum, which has been made and in which a different standard of proof applies, and in which there is a burden of proof.
6. These findings similarly do not bind any Competent Authority considering a future claim of trafficking under the National Referral

Mechanism. I refer to the two sets of alternative proceedings, as the respondent points out that in each of them, the applicant has referred to an age other than that which he maintains for these proceedings. The respondent also says that there are material differences in his account of his travel to the UK, in particular his travel via Chad, never mentioned in these proceedings but mentioned in the NRM interview. The applicant blames the solicitors acting for him in the alternative proceedings, as well as interpreters. His solicitors had included what he says is inaccurate information about his age which he claims he has sought to correct.

*The chronology and the applicant's case*

7. The applicant entered the UK unlawfully on or around 28<sup>th</sup> May 2021, crossing the Channel in a dinghy/boat. On arrival, he was encountered by the UK authorities, issued with a notice of liability to detention (see page [262]), detained at Harmondsworth IRC under an alias, RM (see page [269]), but released, after he was referred under the National Referral Mechanism, on 31<sup>st</sup> May 2021 (see page [318]), with records referring to two dates of birth: 11<sup>th</sup> March 2000 and 11<sup>th</sup> May 2004 (page [321]). The NRM assessor concluded on 1<sup>st</sup> June 2021 that there were reasonable grounds for believing that the applicant had been the victim of trafficking (page [266]). The consequence of this was that the Competent Authority needed to consider whether there were "conclusive grounds." However, the applicant has since confirmed his wish not to be considered under the NRM process, he says because this is delaying the outcome of an asylum decision.
8. The applicant is a Sudanese national, who claims to have left Sudan aged 11 in or around 2016 (paragraph [7], first witness statement, page [186]). He spent around three years in Libya and then nine months in prison in Malta followed by a period of six months in an open camp in Malta, then further travel to Italy and France, and onwards to the UK. The applicant is recorded as claiming to have lived in a village called Kubar in the Darfur region of Sudan, where he had lived with his mother, father and siblings. He went to live with his grandfather following physical abuse from a religious tutor or 'sheikh', who was meant to be responsible for teaching him the Koran. The abuse started when he was approximately 10 or 11 years old. It was when he was around 11 years' old, almost turning 12, that a war erupted between various clans and Janjaweed militia (page [15]). He fled with his brother, 'AH.' He did so at the behest of arrangements made by his grandfather, or alternatively did so without his family's knowledge. He claims that he was not initially aware that his older brother was in the vehicle leaving for Libya with him.

9. He claimed that he travelled overnight from Sudan to Libya, although the respondent points out that it is a journey of nearly 3 days (page [18]). He initially stopped at the border, staying there for around a year while his brother worked (page [18]). He and his brother then moved to another town in Libya called Umm Al-Aranib, so that his brother could find better employment. They shared a room, he thought in around 2017. However, his brother then decided that the applicant should continue traveling, and the applicant was handed over to a Libyan agent, who took him to Tripoli in around 2018 (page [20]). He went in a van with lots of others, but when he arrived in Tripoli, he was arrested and detained in prison. His captors demanded money for his release. He was detained for around eight or nine months but escaped, in an impromptu moment, with a friend, Mousa. He then found a house in Tripoli to stay in and then managed to contact his brother. He left his friend Mousa and lived with his brother in Libya until October 2019. He then travelled to Malta, without his brother, in a crowded boat (page [24]). He woke up in a Maltese hospital, where he stayed for around two or three days. He was then taken by police to a barracks-style detention centre, where the inmates went on hunger strike and from which he absconded.
10. He and a friend, Ahmed, climbed under the body of a lorry and left Malta in or around February or March 2021 (page [26]). It took around two days for them to get to Italy, close to the French border, after which they then headed to France via train. They were stopped and spent one day in prison where their fingerprints were taken and they were deported but they then returned to France (page [26]). Ahmed advised the applicant that the UK was a better place than France, so they took a train to Calais and stayed there for three months. He then left Ahmed behind and travelled in a dinghy to the UK.
11. The applicant claimed that his only education was learning the Koran whilst his older sibling went to school. Only children had reached the age of 12 could attend school in his village. He claimed to know how to write Arabic and to read it (see page [29]). Alternatively, he claimed to be illiterate (page [186]).
12. The applicant's case is that in his answers during the age assessment interview, the interpreter did not understand Sudanese Arabic. The age assessors were not very nice and the questions he was asked reminded him of his past, that he had wanted to forget. The apparent inconsistency between two years when he said he had left Sudan (2015 as opposed to 2016) might have been an issue with the interpreter (paragraph [18] of his witness statement, page [187]). His lawyers had raised concerns over the interpreter

in correspondence (page [166]) to which the respondent had not responded. The respondent had not provided any information about the interpreter's experience or qualifications.

13. The applicant also relied on a photograph, said to be of a refugee identification card issued in a displacement camp in Kalma, in the Darfur region of Sudan, which recorded his date of birth as being 11<sup>th</sup> April 2004, consistent with his claimed age, as well as the witness statements of three friends, 'MN', 'HA' and 'AK'. MN and AK also attended the hearing to give witness evidence.

*The respondent's case*

14. The applicant's case simply recounted how he claimed to know his age and the documentary evidence in the form of a photograph sent to him by his brother. None of the additional witness statements took matters much further forward. There was nothing in the record of interviews to suggest that there was a difficulty in interpretation and the applicant's assertion that he had complained at the time of difficulties with the interpreter was not true.
15. The respondent also relied on the witness statement of a social worker, Adiba Bhatti, who referred to various following points said to damage the applicant's credibility. Her statement was, in reality, a commentary and criticism of the applicant's account, rather than her own personal testimony.
16. First, Ms Bhatti pointed out that in his asylum screening interview, at which he had been provided with an interpreter, his date of birth had been recorded as 11<sup>th</sup> March 2000 (page [223]).
17. Second, at box 1.14 of the same screening interview, his occupation in his home country had been listed as a 'handyman,' at a time when he claimed to have been aged 11 or twelve (page [224]).
18. Third, at box 2.5 of the same document, (page [226]), the applicant referred to doing forced labour for a month in Libya, loading boxes with ammunition, in contrast to his age assessment interview where he referred to only been asked to sweep but managed to escape on the same day (page [21]).
19. Fourth, at box 3.4, page [227], the applicant referred to travelling via Chad, which he had not referred to in his age assessment interviews.



20. On the final page of the asylum interview form, at page [234], he was asked to confirm that his name and date of birth 11<sup>th</sup> March 2000 were correct and he confirmed that they were.
21. The fact that the applicant claimed that his brother had told him his age, as they were leaving Sudan, indicated an element of preplanning which was not consistent with his claim to have been unaware that his brother was in the truck with him, when he left Sudan.
22. The applicant had told the age assessors that a different brother had left in a truck with him (page [15]) to whom he referred in his witness statement when applying for judicial review (paragraph [5], page [186]).
23. Ms Bhatti added that the applicant claimed to remain in telephone contact with his parents (paragraph [72], page [218]).

#### *The hearing*

24. I did not hear any oral evidence from the respondent's age assessors; Ms Bhatti, who was unable to attend the hearing because of illness; or HA. In any event, Mr Johnson accepted that most of Ms Bhatti's witness statement comprised an analysis of what she regarded as inconsistencies in the applicant's account rather than matters of evidence. I heard evidence from the following individuals, who spoke to their witness statements and who also provided additional oral evidence: -  
**The applicant:** When giving oral evidence, the applicant had the assistance of an interpreter in Darfuri Arabic. Given his previous concerns about the quality of interpretation, I was keen to ensure that he and the interpreter were able to understand one another fully. The applicant and the interpreter confirmed at the beginning of the hearing that they had had a chance to talk and that they understood one another. I also urged them to notify me straightaway if they had any difficulties. They did not raise any issues at any stage.  
**MN:** MN also gave evidence with the assistance of an Arabic interpreter. He is 25 years old. He has applied for asylum. He lives in the same hostel as the applicant. He has known him for around three to four months and sees him around three or four times a week. He thought that the applicant was his claimed age of 18 because MN has had to help the applicant with cooking and the applicant has not shown the same maturity as others, such as in cleaning his room or the communal area. The applicant is respectful of him. MN said that the applicant says that he wants his mother. MN accepted that he did not have any experience or qualifications of assessing people's ages, but he instead relied on

what he called 'life experience', and comparing with his own brother, born in 2001, although MN accepted that he had not seen his own brother for four years. When asked whether he was aware that the applicant was in indirect contact with his mother, MN said that he was not aware, as he did not discuss personal issues with the applicant.

**AK:** AK claimed to be 18. He had met the applicant in Calais in 2021. He had not spoken to the applicant about his age, but thought he was 'sort of' AK's age. This was because the residential centre in which they had stayed in Calais did not allow adults. AK did not, however, claim that the French authorities had carried out any form of age assessment.

**HA** did not attend to give oral evidence, but I nevertheless considered his witness statement pages [201] to [202]. He too claimed to be 18 and had known the applicant since January 2022. They saw each other every weekend when they went to the park and played football. He said that he did not know much about the applicant's problems but that the applicant sometimes talked about issues with his age and the applicant told him that he was 18. HA thought that they were similar ages, having spent time talking to him. The applicant didn't do anything that HA thought would make him think he was older than HA or his friends.

#### *Applications concerning other evidence*

25. An issue arose about the witness statement prepared by CB Solicitors for the applicant in respect of his asylum claim. In this statement, at pages [256] to [259], the applicant's own solicitors had recorded his claim to have been born in 'April 1999, not 11 March 1995' (paragraph [1]). The applicant contended that he had never said this and that they must have learned this from a third party, specifically social workers. Having reminded the parties that they had no obligation to waive privilege, I canvassed with the representatives whether it might be possible to adduce CB solicitors' attendance note, on which the witness statement was based, bearing in mind the duty of candour. Mr Bimmler said that his instructing solicitors had attempted to do so, but that CB Solicitors had resisted, saying the disclosure was not necessary. As a consequence, I canvassed with the parties whether they regarded it as necessary and whether a consent order, for disclosure by CB solicitors might assist. They agreed that it would and I issued an order, by consent. CB Solicitors properly complied, although, the applicant had further concerns and reiterated his position that he had never told CB Solicitors that he was born in 1999. He claimed that when the draft witness statement was read back to him, it had been read back as indicating 2004, his claimed year of birth and that his solicitors had signed it on his behalf, on that basis.

26. Mr Bimmler initially indicated that he was instructed to apply to adduce video footage of recordings of discussions with CB Solicitors, on the applicant's mobile phone. What then transpired was that much of the underlying data held by the applicant on his mobile phone has been lost. This is because the applicant switched mobile phones around two to three months ago, after a meeting at which the respondent had the opportunity to view the applicant's social media accounts on 28<sup>th</sup> June 2022. When he switched phones, while he had retained his WhatsApp account, when he reinstalled it on his new phone, the history was deleted. He had, however, transferred some photographs and recordings from the old phone to the new one, although on further discussion, Mr Bimmler explained that the footage was a recording of a recording, ie one phone recording another. Mr Johnson submitted, and I accept, that the method by which it is said that the information has been transferred did not, as explained, make sense. If the material had been recorded from original recordings, it was unclear why they were no longer available. At this stage, Mr Bimmler did not maintain the application to rely on the recordings, provided that the applicant was given the opportunity to give additional oral evidence, which I permitted. That in turn led to Mr Johnson submitting, without objection from Mr Bimmler, that CB Solicitors be given a chance to respond to the applicant's additional oral evidence, which they did.
27. The import of this is that no original WhatsApp communications now exist before the meeting between the parties' lawyers on 28<sup>th</sup> June 2022, at which the respondent had an opportunity to review the applicant's social media accounts. The applicant sent the camp registration document via WhatsApp to his solicitors as soon as he received it in or around April 2022, but the precise timings of his discussions with his brother before that or his contact with a friend who has lived in Libya for many years, through whom he maintained contact, are unclear. This is because the underlying data on the mobile phone, which might have demonstrated a clear chronology of communications, has been lost, because the applicant switched phones recently. This is relevant, because at various stages of the applicant's oral evidence, for example when asked about his contact with his brother, he said that he could not remember the last time he spoke to him. He also gave contradictory evidence about how frequently his brother was in contact with his siblings. I do not draw adverse inferences about the applicant's credibility from the loss of the underlying data, but its loss, given the importance of the retention of data, and despite the applicant's duty of candour and the fact that he has been legally represented throughout, has hindered my assessment of the applicant's age.

28. At the conclusion of the hearing on 21st December 2022, the parties agreed that CB Solicitors would provide written answers to questions in an attached schedule, following which the parties would have the opportunity to file brief written closing submissions. The parties agreed eight questions:

- “(1) Did anyone from your firm speak to, or correspond with, a social worker from Slough Children First?
- (2) Did anyone from your firm speak to, or correspond with, an employee of Slough Children First?
- (3) If the answer to question 1 or/ and 2 is yes, who and when?
- (4) If the answer to question 1 or/ and 2 is yes, what information was provided and can we have a note of that conversation?
- (5) Where did you obtain the date of birth 11/3/1995?
- (6) Who provided your firm with the date of birth April 1999?
- (7) Have you ever been provided with a copy of an age assessment by Slough Children First?
- (8) When was a copy of the applicant’s statement sent to him?”

29. On 3<sup>rd</sup> January 2023, the Principal Solicitor of CB Solicitors replied by email as follows:

- “1. NO
- 2. NO
- 3. N/A
- 4. N/A
- 5. Home Office papers supplied by client
- 6. Client when drafting his Witness Statement
- 7. NO
- 8. 17/11/2021”

30. The import of the response from CB Solicitors is clear. They had included a date of birth of April 1999 in the applicant's witness statement for the purposes of his asylum claim based on what he told them. The applicant takes issue with the accuracy of the CB Solicitors’ comments, but does not impugn their honesty or professional integrity.

### *Discussion*

31. The purpose of this is to decide, as a fact, the applicant’s date of birth. There is no burden of proof and the standard of proof is on the balance of probabilities. In reaching my decision, I have considered all of the evidence, whether I refer to it specifically or not, as well as both the written skeleton arguments and oral submissions of the parties representatives. In particular, I note Mr Bimmler’s submission that the respondent ought not to be provided a “margin of discretion” as to its view and that the question of age must be resolved as a matter of jurisdictional fact.

Mr Bimmler pointed out that decision makers cannot determine age solely on the basis of appearance, except in clear cases, and that appearance is a notoriously unreliable basis for assessment of chronological age. Demeanour can also be notoriously unreliable and the benefit of any doubt should be given to an unaccompanied asylum seeking child, since it is recognised that age assessment is not a scientific process. He also argued, and I accept, that in assessing the applicant's credibility, my primary focus should be on his evidence pertaining to his age, not concerns about inconsistencies in his account, which are of marginal relevance to his age. He also reminded me that I must be cautious about making assumptions of how one might have expected the applicant to have behaved and also that I should make allowances for problems that the applicant might have in giving a coherent account. I am conscious that on any view, even if the applicant is not a child he is only just a young adult, and a potential vulnerable one. That being said, I canvassed with the representatives that the applicant does not have any mental health issues that might impair his understanding or quality of his evidence. Rather his vulnerability is his youth and relative lack of education.

32. Although I have considered the evidence holistically, I have to start somewhere and the best place seems to be how the applicant claims to know his age.
33. On the applicant's case, he was unaware of his age during his childhood until he left with his older brother, when they travelled together from Sudan to Libya in 2016. His brother had told him the month and the year he was born. In oral evidence, he said that his family did not celebrate birthdays and that whilst he lived either with his immediate family in one house or later, in his grandfather's house a short distance away, he did not know the ages of any of his siblings. He said that whilst he did not know his own age because he had not attended school and had only had limited Koranic education, his older brother must have known of the applicant's age from their parents. However, when he was asked how, if his brother had learned this from their parents, he would also not have known, having lived in or near the family home, he relied on the fact that he had not always lived in the family home, and had instead lived with his grandfather a short distance away. He added that his brother might know the applicant's age because the brother had attended school and he had not. However, he could not explain why, beyond basic numeracy, the applicant's brother would have learnt of the applicant's age from having attended school.
34. The second basis of the applicant's claimed knowledge of his age was when the applicant received the Kalma camp registration

document, which refers to a “displacement date” of 2<sup>nd</sup> June 2008 and his date of birth as being 11<sup>th</sup> of April 2004. He says that he received a photograph of the document from his brother, on a date he was unsure about, but possibly in March or April 2022. He had managed to get his brother’s details from the friend who had lived in Libya, ‘M,’ who now lives in the UK. When asked about how the Kalma authorities would be aware of his precise age, he did not know who would have registered him, or how his precise date of birth (11<sup>th</sup> April 2004) as opposed to his month and year of birth to which he had referred in both his witness statements, was known.

35. I have serious concerns about the reliability and authenticity of the registration document, for a number of reasons. It contradicts the applicant’s previous claim to have lived in his home village all of his life, before fleeing Sudan. Contrary to Mr Bimmler’s closing submissions, the respondent did not accept, without challenge, its authenticity or accuracy. The respondent was hardly in a position to make a more detailed challenge, given that it is in essence, a photograph, with concerns about how was received and its quality, which I discuss below.
36. There is no explanation for how the camp registration document was originally produced and the basis on which registration details were provided to the camp authorities. Even if the document is genuine, I have no sense of how the information had been verified. To be clear, I have not been provided with the document itself. Instead, there is a very poor quality photograph, whose underlying metadata, which might show when and where it was taken, has been lost. I do not have the WhatsApp message by which it was sent to the applicant. That too has been lost.
37. The applicant sought to reconcile the inconsistency posed by the photograph by explaining that his account of having lived in his home village for the whole of his life until he left Sudan (page [12]) was not accurate, and that his family had moved to the camp, and had later returned to his village on a date that he could not remember, before he fled Sudan. His family had since moved again. His brother, with whom he was in contact, had told him that his family now lived in a town called Gireida. He initially claimed in oral evidence that his brother was not in contact with their siblings, until it was queried how the brother would know where they lived. He then said that his brother was in occasional contact with their siblings, but not daily.
38. The applicant also said that he was in contact indirectly, via a friend of his brother, with his mother, who herself did not have a telephone. When asked whether he had asked his mother about any identity documents, he said that he had not thought to ask, as

people do not pay much attention to documents in Sudan. That response does not explain why, via his brother, the applicant or his solicitors have not sought confirmation from his mother, who would obviously be best placed to answer questions in connection with his claimed date of birth. He does not refer to contact with his mother in his witness statements.

39. On the one hand, I am conscious that even on the respondent's case, the applicant is relatively young and his education is limited. His recall of sequences of events or precise timings may be susceptible to error, even if the applicant is not attempting to mislead me.
40. On the other hand, the applicant's explanation for his knowledge as to his date of birth is not, in my view, sustainable. On his own evidence, there is no culture within the area where the applicant grew up for recording or celebrating births. The applicant has provided no adequate explanation for why his older brother suddenly informed him, when he left Sudan, of his age, or how his brother would know his age, simply by virtue of having attending school, or if it was a matter that was discussed with his parents/mother, why they would not have told him. I do not place any weight on the reliability of a poor-quality photograph of the camp registration document.

#### *Maturity and demeanor*

41. I bear in mind the danger of placing significant reliance upon assessments of maturity and demeanour. I place very limited weight on the evidence of a 'MN', 'AK', and 'HA,' the applicant's friends. I do not go so far as to say that these witnesses are being deliberately untruthful. Rather, none has any experience in assessing people's ages and as MN makes clear, he was unaware of the applicant's indirect contact with his mother, as they did not discuss personal issues of that nature. The fact that the applicant was resident in some form of hostel in France with AK does not assist, where there is no suggestion that the French authorities have made any proper assessment of the applicant's age.

#### *The respondent's age assessments*

42. I turn to the age assessment completed by trained social workers, Bridget Nam and Adeniki David. Their relevant expertise is not disputed and they have specific experience of conducting age assessments. Their report refers, at page [9], to the applicant as having a visibly prominent larynx, defined muscle structure and a physically mature appearance, as well as recent shaving. The assessors refer to his composure when answering questions, and

his lengthy answers, typical of adult. While I do not doubt their experience, I am very conscious of the limited weight that can be attached to demeanour and maturity. Their report does not therefore assist, to any great degree.

*Other documentary evidence and accounts*

43. I have already touched on the fact that under three separate processes (the age assessment, the National Referral Mechanism process and the asylum process) there are records of different ages. In the asylum screening interview, the applicant was interviewed on 31<sup>st</sup> May 2021 with an interpreter. He has not suggested that there was any problem with that interpreter. That record had, at box 1.2, page [321], a date of birth of 11<sup>th</sup> March 2000 and alternative date of birth of 11<sup>th</sup> May 2004 together with the applicant's description of himself as having an occupation as a handyman. The applicant's explanation for the record of the date of birth of 11<sup>th</sup> March 2000 is that officials simply made this up when he was first encountered and fingerprinted.
44. The final process of NRM referral refers to the applicant as having a date of birth of 11<sup>th</sup> March 2000 (page [313]) referred to on numerous occasions in correspondence between the competent authority and CB Solicitors and there is no suggestion of disagreement by them. I am also conscious that it refers to 1 May 2004 (page [341]) so the picture in relation to that documentation is less clear.
45. As already discussed, CB Solicitors have disclosed the applicant's witness statement for his asylum claim, which states at paragraph 1 that he was born in April 1999 and "not 11<sup>th</sup> March 1995." The applicant is adamant that this was provided by social workers looking after him to CB Solicitors and that he had not told them that date.
46. I have considered the applicant's assertion of how the date of birth of April 1999 has come to be in his witness statement. CB Solicitors are clear that they have not been told this by the applicant's social workers. I am conscious that the response has been provided by a solicitor, who is an officer of this Court and under a professional obligation not to mislead me. He is emphatic, after repeated challenge, that the date is based on what the applicant told him. As the applicant's solicitor, he has no motive to mislead this Tribunal. His honesty and integrity have not been impugned. In contrast, the applicant has nothing on which to base his assertion. It is suggested that the bulk of an attendance note consists of generic, template advice including a reference to the applicant as 'her' and a clients 'husband' as well



as a reference to the client not yet having claimed asylum. In the circumstances, the applicant invites me to place limited weight on the attendance note. Mr Bimmler also submits that the witness statement drafted by CB Solicitors is internally inconsistent, as it refers to him being 12 years' old in Libya, and his claim to have left Sudan in 2016, so that this was consistent with his claimed date of birth of 2004, not April 1999.

47. In his closing written submissions, Mr Bimmler invited me to consider that given that social workers had made an initial assessment of the applicant's year of birth as being 1999, so I should prefer the applicant's assertion that it was likely that CB Solicitors had included that date in the witness statement because of their contact with his social workers. The difficulty he faces is that he does not challenge the honesty of the applicant's solicitor. While there may be honest inaccuracies in accounts, the principal solicitor at CB Solicitors has been emphatic that he has had no contact when drafting the statement, or at all, with the applicant's social workers.
48. I prefer the evidence of CB Solicitors that they have not had any contact with the applicant's social workers, which resulted in the phrase, 'April 1999', being included in the asylum witness statement. There are two other alternatives. The first is that CB Solicitors have, like others (so it is claimed) mis-recorded what the applicant has told them and they were mistaken. Alternatively their records are deficient. Mr Bimmler points to the absence of an attendance note of the meeting when the witness statement was taken. What instead has been provided was an earlier attendance note, containing template advice, with various inaccuracies in it. I accept Mr Bimmler's submission that the document entitled "initial instructions" is not a note of the meeting at which a witness statement was taken. Indeed, there is no reference to April 1999 in it and there are the inaccuracies pointed out. Moreover, the note itself does not purport to be a note of the witness statement meeting. It refers at the end to the next appointment being 29<sup>th</sup> June 2021, whilst the witness statement is signed by the author (not the applicant) as having been taken over the telephone (because of Covid) on 17<sup>th</sup> November 2021. While there is no separate attendance note for the 17<sup>th</sup> November 2021 call, I do not draw adverse inferences from that, as practice varies on how witness statements are taken, and CB Solicitors have said that the witness statement reflects what the applicant told them. Indeed, an email from CB Solicitors to Instalaw dated 11<sup>th</sup> July 2022 reiterates that it was the applicant who said that his date of birth was different from that recorded in his "Home Office papers" [1995]. The same e-mail acknowledges that the applicant had not signed a copy, and remained pending a final preparation interview,

once a substantive asylum interview date was known. I accept that the statement contains an inconsistency, where it refers to the applicant's age in Italy, and his claim to have left Sudan in 2016. That is something that would have to be explained and resolved in a final version of the witness statement. However, drawing the various communications from CB Solicitors together, all are consistent that not only did the applicant say that his month and year of birth was April 1999, but that he had expressly corrected the respondent's record of 1995.

#### *Narrative of travel from Sudan to the UK*

49. It is not my role to assess the veracity of the applicant's asylum claim, for which there is a separate process. Only credibility issues which pertain to the applicant's age are relevant. Nevertheless, there are elements of the narrative which touch upon the applicant's age. In particular, the applicant, in his asylum interview, has referred to travel to, and spending a significant time in Chad, living there for nearly a year, rather than traveling to Libya. That in turn impacts on his claimed age in Libya. No reference to this is made in his age assessment. I also accept the criticism that it is unclear why, if the applicant was of such a young age, he would have been sent alone (to his knowledge) by his grandfather, separated from his other siblings. However, I am also conscious that there may be particular circumstances that explain this. I have also noted his claim to have been used for manual labour stacking ammunition in Tripoli for a month, in contrast to his claim elsewhere to have swept floors for a day, only to then escape. I think it likely that the applicant was attempting to minimise the role he played, for fear that working in a manual role might count against him in relation to his claimed age. (He also disputes being a 'handyman').
50. In summary, the applicant describes alternative versions of where he lived before leaving Libya (either in his village all his life or alternatively at least in part in a displacement camp); travelling via Chad or without reference to Chad at all; and when in Libya, inconsistencies in carrying out manual work. On the other hand, the applicant is consistent about the later part of his journey via Malta, Italy, and France and thereafter the UK.

#### *Conclusions*

51. Having considered the evidence holistically, I have already outlined why I place limited weight on the evidence of the applicant's friends. The social workers' opinion is of limited assistance, and I am not satisfied as to the reliability of the camp registration document, for the reasons outlined. What is at the heart of this

application is the applicant's inconsistency, not on otherwise irrelevant aspects of his narrative or journey, but his own age as he perceives it. I have reminded myself that simply because he is not truthful in elements of his account; or that his evidence is otherwise unreliable, because of his lack of recall of a sequence of events; it is not appropriate to discount his evidence entirely. However, three different authorities (the respondent, the NRM Competent Authority and the Home Office) have recorded three different dates of birth. The applicant has attempted to explain this through translation difficulties or bureaucracy. However, tellingly, I find that the applicant has told CB Solicitors that he was born in April 1999. I conclude that this was because he believes it to be true and I do not accept his explanation that they received that information from his social workers. I conclude that his date of birth is what he truly believes it to be, namely April 1999.

52. I conclude that the applicant has an assigned date of birth of 1<sup>st</sup> April 1999.

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