

**IN THE UPPER TRIBUNAL**

**JR-2024-LON-**

**000016**

**(IMMIGRATION AND ASYLUM CHAMBER)**

**IN THE MATTER OF AN APPLICATION TO APPLY FOR JUDICIAL  
REVIEW**

**BETWEEN:**

**THE KING**

**(on the application of GSH)**

**Applicant**

**-v-**

**LIVERPOOL CITY COUNCIL**

**Respondent**

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**Order**

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**Before Upper Tribunal Judge Rimington sitting at Field House 15-25 Bream's Buildings London EC4A 1DZ**

**UPON** hearing counsel, Ms S Ferrin for the Applicant and counsel, Mr L Johnson for the Respondent at a fact finding hearing on 8 October 2024

**UPON** having considered all documents lodged

**AND UPON** the Tribunal having handed down judgment on 28 November 2024 in the absence of the parties

**IT IS DECLARED THAT** the Applicant was born on 12 August 2000.

**AND IT IS ORDERED THAT:**

1. The application for judicial review is dismissed.
2. The Applicant shall pay the Respondent's costs of the application not to be enforced without the permission of the Tribunal and subject to an assessment of the Applicant's ability to pay under section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Any costs shall be the subject of a detailed assessment, if not agreed.
3. There shall be a detailed assessment of the Applicant's publicly funded costs.
4. There was no application for permission to appeal to the Court of Appeal before me but in the event I refuse permission as I conclude there is no error of law in my decision.

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

Dated:                      28<sup>th</sup> November 2024

**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): 28/11/2024

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).

IN THE UPPER TRIBUNAL

JUDGMENT GIVEN FOLLOWING HEARING

JR-2024-LON-000016

Field House,  
Breams Buildings  
London  
EC4A 1DZ

8<sup>th</sup> October 2024

**THE KING**  
**(ON THE APPLICATION OF GSH)**

Applicant

and

**LIVERPOOL CITY COUNCIL**

Respondent

**BEFORE**

**UPPER TRIBUNAL JUDGE RIMINGTON**

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Ms S Ferrin, instructed by Luke and Bridger Law Solicitors appeared on behalf of the applicant.

Mr L Johnson, instructed by Liverpool City Council appeared on behalf of the respondent.

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**ON AN APPLICATION FOR JUDICIAL REVIEW**

**APPROVED JUDGMENT**

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JUDGE RIMINGTON: The applicant is an Eritrean national who entered the United Kingdom on 20<sup>th</sup>-21<sup>st</sup> July 2023 and claimed asylum and that he was a child of 16 years at the time of entry and was born on 12<sup>th</sup> August 2006. By 25<sup>th</sup> July 2023 the immigration authorities had ascribed the applicant a date of birth of 12<sup>th</sup> August 2000, some six years earlier. The respondent then conducted an age assessment on 18<sup>th</sup> August 2023 and social workers (Christina Stirrup and Julia Walimbwa) considered that the applicant was born in 2000. The applicant is thus 'age-disputed' and the issue before the Tribunal is the applicant's date of birth.

### **Background**

2. In his witness statement dated 16<sup>th</sup> October 2023 the applicant explained that he learned his age from his mother before he left Eritrea and was told the date in the Gregorian calendar as they '*do not use the Islamic calendar much in Eritrea*'. In his witness statement he advanced that he went from Eritrea to Sudan with his uncle in 2014 and attended a Madrassa for 2 years from 2014 when he was aged 7 years old. The applicant stated that he left Sudan for Libya with two friends in May 2022 and stayed in Libya for 8 months. His boss then organised his transfer to Italy where he was detained for a day. When in Libya he contacted his mother who again told him his age of being born in August 2006 and he gave this information when he was stopped in Italy and specifically stated that he gave his date of birth. He then went to France by train where he hid in the toilets to avoid detection but was again detained and they took his fingerprints and date of birth and was then let go. On arrival in Calais the applicant was given a mobile phone by a charity organisation.

### **Litigation history**

3. The grounds of challenge dated 16<sup>th</sup> October 2021 to the age assessment, in summary, asserted that:
  - (i) the age assessment was wrong as a question of fact and applying relevant case law the applicant's claim was not one that could not succeed.

(ii) the assessment disclosed procedural unfairness/failure to comply with applicable guidance and law.

(a) The respondent failed to undertake a proper 'minded to process' as described in **R(B) v The London Borough of Merton [2003] 4 All ER 280** and in the Association of Directors of Children's Services Guidance ('ADCS 2015'). The assessors should have put their provisional evaluation to the applicant and re-evaluated following his response. The approach was not in accordance with **R (HAM) v London Borough of Brent [2022] EWHC 1924 (Admin)** at [6] nor **MA & HT v Coventry City Council and SSHD [2022] EWHC 98** at [116] such that common law principles of fairness applied to both short and long form assessments. The applicant had no fair and proper opportunity to deal with important points adverse to his age claim. The assessors conclusions under the heading 'minded to' were not provisional but definite.

(b) there was an absence of an appropriate adult who could have assisted with supporting communication, advocating on the applicant's behalf, representing his best interests and ensuring his welfare needs were met during the interview process and able to challenge the social workers. The applicant claimed during the process he was in distress through living with adults and also sleep deprived.

(c) there was an improper reliance on baseless, unevicenced and pseudo-scientific postulations of physical proof and indicators of age made without expertise. For example, the assessors referred to the applicant's 'developed bone-structure', 'features of a fully formed adult' and 'the physical characteristics of an older male such as receded hairline'. The assessors had failed to heed the warnings of the courts as to the inherent unreliability of appearance and had purported to conduct a scientific evaluation outside any assessed expertise in the field. If medical opinion cannot determine age then

less so untrained social workers. There are no scientific means to determine age.

(d) there was an erroneous approach to the applicant's credibility. Doubts about aspects of an individual's account cannot be used to dismiss his account of how he came to know his age. **MVN v London Borough of Greenwich [2015] EWHC Civ 1942 (Admin)** recognised that asylum seekers may have problems giving coherent accounts of the history. Assumptions were made, despite his limited education, that the applicant could follow the tabulated timeline relayed to him.

4. His Honour Judge Pierce on 4<sup>th</sup> December 2023 sitting as a Deputy High Court Judge granted permission for judicial review but refused interim relief.

### **Legal Framework**

5. **R(B) v The London Borough of Merton** set out detailed guidance on the process to be followed by local authorities when assessing age and that has been repeatedly endorsed. The High Court in **VS v The Home Office [2014] EWHC 2483 QB2** summarised the relevant legal requirements of an age assessment at [78] as follows:

“ ...

- o *The purpose of an age assessment is to establish the chronological age of a young person.*
- o *The decision makers cannot determine age solely on the basis of the appearance of the applicant, except in clear cases: **Merton** per Stanley Burnton at [37].*
- o *Physical appearance is a notoriously unreliable basis for assessment of chronological age: **NA v LB of Croydon [2009] EWHC 2357 (Admin)** per Blake J at [27].*
- o *Demeanour can also be notoriously unreliable and by itself constitutes only 'somewhat fragile material': **NA** per Blake J at [28]. Demeanour will generally need to be viewed together with other*



things. As Collins J stated in **A and WK v London Borough of Croydon & Others** [\[2009\] EWHC 939 \(Admin\)](#) at [56]:

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

- o *There should be 'no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child': see **Merton per Stanley Burnton** at [37-38]. The decision, therefore, needs to be based on particular facts concerning the particular person.*
- o *There is no burden of proof imposed on the applicant to have to prove his or her age in the course of the assessment: see **Merton per Stanley Burnton** at [38]. This is confirmed also by **R(CJ) v Cardiff CC** [\[2011\] EWCA Civ 1590](#), in which, at [21], Pitchford LJ said this:*

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

- o *In similar vein, benefit of any doubt is always given to the unaccompanied asylum-seeking child since it is recognised that age assessment is not a scientific process: see **A and WK** per Collins J at [40].*
- o *The two social workers who carry out the age assessment should be properly trained and experienced: **A and WK** per Collins J at [38].*
- o *The applicant should have an appropriate adult, and should be informed of the right to have one with the purpose of having an appropriate adult also being explained to the applicant: see **FZ** per Sir Anthony May P at [23-25]; **J** per Coulson J at [14]; and **AAM** per Lang J at [94(a)].*
- o *The child should be told the purpose of the assessment see **FZ** per Sir Anthony May P at [3] (summarising **Merton**).*
- o *The decision 'must be based on firm grounds and reasons' for it 'must be fully set out and explained to the applicant': **A and WK** per Collins J at [12].*
- o *The approach of the assessors must involve trying 'to establish a rapport with the applicant and any questioning, while recognising the possibility of coaching, should be by means of open-ended and not leading questions'. It is 'equally important for the assessors to be aware of the customs and practices and any particular difficulties faced by the applicant in his home society': **A and WK** per Collins J at [13].*
- o *It is 'axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him': **FZ** per Sir Anthony May P at [21]. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant 'with their conclusions without first giving him the opportunity to deal with the adverse points': [22]. See also **J** per Coulson J at [15]; **AAM** per Lang J at [94(c)]; and **Durani** per Coulson at [84-87] (in particular, at [84]: 'Elementary fairness requires that the crucial*

*points which are thought to be decisive against an applicant should be identified, in case the applicant has an explanation for them’).*

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

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

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

7. In **R (AE) v Croydon LBC [2012] EWCA Civ 547** the court held that in the absence of documentary evidence, the starting point was credibility and in **MVN v London Borough of Greenwich [2015] EWHC Civ 1942 (Admin)** Picken J noted at [27]:

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

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

8. The importance of an appropriate adult being in attendance was confirmed in **R (FZ)** at [24] as part of the necessary elements of a fair and appropriate process. This has, however, been revisited in **R (SB v Kensington and Chelsea) [2023] EWCA Civ 924** and in **R (HAM) v London Borough of Brent [2022] EWHC**

**1924 (Admin)** Swift J concluded that whether an appropriate adult was required depended on the circumstances of the case as opposed to it being a legal requirement [20]. Swift J confirmed that it was necessary for adverse points to be put to the young person so that they may have an opportunity to respond but also held that the distinction between a full **Merton** assessment and a short form assessment was legally irrelevant; what is required in all cases was for the principles identified in **Merton** to be applied in respect of “reasonable investigation and fair process”.

### **Documentation**

9. An agreed bundle of was provided to the Upper Tribunal which included the short form age assessment dated 18<sup>th</sup> August 2023, two witness statements of the applicant dated 16<sup>th</sup> October 2023 and 15<sup>th</sup> April 2024 and which he adopted in oral evidence and a statement from Ms C Schwenger, dated 12<sup>th</sup> April 2024. There was a statement albeit undated from Christina Stirrup. There was also a statement from Martin Bridger dated 1<sup>st</sup> March 2024. There was no authorities bundle.

### **The Hearing**

10. The applicant attended and gave oral evidence at the hearing as did Ms Schwenger. There was no application from Ms Ferrin that the applicant was a vulnerable witness nor that I should invoke the Presidential Guidance Note (no 2 of 2010) Children, vulnerable Adult and Sensitive Appellant Guidance and the Senior President of the Tribunal's Practice Direction (2008) on Child, Vulnerable Adult and Sensitive Witnesses. I am aware, however, that there is no bright line between being a minor and adult and I have considered and applied the guidance where appropriate. At the date of the hearing, even on his claimed age the applicant was 18 years of age and there was no indication that he had any form of special needs. He answered the questions asked of him and appeared relaxed at the hearing. Ms Ferrin was reminded to observe her client and advise should he need a break.
11. I have not set out the oral evidence in detail as it is recorded but I have referred where relevant to the evidence in my conclusions.

12. In submissions, Mr Johnson identified that the peculiarity of the case was the dearth of evidence even in the face of reasonable expectation. The subject access request revealed nothing. The question was how the applicant knew his age. He claimed his mother told him 2 months before he left Eritrea only because they were discussing his father. The age assessors had been told voluntarily that he was 9 in 2014. That did not accord with his claimed age now. That information was offered twice and been put to him in tabulated form to explain the difficulty. By the time he had come to produce his witness statement 2 months later, he said he was 7 years old in 2014 and reaffirmed six months later in his second witness statement. The statements were contradictory. The applicant asserted that individuals entered military service at 11 or 12 years old in Eritrea. The Country Policy and Information Note Eritrea: National service and illegal exit September 2021 (CPIN) on Eritrea demonstrated that 18 was the relevant age for conscription and thus to leave at 7 to avoid suspicion was not credible. The applicant claimed he had no contact with his mother which was not believable bearing in mind he had his uncle's number which is how he contacted her previously.
13. There were challenges to the enquiry process but the key points from the age assessment had been accepted by the applicant during his oral evidence. He accepted he said that he was 9 in 2014 albeit he now claims he tried to amend this at the close of the interview. He accepted in oral evidence that that during the interview process there was a break and the provisional findings put to him giving him an opportunity to respond. There was nothing wrong with the age assessors finding he looked older than he claimed but that was only one of three factors given. The public law arguments even taking them at their highest do not affect the weight to be afforded to the age assessment. First there was no unlawfulness in the way the process was conducted and secondly the criticism was not born out by the applicant's own evidence at the hearing. I was invited to draw inferences from what was missing. Ms Schwenger's entire experience for comparison was of those who were age disputed and she had no qualification in age assessment.

14. Ms Ferrin submitted that the multiple weaknesses in the age assessment did not justify reliance on it. The applicant had no opportunity to challenge the provisional findings of the assessment and there had been no recording of the applicant's answers. He was told he needed a lawyer to amend the contents. No adult was present and that the applicant was afraid was reflected in his statement that he had not slept well. He said he did not know he could challenge the age assessment. There were really only two reasons given for the conclusions not three as submitted by Mr Johnson. The applicant had only attended education for 2 years and yet the assessors had put a timeline in tabulated form which lacked sensitivity and failed to acknowledge his background. The assessors had no experience of Eritrean applicants in such assessment and were not mindful of the applicant's limited education. I was referred to **VS**. It was clear that the Home Office had ascribed a date of birth to him on arrival and yet he was consistent in his account and in his social media. The differences in dates given by the applicant in his statement such that he was 7 years old in 2014 and 10 years old in 2016 was that dates were taken from either before or after his birthday. Ms Schwenger's evidence was important. She came from a large foster family and professionally was a social worker abroad and had experience of age assessments in France. She had been working with minors for the last 5 ½ years. She observed the applicant enjoyed playing PlayStation and football and was afraid of making eye contact and had matured. I was referred to page 195 whereupon there was a reference to the detention of other unaccompanied minors. The applicant had been consistent in his evidence and did not bear the burden of proof.

### **Analysis**

15. I turn to the issue of the applicant's credibility. **MVN** at [61] confirmed when considering credibility the importance of the applicant's own evidence. It was noted '*The reason why this is critical is because both parties agree that in a case like this, where there is no documentary evidence or dental or medical evidence, the evidence of the person whose age is being determined is most important.*'

16. The applicant's overall written account lacked considerable detail and his oral evidence was also sparse as to detail. There were some very significant issues undermining his credibility.
17. Contrary to the submission that the applicant has been consistent in his evidence throughout, at the hearing the applicant made significant alterations at paragraphs 5, 9 and 10 to his previous written statement of October 2023 for which he had already signed a statement of truth and previously confirmed had been translated to him in a language he understood. Not only did he amend the name of his mother[9] but also stated that he had called his mother in Libya before he contacted the registry not afterwards [5], and thirdly that he had remained in Libya for 1 year and one month not 8 months as he had previously stated [10]. He now stated that he worked for 8 months.
18. Moreover, the applicant asserted in his oral evidence that the information given to the age assessors was now incorrect. I shall return to that point below when considering the substance of the age assessment.
19. In oral evidence, the applicant stated he did not tell his mother that he was leaving Sudan for Libya and left with two friends. There was no indication that they were a wealthy family and, according to the applicant, the family lived in 2 rooms in Eritrea and yet the applicant 'announced' his demand for funding to his mother only once he had arrived in Libya and asked her to pay. As he said, it possible to pay for being smuggled by entering slavery or be killed by way of recompense but I do not accept that the applicant would have failed to advise his mother of his departure for Libya (bearing in mind he kept in contact with her), failed to organise the payment prior to his departure with his mother and or make her pay through the sale of her entire livestock as he claimed in oral evidence. Indeed this aspect of his oral evidence did not feature in either of his written statements. His mother was apparently alone until she ultimately joined the uncle in Sudan (the uncle had left for Sudan with the applicant) and there was no other indication of wealth. I conclude that it is most likely that the applicant was not merely reliant, after the event, on his mother for funds for his departure about which she knew nothing. I find that he was more likely to have worked in Sudan to organise and pay for his departure to Libya. Indeed his

working would be more consistent with him being older. I note he accepts that he worked in Libya.

20. The absence of evidence which could be reasonably obtained also undermined this applicant's account. His mother was contactable and on his own evidence he had his uncle's telephone number through which he contacted his mother beforehand but no evidence or statement from her (which could be reasonably expected owing to electronic methods of communication) was sought. The applicant himself stated that she might have a document to prove his age and even if this were incorrect there was no indication that any request had been made. His explanation that he had not contacted her because of the expense was simply not credible either bearing in mind he had contacted his mother previously from Libya and from Italy.
21. Nor was there any evidence from the applicant's college tutors as to his age despite him starting in January 2024. There was no indication that those with whom he was taught at his college in Liverpool were all age disputed and although it appeared a request had been made to the college for a tutor's statement as to his age, none was forthcoming.
22. The applicant also confirmed that he had been detained in both Italy and France and provided his date of birth and indeed in France been fingerprinted. Despite subject access requests being made in the name and date of birth the applicant gave to the UKBA, the Italian authorities stated that no record of such an individual was located and the French did not respond. I conclude that this was because when detained in Italy the applicant had given a different date of birth or name and this undermines his claim.
23. That the applicant's social media accounts (Facebook and Messenger registered on 23<sup>rd</sup> July 2023 i.e. on entry) were consistent with a date of birth in 2006 goes no way to establishing that fact. These accounts were set up after the applicant had been resident in the jungle in Calais and after assertion by him that he was a minor on entry to the UK.
24. The reference in the bundle to the applicant being detained with other un/accompanied minors is not indicative, one way or another, of the applicant's



age. There is reference in the same passage cited in the Compliance and Enforcement of Detention Border casework notes identify that the detention was reviewed in accordance with Section 59 of the Immigration Act 2016 and 'adults at risk in immigration detention guidance'. Indeed once interviewed and individually considered, the UK authorities considered the applicant as being significantly over the age of 18 years.

25. I acknowledge that Ms Schwenger, the drop in services co-ordinator with Care for Calais, was said to be a social worker in France and had experience of working with UASC children. She described herself, however, as an Age-Dispute Co-ordinator at Care-4-Calais and confirmed that she compared the applicant with other 'attendees' in the group run by Care for Calais and they consisted entirely of 'age disputed' individuals. There was no indication of the number of those whose age had been upheld or rejected and no clear indication of their background. That she had experienced a large foster family does not point to a particular expertise in judging age. Although she stated that the applicant, in her view, had matured she also accepted that his behaviour could be that of someone over the age of 18 years. That someone plays football and PlayStation is not necessarily an indicator of being under the age of 18. By the time she met the applicant he was engaged in an age-dispute and represented. I place very limited weight on her evidence.
26. Turning to the age assessment itself, short form assessments are not unlawful depending on the circumstances.
27. Swift J in **R (HAM) v Brent** confirmed that in relation to the range of guidelines set out for example in **VS** '*It would be wrong to regard each item on each list as a requirement of fairness in every case*'. Each case is fact sensitive and as set out in **R (HAM) v Brent** at paragraphs 10 and 11 there is no burden of proof and the assessment must be made on reasonable enquiry, but this will depend on the circumstances and the enquiry must be undertaken fairly.
28. As stated in **SB v Kensington** at [86]:

*'an arguable procedural lapse may support an application for permission to apply for judicial review, but once permission to apply has been*

*granted, it is unlikely to play a significant part in the court's decision, based on all the evidence, about the claimant's actual age, which is the court's real job in these cases.'*

and at [90]:

*'Whether an interview will be unfair if there is no appropriate adult will depend on a range of factors, which will vary from case to case. I also agree with Swift J that R ((ZS) Afghanistan) v Secretary of State for the Home Department is not binding on this point.'*

29. There appeared to be no significant challenge in relation to interpretation.
30. As noted in **R (HAM) v Brent** whether an appropriate adult is required depends on the circumstances of the case as opposed to it being a legal requirement. The social workers were clearly aware that the applicant asserted he was a minor, are trained in dealing with minors in age assessments and were undoubtedly aware that he had endured a long journey some four weeks' earlier. The applicant had time to recover from his journey prior to his interview. Merely that the applicant was living with adults does not justify an undermining of the social workers approach overall.
31. From a careful reading of the assessment, the applicant was able to engage with the process and respond accordingly during the age assessment notwithstanding no 'appropriate adult' was with him. This is someone who on his own evidence was, as a minor, able to depart without his family's knowledge, albeit with friends, from Sudan to Libya some months earlier and navigate his way through France hiding in train lavatories to avoid detection. There is no indication that he was under the direction of an agent at that point or that he lacked confidence in that regard. The applicant gave his responses to the social workers spontaneously and accepted that the information he gave to the social workers differed from his witness statement two months later. That is not consistency.
32. As noted in **R (FZ)** *'If the decision-maker forms a view that the young person may be lying, he should be given the opportunity to address the matters that*

*may lead to that view. Adverse provisional conclusions should be put to him, so that he may have the opportunity to deal with them and rectify misunderstandings. The local authority is obliged to give reasons for its decision, although these need not be long or elaborate.'*

33. I do not accept that the social workers failed to make a reasonable investigation of the facts or give the applicant an opportunity to respond on key issues. Although there was criticism that the 'minded to process' was in fact definitive, it is clear that the social workers did adopt a 'minded to' approach as it is specifically stated that '*The assessors made it clear that they were minded to at this time to not accept his claimed age for the following reasons*' which were threefold, (i) the tabulated explanation of his age as given by him, (ii) the specific fact of his being in the Madrassa at 11 years in 2016 and (iii) his physical appearance.
34. Ms Ferrin submitted that the age assessors had only effectively given 2 reasons rather than three and thus half of the reasoning related to appearance. Even if (i) and (ii) were intertwined this is not mere reliance on appearance. Further, it is not unlawful to make reference to appearance and secondly it is clear that the assessment did not rest solely on the applicant's appearance.
35. The social workers set out in tabulated form the timeline the applicant had given and explained in point form why his claimed age was not consistent with the information he himself had supplied. Thus the applicant was clearly apprised of the key question and the issue. Following that being put to the applicant only then was the conclusion given.
36. From the way the age assessment was recorded it does not appear therefore that the adverse points had not been explained to the applicant or that he had no opportunity to respond. As per [165] of **MVN** it is the important adverse points which need to be put to the applicant. They were in this instance.
37. As pointed out by the social workers the applicant twice stated in his age assessment interview that he attended the Madrassa at the age of 9 in 2014 and was there for 2 years. Thus at the very least, and even on his own evidence he would have been 11 in 2016, and thus at least 18 in 2023. This

was freely given information. Only in his witness statement some 2 months later did he assert this was in fact incorrect. I find more credible the first spontaneous account bearing in mind it was repeated. This shows the applicant was not firm nor consistent in his account and knowledge of his age; this is borne out by his claim that he needed to telephone his mother to remind him of his age.

38. The applicant maintained that he left Eritrea because of fear of conscription and that if he had left at a later age this would raise suspicion. Although Mr Johnson submitted that the applicant's evidence that conscription took place from the age of 12 was contradicted by the background evidence that conscription took place only from the age of 18 years and this undermined the applicant's evidence, I note that the CPIN on Eritrea did refer to individuals being recruited underage. There was, however, no evidence that anyone under the age of 12 would be conscripted and the applicant's account of being removed a whole 5 years earlier at 7 to avoid detection is an explanation that I do not find persuasive.

39. Nor do I accept that the social workers approached the assessment on a 'pseudo-scientific' basis. Assessment of appearance is not wholly excluded from the process and separate reasoning on credibility on the applicant's own evidence was made. In **R (FZ)** Sir Anthony May P confirmed that social workers could, in the course of an age assessment,

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

40. To suggest, as Ms Ferrin did, that a reference to the applicant not sleeping well meant he was scared in his assessment process was to my mind taking the case too far. I simply do not accept two social workers trained and experienced in age assessments would not be aware of the pressures on young people going through such interviews and make necessary adjustments. As stated in **R (N) v SSHD** [2008] EWHC 1952(Admin) at [25 '*most people who have*

*experience of obtaining a narrative from asylum seekers from a different language or different culture recognise that time, confidence in the interviewer and the process and some patience and specific direction to pertinent questions is needed to adduce a comprehensive and adequate account*'. There is no indication that these two social workers fell outside these parameters or that they had no understanding of the pressures on young people of arduous travels, being from a different culture and the experience of being interviewed. They checked as can be seen from the report of the age assessment that the appellant felt fit and well and he said 'yes'. The social workers were not called in order to challenge specifically their expertise nor witness evidence.

41. The short form age assessment was therefore not flawed through the absence of an appropriate adult, failure in interpretation or a lack of the 'minded to' process or reasoning or on approach. I find the social workers gave adequate reasoning for their conclusions. Nothing in the assessment suggested that the **Merton** guidelines were not broadly complied with or that the social workers failed to adhere to the ADCS guidelines, which are just that, guidelines.
42. Reliance can be placed on the opinion of the two trained and experienced age assessing social workers who concluded this particular applicant was an adult on entry. After interview the social workers put him at over 18 years old, and although they did not pinpoint his exact date of birth that does not undermine the assessment overall. In the body of the assessment it was concluded that the applicant was *'more like an individual aged 23 years old or older coinciding with the view of the immigration officer during his screening by the Home Office.'* A letter from the Home Office Kent Intake Unit dated 21/7/2023 confirmed that *'Two Home Office members of staff have assessed that your physical appearance and demeanour very strongly suggests that you are significantly over 18 years of age'*. I accept the underlying conclusion that the applicant was an adult on entry to the UK (and the age assessed on his physical appearance was outside the margin for error) and their decided view given on sound reasoning.

43. In this instance it was open to the age assessing social workers to take the approach both legally and factually that they did.
44. I find, having assessed the evidence holistically, that the applicant was an adult on entry, and I give him a date of birth of 12<sup>th</sup> August 2000.