



IN THE UPPER TRIBUNAL

Case No.: JR/1105/2020

IMMIGRATION & ASYLUM CHAMBER

JUDICIAL REVIEW

B E T W E E N :

In the matter of an application for Judicial Review

**THE QUEEN
on the application of DK
(by his litigation friend, Francesco Jeff of the Refugee Council)**

Claimant

- and -

LONDON BOROUGH OF HARROW COUNCIL

Defendant

ORDER

UPON the fact-finding hearing on the Claimant's application for judicial review held on 15th - 18th December 2020 before Upper Tribunal Judge Rimington.

AND UPON hearing Ms Benfield for the Claimant and Mr Holbrook for the Defendant.

AND UPON Clare Montgomery QC having granted permission on 5 December 2019 and making no order as to costs.

IT IS DECLARED that the Defendant's date of birth is 12th March 2000 so that when he presented to the Defendant in July 2019, he was 19 years of age.

IT IS HEREBY ORDERED THAT:

1. The application for judicial review is dismissed.
2. The order for interim relief made on 7th November 2019 is hereby discharged.

3. Save for the costs order made on 5 December 2019 (which was 'no order for costs') the Claimant is to pay the Defendant's costs which are to be subject to a detailed assessment if not agreed and are to be subject to an assessment of the Claimant's ability to pay under the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, s26.
4. The Claimant's publicly funded costs will be the subject of detailed assessment.
5. **Permission to appeal to the Court of Appeal is refused.** Neither representative attended and no grounds were raised at the hand down and I consider there to be no arguable error in my judgment.

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

Dated: **17th February 2021**

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:

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/1105/2020 (v)

Field House,
Breams Buildings
London
EC4A 1WR

15th to 18th December 2020

THE QUEEN
(ON THE APPLICATION OF DK
(BY HIS LITIGATION FRIEND MR FRANCESCO JEFF OF THE REFUGEE COUNCIL))
Claimant

and

LONDON BOROUGH OF HARROW COUNCIL
Defendant

BEFORE

UPPER TRIBUNAL JUDGE RIMINGTON

- - - - -

Ms A Benfield, Counsel instructed by Osbornes Solicitors LLP appeared on behalf of the Claimant.

Mr J Holbrook, Counsel instructed by the Government Legal Department appeared on behalf of the Defendant.

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ON AN APPLICATION FOR JUDICIAL REVIEW

APPROVED JUDGMENT
- - - - -

JUDGE RIMINGTON: The issue to be determined by the Tribunal is the claimant's probable date of birth. The claimant is a national of Afghanistan and claims to have been born on 20th January 2004 (30 Jady 1382 in the Shamsi calendar). An age assessment completed on 9th October 2019 by the defendant determined that he was likely to be 23 years old when assessed.

The Law

2. Section 20 (1) of the Children Act 1989 expresses that

"Every local authority shall provide accommodation for any child in need within their area"

3. As set out by Lady Hale in **R (on the application of A) (FC) (appellant) v London Borough of Croydon** [2009] UKSC 8 at paragraph 51

"It seems to me that the question whether or not a person is a child for the purposes of section 20 of the 1989 Act is a question of fact which must ultimately be decided by the court. There is no denying the difficulties that the social worker is likely to face in carrying out an assessment of the question whether an unaccompanied asylum seeker is or is not under the age of 18. Reliable documentary evidence is almost always lacking in such cases. So the process has to be one of the assessment. This involves the application of judgement on a variety of factors, as Stanley Burnton J recognised in **R (B) v Merton London Borough Council** [2003] EWHC Admin 1689,... But the question is not whether the person can properly be described as a child."

4. Indeed, **R (B) v Merton** sets out the approach to be taken in the assessment and the burden of proof, and, at paragraphs 37 and 38, the court confirmed the following

"37. It is apparent from the foregoing that, except in clear cases, the decision-maker cannot determine age solely on the

basis of the appearance of the claimant. In general, the decision-maker must seek to elicit the general background of the claimant, including his family circumstances and history, his educational background, and his activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the claimant's statement as to his age, the decision-maker will have to make an assessment of his credibility and he will have to ask questions designed to test his credibility.

38. I do not think it is helpful to apply concepts of onus of proof to the assessment of age by local authorities. Unlike cases under section 55 of the Nationality Immigration and Asylum Act 2002 there is in the present context no legislative provision placing an onus of proof on the claimant. The local authority must make its assessment on the material available to and obtained by it. There is should be no predisposition, divorced from the information and evidence available to the local authority, to assume that a claimant is an adult, or conversely that he is a child. Of course, if a claimant has previously stated that he was over 18, the decision maker will take that previous statement into account, and in the absence of an acceptable explanation it may, when considered with the other material available, be decisive."

5. **R (A) v Croydon** underlines the importance of the decision as to the age of a young person, particularly an unaccompanied person, seeking asylum. Indeed the age of the young person is relevant because of the material support that is to be provided by the LA even beyond the age of 21 years, the approach the Secretary of State may take to any asylum claim and the issue of credibility. It has also been decided that age is an objective fact which admits one right answer.
6. In **R (NA) v the London Borough of Croydon [2009] EWHC 2357 (Admin)** the court stressed the importance of transparent, fair and careful assessments of extremely difficult

questions noting the importance, in the age assessment itself, of giving the benefit of the doubt to the claimant in the case of real doubt when every other factor for and against has been appropriately weighed.

7. I am persuaded that the correct approach to the "benefit of the doubt" is as reiterated in the two-judge panel in **R (on the application of AM) v Solihull Metropolitan Borough Council** [2012] UKUT 00118 (IAC) at paragraph 12, which in turn reflected the judgment from the Court of Appeal in **R (CJ) v Cardiff County Council** [2011] EWCA Civ 1590. At paragraph 23 per curiam the Court of Appeal observed that

"...There is no hurdle which the claimant must overcome. The court will decide whether, on a balance of probability, the claimant was or was not at the material time a child. The court will not ask whether the local authority has established on the balance of probabilities that the claimant was an adult; nor will it ask whether the claimant has established on the balance of probabilities that he is a child".

8. Indeed in **R (on the application of AE) v the London Borough of Croydon** [2012] EWCA Civ 547, Aikens LJ at paragraph 23 confirmed that the court

"is, effectively, acting in an inquisitorial role in which it must decide, on a balance of probabilities, whether the young person was or was not a child at the material time... In doing so the court must clearly consider all relevant evidence. Ultimately, however, the court has to make its own assessment based on the evidence before it".

9. **R(AM)** and **R (FZ) v the London Borough of Croydon** [2011] EWCA Civ 59 set out that the purpose of the assessment is to

establish a person's chronological age based on information derived from the child and assessment of the credibility and plausibility of that evidence. If the chronological information is consistent, plausible and believable then no apparent observation about chance appearance and demeanour is likely to tip the balance against the age stated by the child.

10. Additionally, as set out in **R (KA (Afghanistan) v SSHD [2012] EWCA Civ 1420** at paragraph 35, credibility is relevant and

'In any case, credibility often does have a very significant part to play in resolving an age assessment dispute'.

History

11. The chronology notes that on 2nd October 2018 the claimant (DK) was recorded to have claimed asylum in Bulgaria and that he entered the United Kingdom as an unaccompanied asylum seeker in July 2019. On 10th July 2019 he was placed with Mrs S Hosseinbor, foster carer, and on 19th July 2019 DK claimed asylum and attended an asylum screening interview at Croydon. He was issued with an IS.97M confirming his claimed age had not been accepted but, since his physical appearance and demeanour did not very strongly suggest that he was 25 years or older, his asylum claim would be processed under guidance for that for children. On 13th September 2019 the London Borough of Harrow ("the defendant") commenced the age assessment process and on 9th October 2019 a final age assessment meeting was held, and DK was informed that his age was disputed. On 25th October he was transferred to semi-independent living accommodation.

12. The claim for judicial review was issued in the Administrative Court on 6th November 2019 and HHJ Collins Rice made an ex parte order for interim relief and expedition. On 21st November 2019 a referral was sent to the British Red Cross Family Tracing Service. On 5th December 2019 HHJ Montgomery granted permission for judicial review on the papers and transferred the claim to the Upper Tribunal.
13. On 4th June 2020 Mr W Steventon became DK's allocated social worker and on 17th September 2020 DK was moved back to his foster placement with Mrs Hosseinbor.

Grounds for judicial review

14. The grounds for Judicial Review asserted that the age assessment was wrong in fact, not based on firm grounds and was conducted in a procedurally unfair manner. The claimant had put forward a coherent and credible account and his foster carer was supportive of his claimed age. Taking his claim at its highest "it cannot be said that he would not succeed in establishing his claimed age at a fact finding hearing" (sic). In particular:
- (i) The procedural failings included that there was inappropriate support in the form of an age appropriate adult or suitable interpreter. The process ran counter to the ADCS Guidance. The appropriate adult should be suitably trained and experienced, but the claimant stated they were strangers to him. Under the ADCS Guidance they should be independent. The same adult was not used, and the defendant did not consider the destabilising effect. The claimant had difficulties with the first interpreter whose language was Farsi and not Pashto which is the claimant's mother tongue. It was acknowledged that the claimant could speak some

Farsi and English, but his preferred language is Pashto. Best practice was not followed as the same interpreter should have been used throughout. There was a failure to gather relevant information and consider relevant country of origin information or explore the claimant's report that he had a taskera in Afghanistan.

- (ii) The age assessment should be based on firm grounds and reasons **VS v Home Office** [2014] EWHC 2483. The reasons given by the assessors included journey timeline, demeanour, physical appearance, credibility of story and level of English, inconsistencies, education and detention in Bulgaria. His journey time left three months to be accounted for, but this could be explained by initial confusion. Insight into his demeanour (it was reasoned his behaviour was not to be expected of a 15-year-old boy) could have come from a foster carer and demeanour was a limited probative value. The age assessors noted that he "appears to be considerably older than his claimed fifteen years" but in **R v Solihull MBC** [2012] it was stated that "almost all evidence of physical characteristics is likely to be of very limited value". There was no clear relationship between chronological age and physical maturity **R (R) v Croydon** [2011] EWHC 1473 (Admin). The defendant's opinion conflicted with that of the foster carer. There was no safe ground given for the assessors to assess the credibility of the story of the claimant for example that the government raid was made on the grandfather's house rather than attack a nearby camp of Daesh. The assessors asserted that his level of English was not commensurate/consistent with a claimed three-month course and travel since the claimant left Afghanistan the year before. The claimant had, however,

been in the UK, been to school in the UK and been in foster care and learnt English before arriving. As to his education no weight could be placed on an unnamed teacher's opinion from the Greenway Project at Claremont School, (the claimant left the course after one day finding the level of English course too basic) who thought him older than claimed. As to his being fingerprinted in Bulgaria, he told the assessors that he gave his claimed date of birth (that is 20th January 2004) but the assessors relied on the fact that Bulgarian detention was explicitly prohibited for unaccompanied minors. It was not clear how this was relevant. The Asylum in Europe information on Detention of Vulnerable Claimants: Bulgaria stated that in practice minors were reported as assigned to adults and detained. There was nothing inconsistent with the claimant's account of being detained and then housed with other young people aged between 11 and 25 years old. There were no reasons explicit or that could be inferred to support the conclusion that the claimant was 23 years old. By contrast the claimant was supported by his foster carer, had given a consistent account of how he knew his age.

Article 34 Request

15. On 17th September 2020 the defendant contacted the TCU ("Third Country Unit") seeking assistance with obtaining information from the Bulgarian authorities. On 18th September 2020 that TCU sent an Article 34 request to the Bulgarian authorities. On 11th November 2020 the defendant applied for an urgent case management hearing (i) to admit the witness statement of Ms Jacinta Kane and (ii) for an order that DK provide consent for disclosure of his personal data under Article 34(9) of Dublin III. Submissions were

filed in reply on 17th November 2020, objecting to the application, and an oral hearing was listed for the determination, but a consent order was signed on 20th November 2020. Pursuant to the consent order on 23rd November 2020 DK made subject access requests to the Bulgarian State Agency for Refugees, the Border Police Directorate and Migration Directorate. On 23rd November 2020, and independently, an Article 34 response was received by the defendant from the Bulgarian authorities.

16. Following receipt of that information by the defendant and served on the claimant 25th November 2020, the claimant's representatives, on 3rd December 2020, made an application for an adjournment of the four-day hearing for 10 weeks in order to obtain further documentation in relation to the General Data Protection Regulations ("GDPR") request made on 23rd November 2020 and the claimant objected to the production the Bulgarian response to the Article 34 request to the court. That adjournment application was refused on 4th December 2020 with the question of admission of the documentation in relation to the Article 34 request to be determined at the hearing.

The Hearing

17. At the hearing the claimant initially stated that the interpreter was from Pakistan and not Afghanistan, albeit she spoke Pashto, but, after a few minutes, the claimant confirmed that he was content to proceed with the interpreter and that they understood each other. Ms Benfield was permitted to seek instructions from her client outside the courtroom following which she confirmed that the claimant and she were content that the interpreter was appropriate.

18. Ms Benfield made an application that the claimant give evidence the following day as there were documents which had arrived from Bulgaria, as a result of the claimant's subsequent GDPR request, and they needed to be translated. In turn she needed to take instructions. An application was renewed to prevent admission of the letter from the Bulgarian authorities in response to the Article 34 request by the TCU (Secretary of State) which had been provided to the local authority and the claimant. Ms Benfield also objected to the submission of the statement from Jacinta Kane which outlined why the local authority had no incentive to disbelieve and dispute an age assessment claim not least because of costs. Submissions were made by Mr Holbrook that local authorities took a "considerable hit" when they decided they were going to challenge an age assessment and it was relevant; social workers tread carefully when making such assessments. Ms Benfield submitted that it was not relevant and not admissible and not an issue between the parties. If it was related to costs it was materially different and could be dealt with at a later stage during cost submissions.
19. In relation to the Article 34 application, Ms Benfield stated there was a one-page letter which addressed the EURODAC search when the claimant was apprehended. She maintained that the information under Article 34 could not be shared with courts or Tribunals unless in deciding an asylum claim as a question of principle. In effect the Tribunal was being invited to breach the Dublin III Regulations, the parties should not communicate the information to the court or Tribunal.
20. Mr Holbrook responded that the information was relevant to the Dublin process and, regardless of how it was obtained, it was obtainable by the claimant and should have been

obtained well before these proceedings were issued. The claimant was under a duty to provide the Tribunal with all relevant information and he had the opportunity to provide it by two different routes, the Dublin III Regulations or the GDPR. It was not for the Tribunal to oversee breaches of the Dublin III Regulations, albeit he did not accept it was a breach. DK had used an alias and given a different date of birth and it was significant that when he was interviewed in the UK, he had specifically stated he had given the same date of birth to the Bulgarian authorities. This document went to his credibility as to his age. Under Article 34(9) it was a freestanding right for any individual to obtain records and the individual has the right to be informed.

21. I directed that the document from the Bulgarian asylum authorities should be provided to the Tribunal. Article 34 of Dublin III confirms that the information exchanged may only be used for the purposes set out in Article 34 (1). That paragraph, however, includes under Paragraph (1)(b) 'examining the application for international protection'.
22. The determination of the age is important for the examination of the claimant's asylum claim. The defendant has the care of and accommodates the claimant (according to him he is still a minor) under the Children Act 1989, and has the power to make a request, and a duty to act in the best interests of all children under its care (including those with whom the claimant will be accommodated (and I note there was a reference to the claimant being accommodated at one point with a 12-year-old). Under Section 17 the LA has a duty to safeguard the welfare of children within their area and shall make provision for such services as they consider appropriate to be available for accommodated children. In other words, the defendant was

entitled to make a request under Article 34 provisions of Dublin III.

23. Even if that were not correct, the letter from the Bulgarian authorities exists, is in the possession of the parties, and is highly relevant evidence, not least to credibility. That, as the grounds for judicial review underline, is important in these particular circumstances, and the parties have a duty of candour to provide relevant information to the court. It is open to the Tribunal to direct the admission of relevant evidence under The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended). Both parties had sight of the letter and it was open to the appellant, as he did, to explain the circumstances of the documentation.
24. The argument that the underlying documentation was not available to verify the letter does not found an objection to its admissibility. Indeed following the GDPR request further documentation was provided and I permitted Ms Benfield to take further instructions from the claimant on the contents of the documentation provided because there was a delay in translation. That documentation was therefore also provided. There was no indication that any further information would be forthcoming. I also make this observation, the claimant was represented and had ample time since the solicitors were first instructed to obtain documentation under the GDPR in preparation for and well before the hearing.
25. I refused to admit the witness statement of Jacinta Kane. I accept that the Tribunal should be slow to exclude evidence but the evidence suggesting that the local authority had a financial disincentive to find claimants were adults when they claimed to be minors was not a matter that was raised in the grounds for judicial review and there was no

allegation of bad faith. I do not accept that the social workers conducting the age assessment, as members of the Health and Care Professions Councils would be guided by financial incentive and on that basis refused to admit the evidence. I did not consider it relevant to the question in hand which was the age of the claimant.

The witnesses

26. At the hearing Ms M Nagiah, principal supervisor of social workers employed by Horizon, adopted her statement, explaining that her principal role was social worker for supervising the foster carers themselves but through her placements she did have interaction with young people. She confirmed she had never conducted an age assessment and had not been trained to do so. Under cross-examination she confirmed that she had been a registered social worker for eight years and had spent twelve years with Horizon and qualified in 2004. She did agree that it would be difficult to assess the age of males who may or may not be children or adults and that she worked with young people under the age of 18. When she met the claimant, she stated that nothing about him 'stuck out' as an adult. She based her opinion on his facial features and his general presentation. She confirmed she had had four meetings which involved DK; none were longer than an hour and a half and the focus of the meeting was for the carer. She had had a further meeting since he had been returned to the foster carer in September 2020 and this was a virtual meeting. She confirmed, however, that she did not examine him in close proximity or in detail and was just going on her first impression. She confirmed that he did not look like an adult and stated that she had not only referred to his facial hair but also his demeanour, i.e. his stature and his social interaction and his tone and his voice in that he spoke softly.

27. She was referred to the photographs in the bundle which were taken in 2019 identifying facial hair. She confirmed that his "facial hair had grown a bit" and that he had "not shaved for a while". She agreed the facial hair looked bristly. At this point Ms Benfield interjected that the photographs were not contemporaneous. Ms Nagiah confirmed that she thought in her opinion the claimant was 16 years old and going to be 17 in January. She did not consider this to be an exact demarcation.
28. When it was put to Ms Nagiah under cross examination that her opinion of his age coincided with his claimed age, she stated that she gave her answer based "on the files we have" which suggest he is 16 going on 17. She accepted that her opinion of his age was influenced by his claimed age to some extent, but she could not say how much. She was referred to the email she had written on 7th October 2019 where she stated that she believed he was a minimum age of 16 when in fact he claimed to be 15 at that point. Her opinion was based on working with young people. She was not qualified to say who was definitely 16 or 18 years old. She agreed that when looking at a young person one could never be sure on seeing them. One might just give an age range. When seeing him on four occasions in 2019 she stated that the youngest age he could have been was 16 and the oldest age was 17.
29. It was put to her that if an *adult* was referred to her service he could not be accommodated, and she agreed. She did not agree that she was concerned to protect his placement because Horizon would lose income and retorted that she was an employee. When referred to the age assessment document and confirmed that she did not notice that he had sideburns and had been shaving for some time because she was not looking for that. Looking at the

photographs, she still maintained her statement that he was a 16-year-old and denied that she wanted him, because it was in the interests of the company, to be a child.

30. Under re-examination from Ms Benfield she confirmed that she was not a director or owner of the company and that generally Horizon had a few placement vacancies, around four or five, but the dynamics changed all the time, and the placements changed all the time. There were several placements with unaccompanied asylum-seeking children. It was put to her that she was asked about factors which informed her opinion and she referred to presentation but also, she referred to his demeanour and Ms Nagiah confirmed that the claimant was very polite and complied with boundaries She added that in complying with boundaries someone older might not do so in a foster placement situation.
31. She was taken to another photograph in the bundle and there she confirmed that the claimant looked younger than the other four photographs she had looked at. She advised that she had been informed that the claimant had been assessed as being 23 years old. She disagreed that was possible.
32. She confirmed that she could not recall whether she had a record of his age before meeting him but did confirm that in order to access the system one had to be under the age of 18 to be referred.
33. Mrs Hosseinbor, the claimant's foster carer, attended the hearing by skype and adopted her statement and gave oral evidence, stating that she had experience of ten children from Afghanistan, including teenagers between the ages of 14 and 18 and they did have facial hair and shaved and looked older as they had had harder lives. She confirmed that the claimant stayed in her care between 10th July 2019 and 20th

October 2019 and then returned in September 2020. She noticed when he returned that he was sleeping too much and he was taking tablets for depression and playing PUG B, an online game. She still thought he was nearly 17.

34. Under cross-examination she was asked whether he had changed in physical appearance and she confirmed that he had lost weight and that over fourteen months his height had not changed and he "looks the same". In terms of his behaviour she stated that she reminded him to shower and clean his teeth and wash his clothes, the claimant asked her what he should do and what he should eat.
35. The witness confirmed she had no training in age assessments. She had been asked by Harrow for her opinion. She was asked if she was aware that he had never been to the dentist and had never cleaned his teeth on the journey and if he had not brushed his teeth regularly on the twelve-month trip, his lack of teeth cleaning might not be a reflection of his age. She agreed you would have to teach someone to do that.
36. She gave oral evidence that on the first evening the claimant left the house without permission and then told her he had gone around to check the area out. She confirmed he had been told by her son not to go out and there were rules and regulations. When she returned, he had left, she was worried and called the police. At first, she stated that she would not expect someone of 15 to behave like that but then stated that some children wanted to go out. She did add that the claimant took advantage as he had asked her son and he had said "no" and said to wait for her to return. It was put to her that in her statement she said he was 16 when in fact he claimed to be 15 at that point, so she must have thought he looked older than even he claimed and whether it

was possible he was 17, as she was not a professional? She responded that she did not know really, she could not tell someone's age and that it was what she had been told his age was and she did not have a reason to say differently.

37. Mrs Hosseinbor then stated that if he was 18, he would not be brought to her, she only accepted children under 18. She agreed it was not possible to be precise about his age. She would be told that the child was this age, and she would "go on that age".
38. DK was then called to give evidence and both counsel representatives were reminded of the Presidential guidelines on vulnerable witness. The representatives of the claimant and the supporting adult were advised to be aware of their responsibility to identify concerns they may have during the course of the questioning and the hearing about the claimant's wellbeing. All were reminded that questioning should be clear and in plain English. Mr Holbrook was reminded of his responsibility to question appropriately.
39. The claimant adopted his three witness statements dated 4th November 2019, 8th July 2020 and 6th December 2020.
40. Under cross-examination DK was asked how he knew his age and he stated that his mother had told him and that he needed it because he was going to school, and it was needed by the teachers. He did not celebrate his birthday and when asked how he knew he had become older he said his mother would tell him that this was his age, but she would not tell him his birthday.
41. When asked his mother's age he said he did not know the age of his mother but knew the ages of his brother and sister. He was then asked how it was that he told Harrow during his age assessment of his mother's age and he stated that he did

not say that. It was put to him that he estimated her age and he said, "I have no information".

42. He was shown the Age Assessment record where he had stated that his grandfather was 65 and his mother was 33 to 35 years old and the claimant stated that he must have said that, but he could not remember whether he said this or not. He then said, "maybe I said it". It was put to him that it was unlikely that on his assessed age his mother would have given birth to him at 10 to 12 years old.

43. He stated he left Afghanistan when he was around 14 years old. At first, he said he could not remember when he left Afghanistan, from Eid he could not remember but then stated from the first Eid it was around the 25th or 26th. It was put to him that Eid was on 15th or 16th June in that year and that was the date in the assessment, and he left therefore on 10th or 11th July 2018. The claimant stated, "whoever asked me", he just gave that answer. He said his grandfather was killed 1½ months before he left, which would place that date in May or early June 2018, but the claimant stated that he did not understand the month of June and that he was 14 when his grandfather was killed and that he estimated or guessed that he must have told the age assessors he was 14 and 2 or 3 months when he died. He then said he might have said 14 and might have said and 2 months or 3 months but he could not remember. It was put to him that with this information his month of birth could be worked out and that he had told us that he was born in January but in fact he was born in March or April. DK stated that he knew his date of birth from his mother and that when the taskera was prepared it was for his school and he was asked why had not mentioned his taskera before.

44. He was taken to the asylum interview dated 19th July 2019 which in fact transpired to be a questionnaire returned by his protection claim solicitors, J D Spicer, and he confirmed that he was asked the questions by his solicitors in order to give the answers. He confirmed the questions were specifically put to him.
45. He was asked about question 5.3 where he said he did not have a taskera. It was put to him that he could have said he did have one but not in the UK. The claimant replied he did not have a taskera over here. He denied he was blaming his lawyers but that was the question that was asked, and he gave that answer.
46. When asked who Haroon Khan was, he stated that he did not know; he was roving around the shops and he found an Afghan 'guy' and he just said he was hungry and where should he go because he was new here. He did not tell Haroon he was a child, he just said he was hungry, he did not know how Haroon found out he was a child.
47. He was asked how he came to meet a friend of his uncle's in the halal butcher's shop and he stated he went to the shop and wanted to buy something and "he asked me where I was from?" DK told him, and the friend said he recognised the claimant and said he knew his maternal uncle. He was not the same person who took him to the local authority offices. He said to the claimant that he thought he was Muktan's nephew and that he had seen DK when he was younger in Afghanistan as a child. The claimant agreed, under cross-examination, that this was very lucky and that he was happy. He was asked why he then did not exchange contact details and he said he did not know, maybe he just forgot; they talked a bit and just left the shop.

48. It was put to him that he had expressed an interest in staying with his uncle's friend, with which he agreed, and it was also put to him that he must have been in contact with the friend because how could he nominate the friend to stay with, if he had no contact details? The claimant stated he had told Susan (the social worker) that he would go to the shop and maybe meet the uncle's friend who might visit that shop again.
49. The claimant was referred to an email from the solicitors Edward Taylor which stated it was the claimant who recognised this man not the other way around. DK replied, however, that at that meeting the friend recognised the claimant and because he was scared, he said to the social worker that DK recognised the friend and that the claimant in turn recognised the uncle's friend. It was raised this was contrary to the email which stated that "my client recognised the man as his uncle's friend whom he had met previously in Afghanistan". The claimant agreed with this but then in oral evidence stated he had never seen this man before and this was the first time.
50. On the second day of the hearing, the morning of 16th December 2020, the claimant reported he was unwell with stomach pains and could not travel and had to return to bed. The foster carer considered that he had issues with his health and medication, and it was linked to his mental health problems.
51. There was no application to adjourn from the claimant's representative, Ms Benfield, and it was sensibly suggested that there was a reordering of the oral evidence.
52. I directed that should the claimant fail to attend in the morning of 17th December that should be evidenced by a medical certificate showing that he was unfit to attend the

hearing. That said, and to avoid undue pressure on the NHS, in view of the pandemic it would not be necessary to obtain a sickness certificate for the date of 16th December when the claimant was said to be ill.

53. On behalf of the defendant, Ms Susan Nasinza, DK's social worker until June 2020, attended adopted her statement of 21st November 2019, and gave oral testimony on behalf of the defendant. Under cross-examination by Ms Benfield she confirmed that she had worked with 50 or more Afghan asylum-seeking children and had also completed age assessment training. She confirmed that she was allocated to DK on 10th July 2019 and saw him every four or six weeks, which would be nine or ten times. She last saw him in February before the lockdown. She stated she was not involved in the initial decisions on his placement.

54. She was asked how she could be precise in her opinion that he could be 21 or 23 but likely 23. The least age she thought him to be was 21. She denied that she was saying he was 23 because his colleagues had assessed him to be that age and she stated she relied on her own evidence. Before 11th July 2020 she had not talked to him about the boundaries on the first day (that he should stay in the foster carer's house) but thought the foster carer would have explained it to him. She observed that she thought the foster carer communicated with the claimant in Pashto or Urdu but could not remember whether there was interpreter there at the first meeting. It was put to her that before the age assessment she had not expressed a view or concern on his age and had not raised it. She replied that she had mentioned this to the team, and she included it in her report. It was pointed out that she had a duty at the time on safeguarding and she stated that she had reported her concern to her line manager, Mr Poole.

55. She was asked whether she was surprised to know that her concerns on his maturity had not been taken into account in the age assessment? When asked what she said to Mr Poole she stated that she thought the claimant appeared older but did not remember the exact words. She commented on the lines on his face, his beard, the fact that he was travelling around on his own and going to the gym travelling across two boroughs requiring a change of bus. She was shown the photographs of him and stated that he looked more mature in a later photograph, but he still retained the features she had seen in the previous pictures. She was asked whether children in different cultures had different hairlines but confirmed that she had not seen young people of 15 with a receding hairline from that region of Afghanistan and that her opinion was based on her experience of children from that region. She agreed that there was a range when children could experience puberty between age 8 and 14 and this was the time that boys could develop an Adam's apple and many boys had an Adam's apple at 16, with which she agreed.
56. She stated that she assessed his age looking at a number of factors including his physical appearance and his demeanour. She thought he was well-spoken and calm with good eye contact and no signs of nervousness and although children could be like that, he had just come into a new country and getting to know how systems worked and she could still see a maturity in him. She agreed that Mrs Hosseinbor provided a good foster placement for him and confirmed he had a good relationship with the other children in the household and that included someone who was over the age of 18 which was one of the foster carer's own children. She agreed he complied with the 6pm curfew, which was unusual for a 23-year-old. She confirmed she was not sure of the ages in the

class at West Thames College where he was said to be the elected class representative and she did not know whether they were 17 or potentially 18. Ms Nasinza added that, after being removed from care, he went to visit his foster carer independently without discussing it with her and despite the social workers requesting to be informed. This was done independently, and it required him to travel across three boroughs from Hayes to Brent via Harrow and although she was criticised for being quick to assume, she thought his actions reflected an older age. She confirmed that she did not know whether he had talked to Mrs Hosseinbor to make arrangements. She did not talk to the foster carer about it.

57. She stated that he attended Claremont High School for one day and chose not to return because the English language level of the class was too low. It was not that his decision was wrong but that he did not consult on the decision and just made up his own mind independently and stated he was not returning.
58. The witness agreed that she had recorded the visit as of 13th September 2019 but that the date appeared to be incorrect because it predated the date, he started college but nonetheless it recorded the fact that he did not return to Claremont. The witness stated that she had done her own assessment, made her own observations and come to her own conclusion. She did not agree with the foster carer who was supporting him to be the age he was claiming and that she was aware of that. Based on the factors in her report he was older and that was her judgment.
59. In re-examination she gave evidence that her interaction with the claimant was more adult to adult than adult to

child. She stated he did not consult and just told one of the decision had been made.

60. Mr Ian Poole, the lead age assessor, attended and gave oral testimony and adopted his statements.

61. Under cross-examination he confirmed that the first time he met the claimant was when he came for an age assessment, but he had actually seen him before in the authority's offices. Mr Poole denied that the age assessment was commenced because the Home Office disputed the claimant's age and stated the assessment was commenced because the local authority disputed his age. The local authority tended, for various reasons, only to assess those who they think are adults. Ms Benfield put it to the witness that having reviewed the records there were no concerns raised prior to the age assessment in relation to his age. Mr Poole stated that he had not read the file but the social worker dealing with him thought he was not his claimed age. He was aware that by the time the age assessment commenced there were no concerns raised by the foster carer to his knowledge, but he knew that the social worker did not believe him to be 15.

62. When asked why there were no records of Ms Nasinza considering him older, he responded that Ms Benfield would have to ask his social worker. He stated there were a number of young men who were claiming to be 15 and placed in foster care. It was not right but that was what happened. He accepted there were three different interpreters at the age assessment, but the claimant was always asked if he understood and signed that he agreed to the questions. Under the ADCS Guidance it was not best practice, but it depended on whether delay was justified and sometimes interpreters were simply not available, and one had to work with what one had rather than delay. The interpreters were

arranged by the social worker, so he did not know why the same interpreters did not attend. He thought the claimant could understand the interview because the claimant gave appropriate answers to the questions asked and at the start and the close of the interview, he confirmed he understood what had been said. His English was better than Social Services were led to believe and although Mr Poole was not a Pashtu speaker, he had conducted age assessments for many years, and he thought the claimant understood what was being asked.

63. In respect of taking notes the other social worker, Rashid Kato, and he spoke to the appropriate adult and requested that she took notes. The social workers themselves took notes and it was mentioned to the appropriate adult's manager the need for her to take notes. Mr Poole accepted the need and advised her of the wisdom of doing so but they both saw that she was not doing so. The appropriate adult, however, would not be from the local authority but from an, an independent organisation and Mencap and the Refugee Council were used; her colleagues invariably took notes. It was assumed after the first interview notes would be taken. He was asked whether the claimant had been deprived of the opportunity to see relevant notes and Mr Poole stated that both social workers had taken notes and the appropriate adult had done the relevant training.

64. Mr Poole was asked about his description of the claimant's physical presentation and noted that not many 15-year-olds were going bald and had so many wrinkles/lines. This was not a question of someone who was 17 claiming to be 15 but someone who was in their mid-20s claiming to be 15, which is two thirds extra of their life. The claimant looked older for a number of reasons and it was not just the facial hair, but it was a significant thick beard and there were a number

of photographs which showed it did not take long to grow. He had not seen such a thick growth of beard on a 15-year-old whether from Croydon or Afghanistan. The hair was also receding, he had lines and his hands and his whole appearance suggested he was much older.

65. It was the opinion of his tutor at the Greenway Project that he was older. He thought she was a teacher not a receptionist. He accepted the claimant was only there a for a day. [The note on file of the telephone conversation between Mr Poole and the tutor was an exhibit to his witness statement]. People were very reluctant to put things in writing. It was put to him that his decision did not sit comfortably with the three other professionals who gave their opinions and whom he chose to ignore, including that of Mrs Hosseinbor, the foster carer. He was asked why he did not consider this opinion in the course of his age assessment but later clarified that he did take this into account, albeit it was not expressed in writing in the report. He observed that independent living skills were such that many people in the UK might have those skills but in Afghanistan most women did domestic activities, so the fact that the claimant could not cook was reflective of nothing.

66. He stated he was aware that foster carers get paid £600 to £800 a week and thus there could, in general, be a financial incentive for independent foster agencies to offer expensive placements to people who are little trouble, but he was not identifying any one specific and it was human nature to prefer someone easier. He was asked why he did not explore her opinion and Mr Poole responded that the foster carers had her opinion.

67. He thought that physical appearance could be significant depending on the age and he referred to the dental records. There was a difference between what the dentist said to the social worker and what she wrote down in email which was watered down. He observed that when asked about his Adam's apple the claimant's response was not that expected of a 15-year-old when referring to his genetics.
68. Following the age assessment there was no contact for over twelve months for the claimant, but he had seen him at various service user events, but he had not spoken to him.
69. He was asked why he had not recorded all information in the documentation section at internal page 11 of the age assessment. Mr Poole stated that Rashid's view was not written in the file and he did try to explore with Mr Holmes-Attivor, the Hampshire social worker, his opinion on age but he said he did not wish to get involved. Prior to that Mr Holmes-Attivor had spoken to Susan Nasinza and Mr Poole telephoned him but he would not reply and would not write anything down and did not give an opinion. Ms Nasinza was strongly of the view that she thought he was a man.
70. Mr Poole said he was not responsible for the documentation being passed to the claimant's legal representatives. The entire file would have been copied and forwarded to the legal team for the local authority, this then would be redacted and passed on to the legal aid team for the claimant.
71. Mr Steventon, the claimant's latest social worker, attended and gave oral testimony remotely and adopted his statement and was cross-examined by Ms Benfield.
72. He confirmed he was the allocated as social worker on 4th June 2020 this year and he had met the claimant four to six

times in line with his statutory responsibilities. He confirmed that he had undertaken three age assessments and at the time, it was put to him, he thought the claimant was 23. He had seen the age assessment. He agreed there was no record of his meeting with the claimant on 16th June 2020 where the claimant refused to meet him because the claimant was unprepared, but he was sure he would have noted it in his case notes. He was told over the phone that nobody had told him he was coming and DK refused to see him.

73. The witness accepted that assessing a claimant on his physical appearance was notoriously unreliable but in cases such as this it was relevant. He accepted that children from Afghanistan did shave and grow facial hair much earlier, but he considered that it would not be as heavysset with the heavy shadow and full beard as the claimant had. He accepted photographs could be unreliable, but it depended on the quality of the photograph. He also thought he had a very prominent Adam's apple and that many unaccompanied asylum-seekers were a lot more reserved and compliant although he did agree that the claimant had been compliant. He thought the claimant was very clear in what he was asking for in terms of asking for support and still believed he would be more reserved. He accepted it was common for children to ask for a clothing allowance and he noted that specific counselling was requested because his friend had attended that service but nonetheless Mr Steventon thought the claimant was very clear about what particular service he wanted and that he was mature in his decision-making. He was aware that he would leave the placement and go out and do things independently by himself and did not need to rely on support workers, particularly as he was relatively new to the country and he was confident in himself although he accepted that by the time Mr Steventon was allocated as his

social worker he had been in the country for a year. He could not be trusted with the phone and his sleeping; it was attributed to medication, but as the doctor advised it was only a low dosage. He stated that he had written to the dentist and asked for his view if it was rare that his teeth had erupted, and he believed that they had written back and said that that was reflective of someone older than 15 and that he was older rather than it being a rare case.

74. He confirmed that he took the step to contact the Home Office on 17th September 2020 requesting a EURODAC confirmation and that he did not seek the claimant's consent as it was part of the ongoing assessment and he explained that whenever the service worked with young people assessment was always ongoing.
75. Under re-examination Mr Steventon agreed that the claimant was needy in some areas and not in others. For example, he was not clear that the claimant's inability to get out of bed was genuine because sometimes when he was in foster care his carer said that he was awake but refused to get up and was choosing not to go to college and that generally a 16-year-old would comply and listen and follow instructions.
76. The claimant resumed his evidence on 17th December 2020 and Ms Benfield was permitted to take instructions from him on documents which had been requested by the claimant's representatives (GDPR subject access request) in early December 2020, received on 14th December 2020 and translated on 15th December 2020.
77. Ms Benfield asked a series of questions and she was requested not to lead the claimant. He had stated that he did not remember signing documents when first in Bulgaria. He did not remember how many he signed. He stated he did not know why the documents from the Border Police recorded

his name as family as S*****. It was stated that there was a date of birth recorded as 1st January 2000 and he was asked to comment, and he stated he had never heard of that date of birth and he had not given this date of birth to anyone. He had never heard the place Kargahi and did not know where it was. He confirmed that some pages of the documentation did contain his signature, but he could not remember how many pages and how many signatures. In relation to the Border Police Directorate order, which was said to be announced in Persian, he stated, "Persian is not my language, I am Pashto". He did not remember the Border Police Directorate order being explained to him. He stated that he did two kinds of signature, one in Pashtu and one in English and this was the English one and he signed whichever language came into his mind, be it Pashto or English. Other pages contained his signature, but he denied he was given any document. Ms Benfield asked the following questions: "Were you ever aware of what name was recorded of the documents you signed in Bulgaria?", to which he replied "no", and "were you aware of what the date of birth in the documents was?", to which he replied "no".

78. Under cross-examination he stated he did not know whether his family were wealthy or poor, but his grandfather employed servants and had two farms. No-one told him to get the taskera or bring the taskera when he left Afghanistan and he obtained it when his grandfather took him to the city when he was 6 or 7 years old. This was the city Kaga (as spelt by the interpreter). It was explained to him that the documents showed he was first detained in Bulgaria on 17th September 2018 and he replied he did not understand. He was asked whether he accepted he was detained in Bulgaria for 24 hours to which he replied that he did not know that he was taken from the car and was there for two days in an enclosed

place with approximately 28 other people. After two days he was taken elsewhere. He was asked roughly how long he was detained in Bulgaria to which he replied that he did not know. He was asked whether it was days, weeks or months he stayed in Bulgaria and he responded that he did not understand the question. He was asked whether he was detained for days, weeks or months again and again he stated he did not know.

79. He was asked whether he could remember he was fingerprinted in Bulgaria. First, he said he could not remember and then stated that they did take his fingerprints. Before he was taken the first time, he was eight days in the jungle before he was detained. It was put to him that he was very precise when he knew how long he was in the jungle but not anything else and he responded that "sometimes I understand, and I work in my mind but sometimes if I don't understand I forget - I am not a computer".
80. It was put to him that in the age assessment he stated he stayed in Bulgaria for almost fifteen days and he responded that at that time he remembered but he did not now.
81. He accepted that the documents in Bulgaria related to him but stated, however, that the documents recorded the name S**** and that was the first time that he had heard of that name.
82. There was also a letter from the State Agency for Refugees in the Republic of Bulgaria which recorded that he was fingerprinted on 2nd October 2018, about two weeks after the first record of his detention. In response to questioning, the claimant said he could not differentiate whether S**v** and S**w** were similar or not. The claimant stated that he gave his name on one occasion and that was in the first place and not anywhere else.

83. He denied he had used an alias and he was effectively asked why the officers in Bulgaria who recorded his family name as S**w** or S**v** would have made it up? It was pointed out that the asylum letter identified the date of birth given but the claimant queried the date of birth on the letter from the State Agency for Refugees.
84. The claimant stated that when he was detained in the first place, he did not understand the language or what the man was saying. It was put to him that when he was first detained, he gave his date of birth and he replied, "yes the first time they asked how old are you and the date of birth and the name and asked quickly and took me back to the room".
85. Mr Holbrook pointed out that the first officer recorded that he was born on 1st January 2000 and he responded that he did not know, he had never been given that date of birth and he did not know why that date of birth was recorded.
86. It was put to him that he had told the Tribunal a moment ago that he gave his age as well, to which he stated "yes", and he said he gave the age of 14.
87. He was then asked why then, if he had given the age of 14, an officer would record a date of birth which would tell the officer he was 18, and the claimant replied that he did not understand why they had written that date of birth as 2000 and stated, "they asked me how old are you and then date of birth and then I told them in both languages". The claimant confirmed that this was in English and in Pashtu and he stated the interpreter spoke Farsi. He was talking to him and he said he did not understand what he was saying because he did not understand Farsi. It was put to him that he knew his date of birth in the Gregorian calendar, i.e. the English calendar, and he stated, "yes I know the English

calendar” and it was suggested to him that if this man interpreted the date of birth in English any problems in the interpretation would be irrelevant. The claimant said he did tell them it was in 2004 but then stated that he said it in Pashto (and not in English). It was put to him that he had earlier said it in both English and Pashto whereupon the interpreter stated that the claimant was saying English dates but in Pashtu and then the claimant stated that he did not say it in English in 2004 because there was an interpreter present.

88. The claimant then stated in English “I just said 2004 in Pashtu, that is I stated the dates in Pashtu”.
89. He was asked what he told the authorities about his age and date of birth in English and he then stated, “I did not speak to them in English”.
90. He further stated under cross-examination that he had started shaving in Serbia His mother had told him before he left that “you should remove your beard” so he looked older and he denied his mother saw him with a beard but said “you should remove it and grow it, so you look older” (at this point the independent interpreter present in court stated that the court interpreter had interpreted as “remove” when the claimant had stated “shave”). This was the only interjection from the independent interpreter. He stated that when he left Afghanistan, he looked young, so maybe she was scared he would be travelling with older men.
91. The claimant was asked about his photographs and the dark shadows on his photographs of his beard and during the interchange interjected “why are you asking me questions about my beard?” Mr Holbrook observed that the claimant was confident and even cocky, but counsel was reminded that he should not comment, as he did. Mr Holbrook rephrased his

interjection and asked the claimant whether his responses were those of an adult confident or even cocky adult, to which the claimant replied, "I don't know but you're asking me questions and I'm answering them". He then denied understanding why he was being asked about his beard. To the question "would you agree as children grow older their facial appearance changes?" the claimant replied, "what kind of question is that?". When asked about the significance of facial changes for the ageing process the claimant stated he did not understand the question.

92. The claimant denied he was in touch with his family and when it was put to him that the Red Cross could help him get in touch, he replied "I have asked them many times, but they don't have any information". When he was asked whether he had tried to establish contact with his family after he had spoken to the social worker Susan, he stated "I didn't do anything, I thought they were going to do it".
93. He was asked about contacting his uncle by telephone as he travelled across Asia and the claimant replied, "at certain points I was in contact but after that his number stopped working". He then stated, "I did speak to him some time and then his number stopped working". The claimant could not remember which country he was in but said he spoke to him three or four times and then the number stopped working. He was asked whether he had tried since he came to Britain and the claimant replied that he had the number on a piece of paper and when it stopped working, he threw it away. He was then asked whether the number was not stored in his mobile phone and the claimant said that he did not have a mobile phone and there were other people who would lend him a phone but it was pointed out that he had told the London Borough of Harrow that he had a mobile phone in Afghanistan and that was how he learnt the Gregorian calendar, to which the

claimant stated that it was his fellow classmates had phones and that he knew he needed the Gregorian calendar.

94. It was put to him that he travelled with a SIM card, which he denied, and he was referred to the age assessment record.
95. The claimant was asked how he communicated with his foster carer and he stated that he spoke to her in English and when asked what other languages it was said that he used Dari, which was an Afghanistan Farsi, and he stated, "she spoke to me in Persian".
96. After the close of evidence at 12.20pm Ms Benfield advised that she proposed to submit further evidence, that she wished to make written further submissions and that she would be unable to make submissions that afternoon; although the timetable listed the 17th as the date for submissions the overall trial had been listed for four days. She wished to introduce further evidence on conditions in Bulgaria, having taken instructions from her client on the Bulgarian documentation which had only been translated on Tuesday 15th December at 4pm and that she wished to produce written submissions in addition to her oral submissions and she needed time to prepare them. She stated that she was only able to take instructions from her client on that morning of the hearing (17th December) as translations had only been received at 4 o'clock on the evening of 15th December, Tuesday. The claimant had not attended, asserting ill health on the previous day. It was pointed out to her that the access request which became the subject of the translations and the late introduction into the evidence was occasioned by the delay in making those requests and only prompted by the Article 34 request and further, there had already been an indication in an application for an

adjournment prior to the hearing that conditions in relation to Bulgaria may be presented.

97. Although I consider these documents could have been submitted earlier, I allowed Ms Benfield and her team until 2 o'clock to produce further documentation and to provide it to Mr Holbrook for consideration in time for his submissions, as he proposed to start at 2pm. At 2pm I allowed Ms Benfield to postpone her submissions until the following morning.

Submissions

98. Mr Holbrook submitted that the claimant's evidence was unreliable and that he had told lies which were material to the issues in the case. First, he had accounted different dates of birth to different officials on different occasions. I was being urged to find that none were correct. Secondly, he had lied as he had given two different names. In Bulgaria he had given one name which was the same to different officials; both could be incorrect. Third, he told the Harrow authorities that he had given the same date of birth to those in Bulgaria, which was not correct. Fourthly, it was totally improbable that he would just happen to meet an Afghan man in a shop and now we know that that Afghan was a former care leaver. Fifthly, he told this Tribunal that he met his uncle's friend who just happened to recognise the claimant whereas we know he gave alternative instructions to his solicitor he recognised the Afghan man himself. The oral evidence was contradictory to the written evidence. Sixth, it could not be right that he just happened to meet his uncle's friend in a shop. Seventh, it was so incredible as not worth contemplating that he did not exchange contact details with the uncle's friend; how else

could he have turned down that support if not in touch with that man?

99. Eighth, it was improbable that he was not in touch with his family since leaving Afghanistan. This morning he confirmed to the court that he had not done anything to contact the Red Cross because he thought Social Services would do it and in answer, he stated that he had contacted them lots of times and this morning he said, "I tell the Red Cross all the time". The referral made by the social worker was on 21st November 2019. Proceedings were issued in this matter on 6th November 2019 and Harrow put in summary grounds of defence on 23rd November, which identified that he had not said what efforts he had made to contact the Red Cross. The Harrow solicitor said it was intending to seek a direction for disclosure of documents about the efforts he had made. A response from the claimant's solicitors on 1st June 2020 included information from the Red Cross and several months before the offer appointment and on 2nd July although DK states that he has not heard. There was no evidence of him doing anything between the referral and the solicitors chasing on 1st June 2020, which was a period of six months. It did not ring true for someone who stated they missed their family. The evidence he gave denied having a mobile and then denied having a SIM card which contrasted with that he knew the Gregorian calendar and he expressed he had a SIM card in the written evidence.

100. The claimant frequently stated during cross-examination that he did not understand or queried the questions he was being asked. For example, he stated "why are you asking about facial hair?" This is the person with a claimed age of 15 and yet when questions were put to him by social workers, he began to discuss a family gene. It was quite clear that he must have known what the questions were about.

101. It was clearly hard to ascertain the truth and these lies were of material issues as to his age. The lies were designed to obtain support [public financial] and social worker support at no inconsiderable cost to the local authority. The other benefit to him was that if it was established that he was a child it would be harder to remove him in the long term. These lies were material and not told for any other purpose.
102. His behaviour and appearance were not consistent with his claimed age and this assertion was amply supported by the evidence and photographs and from that seen of the claimant, who had clearly been shaving for many years and had lines on his brow and on his face and those were lines caused by having lived for some time, as were his receding hairline and his pronounced Adam's apple.
103. He was capable of making a decision on the very second day he asserted he was in this country and defy the curfew that had been imposed. He turned down the education offered to him and this explained that he knew his mind and was able to assert himself in the presence of adults.
104. The way he responded to a barrister and the Tribunal was confident and the behaviour of a man.
105. Turning to the witnesses, Mrs Hosseinbor lacked the necessary expertise and qualifications to be objective and in evidence-in-chief she said that the claimant looked older than her own children, having qualified it with saying he had had a hard life. She knew full well height was not an indicator of age. She commented on his facial hair that it was like all Afghan children, but not that it was substantial and coarse facial like his, however. She also stressed his behaviour, but Mr Poole had already stated that culturally Afghan males behaved very differently. He had

been brought up in a society where males were not expected to fulfil such roles and as far as brushing his teeth he had never even been to the dentist in Afghanistan on his own evidence and had never brushed his teeth.

106. She had the opportunity to comment on his departure from the family home but did not volunteer it.
107. She stated on a number of occasions she saw no reason to doubt him as she had to establish a relationship with him. Her opinion was ultimately incoherent; she was happy to say he could be 15 or 16 or 17 but not 18. What she did say was that if he were 18, he would not be brought to her. She constantly fell back on the point that she was not trained but then said he was definitely 15.
108. Turning to Mrs Hosseinbor's own social worker/supervisor. She was clear that she lacked expertise and training and she lacked the ability to assess him. She talked about facial hair and had to admit it was bristly and not fluffy. She noted his receding hairline would be suggestive of older male of over 30 and it was surprising that she had not noticed this characteristic on him. Her argument was based largely on physical appearance and said very little about social functioning. She was incoherent when stating that he did not look 15 but the oldest he could be was 17 but not 18, as that would mean he was an adult. It was also suggested that she had reached the conclusion and then developed her argument. Her motivation was concern not to lose the placement. Mr Poole pointed out that independent carers and foster agencies were paid £700 to £800 per week and it was natural and human nature for someone to prefer someone who was no trouble. It was also noted that there were four to five vacancies and thus there was an incentive to continue the placement.

109. Ben Holmes-Attivor from Hampshire Social Services refused to give any further information other than that the claimant was a child or a few months older. Mr Poole did speak to him, but he said he did not wish to become involved and this was shown by the correspondence sent to him and a chasing email for his view in writing. It was worth pointing out that the claimant's solicitor also contacted him, see the supplementary bundle, 108, and he confirmed he did not want to be involved.
110. There was no evidence worthy of supporting his claimed age.
111. Looking at what Harrow social workers made of his age was relevant. Ms Nasinza was his social worker when he first arrived in July 2019 and qualified to perform the role of age assessor and had worked with over 50 Afghani young asylum seekers. From July 2019 to May 2020 she thought his minimum age was 21 and his maximum age was 23. She said he looked older and she raised her doubts with the manager; she was strongly of the view that he was a man. She noted he had an ability to make relationships, to be calm and an ability to travel around and go to the gym across two boroughs and making journeys without seeking the assistance of the foster carer. There was a decisiveness about his decision-making to leave Claremont and she was of the view that he had an adult-to-adult relationship with her. She drew attention to the lines on his face and was clear that a high hairline was not a characteristic of Afghans.
112. With regard to the criticisms of the assessment process both the young person and the interpreter were asked at the start and close of the interviews to confirm that they understood each other, which they did. That the appropriate adult did not take notes was merely a formulaic criticism and both the

other two assessors took notes and at no point was this put to Mr Poole.

113. With respect to the different appropriate adult, this begged the question of what was supposed to happen if one could not locate an appropriate adult. This was not a case when the claimant was being faced by cross-examination but being asked questions by two social workers and there was an appropriate adult present.
114. The social workers found a difference of eight years between the claimant's claimed age and his actual age, which was an extra third of his life. Someone of 15 did not start to go bald or have lines on his face and this was whether someone was 15 from either Afghanistan or Croydon. He also had a receding hairline and Mr Poole stated that he and Mr Kato split the difference with Mr Poole thinking the youngest could be 21 and the oldest being 26 and there was no criticism of that. The answer given in relation to the Adam's apple by the claimant was not the response of a 15-year-old but the response of someone who knows the age he is trying to cover up. From the note from in relation to the tutor at Greenway Project attached to Claremont School confirmed he was "quite old", that is "20 plus". On the issue of independent living skills that was indicator of culture or class rather than a function of age. The opinions of the foster carer were unreliable because they lacked the experience of training. Mr Poole pointed out the income derived by a foster carer who would clearly prefer someone who presented her with little trouble.
115. Looking at the totality of the evidence, Mr Poole did identify the appearance of the claimant but also his behaviour and elements of his story that he did not believe. Further, he would expect him to grow two to three

centimetres. His height was taken on 6th August 2019 when he claimed to be 15 years and 7 months at 163 centimetres and a weight of 56.3 kilograms. On 4th November 2020 he claimed to be 16 years and 10 months, which was fifteen months later but the claimant had shrunk to 162.7 centimetres. In essence, Mr Poole's evidence was reliable and should be accepted.

116. Turning to that of Mr Steventon, he also had qualifications and experience to give an opinion on age. He had met the claimant four to six times and on the issue of physical appearance had noted that his beard was full and up his face and his Adam's apple more prominent than to be expected of a 15-year-old.
117. As for his behaviour he thought the claimant was not reserved. For a 16-year-old and he was very clear on what he wanted such as leaving a placement and to do things independently without the support of social workers.
118. Drawing that together, one could see the table submitted in the skeleton argument that his most likely age from all of the evidence was that he was 23 years old. Mr Holbrook submitted this case had lasted a year and there had been an injunction which had forced Harrow to pay. As could be seen from the case of **Merton** at paragraph 27, this was an obvious case. In **Merton** the court was referring to an age assessment of those between 16 to 20, not those of 23.
119. The claimant had accepted that he had had coaching from his mother as to his age as referred to at paragraph 28 of **Merton**. There is no passport or travel document here and that raised suspicion in accordance with the findings at paragraph 30 of **Merton**. When considering paragraph 34, physical appearance and demeanour were relevant. That said, Harrow had not made the assessments solely on physical

appearance as per paragraph 38 of Merton. This was an obvious case; even obvious cases could now end up in lengthy and protracted court proceedings.

120. Turning to A v The London Borough of Lambeth, this claimant was brought into Social Services by an ex-care leaver who stressed that the claimant claimed to be a child. The social worker had given him the benefit of the doubt at the time and it could be seen that the age assessment followed all the guidelines, and the court should be slow to reach a different opinion. Mr Holbrook referred to the Home Office documents in relation to the funding framework such that it was not in Harrow's interest to challenge an age assessment.
121. As could be seen from paragraph 25 of A v The London Borough of Lambeth, one would expect an Afghan to continue growing even after 18.
122. It was not correct to take from paragraph 14 of Solihull v AM that age and appearance could not ever be relied. Paragraph 14 was a general observation. The court in that case was critical of the datasets used in relation to physical characteristics and gave further refinements at paragraphs 15 to 18. The full emergence of the third molar was characteristic of adulthood and that dental evidence could be subject to further scrutiny but what was said in Solihull v AM still held good.
123. As could be seen from the report of Professor Olze in the report entitled 'Comparative study on the effect of ethnicity on wisdom tooth eruption', full emergence of the third molar was not consistent with a claimed age of 15½. Mr Ockelton in Solihull v AM was not saying that one should not have regard to a fully formed beard or an Adam's apple (see paragraph 73). It was accepted as a caveat in borderline cases it would be unreliable to simply rely on

appearance but here there was an eight-year gap between the claimed and the assessed age and as time went on, evidence on appearance and demeanour became more relevant. It was, it was accepted, difficult to know how far into adulthood someone had developed.

124. With respect to the dental evidence case law had moved on since the case of **Solihull v AM**.
125. In **AS v Kent** (age assessment; dental evidence) [2017] UKUT 446 paragraphs 62 to 63 set out the relevant expertise for those assessing and when assessing the evidence of the foster carer and the supervisor it was clear they did not have knowledge and experience and therefore little weight could be given to their opinion.
126. As can be seen from the evidence from the dentist, she did say he was probably most likely over the age of 15 years. An oral eruption of the third molar was consistent with being over the age of 18.
127. It is likely that this claimant was 23 years of age. The claimant was asked questions in Bulgaria on occasions two or three weeks apart and in both instances the response was that he was born in 2000.
128. Mr Holbrook continued his submissions in respect of the dental evidence, and I was referred to the growth charts for males at page A102 of the bundle. Mr Holbrook made the point that when there were young people from different countries one would expect their development to be delayed and one would expect the claimant to be lower down the actual height graph but nonetheless to develop after his arrival in the UK if he were the age he claimed. He has not.

129. In respect of dental evidence, the Olze paper used four stages of molar eruption. Using the sample of German men, the chances of a 15½ year old reaching this stage of development was impossible. The data covered German, Japanese and South African and the data was broadly the same, that is, not supportive of the third molar being erupted at the age of 15. Mr Ockelton made the comment in **Solihull v AM** that full dental maturity was characteristic of adulthood.
130. It was accepted there were now different stages of dental development and a different way of measuring chronological maturity, albeit it was accepted it was not a reliable indicator, it did not detract from the point that it cast doubt on his claimed age.
131. The fact is that the dental evidence was on a par with all the other evidence. There may be a limited use for dental factors in age assessment but that did not mean to say that fully mature teeth were not an indicator of being over the age of 18.
132. In this case the claimant had criticised Harrow for a lack of candour, but disclosure was performed, and all relevant information and facts were before the court.
133. All potential claimants should make subject access requests of those nations through which they have passed when they make age assessment challenges in line with a duty of candour to obtain and disclose that material. It took Bulgaria only three weeks to respond. If those requests are made promptly relevant material will come to the attention of potential defendants and it is likely in this case that permission would never have been given, there would have been no injunction and there would have been no extensive age assessment for four days.

134. Mr Holbrook submitted that the information in the supplementary bundle [Asylum in Europe] suggests that not all children are sent to detention and when the claimant crossed into Bulgaria the relevant age was said to be 14 and thus the police had no incentive to make it up to 18 but the further material showed otherwise. In response to the criticisms of why would the Bulgarian authorities make up a name or two different dates of birth and that DK had said he gave the same date of birth in Bulgaria as he gave here, Ms Benfield in response submitted that the practice of the Bulgaria authorities continued.
135. Ms Benfield proceeded to make oral submissions. She advanced that the primary focus was on the claimant's credibility and he had provided a consistent account. Evidence in relation to his height and growth was unreliable and that should be discounted when coming to a decision. The local authority had placed significant and undue weight on physical appearance, which was not in accordance with case law and guidance, and the body of evidence supported that he was the age he claimed to be. She submitted that the benefit of the doubt did have a role to play and that Ms Nasinza had not applied it. The benefit of the doubt related to the age assessment itself and to the Tribunal's task.
136. The ADCS Guidance was relevant to the age assessment, and if there were doubt whether someone was a child or an adult they should be classified as a child. The local authority witnesses all proposed an age range for the claimant. Ms Nasinza confirmed she thought he was 21 to 23 but for no articulated reason said he was 23 and the benefit of the doubt should mean that she went to the lower end of the range. Mr Poole said the youngest age he could be was 21, albeit that he was given the age of 23.

137. As can be seen from AS v Kent, particularly at paragraph 133, when a specific age has to be determined it required a sympathetic assessment of the evidence, and this is the principle which should be applied. Age assessment was not an exact science and it should be determined on the balance of probabilities.
138. Although the age assessment decision came before an asylum claim the Tribunal was dealing with someone who had claimed asylum and should not make findings on his asylum claim, which would be subject to a different process and on a lower standard. It should be borne in mind that this was a person who disclosed a particularly traumatic history.
139. There should be a sympathetic assessment of the evidence where mental health difficulties and victims of torture were subject to age assessments as can be seen from MVN v The London Borough of Greenwich [2015] EWHC Civ 1942, particularly paragraph 39.
140. Turning to physical appearance, it was accepted that there was relevant material, and it was not sought to argue otherwise, and that point was obvious from B v The London Borough of Merton and later authorities.
141. Visual assessments were permissible where it was very suggestive the claimant was over the age of 25. Each case was fact sensitive and it was underlined in R (AB) v Kent [2020] EWHC 109 (Admin) that physical appearance was notoriously unreliable, and demeanour could also be unreliable.
142. This, however, was not a case where the defendant elected to conduct a short form visual assessment and thus could not have considered that it was a clear and obvious case that he was an adult. Had it done so it would have conducted a

short form assessment and declined him. Instead, the approach was to accommodate him in foster care along with other children as with any other child of 15. It was clear the Home Office did not consider this to be an obvious case. The defendant's position came very close to suggesting that his physical appearance was so stark that he could not be accepted as someone of 15 but that was not in line with the local authority's conduct. This was not a case where physical appearance should have had primacy and Mr Holbrook attempted to discount its unreliability. The ADCS Guidance cautions against reliance on physical appearance before someone has recovered from their journey and goes further at paragraph 25 that a social worker should avoid placing too much weight on physical appearance and demeanour and reiterated that at paragraph 58 it was unreliable. The unreliability of physical appearance was broader than the local authority advanced.

143. It should be borne in mind that physical appearance was affected by variables such as nutrition, upbringing, experience, genetics and provenance. Mr Holbrook suggested that the judge should be able to make observations but that was highly questionable. Additionally, the local authority had referenced a sequence of photographs and they too were highly unreliable.
144. Physical appearance was highly subjective and there were no reliable markers. She submitted that Mr Holbrook had stressed the claimant was going bald, which was not borne out in the evidence, and there should be significant caution attributed to the social workers' evidence when relying on physical appearance.
145. In relation to the photographic evidence Ms Nasinza accepted that he had changed in the photographs and I was referred

to paragraph 124 and paragraphs 207 to 209 and 212 to 213 of **AS v Kent** in relation to photographs. Here the Tribunal cautioned against considering physical appearance from photographs as it could be affected by lighting, exposure, cameras, clothing and any combination of the same. The utility of benchmarking what certain ages would look like was rejected. The Home Office's own guidance, which is referenced in the bundle, at paragraph 28, stated that Home Office Assessing Officers should conduct an assessment in person and not remotely or such as with a camera. Reliance on the photographs should be roundly rejected.

146. Turning to the witness evidence, neither height nor dental evidence could carry any weight in the assessment and case law cautioned against that analysis and in particular there was no primary evidence. Mr Holbrook had stated that he had stopped growing, at which point Mr Holbrook objected to the way the submissions had been made.
147. **AM v Solihull**, was the starting point and in particular paragraph 17 in relation to height and growth stated that not much could be gained from a "levelling off".
148. There had been no accurate measurements over a period of eighteen months as required by paragraph 17 of **AM v Solihull** and this evidence fell foul of accurate measurements over a period of eighteen months. One of the measurements must be inaccurate and it was highly improbable that the claimant had shrunk. It was not clear whether the information was taken with the claimant's shoes on or shoes off. There was simply too much unreliability placed on this and children developed in different rates and at different ages. **A v Croydon** dealt with the evidence of Dr Stern and stated that measurements of height and weight were not reliable unless carried out by properly trained people and the measurements

here indicated a lack of scientific basis. Maturity and chronological age were two different things. Caselaw confirmed that the rate of his growth was still not a reliable indicator of age. The rate of growth could be distorted when access to a better diet in the UK and there were no measurements from a clinical paediatric medical professional.

149. The dental evidence displayed a pseudo-statistical analysis and the local authority stated that having fully erupted molars suggested the claimant was an adult but there was no reliable information on his dentistry. The dentist's view recorded in writing was that his dental profile was consistent with him being over 15, which he was. Mr Holbrook sought to rely on the note of telephone call, but it is difficult to see how that sits comfortably with the point that people often are reluctant to give a view. The local authority simply attempted to undermine it because it did not support their case. The dental opinion was consistent with what was said in AS v Kent at paragraph 97. The subject could be at stage H (i.e. well developed) at the age of 14. The evidence we had was minimal from the Kingsbury Dental Practice. He was examined at the age of 15 years and 7 months and there was no x-ray, as required, and no assessment of the development of his teeth.
150. Mr Ockelton accepted in AM v Solihull at paragraphs 56 to 57 that the eruption of the third molar was indicative of adulthood, but it was quite wrong to say any more and the court should be alert to the dangers of misuse of such information. In AS v Solihull there was a summary at paragraph 109. Professor Olze had been looking at three different nationalities not including Afghans and it was unreliable to infer that an Afghan's development was the

same; there was no information on Afghanistan. The Tribunal found it to be unreliable.

151. Ms Benfield referred to paragraph 77 of **R (ZM and SK) v The London Borough of Croydon (Dental age assessment)** [2016] UKUT 00559 (IAC), which referred to the requirement of dental x-rays; it was difficult to see how this assisted the defendant. Overall, a detailed examination was required, which had not been conducted here. It was only relevant to compare comparable ethnic groups because, overall, teeth were not a reliable indicator.
152. The evidence from Bulgaria was from two sources, the letter and the response to the subject access request. In respect of the letter from the State Agency for Refugees there was nothing that underlay this information, and it was not clear whether it was building on the border force information. This should be treated with caution when the primary records were absent, bearing in mind the possibility of error and errors did occur. In relation to the border force material, the record showed the name of D S***** born on 1st January 2000. The claimant would have had no motivation to provide incorrect details and had been consistent about his date of birth.
153. His place of birth is given in the documents as being Kargahi but he did not have knowledge of such a place. Nothing in the papers supported that that place was relevant, and the claimant's evidence had a ring of truth about it and he had not attempted to explain away the material. He simply says he does not know how this date was given and maintains that he has provided the same data throughout. His encounter with the police in Bulgaria was reflective of the country background material and he explained that they encountered the border police on the

third attempt with a group of 28 others when he was detained. He stated in his second and third statements he was badly treated and rushed to provide information and he was provided with an Iranian interpreter and could hardly understand him. His account of his treatment in Bulgaria is externally consistent.

154. The evidence showed asylum seekers are detained and ill-treated in Bulgaria.
155. Country background material states the Bulgarian police cannot lawfully detain asylum seekers under the age of 18 and he was given a date of birth in 2018 as being 2000.
156. I was referred to extracts from the EASO age assessment practice in Europe (2013 and a second edition 2018) to compare practice. The extracts showed that in 2013 assessment was made by Social Services whereas in 2018 it was assessed only on documentation. The claimants were not informed of age assessments and so, it was submitted, it was highly probable that a visual assessment was conducted of which the claimant had no knowledge. The country background material referred to pushbacks, which was consistent with the claimant's account, and there was also reference to a lack of support on the border and a general lack of information and a failure to allow claimants to ask questions. The 2017 Age, Gender and Diversity Participatory Assessment Report from the UNHCR representation in Bulgaria referred to pushbacks. There was also a general lack of information on the procedures for claimants such that many detainees were not aware of the reasons for their detention on apprehension by the police and their further legal options including the asylum system and that they did not receive appropriate care. The Asylum Information Database Report (undated) indicated that in practice both asylum-

seeking children and adults continued to be detained. One of the reasons for the age assessment disputing his age stated that detention of children was prohibited, which was incorrect.

157. To circumvent the law that unaccompanied children should not be detained two tactics were deployed, one was to record them as an adult and the other was to suggest they were accompanied. This is the approach of the police. The Asylum Information Database Country Report on Bulgaria dated 2018 supported the claimant's account response and showed he had provided correct details. His recorded date of birth of 1st January 2000 was simply nominal to facilitate his detention.
158. The assessment should follow KB & AH (credibility-structured approach) Pakistan [2017] UKUT 00491, which held that detail, internal and external consistency and plausibility was helpful in approaching credibility, and, having found a young person to be genuinely credible his date of birth should be accepted. Where his oral history was credible the observations on demeanour were less relevant.
159. Credibility was critical. There had been internal and external consistency and plausibility. He had provided account which was highly externally consistent. DK gave a clear account and knowledge of his age and date of birth and his chronology was consistent, in other words, how old he was at different times. He promptly answered how old he was in Bulgaria when he stated he was 14.
160. He was asked those questions repeatedly and although they were appropriate, he was a vulnerable witness, and he was frustrated.
161. In relation to the nine lies that Mr Holbrook states that he had made she stated they were not made out. In relation to

the three different dates of birth there were significant shortcomings in the Bulgarian system generally.

162. In terms of his different names it was perfectly possible that there was an error. The points made by Mr Holbrook were simply repetitive. It was not implausible that he should meet a care leaver who was an Afghan man in a shop in Harrow. The reference to who recognised whom was entirely credible and simply a misunderstanding in relation to his uncle's friend. That he met an uncle's friend in an area where there was an Afghan population was not so incredible nor was it incredible that they might not exchange details because it was a short encounter. Equally, in relation to the discussions with Ms Nasinza that he had told her he may be able to stay with an uncle's friend was believable. Out of fear he proposed this as an alternative and potentially not thinking this through although there was no lack of credibility.
163. In relation to tracing his family, in oral evidence he could not remember but the steps he took were recorded and there were early records that he agreed to tracing contact through the Red Cross with his family and he had stated that he wished to trace his family. The records showed this on 6th August 2019, and on 1st June 2020 he was on the waiting list and there had been nothing since. On 20th November 2019 it was indicated he would like help and yet on the same date it was considered that it was only possible if the Red Cross were operational in his home area. There was a review in 2020 and the Red Cross were waiting to resume tracing. It showed that he was waiting and on 29th October 2020, the recent records showed that it was not clear if the foster carer had followed it up.

164. The local authority had a great deal of involvement in this and it was wrong to suggest that this was relevant to his credibility when he had done all that he could in his weeks of arrival.
165. In relation to the means of contact with his uncle and whether the SIM card stopped working, the information had been mischaracterised. It could be seen from the handwritten notes of the social workers' age assessment interview what is said that he had the number and the SIM card had stopped working. This was how it was transposed into the age assessment. DK was obviously talking about his uncle's SIM card.
166. Finally, the point was made that when the claimant was questioned, he queried why he was being asked about facial hair and it was said that he was well aware, but that was simply not made out and the evidence from Mrs Hosseinbor was that young men do grow a lot of hair earlier than those who are from the United Kingdom. It was not material to his age.
167. The claimant's physical appearance had been exaggerated by the local authority and their position had been inconsistent. It was difficult to know how the local authority could advance anything on demeanour as Mr Steventon stated that the claimant was compliant and there was no consistent picture to suggest all unaccompanied asylum seekers presented in the same way. Mrs Hosseinbor considered his behaviour highly consistent with that of a younger person and it was not right to undermine Mrs Hosseinbor, on the basis that she received £600 to £700 per week and would not wish to lose a compliant unaccompanied asylum-seeking minor merely because he is compliant when it was advanced that he could be very difficult.

168. It was correct that the claimant could articulate his own wishes, but this went little further than he was confident and could take buses. The evidence showed he needed a high level of support beyond the average.
169. Mrs Hosseinbor had raised his problems with his mental health and nowhere had that been engaged with.
170. It was noted that the witnesses were not trained but if their evidence was to be discounted it would only ever be social workers who could offer an opinion worthy of credit and their opinion was in conflict with the ADCS guidelines.
171. The opinion of foster carers and teachers was important as per AM v Solihull, paragraphs 19 to 21, and the opinion of teachers could provide a useful opinion. Mrs Hosseinbor was an experienced foster carer and had fostered more than ten children and was well-placed to give evidence. Her children were older. When he was in semi-independent placement for 16 to 17 year olds the records raised no concern about his presentation and there was nothing in relation to his college placements, where he was well-integrated. The concerns only came from the local authority's social workers and "many other professionals had no concern professed". The witnesses were mutually supportive.
172. The age assessment should be given less weight because it was not conducted in line with the ADCS Guidance notwithstanding the involvement of Jacinta Kane in its authorship. There was a lack of continuity, with appropriate adults which was contrary to guidance, and there was no cogent explanation. The claimant explained he felt the appropriate adults were strangers and he was not supported, and he could not rely on them. He was vulnerable and it was very important that he had a measure of support and further, there should have been an independent record of

what was discussed. Mr Poole was less than impressive and merely stated that the option was to adjourn, in which case he should have done that. It was no answer to merely suggest that the claimant was able to look after himself. The claimant should have had a procedurally fair assessment. There was also a lack of consistency in the interpretation, which was unfair, and more importantly, there was a failure to gather relevant evidence. The local authority accepts that it should have referred to the social worker, the foster carer and the report of Greenaway and that was a significant omission. Mrs Hosseinbor's, Ms Nagiah's and Mr Holmes-Attivor's opinions were withheld from the correspondence and that was referred to in the High Court and had a significant bearing on the claim when permission was granted.

173. This failure to disclose was not explained by Harrow's Legal Department and these should have been included. Mr Poole was unconvincing when he said that they were, and indeed he accepted that they should have been included. The local authority knew full well that Mrs Hosseinbor and Ms Nagiah had different views.
174. When looking at the duty of candour the conduct of the local authority was "reprehensible" and could have barred this claimant from bringing this challenge and barred him from obtaining funding and to hold such opinion back was a matter of high importance. Mr Poole's reasoning conflicted with the approach he took to that of Greenway when he accepted, he had not spoken to Miss Salim and his evidence was highly unsatisfactory. He clearly had not explored or given any consideration to it. The sole record of Miss Salim's evidence was a report from Mr Poole and her opinion that he is "quite old - 20 plus" but there was no information

provided and no written opinion provided by her and no probing of the nature and extent of the observation.

175. The Tribunal was invited to find that the claimant was the age he claimed to be.

Analysis

176. At the commencement of the hearing before me the claimant raised a concern that the interpreter came from Pakistan rather than Afghanistan albeit she spoke Pashto. Time was given to the claimant to resolve whether there would be an issue with the interpreter in the hearing and the claimant was invited to consult with his representatives (both counsel and solicitor were in attendance throughout the proceedings) and DK confirmed that he could understand and chose to proceed.
177. Throughout analysing the evidence I have considered the claimant a vulnerable witness under the Presidential Guidance Note No 2 of 2010. He claimed to be a child, but also that he has mental health difficulties for which I give some context.
178. The claimant, DK, denied any medical problems in his Asylum in-take interview dated 19th July 2019 save he disclosed a nasal problem and stated he had nightmares. The medical notes, however, from the Willow Tree Family Doctors Surgery recorded the claimant was registered with the practice on 23rd July 2019 as a looked after child, and on 12th August 2019 recorded 'poor sleep and a history of 'headache' (sic). In a statement dated 18th September 2019 and attached to the interview questionnaire and signed by the claimant he also denied any medical issues. The GP notes identified on 24th October 2019, that the claimant 'was at ESOL centre and they did an age assessment, and they think he may be 23 years of

age, so course is going to stop this has made him depressed and for a few weeks sleeping all the time'. He was diagnosed with depression. There was no formal psychiatric report, but he had been referred for counselling. In January 2020 DK is described in the GP notes as 'cheery and upbeat' and in June 2020 as 'mood fine'; on 8th October 2020 his GP notes referred to him 'MH Services'. He is currently taking a low dose of Citalopram. When assessing the evidence and for example discrepancies in the evidence, I have borne in mind the relevant guidelines.

179. I first address the ground in relation to the procedure of the age assessment.
180. The age assessment was conducted by two qualified social workers who were experienced in assessing age including the age of young asylum seekers from Afghanistan. Mr Poole detailed his qualification, which included that he had a BA (Honours) degree from University of Nottingham, a CQSW and Diploma in Social Work from Newcastle University, a Diploma in Management Studies from Kingston Polytechnic and the Institute of Personnel Management and a Master of Business Administration from the City University of London. He had worked in local authority social work for approximately eighteen years, predominantly as a manager of Looked After Children and Court Teams and worked for the London Borough of Harrow Leaving Care and Unaccompanied Asylum-Seeking Children Team since November 2014 and had undertaken a considerable number of age assessments.
181. Rashid Kato was also a qualified HCPC registered social worker with a BA (Honours) degree in Social Work from Brunel University and had been working in the London Borough of Harrow Leaving Care and Unaccompanied Asylum-Seeking Children Team since September 2017.

182. The age assessment acknowledged the guidance (ADCS) at the outset of the written report, noting that age assessment was a complex task, that the assessment may be legally challenged and that it was extremely difficult to ascertain age with certainty. Also noted was the importance of the age assessment to the assessment of need of subsequent provision of service for the young person and that the assessment should be conducted from a holistic perspective but was a process of professional judgment.
183. The assessors explained the parameters at the outset such that, in age assessments, the benefit of the doubt should always be the standard practice and that where practical two assessing workers were beneficial. It was acknowledged that young people may have been asked previously many difficult and distressing questions. The form and type of questioning to be adopted was noted; open-ended, non-leading questions should be asked and the importance of feedback to the young person at the conclusion of the assessment. The social workers were clearly aware of the claimant's said vulnerabilities from the outset and the demands of conducting an age assessment within the ADCS guidance.
184. Criticism was made of the age assessment on the basis that notes were not taken by the appropriate adult and the adult and interpreter changed. The claimant's objections were that first, he would have felt more comfortable, and secondly that there were no notes taken. The same adult attended the first two meetings and another on 23rd September 2019 and 9th October 2019. There was no indication that the claimant made any specific objection to the adults themselves, indeed he signed in all cases, including the last, that he wished '*to proceed with the independent person present*'. I note that the claimant had no hesitation in deciding that a particular course at Greenway College was

unsuitable for him and expressing his views at that time. Those appropriate adults present were suitably qualified as confirmed by Mr Poole and from a reputable organisation independent of the local authority, regularly used, namely Harrow Mencap. Whilst a failure to take notes is not ideal that omission does not fundamentally undermine the age assessment process itself, the information taken therein nor the reasoning. The assessment was undertaken by two qualified HCPC registered social workers and the change in adult did not appear to have hindered the claimant from answering questions. There are records of the interchange and there was there no recorded complaint made by the appropriate adult of the process adopted by the social workers.

185. As evidenced by Mr Poole, he asked the adults to take notes. By contrast both he and his colleague took notes which are evidenced in the bundle. Little by way of comment was made on those notes save for one issue of transposition into the age assessment itself in relation to the sim card and that I have addressed below and by reference to other evidence. There is always a balance to be weighed between delaying the age assessment should the claimant demur as to the appropriate adult or to proceed. In this context and in the absence of any particular criticism of the appropriate adult, the fact that in hindsight it was discovered the adult did not make notes (there was no criticism by *the adults* of the conduct of the assessment at the time) and that the claimant may have felt more comfortable with a constant presence, does not undermine the fairness of the process. There was no indication from Mrs Hosseinbor, the claimant's foster carer, that he had raised significant concerns with her about the *process at the time*. It is clearly not possible to insist on specific performance that

is the same person attends each meeting even if that is desirable. The role of the appropriate adult is to support and advise and to ensure the claimant understands the process and his/her rights to legal advice. The adult is not a legal representative and there is no authority which suggests that the absence of handwritten notes or a change in personnel detracts from the weight of the assessment itself.

186. There appears to have been no response from the Information Commissioner's Office to the complaint vigorously pursued by the claimant's legal representatives and who requested that the defendant reprimand Harrow Mencap as a result and further requested disclosure of material pertaining to the local authority's handling of the situation with 'Harrow Mencap'. I see that Harrow Mencap did ultimately respond citing the pandemic as causing disruption to their service. The sanction of Harrow Mencap is not for this tribunal nor relevant to the determination of age. As pointed out to the solicitor, the ADCS guidance is not definitive that such notes should be available, and I am not persuaded that the change of adult or lack of notes hindered the process unfairly.

187. As to interpretation, the claimant was interviewed as part of the assessment process on 13th, 17th and 23rd September and was informed of the preliminary outcome of the assessment on 9th October 2019. The claimant had ample opportunity to challenge the interpretation given and that was not done. There was further criticism that three different interpreters were used. The claimant signed on each occasion to confirm that he fully understood the interpreters and all the questions asked, both at the start of the age assessment, and at the close and that he understood the interpreter.

188. If the claimant was uncomfortable with the interpreter at the age assessment, I conclude that he would have said so particularly as he was able to make an independent self-determination on 10th September 2019, not two weeks earlier, that he would not attend the Greenway project to learn English. The nature of the assessment (three or four different sessions with the young person on different dates) may necessitate a change of interpreters over the various interviews but equally affords time for challenge. As long as appropriate interpretation is undertaken there should be no particular difficulty with such a change and this does not render the age assessment unfair or undermine, in these particular circumstances, the product of the assessment.
189. The handwritten notes indicate that the questions were put in a clear and simple terms by experienced social workers. From the questions asked and the responses given by the claimant, including his fluent challenge to the interpreter when the claimant considered he/she had not interpreted accurately, I am not persuaded that there was a difficulty with the interpretation and that this undermined the age assessment.
190. Mr Poole was also criticised for his failure to address all the opinions available. In his oral evidence which I address below he did confirm that he considered all opinions. That I accept because I have no reason to doubt his professional word, and the records show that such opinions were solicited in writing prior to the conclusion finally drawn.
191. The claimant adopted his three further statements signed on 4th November 2019, 8th July 2020, and 6th December 2020. He stated that his mother told him his age when he went to school and that he needed his age in order to attend school.

There were however a variety of inconsistencies between the claimant's oral evidence and the written records of his evidence in the bundle (including but not only the age assessment) which are significant and that is despite allowances made for his claimed age and mental health issues detailed above and experiences.

192. For example, in oral evidence he stated that he knew the age of his siblings but denied in oral evidence that he knew the age of his mother. This however, together with the age of his grandfather and his father was recorded in the age assessment (and clear in the handwritten notes). When asked why he told the age assessor's his mother's age he stated, 'I didn't say that'. To the question that he must have estimated her age he replied, 'I have no information' and then when asked to consider the pages of the age assessment which recorded his responses on his family's age, he stated 'I must have said but I can't remember whether I said this or not'.
193. I can accept that the claimant might have some mental health issues. He could, however, clearly remember many elements of his evidence in detail. It is possible to forget some details, but I do not accept he would fail to remember that he had previously *known* the age of his mother. During the course of his evidence when asked whether he had made it up he merely responded, 'maybe I said it'. His explanation was that when he came to the UK, he might have given her age, but he did not have much information and was confused. Even if he were confused about the age itself, I do not accept that he would forget that he even knew his mother's age.
194. Further the age assessment was not conducted immediately on DK's arrival in the UK and he had sufficient time to rest

and recuperate before he was interviewed. When asked about this the claimant stated that maybe he had given his mother's age but then said he did not understand. He gave no adequate explanation as to why he did not understand the straightforward question which is such that he either knew the age of his mother or he did not. He was not diagnosed with a serious mental health problem and was not presented as someone with specific cognitive special educational needs and the question was clear.

195. In his signed statement dated 18th September 2019, he stated he had come through countries including Bulgaria and Serbia but denied knowing the others (i.e. France), (he also stated that he did not know in which countries he had been fingerprinted although told in July 2019) but, by contrast and in particular in his age assessment, he gave details of how long he stayed in Calais.

196. In his questionnaire dated 19th September 2019 DK was asked to declare the languages he spoke, and this reply was simply crossed through; he did not declare the languages he knew including Urdu, English and Dari albeit he confirmed that the solicitors went through the questions with him. DK claimed to having lived in a village in Afghanistan until the age of 15 years and yet denied to the education authority that he could speak English. He corrected the interpreter during his age assessment because he stated he could speak some English and recognised deficiencies in interpretation. He also disclosed to the social workers that he could speak or understand a range of languages including Pashto, English, Urdu and Dari. Indeed he confirmed in oral evidence that when he first lived with his foster carer, she spoke to him in 'Persian', and I do not accept she would have done so had he understood little.

Further, he left the English language class in Claremont High School because he thought it too elementary for him.

197. Although it was stated that he gave a consistent chronological account throughout, he could not give the year he actually left Afghanistan, either in Pashto or in English and merely repeated when questioned that he left when he was 14 years old. In response to the exact date he left (rather than the year) he stated that he left from the first Eid around 25th or 26th in that year (I ignore the fact that he could not remember at first the timings of him leaving). He thus could answer some specific questions but not others, the complexity of which was similar. The repetition of the answer that he was 14 when he left does not render his account more plausible. Having stated that his age was 14 years when he left and apparently knowing his date of birth he could not account for his age when his grandfather died but did state in oral evidence that his grandfather died 1 ½ months before he left and this, as pointed out to him, indicated that his date of birth was in March or April.
198. A further difficulty was that the claimant stated in an Asylum in-take interview questionnaire dated 19th July 2019 given to the Home Office, that he did not have a taskera. The framing of the question was clear. According, however, to his witness statement of 4th November 2019, also prepared by a solicitor, and oral evidence, he confirmed that he did have a taskera and thus he knew his dated of birth. Albeit that these questions were given in writing the claimant gave the responses and went with his foster carer to the appointment in which experienced solicitors, JD Spicer, completed the questionnaire and the claimant declared the truth of the answers. In oral evidence the claimant confirmed that he was specifically asked the various questions. The claimant advanced that all he said was that

he did not have a taskera over here. He denied he was blaming the lawyers for the answer given and asserted that the question was aimed at whether there was a taskera in the United Kingdom. It is quite clear that the question refers both to a taskera in the UK and in Afghanistan because it asks if the document is in the UK.

199. The explanation of how he chanced upon an ex-care leaver who initially took him to Harrow's services is vague and unlikely albeit not impossible. However, the claimant gave oral evidence that he bumped into another Afghan who just happened to recognise the claimant from when he was a child and was a friend of his uncle's. I can accept that Afghans might prefer to go to specific shops when in London but to claim that he was recognised, that he missed his family and then fail to exchange contact details because he was buying orange juice was simply not credible particularly as he had indicated how much he missed his family. This was his opportunity to explore some renewed contact with known Afghans and possibly obtain information on his family whom he has requested the Red Cross trace, and his response when questioned on why he did not exchange details was finally 'I did give you an answer earlier'. In oral evidence, the claimant maintained that he did not have his details and did not see the Afghan again after the first chance encounter. When, however, the age assessment declared the claimant to be an adult and when the accommodation was about to be changed, the claimant's solicitor wrote to Social Services stating that he would rather stay with his uncle's friend. I do not accept that the claimant would have initiated that suggestion if he did not have the details and simply on the off chance that he might meet the friend again in the shop or that he said it because he was scared.

200. Again the claimant displayed a sureness and deftness in answering the questions whilst at the same time either failing to answer or being vague on questions which were more problematic for him. In some respects, he could recall large sections of his past in detail but when questions were less helpful, he failed to recall in a manner not consistent with his presented mental health.
201. Mr Benfield was given permission to question the claimant on the Bulgarian documentation which was ruled admissible. He stated that he did not know why the surname (family name) S***** had been given and denied that he had ever given 1.1.2000 as a date of birth to anyone. He accepted that he signed documents but could not remember how many. He also stated that he had never heard of Kargahi as a place. He accepted that some pages relating to the Border police documentation contained his signature but that he was not given time to read the documentation and that his order for release on 18th September 2018 was 'announced in Persian' when Pasto was his language. He did not understand the interpretation. As I noted, however, DK accepted that his foster carer (of Iranian descent) spoke to him in Persian when he first arrived.
202. At the claimant's Asylum in-take interview conducted at Croydon in July 2019, the claimant had an interpreter and confirmed he understood the questions. At question 19 of the interview it was put to him that he had been fingerprinted in Bulgaria and he explained his conversation with the interpreter in Bulgaria as follows, 'There was an interpreter and he said they were going to fingerprint me and write down my details' ...'I told them my date of birth and they said it is ok we will write it down'. That was an interchange not of someone who had no understanding but of someone who could recall and comprehend the interaction.

He added in that interview that he gave the same name and the same date of birth to the Bulgarian authorities i.e. 2004. He made no mention when recalling the incident with the interpreter in Bulgaria that he did not understand. At this interview in July 2019, he had legal representation in the form of JD Spicer.

203. DK also stated in oral evidence that, with reference to the Bulgarian documentation, sometimes he signed in Pashto and sometimes in English but when the claimant was also asked 'were you aware of what date of birth was in the documents?' (which was indeed in the Gregorian calendar) he replied 'no'. The dates of birth are clearly written in English numerals. Further the claimant had confirmed that he knew his date of birth in both the Gregorian and the Afghan calendar (his English proficiency included some reading).

204. The claimant initially stated in oral evidence that when first detained he gave not only his date of birth but also stated how old he was. The claimant also initially stated that he told the interpreter his date of birth and how old he was in both languages (English and Pashto). He was asked to confirm this in the hearing and did so. The claimant then contradicted his oral evidence stating that he gave his date of birth in Pashto only. He then stated that he gave English dates in the Pashto language. The claimant also stated that he did not say 2004 in English but in Pashto because there was an interpreter present. DK then stated, finally, that he did not speak to them in English. In his third statement, however, he had also confirmed that he had given his date of birth in the Afghan and the Gregorian calendar.

205. In effect the claimant obfuscated and changed his evidence to straightforward and simple questions. Within a matter of

minutes earlier, the claimant had given oral evidence that he told the authorities his date of birth in English. The claimant could remember precisely how long he was in the jungle near Bulgaria (8 days) prior to going into detention but could not recall how long he was in detention in Bulgaria. When challenged on this his response was 'I am not a computer'.

206. It is most unlikely that two different Bulgarian authorities would make up a very similar name of S***** and I find that the claimant's disavowal of this name to be improbable. The claimant's evidence on this was not direct, was inconsistent and evasive, even taking into account his mental health difficulties.

207. I was taken through extracts of reports in relation to the Bulgarian authorities' treatment of detainees and asylum seekers. It was advanced that the authorities deployed two particular tactics when dealing with minors. First, they identified an adult to whom they attached the minor in order not to be considered unaccompanied. Alternatively, the minor was fixed with a date of birth of eighteen.

208. Ms Benfield submitted that although Mr Holbrook relied on evidence which suggested the practice of detention of minors ceased as of July 2018, the AIDA report (Asylum Information Database Report) suggested that the detention of minors was ongoing. The AIDA Country report Bulgaria referred to this practice continuing and that such children "are assigned ('attached') to any of the adults present in the group with which the children travelled, which has been the steady practice ongoing for the last couple of years".

209. As indicated, however, in the AIDA report, an amendment to the LARB regulations entered into force on 10 July 2018 (i.e. between the date of the previous reports of EASO and

when DK claimed asylum) to introduce rules and procedures for immediate and direct referral of unaccompanied migrant children from the police to the child protection services in order to avoid their detention. The report referred to an immediate change in the national police practices on detention. That said, the practice appeared to continue for those considered to be between the age of 14 - 18 years 'the police continue to employ detention through attached or registration as an adult'.

210. DK, however, made no mention that he was attached to any adult when or after he was actually arrested, and this was not apparent on the face of any of the documentation. Albeit he states he was guided through Europe by an agent, there was no mention of the agent on detention or when claiming asylum. The claimant's evidence regarding interpretation did not refer to the agent or any other accompanying adult being with him when detained in Bulgaria.

211. With regard the second method, Ms Benfield also referred to the change in processing of age assessments in Europe by way of the two EASO reports (2013) and the second edition (2018) report which in fact was produced in April 2018 and prior to the claimant's arrest. It was submitted that the authorities had only visually assessed the claimant and the reports showed the changing process. I was provided with extracts of those reports and the overview of the safeguards included the principle of the best interests of the child being applied, an independent person supporting the claimant and a variety of other procedural safeguards. I am not persuaded that this takes the case further in the light of my other reasoning.

212. It was thus suggested that he was 'given' the age of an adult and rushed through the process with inadequate

interpretation. I note however that the UNHCR age Gender and Diversity Participatory Assessment Report noted that 2017 remarked on a 'dramatic decrease in the number of asylum applications submitted to the Bulgarian authorities from the previous year and also referred to 'multi functioning teams' consisting of 40 representatives of 18 state and non-governmental entities involved in the participatory overview of 'Access to Rights' in Bulgaria. In other words not only was there a marked decrease in the numbers being processed but also increased scrutiny of the Bulgarian processes by various non-governmental bodies and agencies in relation to detention, police treatment of asylum seekers and services including interpretation at the border and in detention facilities with particular reference to minors. There was reference to lack of interpretation but in the claimant's case the documents signed identified the use of an interpreter.

213. Bearing in mind DK could understand English, read the Gregorian calendar and was spoken to in Persian by his foster carer when he first arrived, and confirmed he spoke in Pashto and English to the authorities in Bulgaria, (which is an EU state), I do not accept that he did not have interpretation on detention nor failed to understand sufficiently to transmit or understand his given year of birth and name.
214. The claimant's first name (as opposed to surname) was given and recorded correctly, and the naming elements were in English, which the claimant can understand; he can read and write basic English and his date of birth was on the documents handed to him. His surname S***** is written in the Old Roman alphabet (English) rather than the Cyrillic alphabet on the Bulgarian documents throughout and is clearly distinguishable next to his name on documents which

the claimant signed. He must have been aware of this name. The claimant is clear in his witness statement that he himself gave the details and in his oral evidence he confirmed signing if not all, some of them. This is not the name given by the claimant on entry to the UK.

215. The documentation relates to two different time periods and events, the first relating to his detention and the second in relation to his asylum claim. Both place his date of birth in 2000. This year of birth appears on the face of all of the documents relating to DK. He may have missed the month of his birth, but his year of birth is clear. He asserted in his age assessment that he gave the same age to the Bulgarian authorities himself as he gave here. The year 2004 appears nowhere on the documents whereas the year 2000 appears throughout. I find it to be speculation that the Bulgarian authorities put that date down to make him 18 years old. The claimant managed to make his first name understood, and asserts the surname was ascribed to him by the Bulgarian authorities. There was no explanation why those authorities should adopt his first name but give him a completely random surname not just on his first detention but also two weeks later when he claimed asylum and was free to leave. That the date of birth differed indicates a different process of taking information by a different body (the refugee agency). The year of birth remains constant.

216. The UNHCR report referred to a lack of information and that many of the detainees were not aware of their legal options and the asylum system. From the letter from the Republic of Bulgaria State Agency of Refugees with the Council of Ministers, by contrast, this claimant engaged with the process as it is shown he 'lodged his application for international protection with the Republic of Bulgaria on 2.10 2018' and is then recorded as having 'absconded on 9th

October 2018'. In terms of the RSDP and reception conditions 'no cases were reported when applicants were unable to understand the interpreter'.

217. The reports indicate a considerable oversight and involvement of UNHCR and non-governmental organisations in the processes adopted by Bulgaria and those processes by 2018 and, from the reports of 2017 had considerably less pressure on them. Although he asserts mistreatment the claimant waited some days before 'absconding' from the camp. An account consistent with pushbacks could emanate from an adult just as a minor and does not add to the narrative.
218. On balance I do not accept that the practice simply to ascribe an older age particularly as the claimant was with a large group of 28 when arrested, and there was clearly an option to attach him to an adult, but his own account runs counter to that suggestion. Secondly scrutiny of practices appeared to have increased and thirdly, not once but twice by different authorities within Bulgaria, the claimant was recorded as having been born in 2000. The claimant's description of treatment developed such that in his last statement it was described as 'cruel' but even in that statement he accepted that after the first camp he was fed and allowed to leave. His reference in his third statement to the 'cruelty' was to the two days he spent in detention by the police. He makes no significant specific complaint about the treatment when he claimed asylum on 2nd October 2018 to the Bulgarian Refugee agency.
219. I find that there was an interpreter when DK claimed asylum in Bulgaria and contrary to his statements to the social workers in the age assessment, he did not give the same dates of birth, particularly the year, as he gave in the UK.

220. On questioning about his contact with his family and uncle DK accepted that he was in touch with his uncle by telephone in Iran as he travelled across Asia but stated that was until 'the number stopped working'. The handwritten notes recorded that the 'Sim stopped working'. That was repeated in oral evidence. The claimant then said in oral evidence that he had the number on a piece of paper and when it stopped working, he threw it (the paper) away. It was put to him that it must have been stored on his phone, but he then denied he had a mobile phone in Afghanistan and that he learned the Gregorian calendar from other classmates who had phones in Afghanistan. He denied he had a sim card even when he was shown the record of the age assessment where he referred to a sim card. He repeated he only had the number on a piece of paper which he threw away. That was a direct contradiction of his previous evidence. Ms Benfield's suggestion that he was obviously referring to the 'uncle's' sim card is not borne out by the context of the handwritten notes, the age assessment nor his own statement.
221. He cannot have known that the sim card of the uncle stopped; he was referring to his own phone. It is not credible that every time he wished to phone his family, he would have had the opportunity or been able to borrow a phone during his travels. I do not accept that there was a contradiction between the handwritten notes and the record in the formal age assessment.
222. I have factored in the claimant's mental health condition and that he was referred to counselling but do not accept that it explains the changes in his evidence. As Ms Benfield pointed out, he was able to be consistent in certain aspects of his claim such as him being 14 when he left Afghanistan and the number of days spent in the jungle outside Bulgaria. When the evidence was less convenient, he

either could not remember, denied saying what was written down or blamed an interpreter. Owing to the frequency and importance of those particular errors I do not find that the claimant's mental health condition can explain them. There was no medical indication that he was unfit to give evidence and he had no reported difficulty in learning at college. Indeed, the class at Claremont High School he considered the learning insufficiently advanced. He was able to give lucid and articulate evidence, understood the questions and even challenge them.

223. The care plans and social work reports confirm that DK has been able to attend college, attend the gym on a regular basis, and attend a variety of appointments. The reports indicated a level of independence and ability to express his views and articulate his rights at an early stage. The Horizon report from September 2019 for example reported him going to the mosque and refusing to attend a school preferring to wait for the age assessment to be completed to go to college. I accept that he has been given guidance and assistance but nonetheless he has been able to engage with and make decisions on his affairs on a consistent and regular basis.

224. The ADCS, which I note is guidance only, identifies that 'Foster carers, key workers, social care workers, advocates, teachers and college tutors may be involved in working with a child or young person depending upon their circumstances and placement arrangements, and they are likely to have high levels of contact with the child or young person. Their observations of children and young people in different settings and interactions with peers and other adults can make a useful contribution to your assessments. It is good practice to gather the information available prior to

conducting the age assessment interview(s) with the child or young person'.

Two of the criteria adopted in AS v Kent in relation to opinion evidence was that (i) the witness should be impartial and (ii) whether there was a reliable body of knowledge or experience to underpin the expert's evidence.

225. With that in mind, I turn to the evidence of the foster carer, Mrs Hosseinbor, who believed that the claimant was a minor. Mrs Hosseinbor had the claimant living with her from July to September 2019 and again from November 2020 to present, and stated she was used to fostering young asylum seekers. It was suggested that the claimant's foster carer had an interest in maintaining the placement, affording her approximately £600 to £700 per week but I believe Mrs Hosseinbor gave evidence in good faith. I would not disregard her evidence on impartiality grounds because she was in receipt of funds for DK's placement.

226. She herself, however, accepted that she had no training in age assessment. She confirmed in her statement of 30th January 2020 that she thought DK 16 and inter alia he did not brush his teeth and his cooking skills were limited. As pointed out by Mr Poole, DK did not see a dentist in Afghanistan and as the claimant stated his grandfather, with whom he lived, had servants. Together with the cultural influences regarding domestic tasks the evidence of the claimant's domestic skills does not assist.

227. She confirmed on questioning she had proceeded on the assumption that the claimant was the age that he claimed, and which had been given to and by the agency. Clearly, the agency operated on the basis that it was placing those below the age of 18 and remunerating the foster carers accordingly. I give limited weight, however, to her

evidence on the basis that she has not been trained as an age assessor and she proceeded on the basis of the age given to her. I accept her role is to consider his needs rather than question the claimant's account's credibility and age when that is not her function. Indeed, she acknowledged that she had previously had those aged 19 in her household and although she acknowledged that she could not be sure that he was 15 or 16 or 17 she said she could say he was not 18.

228. In her email dated 18th October 2019 to the appellant's representative she wrote that 'they may get lines on the face because of the climate and the hard work they have done from a very young age'. This was not the account of the claimant. His account was that his grandfather was a landowner with two 'big' farms and servants, and he attended a school and then private school until not long before his departure at the age of 14 years. According to his statement of 8th July 2020 he had only one year in the fields.

229. The evidence of Ms Nagiah, the administrator for the agency, was challenged on the basis that it was not in the agency's financial interests to question age of those being placed. The defendant, however, commissioned the placement and I consider that the agency would merely proceed on the basis of the age given by and to the commissioning authority. According to her statement of 24th January 2020 she saw DK only four times and it is clear that her focus was the foster carer herself rather than DK. Further, she herself stated that she was not best qualified to provide a specific assessment for D's age. She thought that he was developing self-care skills and needed help with important meetings but was 'otherwise able to manage some meetings himself'. I afford limited weight to her evidence.

230. Mr Poole was criticised, and, in part, permission was granted on the basis that he had failed to take into account the views and opinions of the foster carer and Ms Nagiah. Those opinions, however, were clearly sought by the defendant as witnessed by the email correspondence of Ms Nasinza on behalf of the London Borough of Harrow. Indeed, Mr Poole was copied into the requests. In his oral evidence, Mr Poole was quite clear that he was aware of the opinion of the foster carer that the claimant was under the age of 18 and that the administrator for the care agency, Ms Nagiah, considered the claimant was a minor. He confirmed that he took this into account notwithstanding that it was not actually written into the assessment. The email records show that their views were solicited prior to the decision. Indeed, as Mr Poole explained, he did not specifically refer in the assessment to the evidence of the initial social worker Susan Nasinza, who had assessed the claimant as being over the age of 18.
231. I preface my observations on the social workers' evidence by stating that all gave a range of ages. They were definitive, however, that he was not a minor but an adult despite their various views on how much of an adult he was.
232. As the caselaw indicates age assessments are, by their nature, imprecise. Mr Poole gave the claimant an age range of between 21-25 years in the age assessment and had settled at 23 as being most likely whilst the other social worker, Mr Kato, had thought the claimant between 23 -28 years.
233. Mr Steventon had not encountered the claimant at the time of the age assessment but was also firm in his evidence as a qualified social worker who had undertaken age assessments himself, that the claimant was over the age of 18 albeit he accepted DK could be 'compliant'. I give weight to Mr

Steventon's opinion which was balanced in that he thought the claimant presented as independent although he did accept that he could be compliant. I note by the time he met the claimant he had already been the UK for at least a year. He had given an age range of between 21 and 23 years.

234. The verbal opinion of the tutor at the Greenway Project on 11th November 2019, was recorded in a case note by Mr Poole on 13th November 2019 and confirmed in an exhibit to his statement. As Mr Poole stated, many professionals are reluctant to commit their views to writing and, on this occasion, albeit her view was based on a cursory meeting, is not to be wholly discounted, particularly as this project was specifically set up to meet the needs of young asylum seekers learning English and her view was recorded at the time and there was no apparent contradiction and no challenge to this note. I accept however there was little by way of evidence as to her qualifications and experience. She thought him '20+'.

235. This contrasts with the social worker Mr Holmes-Attivor, who in fact refused to make firm his views that the claimant was a minor and despite numerous emails from Mr Poole requesting that he place his views in writing he declined to do so. There was on record a note of a telephone call with him on 9th December 2019 stating that Mr Holmes-Attivor stated he had no experience or knowledge of age assessments and did not want to get involved and that he said he would put this and his views in an email. He did not do so. His views have only been represented. What I do know is that he was involved with the claimant's care, was specifically requested by email by *both* representatives to give his opinion as a social worker in writing as to whether the claimant was an adult or not and declined to do so. I am surprised that, as a social worker, he did not back up his

opinion in writing because he must have been aware of the implications, and I therefore attach little weight to his verbal opinion, even though represented, that the claimant was a minor.

236. What is noticeable is the absence of evidence from any other tutor, bearing in mind the claimant had attended college since the end of 18th November 2019. As the ADCS guidelines indicate, a range of views including those from tutors will assist in assessing age. I realise that the claimant may well have attended college remotely since the lockdown in March 2020, but nonetheless he has come into contact with tutors at the college in late 2019 and indeed has attended because he was stated to have been elected class representative in 2020.

237. I am not persuaded that the dentist's evidence assists one way or the other. I accept that data sets can be unreliable particularly if there are no comparable ethnic groups within the analysed statistics. Albeit the claimant had a fully erupted third molar said to be consistent with the status of an adult, case law cautions placing reliability on such evidence. Even though the dentist had previously advised that the dental presentation of the claimant was that of an adult she only stated in writing that he was 'at least 15 years old', which appeared to be contradictory and would not be drawn further on a previous conversation with the social worker. I have no reason to disbelieve the oral conversation related by the social worker with the dentist in relaying that the claimant had a dental structure suggesting he was over the age of 18 but there was contradiction, and therefore this takes the case no further forward as to age assessment. All that can be said is that it does not detract from the opinion of the social workers that the claimant is over the age of 18 years.

238. In relation to the historical photographic evidence I agree that reliance on photographs is not necessarily helpful to show the heaviness of his beard or receding hairline or age because the lighting, exposure and other conditions can make such a difference to photographic presentation.
239. The information on the Red Cross takes the case no further forward for the defendant. The claimant stated that he had asked them many times, but they did not have any information. I can accept that the Red Cross will not trace where they are not operational, and the request simply lies on the file. I would add that the Red Cross will only be able to trace with the correct name.
240. I turn to the content of the age assessment. When considering the age assessment **R (AM) v Solihull Metropolitan Borough Council (AAJR) [2012] UKUT 0018** counsels against reliance on demeanour and social interactions in the course of a short interview between 'an individual and a strange adult' [19].
241. Following **R (AM)**, great caution must be given to physical attributes. At the date of the age assessment under challenge it was recorded that DK shaved regularly and had a developed Adam's apple and thus had the attributes of being fully grown. The authorities establish that physical appearance is an unreliable indicator of age, but **R (B) v Merton** does not exclude that consideration merely that the decision-maker cannot determine age solely on the basis of the appearance of the claimant. The observations thus can be taken into account and they add to the picture. There was not however mere reliance on appearance and demeanour.
242. The age assessment itself refers to a variety of factors that were taken into account in addition to references to physical appearance and demeanour. It was noted that an

initial hypothesis of age may be formed on the basis of height, facial features, voice tone and general impression. The assessors also noted that it was important to consider racial differences and that it was "normal in some cultures for boys to have facial hair at an early age". It was also noted that "life experiences and trauma may impact on the ageing process" and this should be borne in mind, together with the culture of the country of origin and events preceding the interview, journey and experiences. Thus it is evident the assessment does not rely on physical appearance and demeanour alone.

243. The initial impression of the claimant was that he had lines on his face, his hair was receding at the side of his forehead, he had a pronounced Adam's apple and had the appearance of a young man aged between 25 and 28 years of age. He was short and five foot five inches and weighed just under nine stone. There was no challenge to the actual description. His interaction during the assessment was someone who was considered to be calm and confident and who provided responses to each question and did not seem to be distressed by exploring past events.
244. The claimant reported that he lived in a district named "Khaga" (similar to the name of the town from which DK stated his grandfather was said to have secured his taskera) and he gave the ages of his grandfather, mother, father, brother and sister.
245. The assessment went through the history the claimant gave and noted the contradiction between the claimant's information that Daesh had taken over the area but at the same time the grandfather's local house was locked down by the government. I was urged to find that there was a consistency between the claimant's account of being forcibly

recruited and the external information for example the Landinfo report. It is not for me to analyse aspects of the asylum claim but, as it was pointed out by the social workers, there was a contradiction that government forces would focus on the grandfather's house rather than the Daesh compound when they were both local. His story that Daesh released him to visit his family jars with the concept of forcible recruitment.

246. There were more telling contradictions relied upon not least the time spent on his journey and his language ability.
247. The age assessment reiterated his account of his of travel noting that he left Afghanistan on 11th July 2018, (his departure was 26 days after Eid al-Fitr, that is, on or around 10th or 11th July 2018), he spent two days in Pakistan, took a month to travel to Turkey, where he spent a month, and left Turkey in mid-September 2018 and travelled to Bulgaria, where he stayed for seventeen days. He took a day to travel to Serbia, where he stayed for four to five months and therefore left Serbia in early March 2019 and took four days to travel to Calais, where he remained a month before entering the UK. This calculated his entry to the UK in mid-April 2019. However, he presented himself on 10th July 2019 and thus there were three months unaccounted, which is a large percentage of a twelve-month journey.
248. It was then noted that he changed his account of his journey and stated that he spent six months in Serbia and six months in Calais. (It had been noted that previously he did not remember travelling through France). It was open to the age assessors to take this "slippage" or change of account into the assessment.
249. The age assessment also took into account that the claimant could speak and understand English to a higher level than he

had stated on entry and he could read and write basic English. It was recorded that he had told the education authority he did not speak English.

250. In relation to his education DK recounted that he went to the Zawar Private School, which he attended when he was 6 years old, and that he left after seven years and did not attend school thereafter. He attended a short course in Afghanistan for English. He confirmed that he could read and write basic English and that he was 12 years old when he started the course. When asked about the proficiency of his English he maintained that he had learnt English from his 'aunt' (Mrs Hosseinbor) in the UK and back in Afghanistan, where he studied English for three months.

251. It was open to the assessors to conclude that his account of his studying English in Afghanistan for three months was not consistent with his level of English, which was beyond that one would speak after three months of study. The claimant stated that he had met people in the past year who spoke English, and that helped him to learn English. He had, however, only been with the foster carer a matter of two months before the commencement of the age assessment and he describes travelling and being in camps with Afghans and Iranians passing through a range of non-English speaking countries. Further, the claimant had denied to the local education authority he could speak English and thus was sent to attend the Greenway Project attached to Claremont School in Kingsbury, a course designed for people who did not speak English or whose age was questioned. The indication is that the claimant had spent much longer learning English. In this particular instance the question of the claimant's ability in languages does throw doubt on the length of his travels and thus his age.

252. Further, it was considered that the claimant was fingerprinted and detained in Bulgaria and kept in a camp with people aged between 11 and 25. It was not accepted that he would be kept with an 11-year-old as this was explicitly prohibited for vulnerable persons. Although Ms Benfield criticised this line of analysis because the Bulgarians did continue to detain those underage, I consider that it was still open to the social workers to reject that the claimant would be kept with someone as young as 11 and unaccompanied minors. Such detention is indeed against the Bulgarian regulations. As indicated previously, there appeared to be considerable oversight by non-governmental organisations of camps in Bulgaria by 2018.

253. Finally, the age assessment considered that the claimant, when told that he had been assessed as 23 years old, asked if the decision could be changed if he provided an ID document and it was put to him that he had maintained throughout his age assessment that he had no way of obtaining any such documents from back home. He also reported that he had a taskera in Afghanistan but was unable to bring it to the UK. When asked about whether there was anyone, he could contact to send him ID documents he said that people in the area did not know about social media and there was no signal in the area, so he could not contact anyone back home. This contrasts sharply with the account of being able to contact his uncle at least from Iran and that boys in his class at school had mobile phones. It is recorded that he had his uncle's contact number until they reached Iran.

254. In effect, the overall age assessment relied on various factors as explained above and was conducted by two experienced social workers. Mr Poole did not, in his oral evidence depart from the age assessment nor his witness

statements. The criticisms made of his evidence did not seriously erode the credibility of his statements.

255. The CLA health report dated 6th August 2019 described that the claimant was 163 centimetres in height. This was taken at a health assessment. On 4th November 2020 some 15 months later his height was recorded as being 162.7cm. Ms Benfield argued that AM v Solihull required an 18-month gap between measurements and the heights were clearly incorrect as there could not be a reduction and A v London Borough of Croydon [2009] EWHC 939 (Admin), emphasised that measurements should be based on formal clinical paediatric quantification. As set out at paragraph 25, when citing evidence from a medical expert

'Measurements of height and weight are in his view not completely reliable unless carried out by a properly trained paediatric auxologist. In any event, assessments of growth and maturity are in his view unacceptably unreliable. Height is particularly difficult to use as a reliable indication since much will depend on the height of each parent.' [my underlining].

256. The measurements here, however, are not reading off or comparing data from another data set but assessing the data with respect to the claimant's own history and measurements. Simple measurements conducted by healthcare professionals form the basis of a range of medical assessments and are clearly of medical value otherwise they simply would not be undertaken. Here there is a lack of evidence of growth at the age of 15 years over a 15-month period. AM v Solihull acknowledged that physical maturity may take place 'more slowly in conditions of poverty' such that after arrival change may take place more quickly. AM v Solihull in fact referred to the time between measurements as 'over a

considerable period of time (say 18 months or more)'. The timing was not definitive. Height, however, is not determinative and merely a fragment in the picture but the claimant has not grown, at the claimed age of 15 years, over a 15 month period. What is clear from **A v London Borough of Croydon** is that a local authority would be criticised if all medical evidence were not taken into account.

257. In sum, the evidence weighs against the claimant. Three age assessment trained social workers with experience, assessed this claimant to be over the age of 18 and variously between the ages of 21 to 26. The independent documentary evidence despite its alleged shortcomings from the Bulgarian authorities identified this claimant as having given information on claiming asylum that he was over the age of 18 and born in 2000. Even if the detention reports from the border police are ignored, I consider the Bulgarian State Agency for Refugees would be more thorough. That organisation was particular on querying the name and identity of the claimant before releasing information. The claimant criticised the interpretation, but I have dealt with those criticisms above.
258. Further, the details recorded by the Bulgarian asylum authorities differ from those identified by the border police and recorded over two weeks later after his detention by the border police in the first camp. During the later period he relates that he was free to go and indeed left. There was no detention and thus no detention restriction imperative on the part of the Bulgarian authorities, when recording his asylum claim, to classify him as an adult for the purposes of detention records.
259. The Bulgarian State Agency for Refugees was reluctant to engage with the further subject access request because they

did not believe the claimant's identity as he had given a different name.

260. This claimant maintains that he was at school for a mere seven years, attended an English school for three months studying basic English but during the course of his interviews with social workers and as recorded in the papers, could speak Pashto and was conversant with Dari and Urdu and confirmed that he spoke Persian with his foster carer and latterly English. I do not accept that the claimant could merely have absorbed the ability to speak these languages within one year of travel from Afghanistan, particularly English. I consider the age assessment to have weight in that respect. Indeed his travel history places him with Iranians and Afghani.

261. Not least, there were considerable inconsistencies in his evidence which undermined his credibility, which as the representatives submitted, is important. There were a number of flaws in the evidence notwithstanding the latitude given for the claimant being classified as a vulnerable witness. Indeed, during the course of the hearing, as noted, he was able to understand questions, make responses, make observations and comments on those questions and, unprompted and spontaneously, raise questions himself. On his first night with the social worker having been told by the son to remain indoors he left to 'check out' the area. He had been in this country, as he claimed, only for a matter of days.

262. I assess the evidence holistically, particularly in the light of my analysis of the claimant's evidence, the age assessment and the documentation provided from Bulgaria. Mr Poole was well-qualified and had sufficient experience and expertise in age assessments to give a valid opinion to

which weight can be attached. He was experienced to the point that by the time he gave oral evidence at the Tribunal he had indeed retired. That local authority documentation may not have been provided at the outset was not the responsibility of Mr Poole. The assessment was conducted over a series of meetings not just in a short period but over a period of time. Age assessment, however, is not a precise science. It may be that DK's time spent in school was correct but that does not necessarily confirm his date of birth. I find that the claimant is on the evidence older than he claims. Mr Poole, Ms Nasinza and Mr Steventon all gave DK's youngest age as being 21 years in September 2019. The tutor at Greenway put him at nearer 20.

263. I do accept the social worker's evidence that DK was an adult on entering the UK and I find his age is close to the range given by the social workers' assessments albeit slightly younger. I find that he was born on the date on which he gave when he was documented claiming asylum in Bulgaria, and which ties in with the evidence he gave that calculates that he was born in the month of March. In October 2018, the claimant had given a date of birth to the Bulgarian Refugee Agency as being March 2000. He turned 19 years in March 2019 and was approaching 20 years when assessed. His date of birth is 12th March 2000 as given to the Bulgarian asylum authorities.

264. There was considerable criticism of the local authority for failure to provide relevant documentation at the commencement of the judicial review proceedings. The defendant, I note, submitted that the omission of various opinions was in error and they accepted that there was a duty of candour. There was no indication that relevant documentation was not before the Tribunal at the date of the hearing.

265. What I say next is not held against the claimant. DK knew in July 2019 that he had been fingerprinted in Bulgaria in October 2018. No request was made to the relevant authorities until late 2020, and that was by the defendant requesting the TCU to respond. Following receipt of the relevant document, its admission was challenged until the day of the hearing. When making age assessment challenges, potential claimants should promptly be making subject access requests of those nations through which they have passed and have given details including fingerprints.
266. Documentation is relevant where it relates directly to the details given by the claimant to, for example, EU member states as to age and identity on detention or in an asylum claim outside the UK. Relevant documents which are reasonably available, and EU authorities are obliged to respond to a subject data request under Article 15 of the GDPR, should be placed before the court to assist and enable it to make just and fair decisions in age assessments. Whereas in this case, an applicant has known since mid-2019 that his fingerprints were taken in Bulgaria in 2018 and he is legally represented, (his representatives were instructed in late 2019), an expectation of such a written request for records is proportionate and fair and may assist either party; it may also avoid adjournments. At the very least, the evidence of a prompt written request by a claimant to EU authorities, which by their nature have to be GDPR compliant, might be expected in order to show that a claimant has endeavoured to secure relevant documentation; that expectation is fair and proportionate.
267. As indicated above the claimant's date of birth is 12th March 2000.

Direction Regarding Anonymity - Rule 14 of the Tribunal
Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Helen Rimington

Upper Tribunal Judge Rimington

17th February 2021