



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

JR-2022-LON-001646

In the matter of an application for Judicial Review

The King on the application of

I S
[ANONYMITY ORDER MADE]

Applicant

versus

The London Borough of Croydon

Respondent

ORDER

BEFORE Upper Tribunal Judge Gleeson

HAVING considered all documents lodged and having heard Ms Justine Fisher of counsel, instructed by Wilsons Solicitors LLP, for the applicant and Mr Hilton Harrop-Griffiths of counsel, instructed by the London Borough of Croydon, for the respondent at a hearing on 7-8 June 2023

IT IS DECLARED THAT:

- (1) The applicant's date of birth is 1 February 2006.

IT IS ORDERED THAT:

- (2) The applicant's application for judicial review succeeds, for the reasons in the attached judgment.
- (3) The respondent shall pay the applicant's reasonable costs of these proceedings, to be assessed if not agreed.
- (4) There is no application for permission to appeal. I have considered for myself whether permission to appeal ought to be granted.
- (5) I refuse permission, because I do not consider that there is any arguable error of law in the judgment handed down today.

Signed: **Judith A J C Gleeson**
Upper Tribunal Judge Gleeson

Dated: 4 July 2023

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 04/07/2023

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

JR-2022-LON-001646

Field House,
Breams Buildings
London
EC4A 1DZ

7-8 June 2023

BEFORE

UPPER TRIBUNAL JUDGE GLEESON

Between

I S
[anonymity order made]
(by his litigation friend T S)

Applicant

and

LONDON BOROUGH OF CROYDON

Respondent

Ms Justine Fisher, instructed by Wilsons Solicitors, appeared behalf of the Applicant.

Mr Hilton Harrop-Griffiths, instructed by the London Borough of Croydon, appeared on behalf of the Respondent.

APPROVED JUDGMENT

JUDGE GLEESON:

1. The applicant is a citizen of Afghanistan and asserts that he is a minor with a date of birth of 1 February 2006 in a village in Kapisa Province, Afghanistan. He also claims to have been born in the month of Dalwa (the 11th month) in 1384 in the Afghan calendar, which converts to the same date.
2. The respondent considers that the applicant is significantly older than he says. Following an age assessment carried out on 31 December 2021, in a single interview with a Pashtu interpreter, the respondent assessed that the applicant was born on 1 February 1996, 10 years before his asserted date of birth, and that he has at all material times been an adult.
3. The applicant has the support of his brother, who is also his litigation friend.
4. **Anonymity order.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the applicant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the applicant or his brother, likely to lead members of the public to identify the applicant. **Failure to comply with this order could amount to a**

contempt of court.

Agreed facts

5. A statement of facts has been agreed between the parties. So far as relevant, the agreed facts are that the applicant left Afghanistan in 2021, to avoid being forced to join the Taliban by his paternal uncle. His maternal uncle helped him leave, with the help of an agent, and he travelled via Iran, Turkey, Greece, Serbia, Austria and France, reaching the UK on or about 21 September 2021, arriving by boat. He was placed in the Britannia Hotel.
6. The applicant's arrival was during the Covid-19 pandemic, so his initial interview was taken remotely on 25 September 2021. The applicant gave his date of birth as 1 February 2006: the agreed facts record that a disputed birth date of 1 January 1996 was assigned (though in other documents, it is 1 February 1996).
7. The respondent carried out a short form assessment: the statement of facts records agreement between the parties that the respondent was not required to undertake a full *Merton*-compliant age assessment, on the facts of the applicant's case. The applicant's solicitors asked for support to be provided to him pursuant to section 17 of the Children Act 1989: as the respondent considered the applicant to be an adult, support was refused.
8. On 31 March 2022, the respondent served an addendum decision, maintaining its position that the applicant is an adult. The addendum dealt with issues regarding the applicant's brother which are no longer in issue.
9. Judicial review proceedings were issued promptly on 6 April 2022.
10. Permission to seek judicial review was granted at an oral hearing before David Lock KC, sitting as a deputy High Court Judge, on 4 August 2022. The respondent was ordered to provide interim support pursuant to sections 17 and 20 of the 1989 Act.
11. The matter was transferred to the Upper Tribunal.
12. The Upper Tribunal therefore has jurisdiction.

Agreed issues

13. The parties have agreed that the primary issue for the Upper Tribunal to determine is the applicant's age and date of birth. In order to do so, the Tribunal must consider:
 - (a) Whether the applicant's account of his age and date of birth is credible;
 - (b) What weight can be given to the respondent's age assessment; and
 - (c) The weight to be given to the evidence of third parties in determining the applicant's age; and
 - (d) The question of costs will also need to be resolved.
14. That is the basis on which this application comes before me.

The Upper Tribunal's task

15. The object of the present proceedings is to determine the applicant's age, as a finding of fact. I have had regard to all of the evidence that was placed before me and I have particularly taken account of the fact that whatever his age, this applicant is young.
16. The legislative framework within which I reach my decision is well established and there is no disagreement between the parties on this. I have had regard, in particular, to the guidance given in *AE, R (on the application of) v London Borough of Croydon* [2012] EWCA Civ 547, *MVN v London Borough of Greenwich* [2015] EWHC 1942 (Admin), and *R (on the application of AM) v Solihull Metropolitan Borough Council (AAJR)*, [2012] UKUT 00118 (IAC). There is no burden of proof and no formal benefit of the doubt principle.
17. In relation to the lawfulness of 'short form' age assessments under the Kent Intake Unit guidance (KIU Guidance), I have been guided by the judgment of the Court of Appeal in *R (MA and HT) v Secretary of State for the Home Department* [2022] EWCA Civ 1663. Any 'short form' assessment must nevertheless be *Merton* compliant, but the lack of a 'minded-to' process does not of itself render a KIU assessment unlawful. There is also no requirement for an appropriate adult to be offered.
18. This application is not an asylum appeal and no questions have been asked which could lead me to a conclusion as to whether the applicant's asylum account is credible or whether he now has in Afghanistan a well-founded fear of persecution for a Refugee Convention reason which would entitle him to international protection in the United Kingdom. That is a matter for the Home Office in the first instance: the Upper Tribunal is not seised of it today.
19. The disagreement between the parties arises on the credibility of and the weight to be given to various elements of the evidence before me.

Procedural issues

20. **Applications for extension of time and further evidence.** Both parties have been obliged to seek extensions of time to file bundles and skeleton arguments. There is no difficulty about extending time in response to the applications made by both parties, and I have admitted both skeleton arguments as they will assist me in the decision I have to make.
21. All additional documents have been admitted, in the interests of justice, including witness statements from two further witnesses who were not on the witness schedule in the agreed bundle. It is in the interests of justice that the Tribunal should have a full picture of the factual matrix against which the age assessment falls to be made.

Conflict of interest.

22. On the second day of the hearing, I asked for clarification on a point of possible conflict of interest. It had been drawn to my attention that Deputy First-tier Tribunal Judge Michael Hanley, who heard the asylum appeal of the applicant's brother in February 2023, and who found both the present applicant and his brother to be credible and reliable witnesses, is the founding partner of Wilsons Solicitors LLP and until recently was both its Managing Partner and the head of its immigration department.

23. Mr Hanley remains a consultant for the firm, which has represented the applicant since these proceedings were brought in April 2022. The applicant's brother was represented in his asylum proceedings by Duncan Lewis Solicitors. Ms Fisher made enquiries and I received a letter from Mr James Elliott, who is the Managing Partner of Wilsons (since 1 April 2023) and the applicant's solicitor. At [3]-[5], Mr Elliott says this:

“3. Michael Hanley was Managing Partner of this firm until 31 March 2020. He was senior partner until 31 March 2021 before he retired from the partnership. He has been a self employed consultant since then undertaking private immigration work. This morning I have looked at the amount of work he did in the year ending 31 March 2023. It was just 35 hours. Mr Hanley plays no active role in managing or supervising in the firm. He rarely if ever comes to the office. He has no role in the public law department, that department with conduct of this case and has had no role in [the applicant's] age dispute. I have had no communication with him about this case at any time until today after Ms Fisher informed me of the judge's concerns.

4. This firm does not and never has represented [the applicant or his brother] in their immigration matters. They are represented by Duncan Lewis. No one in this firm has played any role in the preparation of either's asylum case or appeals.

5. I telephoned Mr Hanley today. He categorically denies that he had any knowledge that [the applicant] was represented by Wilson Solicitors in his age dispute case.”

24. I am quite satisfied therefore that there has been no conflict of interest and that I can give appropriate weight to the decision of the First-tier Tribunal in the brother's case, in February 2023.

Evidence before the Upper Tribunal

25. The applicant filed a consolidated, updated bundle of documents for the hearing, running to 440 pages. I have taken account of the documents that were before me, and in particular, those to which the parties took me during the hearing of this application.

26. I heard oral evidence from the applicant, his brother (who is also his litigation friend in these proceedings) and from his social worker Mr Antony Obasogie, and his foster parent, Mrs Shaista Qamar.

27. In addition, the respondent produced late witness statements from Ms Yomi Molaki, the solicitor with conduct of this application for the respondent, and from Ms Melissa Allen and Ms Kam Nazram, who have been the applicant's Independent Reviewing Officers, Ms Nazram initially, and from March 2023, Ms Allen.

28. I shall refer separately to the witness statements received about the conflict of interest point.

Applicant's evidence

29. The applicant gave oral evidence through a Pashto interpreter from 11 am to 2.30 p.m. on the first day of the hearing. I took particular care to ensure that the applicant and interpreter understood one another, given that he had previously asserted difficulty in understanding the respondent's interpreter. The applicant initially said that he did not understand the interpreter. The interpreter said that there was no difficulty. I asked the applicant to explain the difficulty and he said that some of the interpreter's vocabulary was different. However, he said, 'Let's just do it'.
30. I asked the applicant to let me know during his evidence if he did not understand anything. At the end of the morning's evidence, I asked both the applicant and the interpreter whether there had been any difficulty in interpretation. The interpreter said that she had no difficulty in interpreting for him. The applicant responded that he had no difficulty either, and was satisfied with the interpretation provided.
31. The applicant sometimes appeared to be talking too quickly; the interpreter asked him to slow down and repeat his answers where necessary. No interpretation issues were raised in the brief further cross-examination and re-examination which followed the short adjournment. I am satisfied that the interpretation was adequate and that the applicant was not disadvantaged in giving his evidence. The applicant showed no signs of distress, anxiety, shyness or inability to understand the questions asked during his evidence.
32. The applicant adopted his witness statement of 31 March 2022, his asylum witness statement of 4 September 2022, and an updating witness statement for these proceedings dated 22 March 2023.
33. In his first witness statement, the applicant said that he was born in Afghanistan, in a district of Kapisa Province, and his asserted date of birth was 1 February 2006. His mother told him the date: he needed to know in order to enrol in Madrasa for Quranic teaching.
34. The applicant never knew his father, who was killed by his paternal uncle. His paternal uncle was in the Taliban. The applicant had an older brother and an older sister, but they did not grow up with him: his older sister was married off when the applicant was still very young, to a Taliban in Laghman Province. His brother left the house also when the applicant was quite young, and ended up in the UK.
35. The applicant's mother brought him up, and they lived in his paternal uncle's household. The applicant's paternal uncle was very abusive, beating his mother and the applicant on a daily basis. The applicant still bears the scars of those beatings. His mother tried to run away once with the applicant, to her own brother (the applicant's maternal uncle) but the paternal uncle found them and brought them back. The applicant's paternal uncle wanted him to become involved with the Taliban. The applicant did not want to and felt that he was in danger.
36. In 2021, the applicant ran away from home, with the help of his maternal uncle, who arranged an agent. The agent came to the village, and the applicant spoke to his maternal uncle in India, over the telephone. His maternal uncle told the applicant to go with the agent, and he would help him reunite with his older brother.
37. The journey was long and hard. He travelled through Iran, Turkey, Greece, Serbia, Austria, and then to the Jungle in France, from where he got into a dinghy headed to the UK. The last

part was distressing and dangerous. They were picked up by the UK authorities at sea and escorted into the UK.

38. The applicant criticised the interpretation at his age assessment meeting. He denied having said many of the statements attributed to him. He felt that the assessors laughed at him and did not record what he said. His case is that he told the assessors his date of birth in the Afghan calendar, not the Gregorian calendar: he did not know that format until his brother taught it to him, later. He had no Taskera or other document to support his account of his age.
39. When the statement was made, the applicant was living in a hotel in Bournemouth, but he wanted to go and live with his brother. That has since been arranged. The applicant was having nightmares and difficulty sleeping, but when he stayed with his brother, he could wake him when he had bad dreams and his brother would take him out for a walk to help him settle. The applicant's brother also helped him wash his clothes, and would cook for him. The applicant had not wanted to be separated from his brother in the first place, but had to leave his accommodation as he was not permitted to stay there.
40. In his asylum witness statement dated 4 September 2022, to which I refer only for matters concerning the applicant's date of birth and his knowledge thereof, the applicant said his brother was about 24 years old then (so about 25 now), and his sister, who was married off to a Taliban, was also older, but he did not know how old. His mother had died of a broken heart and the ordeal she suffered, when the applicant was 'very young'. She was still mourning the loss of her husband and the absence of her two older children. Nobody knew then where the applicant's brother was living.
41. The applicant explained that he had not gone to mainstream school, only to the Madrasa. He was 'very young' when his father died. He denied having said specifically that he was 5 years old.
42. In his second witness statement in these proceedings, dated 22 March 2023, the applicant confirmed the account in his first witness statement. The applicant is a Muslim. His paternal uncle was a Taliban commander. The applicant is not a supporter of the Taliban. The applicant's attendance at Madrasa was only for a year. He has never had any work, either in Afghanistan or elsewhere.
43. The applicant entered the UK clandestinely in September 2021, without any identity documents (such as a birth certificate or Taskera). Given how powerful his paternal uncle was, he would not be able to obtain documents from Afghanistan now. He had not used any travel documents, genuine or counterfeit, on his journey.
44. The second witness statement provided the following additional information: the applicant's brother came to the UK in 2011 after escaping from their paternal uncle. He was granted refugee status after an appeal process, as recently as 6 March 2023. The brother had poor mental health, as did the applicant, due to their history and fear of return to Afghanistan. Both brothers needed a Pashtu interpreter during their testimony.
45. On arrival in 2011, during his screening interview, the applicant's brother mentioned the applicant, including his estimated age. The applicant supported this assertion with a copy of his brother's screening interview, SEF form, First-tier Tribunal appeal decision, grant of asylum and other relevant documents. Although the transliteration of the applicant's first name in his brother's screening interview is slightly different, Mr Harrop-Griffiths took no

point on that, accepting that the person mentioned in 2011 was this applicant.

46. The applicant's brother was all the family he had left and he wanted to be close to him, to get to know him and to support each other after so many years. He had also discovered that he had two maternal cousins in the UK, and was enjoying getting to know them and having their support.
47. There were no supplementary questions after adoption of the witness statements, and the applicant was tendered for cross-examination. He said that he was currently 17 years old. After a series of questions about the applicant's memory of his childhood and his family circumstances, he confirmed again that his mother was the one who told him how old he was. In Afghanistan, nobody celebrated birthdays. The other boys were all different ages, older and younger. They were all mixed together.
48. He had been asked about his age on his first day at the Madrasa, when the applicant was about 5 or 6 years old. The applicant asked his mother, who wrote down his date of birth, and the applicant gave someone at the Madrasa that date, the next day. He could not give much more detail, it was a long time ago.
49. At the madrasa, the applicant learned to read and write just a little bit in Pashtu: his writing was not very good, his reading was easier. They were not taught numbers in the year that he attended. He did learn to write down his date of birth, that was not hard, and everyone could manage it. Otherwise, all they did was learn to read the Quran: they did not have permission to write.
50. On his journey, he would tell the police the date of birth and they would write it down. Once in Afghanistan, to the border guards, and once in the UK: nobody else asked about his date of birth. On reflection, the applicant said he had been asked his date of birth in Greece, and he told them and they wrote it on a card, with his name. He told the Greek authorities, the French and the Austrians that he was 15 years old.
51. In his screening interview, the applicant had told the date of birth to the Pashtu interpreter, in the Afghan calendar. He had not yet learned what it was in the Gregorian calendar. He was given a document, which he used for example to show his date of birth to a hospital in the UK when he fell in the hotel and broke his wrist. In his age assessment, the applicant told them and wrote the date down as well. The interpreter was very bad and it would take about 20 attempts to make himself understood. He knew the date in the Afghan calendar. It was not right to say he only knew it in the Gregorian calendar.
52. On entry to the UK, the applicant had a mobile phone but it got wet and stopped working after a few days. While he was travelling, he had been able to speak to his maternal uncle on that telephone. His uncle would not give him his older brother's mobile phone until he had left the agents and arrived in the UK. That was a bit weird, but it was not for him to question his uncle. Once he had his brother's number, they spoke on the telephone and he got his brother's address.
53. The applicant was asked about some inconsistencies between the record kept by Mr Obasogie and his evidence. He could not say how old he was when his mother died, except that it had been a long time. He could not say how long before his departure from Afghanistan it had been, even approximately. His maternal uncle had paid for his journey but he did not know how much it cost. His maternal uncle might ask for the money back, one day.

54. The applicant was still having trouble sleeping: he missed his mother a lot. He had protested about them continuing to bring the interpreter who had been so difficult to understand at his screening interview. He had told them repeatedly that he could not understand her. She was a very elderly lady, he respected her and told her she was like a mother to him, but he really could not understand her. He had not shouted: Mr Obasogie made things up, he could never behave like that.
55. He could not remember Ms Nazram's name: a lot of people came and he had asked his foster mother, Ms Qamar (whom he calls 'auntie') to remind him of Ms Nazram's name, but neither of them could remember it.
56. The applicant had gone to a wedding for his brother's friend, or perhaps a cousin, and returned late. There was a meeting at Ms Qamar's house afterwards. The applicant had asked the person he now knew to be Ms Nazram to change his social worker: the applicant was not happy with Mr Obasogie, who kept bringing to appointments the elderly female interpreter that he could not understand. He said he had a headache at the meeting and denied having had his hand across his face. He was not trying to cover his face in case it made him look older.
57. The applicant kept his room tidy at Ms Qamar's house. He went to college, came home, and went to his room. He stayed out of the rest of the house. He took his shoes off at the front door, and he had learned to work the washing machine. He had few possessions and there was not much furniture in the room, just a pull out bed and a wardrobe.
58. The applicant denied having lied about his age or his history.
59. In re-examination, the applicant said his clothes fitted in his wardrobe and a bag, which he kept in the wardrobe. There was some stuff hanging on the door too. Ms Qamar had bought him the clothes he had. In addition, he had a college bag and his medication. He had no other possessions.
60. At the conclusion of his evidence, the applicant said he had a headache and asked to leave the hearing room. I asked him to wait until his older brother was present in the hearing room. He then went out.

Applicant's brother

61. The applicant's brother adopted his witness statement of 31 March 2022. In it, he said he was the middle child: his sister was older, and the applicant was younger than he. They were not permitted to attend the local school, as their paternal uncle was a prominent Taliban Commander who wanted them to study the Quran and attend mosque.
62. The applicant was born when the brother (who is now 25) was about 10 years old. The uncle remembered the applicant being born, whereas his brother did not. If there was any doubt about their family relationship, his brother was quite happy to undertake a DNA test. Their maternal uncle was now living in India with his own son, a year older than this applicant.
63. In 2011, when the brother left Afghanistan, the applicant was about 5 or 6 years old, which would make him 17 in 2022. On entry, the brother had provided his family details, including details of the applicant's date of birth. That was more than 10 years before the applicant's journey to the UK. He also engaged with Social Services and with the British Red Cross, giving them details of his brother with the same date of birth.

64. The applicant was still immature in his behaviour and looked very young, much younger than he himself looked when he came to the UK in 2011. He was not doing well in the hotel, he had a rash and was not eating because he did not like the food. His brother wanted the opportunity to look after him because he could help care for him and he understood his younger brother's needs.
65. The applicant's brother was tendered for cross-examination. The brother explained the family members: his explanation was the same as that of the applicant. He said that he had been in the UK for almost 13 years, his journey having been arranged when he himself was about 13 years old, by their maternal uncle. The brother had been sent to Peshawar in Pakistan to study, but after less than 2 months, the Taliban brought him back.
66. That was when his maternal uncle, then living in Kabul with his own wife and young children, decided to help the brother to leave Afghanistan. The brother had not been told then, but now knew, that his paternal uncle, the local head of the Taliban, had killed his father. The brother, with his mother and the applicant, had stayed in Kabul with his maternal uncle for some time and were still living there when he left. The maternal uncle rang the brother to say that the paternal uncle wanted to kill him and take all the family possessions in Afghanistan. As the eldest son, everything the family had in Afghanistan belonged to the brother.
67. After leaving Afghanistan, the brother had no way to contact his maternal uncle at first: the system was that the agent took your mobile phone and you did not know where you were going.
68. After he left, the Taliban took the whole family back to their village. His maternal uncle and family fled to India, where they still lived. When the brother reached the UK, he contacted his mother and she told him he had cousins, sisters of hers, in the UK, who had been here almost 20 years. She put him in touch with them and they told him how everything worked in the UK, including foster care and so on. They were the ones who told him how to contact his maternal uncle in India.
69. On arrival, the brother told the Home Office that he had a younger brother, then 5 or 6 years old. He had asked if he could take his brother with him when he left Afghanistan, but his mother said the child was too young: he would not have left the applicant, if he had not been so very young. .
70. His maternal uncle did not warn the brother that the applicant was coming to join him, but he rang him from India to say that the applicant was on the way. The brother then spoke to the applicant's solicitor and to Social Services on his behalf. His cousin (the maternal uncle's son) gave him a picture of his brother as he was now.
71. When he saw the applicant, he had grown and was 'tall and big'. The applicant brought bad news: he told the brother that their mother had died and their sister had been married off to a Taliban warlord. The brother understood that their paternal uncle made his brother do everything, and punished him. The brother was shocked: he blamed himself for what had happened to the rest of the family 'because I ran away'. He just wanted the applicant to live with him, so that he could look after him. It was lucky that he was still alive, years later.
72. The brother said that he himself was on medication and having counselling still, because of the effect of all these traumatic events on him. He also took the applicant to counselling every week: the applicant could not sleep and it was very difficult. It was upsetting to have the

applicant treated as older than his age. The age assessors did not ask how old a person was, they would just put any age.

73. He did not know his brother's date of birth; age was not discussed in Afghanistan in the way it was in the UK. There was nobody who could tell him his brother's age. Since living in foster care, the applicant had aged physically and looked older than he was: he was 17½ but looked 18 or 19. The applicant's life had been hard, but the brother was sure that the applicant was younger than he.

74. There was no re-examination.

Respondent's witnesses

75. I heard oral evidence from Mr Anthony Obasogie, the applicant's social worker, from Ms Shaista Qamar, his foster mother, and from Ms Kam Nazran, and Ms Melissa Allen, the Independent Reviewing Officers who had oversight of the fostering arrangement and his care, generally.

Ms Kam Nazran

76. Ms Kam Nazran adopted her witness statement of 26 May 2023. She had not reread it before coming to the hearing, so I gave her a few minutes to reread it. The statement had been written just a week before the hearing, recording events which took place over 7 months earlier, on 20 October 2022, the only occasion when Ms Nazran saw the applicant. In answer to a question from me, Ms Nazran said she had notes of the meeting, which had not been disclosed: they were just her own notes, 'to sort my terminology out'.

77. In her witness statement, Ms Nazran explained that she was his original Independent Reviewing Officer (IRO), a role which she had been carrying out since 2009, and for the respondent since 2014, in its Safeguarding and Quality Assurance Service. Ms Nazran is a qualified social worker of 30 years' experience. She has mostly worked in Children's Services, but not exclusively so.

78. Ms Nazran completed the applicant's first Looked After Child (LAC) review on 20 October 2022, at his foster placement. She did not complete his January 2023 assessment, and was off work with ill health from February 2023 to 17 May 2023.

79. On 20 October 2022 at Ms Qamar's home, Ms Nazran, Ms Qamar and her daughter were present in person. The applicant's social worker, Mr Obasogie, was present and an interpreter (the elderly woman whom the applicant did not like) joined the meeting remotely by Microsoft Teams. The applicant was not present initially, having stayed out overnight without Mr Obasogie's permission.

80. When Ms Nazran arrived at the foster placement, Ms Qamar explained about the applicant's absence overnight. Mr Obasogie, did not know about it until he arrived at the applicant's foster home that day. Ms Nazran said Mr Obasogie was unaware of the applicant having any cousins in the UK. None had been mentioned: the only relative he had mentioned was his brother.

81. The applicant's explanation was that he had been attending a cousin's wedding. His brother had contacted Ms Qamar, to say that the applicant would be back late, and then again, that it was

too late for the applicant to return to his foster home. Ms Qamar had agreed that as it was late, he could stay overnight and return to his placement the next day.

82. The applicant did not return promptly and they had to telephone him to ask the applicant to return for the meeting. It took several calls to persuade him to return. They thought his brother was going to give the applicant a lift, but in the end, he apparently came on public transport which took longer. During the wait, Ms Nazran had a conversation with Ms Qamar's daughter (the back-up carer) and she is reported as saying that when he arrived 'she was looking for where the child was' and that she considered him to be a lot older than he claimed.
83. The interpreter joined the meeting at this point and the applicant became cross. He refused to engage with the interpreter, saying that she did not understand or speak Pashto, that she was the one 'who made me older' in the age assessment, and he did not like her. He shouted at the interpreter, 'I don't want you. I want a different interpreter, you do not speak the same Pashto as I do', and was argumentative and rude. Mr Obasogie, and Ms Nazran, remonstrated with the applicant, asking him not to shout or be rude to the interpreter. They did not consider this to be 16-year-old behaviour.
84. Ms Nazran told the applicant it was too short notice to get another interpreter. He said that he could understand and speak some English. The meeting continued without interpretation, Ms Nazran keeping her input 'basic' and asking Mr Obasogie to 'inform [the applicant] of what was discussed at the meeting via an interpreter at a later date'.
85. Ms Nazran reminded the applicant that he needed Mr Obasogie's permission to stay overnight with any of his relatives and a risk assessment would need to be completed. He was asked to give details of all his relatives in the UK. The applicant was not happy about this: Ms Nazran considered that this also showed him to be 'an adult rather than a child of 16 years of age'.
86. The applicant asked for a change of social worker. He did not want Mr Obasogie, because he also was part of the assessment that the applicant was older than 16. The applicant had his hand on his forehead, covering his face, during the meeting, but denied having a headache. He was quite vague, but Ms Nazran considered his physical appearance and demeanour to be 'very much of a 24+ male'. He had facial 'hair stumps' which indicated that he had been shaving 'for some years'.
87. Ms Nazran was tendered for cross-examination. She said that she had not spoken to Mr Obasogie about what to put in her witness statement. He had not been aware either of the existence of the cousin, or the overnight stay for the wedding. They had spent quite a long time at Ms Qamar's house, and these were specific things that happened.
88. The applicant had been quite rude and outspoken, and critical of the interpreter. It was almost an argument. She had to ask him not to be rude to the interpreter. The interpreter was a Pakistani woman who speaks a number of languages. The interpreter was the same person who did the age assessment and said that they had been able to communicate 'perfectly well'. Ms Nazran did not book the interpreter and sometimes it was difficult. The same interpreter had taken the applicant for his medical.
89. She had discussed the applicant's behaviour with Mr Obasogie at the time: Mr Obasogie felt that having the same interpreter helped with consistency and that they understood each other. The interpreter told Ms Nazran that they could understand each other. Ms Nazran had no reason to think that the applicant was frustrated by the interpreter. Young persons were

sometimes rude to the social worker but it was unusual for them to be rude to the interpreter.

90. There was no re-examination.

Ms Yomi Molake

91. A short witness statement dated 30 May 2023 from Ms Yomi Molake, the respondent's solicitor with conduct of this application, explained the late evidence from Ms Nazran, the applicant's original IRO, and Ms Allen, who took over from her.

92. Ms Nazran had become unwell and was off work from February 2023 to 19 May 2023. Ms Molake apologised for the late identification by the respondent that Ms Melissa Allen had been the IRO during that period, and for the late introduction of Ms Allen's witness statement.

Ms Melissa Allen

93. Ms Melissa Allen is the applicant's current Independent Reviewing Officer (IRO). She adopted her witness statement of 30 May 2023. She had not seen the applicant since then.

94. In her witness statement, Ms Allen said that she had been seconded to London Borough of Croydon since 15 November 2022, within the Quality, Commissioning and Practice Improvement Service. His previous IRO became unwell and so she chaired his Child Looked After meeting on 12 January 2023, becoming his IRO herself from 1 March 2023.

95. On 12 January 2023, Ms Allen met the applicant at his foster carer's home, in the presence of a social worker, an interpreter, and a student social worker, with Mr Obasogie present remotely on Microsoft Teams. The applicant was respectful, sharing his views and worries with confidence. His main eye contact was with the interpreter. He wanted to spend more time with his brother and became upset when that was discussed.

96. Ms Allen had not observed the applicant with his peers and had no comment thereon. She was told that he had good interaction with adults, attended college regularly, kept his room clean and was beginning to develop independent living skills. The applicant was clean shaven, with what appeared to be mature facial features. His responses, when he became upset, were contained and measured, which was not typical of children of the age he claimed to be. Both his appearance and behaviour suggested a person over 18 years old.

97. Ms Allen was cross-examined. She accepted that the applicant's background might have affected his physical appearance, and that her assessment of his age was mainly based on his appearance. He was worried but able to articulate clearly what he wanted to happen next.

98. There was no re-examination.

99. In answer to questions from me, Ms Allen said that she had no professional age assessment training and that this was her first age assessment experience. She had not been given any guidance, except to give her understanding or observation of what she encountered.

100. The role of an IRO was to ensure that a looked after young person was getting their needs met: education, emotional support and so on, and good foster care. In the short period from November 2022 when she was seconded as an IRO to the respondent, she had worked with about 12 children/young persons, of whom two or three were from Albania, some from Pakistan, and three or four from Afghanistan. Other young persons with whom she worked

were the subject of care proceedings and away from their parents. Her job was to ensure that there was no drift on the care plans.

101. There were no further questions arising from my clarificatory questions.

Ms Shaista Qamar

102. Ms Qamar's primary evidence is contained in a witness statement dated 28 February 2023. She is a foster carer and has been fostering for just 3 years. She has been fostering the applicant since 24 August 2022, a period of 10 months. In her witness statement, Ms Qamar said she considered the applicant's behaviour to be consistent with his claimed age; he liked video games and excessive amounts of time on social media. He wore track pants and jerseys, had a limited conversational range, and his social interaction was highly restricted. He liked bland, basic food, in particular instant noodles.

103. The applicant was fit, slim, healthy and very active. He seemed quite confident about himself: he could be respectful and polite, but had the confidence to use his agency and speak about his concerns. He was shaving, and had begun doing so early, but in her experience this was quite common in young persons from the south Asian countries, including Afghanistan.

104. In her oral evidence, Ms Qamar adopted her witness statement. In answer to questions from Mr Harrop-Griffiths, Ms Qamar explained that she was fostering another child of the same age and they both behaved in the same way, pursuing the same activities (video games and so on) and spending a lot of time on the internet in their rooms.

105. Ms Qamar was then asked about Mr Obasogie's evidence, and his notes, which recorded her agreeing with him that the applicant was much older, about 25 years old, and her daughter saying the same. We have no witness statement from Ms Qamar's daughter, nor did she give evidence.

106. Ms Qamar considered the applicant's voice and tone to be that of other young persons of his asserted age, and that he carried himself 'in a way such as a typical young person would do'. His facial expressions, ability to maintain eye contact and sense of humour were age appropriate for his asserted age.

107. Ms Qamar said that Mr Obasogie had asked her to say how old the applicant was. She told him that she could not judge: she was not a doctor. Her daughter had not spoken with Mr Obasogie about the applicant's age: the daughter did not like this type of discussion. When Mr Obasogie asked Ms Qamar to make a witness statement, she had written it and she stood by her written evidence.

108. What Mr Obasogie had recorded in his notes was untruthful: she had not said what he wrote down, and neither had her daughter. Ms Qamar was not a doctor and was not qualified to judge the applicant's age.

109. In cross-examination, Ms Qamar said she had fostered children for 3 years, all teenagers or late teenagers. The applicant was her sixth foster child. His behaviour was like that of her previous foster children, he had the same range of activities.

110. In answer to questions from me, Ms Qamar said that she had four children of her own, ranging from an adult daughter aged 28, studying in Japan for her doctorate in marine biology; a 24 year old care home manager; a 22 year old electrical engineer, and her youngest, a

daughter, is currently studying criminal psychology at Coventry University. They had all left home, so she thought she would take in children who needed a family.

111. The applicant might look like a big boy, but she was sure that he was 17 or 18 years old. The Afghan boys she had fostered often ate a lot and became big (bulky) but the applicant had not done so.
112. There was no re-examination or further questions from the representatives.

Mr Anthony Obasogie

113. Mr Obasogie was one of the age assessors on 31 December 2021 and has been the applicant's allocated social worker since September 2022. His witness statement dated 20 March 2023 set out his qualifications. He obtained a BA (Hons) in Social Work from Anglia Ruskin University in 2018 and has worked with unaccompanied asylum-seeking children and young people with a wide range of personal circumstances and from many countries, including Afghanistan.
114. Mr Obasogie said that he had previously provided statements for age dispute claims, based on his professional opinion, perspective and observation, and on working with the young person. He was given the applicant's case on 10 September 2022, following a direction to the respondent to provide accommodation for the applicant as a Looked After Child, pending the hearing and determination of his judicial review.
115. Mr Obasogie had no contact with the applicant until the age assessment meeting on 31 December 2021, which he undertook with another social worker. The applicant presented as a 15-year old child. He was not very cooperative or responsive to the questions asked of him 'he used his hands to cover his face and avoid of eye-contact with both social workers and Pashto interpreter'.
116. The applicant's physical appearance was that he was clean shaven, his skin facial tissue being that of a mature adult, with a 'mohawk-fade' haircut with both sides of his head shaved but hair in the middle 'which pronounced his mature face much older than 15 years old age claim'. Mr Obasogie was satisfied that the applicant was 'adult over 25 years old, significantly over 18 years old instead of age claim of 15'.
117. The assessors summarised their view of the applicant thus:

"[The applicant] was observed to be approximately 5'9" tall. [He] is of medium build. He was observed to have bold and study face not characteristic of teenage but well developed adult facial features. [The applicant] had hairstyle haircut with both side; left and right and hair left in middle of his head. Dark spots and shading on his cheeks where it appeared he had recently shaved was observed and hair on his arms. [The applicant's] voice was deep when he spoke but no observations could be made of his Adam's apple as he was wearing a high necked jumper."
118. That was the only meeting the age assessors held with the applicant. There was no 'minded to' process or opportunity for him to comment on their assessment of his age. The applicant was assessed as an adult and Mr Obasogie's involvement with him ceased.
119. On 14 August 2022, Mr David Lock KC, sitting as a Deputy High Court Judge, granted permission for judicial review and gave directions, including that:

“2. The Defendant shall pending determination of these proceedings or further order and so soon as reasonably practicable provide accommodation and other support for the Claimant as if he were a looked after child under sections 17 and 20 of the Children Act 1989.”

120. On 30 August 2022, there was a placement planning meeting. Mr Obasogie saw the applicant ‘at very close proximity’ and considered that given his facial skin texture and body language, he was an adult. The applicant complained vehemently about the Pashto interpreter used (the same one as for the age assessment meeting) because of ‘small differences in accent, intonation, nuances and intricacies of Pashto language’: Mr Obasogie said the applicant did not recognise him from the previous meeting but did recognise the interpreter as the one who had facilitated interpretation on his age assessment.
121. Mr Obasogie said that Ms Qamar, the applicant’s foster carer, had raised safeguarding issues about the applicant as a 25-year old man, given the presence of other young persons in the household. Her daughter independently concurred and agreed ‘without hesitation or influence that he is more of adult due to his conduct and behaviour in the home that [sic] a child of 15 years old’.
122. Mr Obasogie saw the applicant on 15 September 2022, 14 October 2022, 20 October 2022, 16 November 2022, 15 December 2022, 12 January 2023 and 8 February 2023. His assessment of the applicant as an adult did not change. Sometimes, due to impatience or intolerance, the applicant would respond in English, ‘which indicates that he has much more understanding of English than he lets to believe’. The applicant’s thought process was mature, confident and calm, showing him to be more experienced than the numerous 15 – 18 year olds with whom Mr Obasogie had interacted, who came from Afghanistan, Iran Kurdistan, and Vietnam.
123. On most of the home visits, the applicant showed a competent level of independent living skills: his bedroom was kept in impeccable clean and tidy condition, with all bedroom furniture, items and personal effects such as shoes, arranged and placed in good order, which Mr Obasogie described as ‘commendable’. He commented that such tidiness and good order ‘does not reflective [sic] reckless abandon characteristics of general 15-year-old indicated in [Erikson’s] theory of stages of growth and development’.
124. Mr Obasogie asserted that despite being the lead social worker who assessed the applicant as an adult in December 2021, his interactions with the applicant as his allocated social worker had been ‘professional, objective, and without prejudice’. He could ‘confidently surmise in my opinion that [he] in all indication is an adult well above aged claimed, consistent with Home Office estimation of 26 years old when assessed at point of entry into UK’.
125. Mr Obasogie adopted his witness statement as his primary evidence. He said that he had skimmed through it and that it was very true. Mr Obasogie brought his laptop with him. He said it contained his personal notes, but they have not been disclosed. On the Tribunal’s request, he closed his laptop. He had been seen having a discussion with Ms Nazram, who gave evidence immediately before him, but said he had simply said it was his turn next and he would telephone her later.
126. He had continued to see the applicant once every 28 days since his March 2023 witness statement: he had seen him three times, in March, April and May 2023, but his opinion of the applicant’s age had not changed. The applicant remained a Looked After Child under the

provisions of the Children Act.

127. On 14 October 2022, Mr Obasogie saw the applicant at Ms Qamar's home. There was no interpreter. He said that he wrote his official notes the same day, but he always took his own manuscript notes so that he could make correct records. He would usually write up on the day, or within one or two days, at worst a week, so that his managers could check up on his supervision of the young person's welfare.
128. All of the notes relied upon were 'finalised' on the computer several months after they were originally prepared. Mr Obasogie explained that if the file notes were not finalised, his task was incomplete: it was just one click to finalise them. Mr Obasogie said that he did not usually finalise his notes when he wrote them because then you could not change them anymore. However, he had been criticised by his manager for not finalising, 'so I went round and finalised everything'.
129. The file notes from 14 October 2022 were updated and finalised at 16:24 hours on 10 February 2023, just under 4 months after they were originally typed into the respondent's records. Mr Obasogie said that when finalising his notes on 10 February 2023, he had not changed anything, just finalised the entry. However, there is no screenshot of the version of the notes which he typed on 14 October 2022 and no copy of Mr Obasogie's contemporaneous personal notes has been submitted.
130. Mr Obasogie's notes of his meeting with the applicant on 20 October 2022 were written up on 27 October 2022, a week later. The next visit was on 16 November 2022, written up on 18 November 2022. Notes for the 15 December 2022 meeting were created on 18 December 2022. The 8 February 2023 notes were created on 12 February 2023. All four sets of notes were finalised on 2 May 2023. No supporting notes or screenshots of the original entries have been provided.
131. In cross-examination, Mr Obasogie said he began working for the respondent on 13 May 2019, when he qualified as a social worker. The first year was an Assessed Year of Employment (ASYE). Mr Obasogie said that he would look at the Every Child Matters criteria and apply the *Merton* Protocol: he had had 'a few trainings' as well. The major criterion when assessing age was physical appearance.
132. He had undertaken two other age assessments before the applicant. Previously, it was not part of his work, but there had been a restructuring and everybody had to do age assessments now. Although they had not recorded it, when assessing, he and his colleague had considered what the applicant would have gone through, and his traumatic journey to the UK.
133. The service manager had advised that no appropriate adult was needed for a short form age assessment. The applicant's brother had accompanied him and wanted to come into the room but Mr Obasogie's understanding was that this was not appropriate as the assessment 'should be independent'. The purpose of an appropriate adult was 'to moderate our practice'. They did not want a conflict of interest: the applicant's brother might have taken exception when questions were asked of the applicant. They did not normally allow family members to come in during age assessments.
134. Ms Fisher asked why the applicant's brother could not have just sat behind him, for support, but Mr Obasogie said that the brother could have influenced the applicant's evidence by having eye contact, body language and so on.

135. Mr Obasogie and his colleague did not book interpreters. There was an interpreter booking team, and they had used Pashtu interpreters from Pakistan, Afghanistan, and Iran. The interpreter used at the age assessment spoke Pashtu, among other languages, and was a trusted interpreter whom the respondent had been using for a very long time. He thought she was from Pakistan. The interpreter check had been fine, with both parties confirming that they understood one another.
136. Mr Obasogie's colleague had taken the notes, but he left the respondent's service, and his notes were unavailable. Mr Obasogie's notes were passed to his manager but were not in the bundle. Mr Obasogie denied that they had laughed at the applicant. He was very upset on the day, when they told him that the outcome was that he was over 18. The applicant was distraught, and upset, but he could not say anything as the decision was already made.
137. Mr Obasogie next saw the applicant on 30 August 2022. He saw him again on 15 September 2022 with the same Pashtu interpreter.
138. On 14 October 2022, he saw the applicant with the same interpreter. The applicant was aggressive and rude to the interpreter. Everyone was shocked. The applicant got up and left, then came back to the table to continue, in Pashtu not in English. Mr Obasogie explained to him that if someone came from Scotland, they would be expected to use an English interpreter as it was the same language.
139. Mr Obasogie was asked about his computer record of the applicant's behaviour on 20 October 2022, when he objected to the interpreter. They had booked the same interpreter and the applicant was very unhappy, recognising her from the age assessment. Mr Obasogie explained that it was not his fault, and that they could continue without interpretation, in simple English. The computerised record said the applicant had behaved 'positively and calmly'. That was not the recollection of others who were present. Mr Obasogie said that in his notes he was 'maybe being kind'.
140. They later used other interpreters with no difficulty.
141. Mr Obasogie was asked about Ms Allen's observation that lack of control was typical of teenagers. He replied that he had seen the applicant every month, and had the measure of conduct and behaviours.
142. He had told Ms Qamar that he would make a record of her safeguarding concerns and her assessment that the applicant was older than 25 years old. He was shocked that she had changed her evidence. There was another child still in the placement. There followed some evidence about where the shoes were normally left in the house: Ms Qamar insisted that all shoes were left at the front door, but Mr Obasogie insisted that he had seen three pairs of trainers, put tidily in the applicant's room upstairs. He agreed that he himself always removed his shoes at the front door.
143. The applicant just kept his clothes, pills for college and his College bag and iPad in the wardrobe. The applicant could have been untidy, had he chosen to do so, but he did not.
144. In re-examination, Mr Obasogie said that every time he asked the applicant to write down his date of birth, he did it in the Gregorian format: 01/02/06. The evidence of Ms Qamar was recorded by him, but that was the second or third time she had said it. He was shocked that she changed her evidence. He had not talked to her about it.

145. In answer to clarificatory questions from me, Mr Obasogie said he had three children of his own, ranging from almost 26 years old to 32. He had undertaken two other age assessments, one for an Iranian young person, to whom they gave the benefit of the doubt, and another Afghan young person whom they found to be an adult. In the short form age assessment, they only found a person to be between 18 and 25. They were not advised to be more precise and ‘give a number’ as ‘we are not scientific’.
146. He had a lot of experience with migrants. He had worked in Kensington and Chelsea and also in Waltham Forest, and in both areas, most of the young persons were Pakistani, Afghan or Bangladeshi.
147. Ms Fisher asked some additional cross-examination questions arising out of my questions. She pointed out that rather than saying 18-25 in the applicant’s case, the age assessors found him specifically to be over 25: Mr Obasogie said that ‘when we are convinced with all the evidence we have and can defend it, then you can be emphatic’. He did not ‘give a number’ but he did say that the applicant was over 25, in December 2022.
148. Ms Fisher observed that as the applicant’s brother was only now 25, the age given would make him older than his elder brother. Mr Obasogie gave two explanations: first, that they did not know that the applicant’s brother had himself been an unaccompanied asylum-seeking child 10 years earlier; and second, that anyway, he looked younger than the applicant and his manager had asked Mr Obasogie when he saw the brothers together to say which one they were assessing, and who was the elder brother. The applicant had looked older than his brother.

First-tier Judge Hanley’s decision

149. The applicant’s brother provided a copy of the asylum decision on his appeal by First-tier Judge Hanley, promulgated on 16 February 2023. The substance of the asylum account therein given is not relevant to my task today. I note that in that decision, the judge had regard to an earlier decision by First-tier Judge Hodgkinson on 27 March 2013, which was the *Devaseelan* starting point for the 2023 decision.
150. There have been significant changes within Afghanistan following the Taliban takeover in August 2021. Having heard the applicant in these proceedings and the brother give oral evidence, Judge Hanley found this:
- “89. I make a positive credibility finding in respect of [this applicant]. I take into account that no documentation has been produced in connection with his own asylum claim. He gave his evidence in a straightforward manner. He is younger than [the brother]. They have not seen each other nor had any really meaningful contact throughout [the brother’s] time in the UK. In a very real sense, they are getting to know each other. They have been separated for the greater part of their childhoods. [The applicant] would have been very young when [the brother] left Afghanistan and I would be surprised if he has any significant recollections of his elder brother in Afghanistan. I get the distinct impression that they are close to each other and that they are exploring painful events in their family history, not least of which is the death of their mother. ”
151. Judge Hanley found the applicant fully credible and accepted his asserted date of birth as 1 February 2006, making him 17 years old now. He also accepted almost all of the brother’s evidence as credible.

Submissions

152. For the respondent, Mr Harrop-Griffiths relied on his skeleton argument. The applicant had been assessed as 'over 25' on arrival and in his 31 December 2021 assessment, he gave his date of birth only in the western calendar, not the Afghan calendar. He had some difficulty and appeared at one point to forget the date he was asserting. He was adamant that his non-English speaking mother had given him his date of birth in the English format on the day he was interviewed.
153. The brother had stated in his screening interview that he had a younger brother, and given a name. The Tribunal should treat that as a transliteration of the same name as that of this applicant.
154. The plain fact was that the applicant looked much older than 17: on the respondent's case, he was 27 now. He had lied about his date of birth and his physical appearance and behaviour was that of an older man.
155. In oral submissions, Mr Harrop-Griffiths said that the appearance of being older and the applicant's adult demeanour were enough. The applicant had not been very open about his life in Afghanistan or the ages when things happened. Even allowing for the interpreter difficulties, his evidence about Afghanistan did him no credit. It was extraordinary for the madrasa to have asked for the applicant's date of birth, in a country which set no store by birth dates or ages.
156. The applicant had been unable to say which month or season it was when he began madrasa, but now said he had known his Afghan date of birth (12.11.1384) since he was five or six years old, but the applicant's witness statement did not mention that date or format. In his asylum questionnaire, the date appeared as 1.2.2006, but he had been helped to complete that form, and there was no record of what he wrote down or in which language.
157. The Tribunal would have to decide what weight Mr Obasogie's evidence would bear. If the Tribunal was unable to accept Mr Obasogie's evidence then there was nothing more that Mr Harrop-Griffiths could add. The conflict between his evidence and that of Ms Qamar was stark, and it would be for the Tribunal to resolve it, and to consider what her motives might be for changing her account.
158. The respondent no longer sought to suggest that the applicant and his brother were not related as claimed. Nor would the respondent take any point on the credibility finding in the First-tier Tribunal in the brother's case, to the lower standard applicable in international protection cases, that the applicant and his brother were credible witnesses.
159. It was not beyond the bounds of some people's thinking that a family might send its children away to the UK, one at a time. The applicant's brother did not know his date of birth either; he just knew that his brother was very young in 2011. Applying the balance of probabilities, Mr Harrop-Griffiths asked me to find that the evidence of the applicant being an adult outweighed the evidence of his being born on the date asserted by him.
160. For the applicant, Ms Fisher relied on her skeleton argument. She accepted that during the short form assessment, the applicant gave contradictory answers, but no attempt was made to clarify or resolve this. In addition, the applicant had voiced significant concerns about the interpreter provided for the assessment, whose dialect of Pashtu was different from his. He

complained about the same interpreter being used for a routine visit to his accommodation.

161. The applicant would rely on *R (AB) v Kent County Council* [2020] EWHC 109 (Admin). Even if a full *Merton*-compliant assessment was not appropriate, the guidance in *AB*'s case had not been applied, because the assessors did not pay any regard to the margin of error or give the applicant the benefit of the doubt. Nor was he provided with an appropriate adult or a 'minded to' opportunity: see *R (MA and HT) v Coventry City Council and SSHD* [2022] EWHC 98 (Admin). The question as to the adequacy of the respondent's age assessment should be answered in the negative.

162. The applicant's brother had been found credible and had succeeded in his asylum appeal on 16 February 2023. The positive findings of fact in that decision should be accepted in the present decision.

163. The applicant had provided witness evidence and convincing documentary evidence corroborating his claimed age. His brother would have had no reason to lie about his siblings' ages when he came to the UK 13 years ago. The familial link between the applicant and his brother had not been the subject of a DNA test: the respondent had not asked for such a test. It was not appropriate now for the respondent to suggest that the applicant's claimed brother and litigation friend was just a friend with no family links with the applicant.

164. In oral submissions, Ms Fisher said that the evidence for the respondent was that of Mr Obasogie and Ms Nazran. For the applicant, the evidence was that of Ms Qamar, the applicant and his brother, and the First-tier Tribunal decision in the brother's appeal, at which they both gave evidence. The applicant's petulant outburst about the interpreter was indicative of being younger, as were the teenage clothes he wore, the games he plays, and the simple food he enjoyed. The First-tier Judge had accepted that the applicant was the younger brother, but the respondent's asserted age would make him the elder. Mr Obasogie's evidence was elaborated in oral evidence (Ms Qamar had said the applicant was over 25 on two, or three occasions, his manager asked which brother was the elder, and so on) but that was not supported by his notes or by a witness statement from the manager.

165. The applicant had fled Afghanistan at about the same time as the Taliban coup in August 2021, by which time his maternal uncle was already living in India. The short form assessment lacked clarity and detail and the social workers met the applicant only once. The brother's evidence, that he would have taken the applicant with him when he left in 2011 if the applicant had not been so very young, was persuasive but had been given no weight in the age assessment. The brother was himself only 13 years old when he left Afghanistan.

166. Ms Fisher asked me to accept the applicant's date of birth.

Discussion

167. I reserved my decision, which I now give. I first consider what weight can be given to the witness evidence. I remind myself that First-tier Judge Hanley found, to the lower standard, that both the applicant and his brother were witnesses of truth and accepted both their account of their ages, and that the brother was older than this applicant. Having heard the applicant and his brother give evidence, I also consider that they are credible witnesses. The brother does look significantly older than this applicant, which on the respondent's assessed age, would not be right.

168. I consider that Ms Qamar's evidence is reliable and credible and should be given weight. She has fostered six young persons and raised four children of her own. Her evidence was careful and measured, emphasising that she was not a doctor and was simply recounting her observation of the applicant in the context of the other young persons in her care. There is no evidence from her younger daughter, but I accept what Ms Qamar says about her daughter's interaction with Mr Obasogie.
169. As regards the respondent's witnesses, the late-produced evidence of Melissa Allen can be given some weight, but she accepted that she had no professional age assessment training. Her evidence was that younger teenagers tended to lose control when upset, whereas her perception was that this applicant was 'contained and measured', indicating that he is now over 18 years old. The evidence of Ms Molake does no more than explain why Ms Allen's evidence is late. She is a solicitor and I have no reason to disbelieve her account.
170. Ms Nazran's evidence concerned me. She had not reread her statement before giving evidence at the hearing, and she had not seen the applicant or been his IRO since October 2022, having unfortunately had a serious illness in the meantime. Her account of the applicant becoming upset, rude, outspoken and argumentative when presented with the interpreter with whom he had worked at the age assessment was striking: 'I don't want you. I want a different interpreter, you do not speak the same Pashto as I do'.
171. I come then to Mr Obasogie's evidence. He was involved twice with the applicant, the first time in the age assessment, of which both his notes and those of the other assessor have not been produced. Mr Obasogie's evidence about the December 2021 age assessment made clear that the applicant was not given any 'minded to' process: in the short form assessment procedure, that is not required.
172. The age assessment as recorded gives a number of what may be misinterpretations: in particular, the applicant is said to have asserted that in mistreating him, his paternal uncle 'killed him' which is plainly not the case. The assessors do not appear to have had regard to the difficulty the applicant had with the interpreter, whose Pashtu was not from Afghanistan but Pakistan.
173. They also did not permit the brother to accompany the applicant into the assessment, although he had brought the applicant to the assessment meeting. I found Mr Obasogie's assertion that the brother would prompt the applicant even if he were sitting behind him to be strange, but I accept that in a short form assessment there is no requirement for an appropriate adult.
174. I can place very little weight on Mr Obasogie's computerised records. They were all left unfinalised until very recently, Mr Obasogie saying that he did not finalise them because then he could not change anything. His line manager had to insist and he then finalised them all. I do not accept that these entries are an accurate contemporaneous record. I do consider that Mr Obasogie enhanced his account in oral evidence, adding the repeated observations by Ms Qamar, and his manager's remark about the age of the two boys. The applicant was faced on at least two occasions with the female interpreter to whom he objected, because he could not easily understand her. Mr Obasogie did not seem to be much concerned about that, indeed, in the October meeting he carried on without an interpreter in 'simple English' on at least one of his accounts, though elsewhere, he said they carried on in Pashtu.
175. The Scottish/English analogy does not serve him well in this: a Glaswegian young person

might well have difficulty understanding an interpreter speaking received pronunciation English.

176. Mr Obasogie's oral evidence about the applicant's reactions to the news of being assessed as an adult differed from his statement. In his statement, he said the applicant was calm about the older age assessed: in his oral evidence, he described him as having been distraught.

177. These are the principal examples: overall, taking Mr Obasogie's evidence, written and oral, and the late-finalised computer records, I find that I cannot place any weight on his account.

Conclusions

178. My conclusions are not predicated upon the respondent's view or which witness evidence is to be preferred. I agree with the applicant's assertion that, even for a short form age assessment, the assessment by the respondent was inadequate.

179. I remind myself that there is neither a standard or burden of proof and that I must assess the applicant's age as a fact. I have done so on the evidence before me, the oral evidence and the documentary evidence, even if I have not specifically referred to it. I have had regard to the evidence of the applicant and his brother, and that of the respondent's witnesses.

180. None of the respondent's witnesses is an expert, but it is not possible to be an expert in determining age. Their evidence is opinion evidence and when I considered the weight to be placed upon that evidence, I did so in the context of the evidence before me, their contact with the applicant and the experience and the contact that each individual has with young people both as asylum seekers, refugees and non-asylum seekers.

181. Ms Nazran saw the applicant only once, on 20 October 2022, and considered that he was over 24 years old. She prepared her witness statement many months after that meeting, and had not reread it before coming to the hearing. I do not place much weight on her assessment. Ms Allen, meeting him on 12 January 2023, considered him to be over 18, but she has no professional age assessment training.

182. Judge Hanley found the applicant to have been born on 2 February 2006, which would make him 17 now. Ms Qamar considered him to be 17 or 18 years old now (which would put his year of birth at 2005 or 2006). The brother told the Home Office and Red Cross in 2011 that he had a younger brother, then about 5 or 6 years old, putting the applicant's year of birth at 2005 or 2006. He said his brother looked older now, because he had aged physically due to his hard life.

183. I consider it fanciful to suppose that in 2011, the brother would have deliberately given a wrong date of birth for his younger brother. Several of the witnesses said that the applicant was tall for his age, but that his behaviour was that of a younger person, including his outburst about the interpreter. The reliable witnesses all gave dates which would make him between 17 and 18 years old now.

184. Taking all the evidence before me into account and doing the best I can with that evidence I am satisfied that the applicant was born in the Gregorian calendar year of 2006. I find that he was born on 1 February 2006 and I make a declaration to that effect. ~~~~O~~~~