



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

In the matter of an application for Judicial Review

THE KING
on the application of
OMAR MOHAMMED

Applicant

and

LUTON BOROUGH COUNCIL

Respondent

ORDER

BEFORE Upper Tribunal Judge O'Callaghan

HAVING considered all documents lodged and having heard Mr D Gardner of counsel, instructed by Bhatia Best Solicitors, for the applicant and Mr J Swirsky of counsel, instructed by Legal Services, Luton Borough Council, for the respondent at a fact-finding hearing held at Field House on 30 and 31 May 2024

AND UPON the Upper Tribunal handing down judgment on 11 June 2024 in the absence of the parties

IT IS DECLARED THAT:

- (1) The applicant was born on 2 July 2002.

IT IS ORDERED THAT:

- (1) The claim for judicial review is dismissed.
- (2) The applicant shall pay the respondent's costs of the claim not to be enforced without the permission of the Upper Tribunal and subject to an assessment of the applicant's ability to pay under section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Any costs shall be the subject of a detailed assessment, if not agreed.
- (3) There shall be a detailed assessment of the applicant's publicly funded costs.

D O'Callaghan

Upper Tribunal Judge
Immigration and Asylum Chamber

11 June 2024

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): **12/06/2024**

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).



Case No: JR-2023-LON-002081

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

11 June 2024

Before:
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between:

THE KING
on the application of
OMAR ALI MOHAMMED
(ANONYMITY ORDER SET ASIDE)

Applicant

- and -

LUTON BOROUGH COUNCIL

Respondent

David C. Gardner, Counsel
(instructed by Bhatia Best), for the applicant

Joshua Swirsky, Counsel
(instructed by Legal Services, Luton Borough Council) for the respondent

Hearing dates: 30 and 31 May 2024

J U D G M E N T

Judge O'Callaghan:

Introduction

1. By an order dated 2 December 2022, Judge O'Connor, sitting as a Judge of the High Court, granted the applicant permission to apply for judicial review against the respondent's decision as to his age and transferred the claim to the Upper Tribunal: CO/3749/2022.

Issues

2. The Upper Tribunal is required to undertake a fact-finding exercise and make a declaration as to the applicant's age on 13 July 2022, the date the respondent served its age assessment decision upon him.
3. Section 3.1 of the claim form sealed on 12 October 2022, section 10 of the form N244 application notice and paragraph 2 of the grounds of claim identify the applicant as seeking a declaration that he was born on 2 July 2005. However, the applicant's witness statement accompanying the claim form details at paragraph 3 that he was born on 3 July 2005, and it is this date he advanced at the fact-finding hearing as being his true date of birth. The contradiction in the claim form and witness statement filed at the outset of this claim is unfortunate.
4. I was asked by Mr Gardner to proceed on the basis that the applicant seeks a declaration that he was born on **3 July 2005**.
5. The primary issue for me to resolve in these proceedings is the applicant's age, which is in dispute between the parties. In resolving this issue, I am required to identify the applicant's age as at the date of the respondent's age assessment which concluded on 4 July 2022 and was served upon the applicant on 13 July 2022.
6. The applicant asserts that he was born on 3 July 2005 and so was aged fifteen when he arrived in the United Kingdom on 24 June 2021, aged sixteen at the date the age assessment was undertaken, aged seventeen at the date the age assessment was concluded, and is presently aged eighteen.
7. The respondent considers the applicant to be an adult with a date of birth of 2 July 2002 and so aged twenty at the date of assessment and twenty-one at the date of hearing.
8. The applicant has self-identified various dates of birth:
 - 29 January 1999: date of birth entered on TikTok account

- 1 January 2005: at port upon arrival in the United Kingdom (June 2021)
 - 3 February 2005: Kent Intake Unit interview (24 June 2021)
 - 3 February 2005: Luton Child in Need visit (28 March 2022)
 - 2 July 2005: first age assessment interview (6 May 2022)
 - 2 July 2005: third age assessment interview (13 May 2022)
 - 2 July 2005: date of birth entered on Instagram account
 - 3 July 2005: witness statement (11 October 2022)
 - 3 July 2005: meeting with Mr Fergal McCrystal (14 March 2023)
 - 3 July 2005: witness statement (4 May 2023)
 - 3 July 2005: Home Office asylum interview (10 July 2023)
 - 27 August 2005: date of birth entered on Snap Chat account
9. I observe the language of the interpreters attending relevant interviews:
- Kent Intake Unit interview: *Sudanese Arabic*
 - Home Office screening interview held on 27 June 2021: *Arabic*
 - Meeting with respondent's social worker during a child in need visit: *Arabic* (change of interpreter after concern that first interpreter and applicant did not understand each other)
 - First age assessment interview: *Sudanese Arabic*
 - Third age assessment interview: *Arabic (Libya)*
 - Home Office asylum interview: *Sudanese Arabic*
10. Sudanese Arabic has characteristics linking it to Egyptian Arabic, but the dialect retains some archaic pronunciation patterns and has borrowed vocabulary from local tribal languages.

Anonymity Order

11. Judge O'Connor issued an anonymity order on 2 December 2022.
12. The fact-finding hearing was listed at Field House on 18 January 2024. On the morning of the hearing the applicant informed his solicitors and former counsel that he had been recognised as a

refugee by the Secretary of State for the Home Department and had been granted leave to remain in this country. Consequent to discussion with counsel, I set aside the anonymity order as the public interest in being informed as to proceedings held in the Upper Tribunal, protected by common law and article 10 ECHR, now outweighed the applicant's private life rights protected by article 8 ECHR, because the previously relevant factors of the applicant seeking international protection and being, on his own case, a minor had fallen away since the order was issued.

13. The anonymity order issued by Judge O'Connor was set aside on 18 January 2024.

Litigation Friend

14. Upon these proceedings being commenced in the High Court, Maddie Harris was appointed to act as a Litigation Friend. On the applicant reaching, on his own case, the age of eighteen, Ms Harris ceased to be a Litigation Friend: CPR 21.9(1).

Background

15. The parties filed a bundle of documents, supplementary bundle, final bundle and disclosure bundle. All documents have been read with care, though not all are expressly addressed below.
16. The applicant is accepted by both the respondent and the Home Office to be a Sudanese national hailing from the Darfur region.
17. He is ethnically Kresh and speaks a dialect of Kresh as his first language. He can speak Sudanese Arabic but is not completely fluent in his second language and sometimes struggles to understand or identify certain Arabic words. I am satisfied having considered his personal description of his linguistic ability in his witness statement that though not fluent in Sudanese Arabic, he has a strong command of the language.
18. The applicant is from a village situated in the Kafia Kingi area on the southern border between Sudan, South Sudan and the Central African Republic. The village is close to Radom, a larger village situated within Radom National Park, South Darfur.
19. The representatives confirmed that this matter requires consideration of several inconsistencies arising within the applicant's evidence over recent years. The respondent submits that cumulatively they establish the applicant cannot be believed generally, and therefore is not credible specifically in respect of assertions as to his age. The applicant recognises the existence of discrepancies on initial inspection of the documents filed but submits there are rational explanations: the interpreters struggled in understanding him

consequent to his stammer; and errors were made by non-Sudanese Arabic speaking interpreters. Further, the applicant places reliance upon the views of people who have spent time with and believe him to be the age he asserts.

20. Consequent to the requirement to consider the impact, or otherwise, of the discrepancies, which were relied upon by the age assessors and are matters I am to consider, I am required to address evidence filed in this matter in some detail. For ease, I note several, but not all, of the inconsistencies below.

Education

21. The applicant has stated that he went to primary school in Sudan for one year. He cannot remember what academic year he attended, or how he old was. He can write his name in Arabic: *Kent Intake Unit interview* (June 2021).
22. On other occasions he states that he had never been to school: *Home Office Screening Interview* (June 2021); *Luton Child in Need visit* (March 2022) and *Home Office asylum interview* (July 2023).
23. There was a small al-Khalwa (elementary Koranic school) in his village, but he did not attend: *First age assessment interview* (May 2022).
24. At the time of the Kent Intake Unit assessment, the applicant acknowledged that he could not tell the day, month or year: *Kent Intake Unit interview* (June 2021).

Family

25. The applicant's parents were farmers, owning their own land.
26. He recounts on several occasions residing with his mother, father and two siblings, a brother (A) and sister (variously O and U). A half-sibling was born following his mother's re-marriage after his father's death (K). I observe the possibility that two names (O and U) may refer to the same person consequent to varying transliteration.
27. However, very soon after his arrival in this country the applicant referenced having three sisters - (U) born in 2006, (S) birthday unknown, and (N): birthday unknown: *Kent Intake Unit interview* (June 2021).
28. His sisters do not attend school, and they 'are working' on the farm: *Kent Intake Unit interview* (June 2021).

Attack on family home

29. The applicant has stated that his family home was attacked by militia from another tribe, the Binga, consequent to a land dispute. They killed his brother (A) in 2017: *Home Office Screening Interview* (June 2021)
30. In an alternative version, his elder brother (A) wished to marry an Arab woman, leading to an attack in 2018 by members of her tribe, the Habbaniya, upon his family home that resulted in the deaths of his father and brother: *Age assessment interview* (May 2022) and *asylum interview* (July 2023).
31. On occasion he has detailed that an Arab tribe attacked the family home, killing his father and brother, but not detailed the cause of the attack: *Third age assessment interview* (May 2022) and *Home Office asylum interview* (July 2023).

Leaving Sudan

32. The applicant left home in 2020 but could not remember the month. It was possibly July: *Kent Intake Unit interview* (June 2021).
33. In other interviews he stated that he left Sudan in 2018: *Home Office Screening Interview* (June 2021), *Third age assessment interview* (May 2022) and *Home Office asylum interview* (July 2023).
34. He fled Sudan when aged thirteen because of the war: *Luton Child in Need visit* (March 2022).
35. After the attack, he fled from the family home on his own. He came across a vehicle travelling to Radom and secured a ride with its occupants. He cannot recall how many people were in the car. Once in Radom he walked around. He heard some people in the street say they were travelling to Libya. He asked if they would take him, and they agreed. There were two cars making the journey. He could not recall the number of people in his car, but there was a young man with his wife: *Third age assessment interview* (May 2022).
36. The applicant fled the family home with his mother and sister. His mother handed him over to male travellers, who she did not know, informing them that the applicant would be killed if he stayed. He stayed with these men for three days in Radom. They were on their way to Libya, so he travelled with them: *Home Office asylum interview* (July 2023).

Libya

37. The applicant remained in Libya for two months in 2020, undertaking security work on a farm. The owner of the farm did not ask his age. The applicant believed he was aged sixteen at this time. When put to him that this age was inconsistent with his stated date of birth, he

- replied that he could not remember how old he was, but he believed he was sixteen at the time: *Kent Intake Unit interview* (June 2021).
38. He was detained for one month in July 2018 close to the border with Chad and made to mine gold. He escaped: *Home Office Screening Interview* (June 2021).
 39. He was arrested by a militia and forced to work. He was tortured: *Home Office asylum interview* (July 2023).
 40. In his second witness statement, the applicant detailed that he was abducted with his travelling companions and forced to work in the gold mine. He was beaten by guards. Armed guards patrolled the camp to ensure no-one escaped. He explained that he and his companions were released after a month because they were too weak. Guards took them to the centre of Tripoli and dumped them in a street: (May 2023).
 41. Once reaching Tripoli, he stayed with the people he had travelled with (two carloads of people, including a husband and wife). He stayed in a room. The others gave him food and drink. He was too afraid to leave the property. He stayed for a year. When the others decided to leave Libya, he went along with them. He did not know where he was going, save that it was Europe, but found himself in a boat: *Third age assessment interview* (May 2022).
 42. In his second witness statement, the applicant detailed that he resided with the four men in a one-bedroom property. They slept on mattresses. The others worked and he undertook household chores including preparing food and cleaning. He never left the house as it was unsafe, save for when the men took him to a local shop. He made friends with three Sudanese boys who lived next door. The men decided to leave Libya after a year, and he accompanied them as he felt safe with them (May 2023).
 43. He stayed with the four men. They did not want him to work because he was young, so he stayed indoors. When the men decided to move on, he accompanied them: *Home Office asylum interview* (July 2023).

Malta

44. The applicant informed the Home Office that he arrived in Malta in November 2019 and was fingerprinted. He left Malta in December 2020: *Home Office Screening Interview* (June 2021)
45. A friend, who was working casually in Libya, paid 12,200 Libyan Dinar (approximately \$240) to enable the applicant to cross the Mediterranean. He reached Malta, where he remained in a camp for immigrants from December 2020 to April 2021. He did not claim asylum. He then left Malta: *Kent Intake Unit interview* (June 2021).

46. The Maltese authorities separated adults and children, and he was placed in a camp for six months. He was then taken to a town where he was placed in accommodation for young people, where he stayed for six months: *Third age assessment interview* (May 2022).
47. The applicant therefore entered Malta in November 2019 or December 2020, left in December 2020 or April 2021, and remained for five months or for thirteen months.

Italy and France

48. The applicant spent four days in Italy before travelling to Calais where he spent two months. He then travelled to the United Kingdom: *Kent Intake Unit interview* (June 2021).
49. He stayed in Italy for seven days and walked into France. He went to Belgium and returned to France where he stayed for two weeks before travelling to the United Kingdom: *Home Office Screening Interview* (June 2021).
50. He found people travelling from Malta to Italy. When he arrived, he lived on the streets, before taking a train to France. He was not required to pay for a train ticket. He went to Paris and then to Calais: *Third age assessment interview* (May 2022).
51. He was caught several times seeking to cross the Franco-Italian border and returned to Italy. Despite these events he was not fingerprinted by the French or Italian authorities: *Home Office Screening Interview* (June 2021).
52. He confirmed that he travelled under the pretence of being older in order to be allowed to pass through places: *Luton Child in Need visit* (March 2022).
53. He spent months in France: *Home Office asylum interview* (July 2023).
54. He tried on several occasions to travel to the United Kingdom by hiding in a lorry but was unsuccessful. He found people who were travelling by boat across the Channel: *Third age assessment interview* (May 2022).

Traffickers/Agents

55. The applicant denies employing traffickers/agents on his journey from Sudan to the United Kingdom: *Home Office Screening Interview* (June 2021).
56. His expenses were paid by the people he was travelling with: *Luton Child in Need visit* (March 2022).

57. He did not have to pay to cross the Channel, because he had no money: *Home Office asylum interview* (July 2023).

Knowledge of date of birth

58. The applicant has never seen documentation verifying his birth date: *Kent Intake Unit interview* (June 2021).

59. In respect of the birth date of 3 February 2005 the applicant informed the Kent Intake Assessors that he asked his mother for his date of birth and age when he was in Libya. He asked because he wanted to know how old he was. He subsequently stated that his mother had informed him previously. He could not remember when she told him or how old he was at the time: *Kent Intake Unit interview* (June 2021).

60. He stated that he asked his mother for his date of birth in May 2021 when he was in Calais because he wanted to know how old he was. When asked why he made this request at this stage of his life, he replied that he had asked his mother on previous occasions and that she provided the same information. He could not remember when his mother first informed him as to his birth date. However, he could remember being informed in May 2021. He subsequently explained that he was being asked questions about his age by organisations working in Calais who wanted him to move to a hostel for minors: *Kent Intake Unit interview* (June 2021).

61. His date of birth is 2 July 2005. His mother first told him his date of birth when he was in Sudan. She last told him when he was in the United Kingdom: *First age assessment interview* (May 2022).

62. The applicant confirmed his date of birth as 3 July 2005 in his first witness statement: (October 2022).

Age assessment - 4 July 2022 (served 13 July 2022)

63. The age assessment was conducted by Zoe Warren and Adorae Younge, social workers, for the respondent over three sessions, though the second did not proceed as the applicant was unwell. Arabic interpreters were engaged at all three sessions. A female interpreter was used at the first interview. A male interpreter at the second, cancelled, interview and at the third.

64. By his witness statement dated 14 September 2023 the applicant complains that neither interpreter spoke Sudanese Arabic, and so he did not understand them. He saw the first interpreter and did not believe that she had the features of a Sudanese national. He does not recall the second interpreter's appearance and believes he attended via a phone or video call.

65. The applicant's concern was addressed by a witness statement from Fergal McCrystal, a member of the respondent's team responsible for organising age assessments. He confirmed that the interpreters were booked through an interpretation agency who confirmed to him that the female interpreter is from Sudan and speaks Sudanese Arabic. The male interpreter is from Libya and speaks Arabic. The agency could not confirm whether the male interpreter speaks Sudanese Arabic.
66. assessment was completed on 4 July 2022 and served upon the applicant on 13 July 2022. The assessment notes, *inter alia*:

'Some of the information [the applicant] has shared in his Age Assessment has been very different to what he shared with the Kent Intake Unit assessors, most notably his date of birth. [The applicant] initially gave his date of birth as 01.01.2005 to port officials, but then told the Kent Intake Unit assessors his date of birth was 03.02.2005. However, for this Age Assessment, [the applicant] is stating his date of birth is 02.07.2005. [The applicant] has given different information about his family. For this Age Assessment, [the applicant] stated he has two sisters, (K), who is 3 years old, and (W-S), who is 5 years old. However, he told the Kent Intake Unit assessors that he has three sisters call (U), (S) and (N). In this Age Assessment, [the applicant] has clearly stated that he did not attend school, however, he told the Kent Intake Unit assessment that he had been to primary school in Sudan but had only finished one year of primary school.

During the Age Assessment, [the applicant] stated early on that he had never been to the city of Radom which was the nearest city to his village, but when sharing his journey, he said he had been to Radom and this is where he first fled to. [The applicant] has also struggled to give times/distances of his journey. [The applicant] has given a different account of his journey to the UK to the Kent Intake Unit assessors. For the initial Short Age Assessment, [the applicant] stated that he left Sudan in 2020, however for this Age Assessment, he stated he left Sudan in July 2018.'

67. The assessment concluded:

'The decision of this Age Assessment is that [the applicant] is over 18 years old and is therefore an adult. [The applicant] has given three different dates of birth to different people. [The applicant] has given different information about his family, his education and his journey. [The applicant] has not answered the questions confidently, but instead, there has been long pauses, he has started stuttering and was frequently asking the interpreter to repeat the questions. [The applicant] has deep wrinkles on his forehead which I do not feel would be present if he was aged 17 years old. ...'

The Legal Framework

68. Age assessments are carried out to determine whether young people without identity documents are in fact children and so entitled to services provided by local authorities.
69. Section 17 of the Children Act 1989 establishes that local authorities have a general duty to promote the welfare of children within their areas. Although this is a general duty, when read with paragraphs 1 and 3 of Schedule 2 to the 1989 Act a local authority has a duty to assess the needs of any child in its area who appears to be a child in need. Section 17 is therefore the gateway to other local authority services, including the provision of accommodation under section 20 of the 1989 Act.
70. Mrs Justice Thornton observed in *AB v. Kent County Council* [2020] EWHC 109 (Admin), [2020] P.T.S.R. 746, at [18]:
- ‘18. The law requires a wholly different treatment of young asylum seekers depending on whether they have passed their eighteenth birthday. This is of course in itself an entirely artificial and inflexible dividing line, bearing little relationship to human reality but it is built into the structure of not only domestic law but international law in this area and it has to be applied as best as can be (Underhill LJ in *BF (Eritrea) v Secretary of State for the Home Department* [2019] EWCA Civ 872 at §52). Thus: a number of rights and obligations under the Children Act depend upon the distinction. Local authorities are under a general duty to safeguard and promote the welfare of children within their area who are in need (section 17). This includes the provision of accommodation (s20). ‘Child’ means a person under the age of eighteen (s105). It is unlawful for the Secretary of State to detain asylum seeking children.’
71. The obligation to conduct an age assessment is a *Tameside* duty, i.e., for a local authority to equip itself with the necessary facts to decide whether or not to exercise its statutory functions under the 1989 Act.
72. There is no statutorily prescribed way to identify how local authorities are obliged to carry out age assessments. As confirmed by the Court of Appeal in *BF (Eritrea) v. Secretary of State for the Home Department* [2019] EWCA Civ 872, at [53], the law proceeds on the basis that the most reliable means of assessing the age of a child or young person in circumstances where no documentary evidence is available is by the so-called ‘Merton compliant’ assessment: *R (B) v. Merton London Borough Council* [2003] EWHC 1689 (Admin), [2003] 4 All ER 280 (‘Merton’).
73. Relevant requirements have been considered in several judgments, including *VS v. Home Office* [2014] EWHC 2483 QB, at [78], and were summarised by Mr Justice Swift in *R (HAM) v. London Borough of Brent* [2022] EWHC 1924 (Admin):

- When it is necessary to determine whether a person is a child (i.e., under eighteen years old) for the purposes of its duties under the 1989 Act, there is no burden of proof, and so no assumption that a person is a child or an adult, at [10].
 - It is likely to be rare that a fair assessment would be based on physical appearance and demeanour alone, [10]. However, there will be cases where physical appearance and demeanour will suffice, [32].
 - An age assessment must be fair in function and substance, not merely form, [14]. What is fair will depend on the circumstances of the case.
 - An assessment may, depending on the facts of the case, be unfair if an appropriate adult is not present, [20].
 - Where further enquiry as to a young person's age entails interviews, these interviews must be undertaken fairly. What is necessary for this purpose must take account of the circumstances of the person, [32].
 - While the question of whether a process was fair is a matter for the Tribunal, it is for the social workers to justify why such steps were taken or not taken, [34].
74. Lady Hale confirmed in *R (A) v. London Borough of Croydon* [2009] UKSC 8, [2009] 1 W.L.R. 2557, at [51], that the question whether 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 Tribunal and the process must be one of assessment. This involves the application of judgment on a variety of factors and however difficult it may be to resolve the issue it admits of only one answer. As it is a question of fact, ultimately the question must be a matter for the Tribunal.
75. The Court of Appeal held in *R (CJ) v Cardiff County Council* [2011] EWCA Civ 1590, [2012] 2 All E.R. 836, at [21] and [23], that once a court or tribunal is invited to make a decision upon jurisdictional fact it can do no more than apply the balance of probability to the issue without resorting to the concept of discharge of a burden of proof. In this matter I am therefore required to decide whether, on a balance of probability, the applicant was a young person aged under eighteen at the date of assessment.
76. I proceed on the basis that it may well be inappropriate to expect conclusive evidence of age from the applicant in circumstances in which he has arrived unaccompanied and without original identity documents. The nature of the evaluation of evidence depends upon the particular facts of the case. In the absence of any corroborative documentary evidence as to age, the starting point is the credibility

of the evidence placed before the Tribunal, as confirmed by Lord Justice Aikens in *R (AE) v. London Borough of Croydon* [2012] EWCA Civ 547, at [23].

77. The Tribunal is not confined to choosing between the positions of the parties: *R (W) v. London Borough of Croydon* [2012] EWHC 1130, at [3].

The Applicant's Stammer - Reasonable Adjustments

78. The applicant has a stammer as accepted by various age assessors, and confirmed by a letter from Heather Robinson, Adult Speech and Language Therapy Service of a NHS Foundation Trust, dated 19 June 2023. Ms Robinson notes that the applicant's father had a stammer, and it is likely to be an inherited speech difficulty.
79. Stammering is a neurological condition which causes a person to repeat, prolong or block on sounds and words when speaking. The most common type of stammering starts in early childhood when speech and language skills are developing. A person may have times when they stammer and times when they speak fairly fluently. Stammering varies in severity from person to person. It may also be difficult to know to what extent an individual is working hard to hide a stammer. As most people who stammer are affected from an early age, the impact of other people's responses may have caused lifelong feelings of fear, shame and humiliation.
80. Although stammering is not due to nervousness, its effect can make people who stammer more nervous about situations where they will have to speak, especially in public, in front of a group of people or to an authority figure such as a judge.
81. Reasonable adjustments were made at the hearing. I reassured the applicant that he should take his time to say what he wanted to say, and that extra time would be allowed. Additionally, I ensured that time was given to the applicant to answer after a question. With the agreement of Mr Gardner and Mr Swirsky, the applicant was granted a break in his evidence every hour.

Evidence

82. The applicant attended the hearing and gave evidence. His first language is Kresh. I have found above that he has a strong command of Sudanese Arabic. As he is not fluent, I accept his evidence that he sometimes is required to pause and think about what he wants to say in Arabic. He confirmed at the outset of the hearing, and later confirmed when asked by Mr Swirsky, that he understood the interpreter.

83. In addition to his oral evidence, the applicant relied upon his witness statements dated 11 October 2022, 4 May 2023 and 14 September 2023. Accompanying the witness statements are various documents and photographs which I have considered.
84. The applicant is supported by witness statements from Hannah Kagoro, Sarah Patch, Penelope Baird, and Wellington Baah. The first two attended the hearing remotely.
85. Documents relied upon by the applicant and respondent, including the age assessment and the respondent's disclosure running to over 450 pages, were placed in the various bundles of documents filed with the Upper Tribunal.

Kent Intake Unit Age Assessment

86. The Kent Intake Unit completed an initial short Merton age assessment on 24 June 2021 and concluded that the appellant was aged twenty-five with a date of birth of 3 February 1996.
87. The Unit assessment report records, *inter alia*:

'He said that his mother told him how old he was, but he could not remember when she told him or how old he was at the time. The assessors asked [the applicant] how he knows his date of birth if his mother only told him his age. He said that she told him his date of birth also.

[The applicant] was asked about his family and to provide the assessors with their names, dates of birth and ages. He said that he has three sisters. The first sister is (U), she was born in 2006 but he does not know how old she is. The second sister is (S). He does not know her age or when she was born but he knows that she is younger than him. The third sister is (N), but [the applicant] does not know her date of birth or age either. [The applicant] confirmed that he is older than all his sisters.

...

[The applicant] was challenged about the fact that he knew his exact date of birth and age, but he did not know this information for any of his family members. His explanation was that it's because he asked his mother about his date of birth and age and that's how he knows. He said that he asked his mother in May 2021. He said that the reason for asking her in May 2021 is because he wanted to know how old he was. [The applicant] was asked to explain why he asked his mother at this stage of his life and why he has never before enquired about his age. He said that he has asked on previous occasions also and that she told him the same information then.

[The applicant] was asked what age he was when his mother first told him his date of birth. He said that he could not remember. He could also not remember when this was. He was further challenged about this information and his explanation was that he cannot remember the past, but he can remember exactly what his mother told him more recently in May 2021. When asked what exactly it was that his mother told him in May 2021, he said that she told him he was sixteen years old. He confirmed that this was not the first time he had been told his age. He could not provided the assessors with any details about the previous times.'

88. The applicant confirmed that in May 2021 he was residing in Calais and that he contacted his mother because he was being asked questions by organisations as to his age.
89. He detailed that he went to primary school in Sudan for one year, and he can write his name and the names of family members in Arabic.
90. He was unable to provide the ages of his sisters, nor provide a comparison in height and weight. His sisters did not attend school as they worked on the farm, though he was unable to identify when and what age they were when they first started working.
91. When asked by the assessors he was unable to detail the date of the interview. He explained that he "does not know the year, the month or even the day". The assessors stated that he must have a notion of the date, because he asked his mother for his date of birth. He was unable to provide an explanation.
92. The applicant informed the assessors that he left Sudan in 2020 but was not sure when. He suggested he left in May or July. He travelled to Libya where he worked guarding a farm and looking after animals for two months. The farm owner did not ask his age and he could not remember how old he was at the time. A friend then paid 12,200 Libyan Dinars (approximately US\$240) for him to travel across the Mediterranean to Malta. The assessors noted that the applicant was unable to provide details of this friend, save that he was Sudanese and a casual worker, nor did he know how old he was. He stayed in Malta for six months, arriving in December 2020 and leaving for Italy in April 2021. He spent four days in Italy, and then travelled onto Calais, where he spent two months.

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93. A social worker employed by the respondent attended upon the applicant. An initial effort to use an interpreter was aborted because the applicant was becoming increasingly frustrated at being told to repeat himself by the interpreter. The interpreter was changed, and the applicant raised no subsequent concern.

94. The applicant explained that he had left Sudan aged thirteen with others "who were fleeing from the war and other different reasons". His travel expenses for the journey to the United Kingdom were paid by others. He has two siblings in Sudan, his sisters (O) and (K). Like his father, he had no education. He confirmed that he was aged seventeen, and that he was born on 3 February 2005. He acknowledged that he travelled to the United Kingdom on occasion under the pretence of being older to be allowed to pass through places.

Respondent's age assessment

95. The applicant informed the assessors that he was born on 2 July 2005, but the assessors noted that the port officials recorded the applicant as detailing his date of birth to be 1 January 2005.

96. As to his knowledge of his age, the applicant initially informed the assessors that his mother informed him when he phoned her after arriving in this country, but amended this and stated that she informed him before he left Sudan. The assessors recorded: "[the applicant] said his mother kept telling him everything about his date of birth and told him not to forget it".

97. The applicant confirmed that he never had birthday parties whilst in his village.

98. He stated that he had never attended school. The assessors noted that he had informed the Kent Intake Unit that he had attended one year of primary school and could write both his name and the name of family members in Arabic.

99. He used to pray at the mosque in a nearby village and studied the Koran.

100. He had never worked and never used to help his parents with anything.

101. He stated that when his brother died, he was aged thirteen. He was aged twelve when his father died. However, he also stated that both his father and brother were killed when the family home was attacked.

102. His mother informed him the week before the first assessment session that his sisters (W-S) and (K) were aged five and three respectively.

103. The assessors noted the Kent Intake Unit assessment where the applicant is recorded as having a sister (U) born in 2006, a second sister (S) whose age he did not know, and a third sister (N), again whose age he did not know.

104. The assessment records:

'[The applicant] said he was residing [in his village] when his sisters were born. [The applicant] was questioned as to why he could not remember when [his younger sister] was born 3 years ago and had to ask his mother, and [the applicant] replied that his mother told him.'

105. The assessors noted that he had informed the Kent Intake Unit that his sisters worked on the farm.

106. Having fled his home, he travelled to Radom though he could not recall how many people were in the vehicle he travelled in. He stayed there for two days, sleeping on the streets, before he found people travelling to Libya. He joined them. As he was seen to be young, they took him along, and he did not pay. When asked how long the journey was, the applicant replied that he forgets things and could not remember. The people he was travelling with knew their way.

107. Once he arrived in Tripoli, he stayed there for a year with the same group of people he accompanied from Radom. He did not have his own room in the house. People came and brought him food and drink. He did not go outside the house because he was afraid to walk around, in case people came for him. The companions decided they were going to cross the sea, and he decided to go with them. They were older than him and he respected them.

108. They were rescued from their boat and taken to Malta. The group were separated, and he was placed in a camp with children. He was given food in the camp but did nothing and he was not allowed to leave. There were eight people in his room, and they had bunk beds. He stayed for approximately six months before being dispersed elsewhere in Malta where he stayed for another six months.

109. He then travelled to Italy, initially in either a car or a lorry and then on a ferry. He went with others. He resided on the streets in Italy, before travelling to France with others by train. He was not asked to pay for the train journey, and he slept on the journey. The train stopped in Paris and then in Calais. He cannot recall how long the journey was. Once in Calais he made several unsuccessful attempts to get into lorries to cross the Channel. He found some people intending to cross by boat and they set out in an inflatable dinghy. Those making this crossing were rescued at sea and brought to the United Kingdom.

110. The assessors noted that he had informed the Kent Intake Unit that he had left Sudan in or around May or June 2020, approximately twelve months before he arrived in the United Kingdom. He was recorded as stating that he resided in Libya for two months,

undertaking work guarding animals on a farm, and keeping them safe.

111. He informed the assessors that he is in contact with his mother by telephone. The assessors recorded:

'... someone went to his village and this person had a phone and rang him and he was able to speak to his mother by phone. [The applicant] said when he left Sudan, he did not have a phone on him. [The applicant] said when he was in Italy, his friends there had phones. [The applicant] said he had a phone for the first time when he was in Malta. [The applicant] said that the person who called him, had his number and rang him. [The applicant] said he had this person's number since Sudan.'

112. The assessors noted the observations of Sarah Patch, a social care assistant, who had responsibility for the applicant for a month before he was moved into temporary accommodation. Ms Patch considered that the applicant presented as the age he claimed to be.

113. They also noted the observations of Hannah Kagoro, a support worker, who considered that the applicant appeared as a teenager still growing up and needing parental support.

Applicant's evidence

114. By his witness statement dated 11 October 2022, the applicant confirmed his date of birth as 3 July 2005 and detailed:

'I know my age because of multiple conversations that I have had with my mother over the years. She would often remind me of my age and date of birth. These conversations were completely random, and I do not remember the topic of conversation at the time. I just know that my mother would tell me that this is important information and that I should remember it.'

115. He detailed that he was from a poor, small village in Sudan, and that it was extremely unusual for anyone to hold identity documents. He had a brother, who was killed, and a sister (O) who is aged five and a second sister from his mother's remarriage, (K) who is aged three.

116. He explained how he started his journey to Europe:

'We were walking for a long time; I don't remember how long as I was traumatised from what I had just witnessed. After a while, my mother met a group of four men on the street that were leaving Sudan and driving to the nearest city of Radom. My mother explained the situation to them, and they took pity on me as I am a child, so they allowed me to go with them. My mother and sister did not come with me.'

117. He provides a partial timeline for his journey to the United Kingdom: one year in Libya, one year in Malta, a few days in Italy, and several months in Calais, before arriving in the United Kingdom on 26 June 2021.
118. In respect of the date of birth initially provided on arrival, he detailed:
- ‘Upon arrival, I was questioned for some times, but I do not remember how long. I was not aware that my age raised any issues until later in the day when I was told by the officials that they do not believe my claimed age. They then gave me the date of birth of 03 February 1996. ...’
119. As for the respondent’s age assessment, he did not consider the assessors to be welcoming, and they made him very nervous.
120. By his witness statement dated 4 May 2023, he confirmed that he is still in contact with his mother but as there is no internet in her village, they only talk when she travels to town and can access WiFi. They have only spoken a handful of times since he left Sudan.
121. He explained that there are many things that he cannot remember about his journey to the United Kingdom because he was aged thirteen when he left, and his feelings of grief were overwhelming. He was constantly thinking about the deaths of his father and brother, and there were periods of time when he was not aware of his surroundings.
122. The applicant named the four men he met with his mother who subsequently took him on the journey to Libya. They did not ask for payment because he was a child. On the way, they were stopped by people with guns and were threatened. They were taken to a camp in the desert and made to work in a goldmine. The applicant’s job was to carry boxes and collect water for the workers to use to pan for gold. He was beaten by guards if they thought he did not work hard or quick enough. At the mine he received one meal per day. After approximately one month, his group were allowed to leave. He believes he was released because he was too weak to be of use. He was taken to the centre of Tripoli with his companions and left in a street.
123. He remained with his companions in Tripoli. They rented a house. He was not asked to contribute towards living expenses as the others found work, but he would help with household chores. He spent a lot of time indoors but made friends with boys who lived next door. After a year his companions decided to leave Libya. He went with them. They travelled by sea to Malta, and he was separated from his companions by the Maltese authorities who took him to a refugee camp with other children. He remained there for approximately six months, before being dispersed to shared accommodation. Some six

months later, he decided to leave Malta as he felt discriminated against by locals because he is black. He stowed in the back of a lorry with a friend and made his way to Italy where he remained for around four days. He wanted to reach the United Kingdom so managed to travel to Paris without paying a fare, and then took a train to Calais.

124. The applicant explained the difficulties that arise from his stammer. He finds it much easier to communicate with people in person, though the respondent and the Home Office have only used telephone interpreters when engaging with him.
125. As to the Kent Intake Unit assessment, the applicant observes that he was exhausted and tired after his dangerous journey across the Channel and the last thing he wanted to do was be interviewed. He wanted it to end. He struggled to understand the telephone interpreter. He states that he has never given any other date of birth than 3 July 2005. He has never said that he has three sisters. He has never attended school. He never said that he left Sudan in July 2020, nor that he had casual work in Libya for two months.
126. He addressed documents disclosed consequent to a Home Office subject access request. He observes that in his initial asylum registration questionnaire he details being forced to work in a gold mine in the desert. The questionnaire is incorrect when recording that he managed to escape from the mine. He believes this was an interpreter error.
127. He addresses his social media engagement. He accepts that his birth date on TikTok is detailed as 29 January 1999, but he states that he did not pay much attention when entering his date of birth when creating the account, simply entering any date.
128. The date of birth on his Instagram account is 2 July 2005. He did not pay attention when he entered his date of birth, simply putting any date down.
129. The date of birth linked to his Snap Chat account is 27 August 2005. Again, he explains that he was not paying any attention and put down any date.
130. His witness statement dated 14 September 2023 is focused upon his contention that he struggled to understand the interpreters used at his age assessment interviews.
131. By means of his oral evidence the applicant stated that he could not tell how many people lived in his village in Sudan, nor how many houses there were. He could not say how far the village was from the nearest town or city. He confirmed that the village had no running water or electricity. No one had a mobile phone. He stated that the

village did not have a mosque, with prayers being conducted in the village square. There was no religious school.

132. I observe that at the first age assessment interview held in May 2022 the applicant confirmed that the village was small, with a few small cottages and houses. There was a small mosque and a small traditional school, an al-Khalwa, to teach the Koran. He confirmed that he used to pray at the mosque. From the outset of his oral evidence, the applicant adopted an approach of seeking to avoid giving information that may be inconsistent with previous evidence. As addressed below, this tactic flows from an inability to recall information he had previously given to others.
133. At the hearing he confirmed that neither his mother nor father were educated. He denied being able to read or write Arabic when he left Sudan. He could not recall if his parents could read or write. He stated that he did not understand the concept of a calendar when he lived in Sudan, nor did he know how many days there were in a week, weeks in a year. He did not have the ability to tell the time.
134. The applicant could not recall the dates of births of his two sisters but did know their ages, namely 6 and 3. The latter is the same age the applicant gave for (K) at his age assessment interview on 6 May 2022, and the age of the second sister has increased by only one year during the same two-year interval.
135. He explained that he did not know his date of birth until he was in Libya. The group of men he was with had a mobile telephone. His mother was able to travel to the nearby city of Radom and phone using a landline. The people who had helped facilitate his exit from Sudan had provided the mobile number to her. She called him and provided him with his date of birth because “she was worried about me and gave me my date of birth in case I got lost. She said that this was my information if I am lost”. She asked him to memorise his date of birth.
136. When asked how his mother knew his date of birth, he stated that she was his mother so knew. She would know from customs and conversations with locals. She informed him as to his date of birth in “every single” telephone call. He last spoke to her six months ago.
137. He secured his first phone in Malta, and it accompanied him to the United Kingdom. He then had a second phone but recently lost it. His mother was not aware of the new number until he met some people from Radom in a hotel in this country and they sent the phone number back to people in Radom to pass his number on.
138. The applicant was asked whether any of his relatives in Sudan had a phone. He replied, “No”. He further denied that his mother used a relative’s phone to call him. Mr Swirsky took him to a page in the

disclosure bundle where he stated that when she contacted him it was with a relative's phone. When asked to provide this number to the respondent, he refused. He was asked why he refused this request and informed me that it was not his number to give.

139. He confirmed that he left Sudan the very day his mother handed him over to the people heading to Radom. He clarified this answer by stating that they stayed in Radom for several days before leaving for Libya. He informed me that his mother had simply thought he was being taken to Radom for his safety. The four men decided to take him to Libya with them. When he last saw his mother, she had no idea that he was leaving the country. He is now aware that his mother and sister returned to their village when he departed.
140. Mr Swirsky asked the applicant why his initial version of events leading to him leaving Sudan, as explained at the Home Office screening interview, was an attack by members of the Binga tribe consequent to a land dispute. The applicant states that he was "terrified" at the screening interview, that he could not make sense of what the interpreter was saying, and the interpreter did not understand him.
141. The applicant denied saying at the screening interview that his brother was killed in 2017. He informed me that he had informed the immigration officer that his brother had died in 2018.
142. I observe that the applicant was asked at the conclusion of the interview whether he had understood all of the questions asked, and he replied, "yes". He further confirmed that there was nothing that he wished to add or change to his response.
143. The applicant was asked by Mr Swirsky as to how he knew the attack on the family home took place in "July 2018". The applicant accepted that whilst living in Sudan he did not understand the concept of a calendar. He only began to learn about days, months and years whilst travelling to the United Kingdom. He explained that his mother had informed him that his brother was killed in July 2018 when he was talking to her from Libya.
144. Mr Swirsky explored the differing versions of leaving the country. The applicant stated that he experienced problems with interpreters.
145. The applicant was asked about giving his date of birth to Kent Intake Unit as being 3 February 2005. He initially could not recall an interpreter. It was explained to him that a Sudanese Arabic interpreter attended. He replied that the interpreter could have had difficulties understanding him because of his stammer. He acknowledged that the Arabic word for "February" is not similar to "July" but repeated that when he says something it may be understood by others as something else. He was reminded that he

confirmed his date of birth twice in the interview and responded that his birthday is 3 July 2005.

146. He denied having attended school in Sudan or having attended a religious school.
147. He denied previously saying that his sisters worked on the farm. They were accompanying his parents, but not working.
148. He denied previously saying that he left Sudan in 2020.
149. He denied saying that he had only spent two months in Libya.
150. He denied saying that he worked as a security guard on a farm in Libya.
151. He explained that he had not stated that he was been abducted and forced to work in a gold mine in Libya because he had not been asked a specific question on this issue.
152. He denied saying that a friend had paid for the cost of his journey from Libya to Malta. He stated that he did not know if anyone paid on his behalf.
153. He denied saying that he had been in Malta for anything less than one year. He had told everyone that he arrived in Malta in 2019. He had no recollection of ever saying what month he arrived, only of detailing the year.
154. When asked why he had not claimed asylum in Italy or France, the applicant informed me that “the reputation of Britain is the best”.
155. In response to Mr Swirsky asking why various dates of birth were inputted to various social media accounts, the applicant responded that he had not taken this seriously. He only engaged in opening the accounts because he was bored.

Hannah Kagoro

156. Ms Kagoro attended the hearing remotely on the second day. She is a support worker who worked with the applicant from April to July 2022 and acted as the appropriate adult during the age assessment sessions. She provided a witness statement, dated 3 May 2023. She confirmed to me that in 2022 the applicant presented as a typical sixteen-year-old child, who would do as instructed and got on well with other residents who were of the same age bracket. When the residents were together, they behaved like typical teenagers. The applicant was good friends with one boy from Sudan, and they communicated in a common language of Arabic. She would

communicate with the applicant primarily through universally understood sign language.

157. She acted as the applicant's appropriate adult during his age assessment interviews. This was the first occasion she held this role. She felt the applicant was put under pressure to give answers when he was taking time to think. She did not raise a concern at the time because she was new to the process.
158. She has concerns as to the age assessment process generally, as the meetings are too long and conducted without a break. She detailed in her witness statement that the applicant had not eaten before his assessment interviews, but accepted before me that the interview record confirms that the applicant had breakfast before the first interview.
159. Ms Kagoro had difficulty in recalling the interviews. This is not surprising as they were conducted over two years ago. She could not recall the second interview being brought to an early end consequent to the applicant being unwell.

Sarah Patch

160. Ms Patch also remotely attended the second day of the hearing. She is a social care assistant and first met the applicant in March 2022. She provided a witness statement, dated 30 May 2023. She recalls her first impression of the applicant was that he presented as a typical boy of his claimed age.
161. She informed me that the applicant resided at the semi-independent placement she managed for approximately one month. There were two others living there, both from Sudan. The applicant was the only one to be age disputed.

Penelope Baird

162. The applicant's legal representative, Penelope Baird, of Bhatia Best Solicitors, has filed and served a witness statement, dated 11 October 2022. She records two occasions when interpreters have informed her that they struggled to understand the applicant because of his stammer.

Wellington Baah

163. Mr Baah is a support worker who first met the applicant in April 2022. He provided a witness statement, dated 20 June 2023. The applicant presented as a typical sixteen-year-old and at no time did he give the impression that he was an adult. The applicant's behaviour was in line with his claimed age.

164. The respondent requested that Mr Baah attend the hearing for cross-examination, and I directed on 8 September 2023 that he could attend remotely. The applicant's legal representative subsequently informed the respondent that they could not locate Mr Baah and so he had not been warned to attend the hearing. The hearing proceeded in his absence.

Recognition as a Refugee

165. The Secretary of State for the Home Department has recognised the applicant as a refugee. He issued the applicant with a biometric residence permit on 11 November 2023. It confirms the grant of refugee status. Additionally, it records the applicant's date of birth as 3 February 1996, consistent with the 'Merton' assessment undertaken by the Kent Intake Unit.

166. The Home Office therefore considers the applicant to be aged twenty-eight.

167. I confirm that the recording of this date is not determinative of my fact-finding exercise, and further observe that neither party before me accepts this date of birth to be correct.

168. The original hearing on 17 January 2024 was adjourned to permit the applicant to address whether proceedings had become academic.

169. The applicant filed and served a helpful skeleton argument prepared by Mr Gardner, dated 1 February 2024. It was observed that the applicant was accommodated and supported by the respondent pursuant to section 20 of the 1989 Act pending age assessment from 31 March 2022 to 22 July 2022, a period of fifteen weeks and six days.

170. The duty under sections 17 and 20 of the 1989 Act to provide accommodation to children no longer applies to children who turn eighteen, which on the applicant's case was 3 July 2023. However, having turned eighteen other duties may apply under the 1989 Act.

171. By section 22, a "child" who is "provided with accommodation by the authority in the exercise of its functions" meets the statutory definition of being a "looked after child".

172. Section 23C defines local authority duties towards former relevant children. They include:

- a duty to continue the appointment of a personal adviser and keep the young person's pathway plan under regular review: section 23C(3);

- a duty to give the young person assistance with employment, education and training to the extent required: section 23C(4);
173. These duties continue until the young person turns twenty-one or for longer if they are completing an education or training programme, as set out in their pathway plan: section 23C(6)-(7).
174. Section 24B, read in combination with section 23C(4), relates to employment, education and training, including giving assistance by “making a grant to enable [the care leaver] to meet expenses connected with [their] education or training.
175. A ‘former relevant child’ for the purposes of section 23C is a child who has been looked after by the local authority for the prescribed period, namely thirteen weeks in aggregate, which began after reaching the prescribed age of fourteen and ended after reaching sixteen: paragraph 19B(3) of Schedule 2 to the 1989 Act, and rule 40(1) of the Care Planning, Placement and Case Review (England) Regulations 2010.
176. Therefore, to be a “former relevant child”, there is a requirement to have accumulated the thirteen weeks of being “looked after” (provided with accommodation), and a requirement to have been “looked after” at the point when turning eighteen. The Court of Appeal confirmed in *R. (GE (Eritrea)) v Secretary of State for the Home Department* [2014] EWCA Civ 1490; [2015] 1 W.L.R. 4123, these events must have happened as a historic fact: it cannot be “deemed”, as a matter of statutory interpretation, or by operation of public law.
177. The Court of Appeal in *GE* noted that to be a former relevant child, the clear wording of section 23C required the child to have been either in care or provided with accommodation by the local authority. The question was not whether a child ought to have been accommodated but whether she had in fact been accommodated. Where an error came to light, for example erroneously determining age, the local authority could legitimately be asked to exercise its discretionary powers to make good any unlawfulness that it had committed in the past and might, in some circumstances, be obliged to do so. Much depends on the circumstances.
178. The applicant contends, and the respondent accepts, that if he is successful on his case as to his age as the date of assessment, and having been provided with section 20 accommodation for thirteen or more weeks, he will have been a looked after child and consequently he is entitled to support arising as a former looked after child as set out in section 23C(2)-(5) of the 1989 Act. Consequently, the respondent accepts that the claim is not academic. I agree for the reasons addressed above.

Analysis of the Evidence

179. In evaluating the applicant's evidence, I am mindful that he may have been a minor when interviewed. Though the assessors consider that he presented as having some educational knowledge, I proceed for the purpose of this judgment on the basis that he was, as he asserts, illiterate and uneducated on arrival. I note his assertion that he spent an extended time in unsuitable circumstances on his journey from Sudan to the United Kingdom and that he was severely ill-treated in the desert whilst travelling from Sudan to Libya.

180. I observe the guidance provided by Mr Justice Picken in *MVN v. London Borough of Greenwich* [2015] EWHC Civ 1942, at [27]-[28].

181. By an undated statement of agreed facts, dated the parties have confirmed the following agreed facts:

- i. The applicant is a Sudanese national.
- ii. The applicant does not hold any official documentary evidence stating his date of birth.
- iii. The applicant suffers from a stammer.
- iv. The applicant arrived in the United Kingdom on 24 June 2021 by dinghy from Calais, France.
- v. The Kent Intake Unit conducted a shortened age assessment on the applicant, on the same date of the applicant's arrival to the UK (24 June 2021) whereby he was assessed to be an adult with a date of birth of 3 February 1996.
- vi. Upon the two social workers' initial inspection of the applicant, they were of the view that the applicant looked like a child.
- vii. The applicant was accommodated and supported by the respondent pursuant to section 20 Children Act 1989 pending an age assessment from 31 March 2022 to 22 July 2022, for a total of fifteen weeks and six days.
- viii. The respondent conducted an age assessment on the applicant on 6 and 18 May 2022. The age assessment was authorised on 13 July 2022.
- ix. Those present at the assessments were:
 - Zoe Warren - social worker
 - Adorae Younge - social worker
 - Hannah Kagoro - appropriate adult

- The applicant
 - Interpreter (via video call or telephone)
- x. The respondent assessed the applicant to be an adult with the date of birth of 2 July 2002.
- xi. The applicant has been accommodated at adult NASS accommodation since 25 July 2022.
- xii. The respondent has only ever used an interpreter over the telephone or by video call to communicate with the applicant, rather than in person.

182. At the outset, I place no weight upon various assessors' observations as to the applicant's demeanour and mode of expression such as apparent hesitation, pauses, and avoidance of eye contact. I am satisfied that a common theme in the assessments of both the respondent and the Kent Intake Unit was an inadequate understanding that stammering in adults and children can be accompanied by secondary behaviours caused by the increased physical effort involved in speaking or by the act of trying not to stammer, to avoid ridicule or other negative social consequences. People may change words or avoid certain words they usually stammer on. Hesitation in speech can make it seem as though a person is thinking about what to say next rather than struggling to talk. People might claim to forget what they want to say when they are having trouble or change the style of their speech to prevent stammering, e.g., by speaking very slowly or softly. They may also talk very fast. Someone who stammers may also avoid eye contact for fear of seeing negative reactions to their stammering.

183. Consequently, observations by various assessors as to the applicant taking a long time to answer questions, or adversely noting that the applicant made no eye contact at all and was looking down when talking or being spoken to, are inappropriate.

184. I consider an egregious example of this approach is that adopted by the author of the Kent Intake Unit assessment:

'He had a clear stutter which became more evident when he appeared to be nervous or struggled to answer some of the questions put to him by the assessors. He made no eye contact at all and was looking down when talking or when spoken to. He asked the interpreter to repeat each and every question that was asked of him and he took a long time before answering some of the questions. This is a clear indication that he was thinking about how to answer the questions and buying himself more time by asking the interpreter to repeat the questions. If he knew the answers he would have answered straight away and he would not have had to think about how he was going to answer.'

185. The author, a social worker, expressly observed that the applicant has a stammer but failed to adequately weigh the impact of this speech defect in her assessment. Rather, instances that may have been consequent to the applicant grappling with his defect were adversely used against him in respect of his credibility.
186. However, the failings noted do not by themselves undermine the respondent's age assessment.
187. Turning to the applicant's date of birth, there is no documentary evidence supporting his assertion that he was born on 3 July 2005. I therefore consider the evidence filed and served by the parties.
188. I turn first to the applicant's contention that he had difficulties in understanding the interpreters used at his age assessment interviews. Throughout his oral evidence before me, the reasons for the many discrepancies in his evidence, both in the age assessment as well as other meetings and interviews, was primarily laid at the feet of professional interpreters not understanding him consequent either to his stammer or because they did not speak Sudanese Arabic.
189. I address the latter concern first. The applicant explained in his September 2023 witness statement:

'The first interpreter attended over a video call so I could see that she was light skinned and did not have features of a Sudanese national. I cannot remember where she said she was from, but she did mention her origins, and I am sure it was not Sudan. During the session, she was speaking a different dialect of Arabic, not Sudanese Arabic so I struggled to understand her.

The second interpreter was also speaking a different dialect of Arabic to Sudanese Arabic, so I also struggled to understand him. I do not remember if this interpreter attended over the phone or video call, so I do not recall his appearance, but I do not think he was a Sudanese national based on the way he was speaking Arabic.

During the first session, I told the interpreter that I could not understand her, so she would try to repeat or rephrase the question, but I struggled. I did not realise that I could request a different interpreter. When I went home after the first age assessment session, I told my support worker Felix that I struggled to understand the interpreter. I think Felix may have passed on my complaint because for the next two sessions, the local authority provided a different interpreter. I still struggled to understand this interpreter, but I did not think there was any point in complaining about it again as I did not think it would help.'

190. Ms Baird referenced in her witness statement a telephone call with the applicant on 16 September 2022, and exhibited an extract from an attendance note, confirming the applicant stating that the references to three different dates of birth:

‘... are all due to him not understanding the interpreter properly or the interpreter not understanding him properly. [The applicant] did mention that throughout the assessment the assessors have mentioned that they told [him] to let them know if he did not understand them and he also had confirmed that he had understood the interpreters at the time. [The applicant] ... did not understand them to a certain extent however, they were speaking a different dialect and it was not necessarily Sudanese Arabic or he does not feel that the interpreters were Sudanese Nationals.’

191. I observe that the age assessment confirms that the female interpreter, referred to by the applicant in his statement, attended the first session, and the male interpreter attended the second and third interviews. However, having considered the evidence of Mr McCrystal, I am satisfied to the requisite standard that the female interpreter is a Sudanese national who speaks Sudanese Arabic and so the applicant is not truthful when asserting that he had difficulties understanding her or she had difficulties understanding him in Sudanese Arabic. I do not accept that he consequently made a complaint to his support worker leading to a change in interpreter. This is not recorded by Mr McCrystal or noted in the age assessment.

192. At this interview the applicant declared himself to have been born on 2 July 2005.

193. I observe that at the Kent Intake Unit a Sudanese Arabic interpreter was provided and the applicant confirmed that he understood the interpreter. The information provided is detailed, and some of it is consistent with the applicant’s later discussion of events. Other information, such as 12,200 Libyan Dinars being paid to facilitate a crossing across the Mediterranean is such a specific sum as to make it highly unlikely that the applicant had said that no fee was paid for the journey. I consider the information as to the applicant’s answers is correctly recorded in the assessment. At this interview the applicant declared himself to have been born on 3 February 2005.

194. There are two relevant interviews where it is unclear whether the Arabic interpreter originated from Sudan.

195. Turning to the first of these interviews, at the Home Office screening interview the applicant confirmed at its conclusion that he understood all questions asked and that he did not wish to add or change any response. That is strongly suggestive that the applicant believed that he was understood by the interpreter and that the

interpreter understood him. There is detail within this interview such as the attack on the family home by the Binga tribe over a land dispute leading to the death of the applicant's brother in 2017 that I find is unlikely to be confused by a professional interpreter with an attack by members of the Habbaniya over a personal relationship in 2018. I consider that the interview is accurate as to the applicant's answers.

196. The second interview is the Child in Need visit by a social worker employed by the respondent in March 2022, approximately nine months after the Kent Intake Unit assessment. The social worker did recognise that the applicant and the initial interpreter were struggling to understand each other and took steps to secure a second interpreter. The applicant raised no complaint as to the second interpreter. I am satisfied that the case note accurately reflects the applicant informing the social worker that he was born on 3 February 2005.

197. The respondent has confirmed that the third age assessment interview was conducted by a Libyan national in Arabic. It has not been possible to ascertain whether this interpreter is professionally qualified to interpret in Sudanese Arabic. I address this interview below.

198. I turn to Mr Gardner's second issue, namely that even if both the interpreter and the applicant understood each other in Sudanese Arabic, the applicant's stammer resulted in communication difficulties. Mr Gardner submitted that whilst his instructing solicitors and the Home Office engaged in good practice in addressing the applicant's speech defect with care, the Kent Intake Unit along with the respondent did not. It is appropriate to note Mr Swirsky's reminder that the Kent Intake Unit is a Home Office unit primarily dealing with new arrivals detected either near Dover and Folkestone, in the surrounding Kent area and small boat arrivals, with a particular focus on processing unaccompanied children. Mr Gardner's submission seeks to differentiate the conduct of the Unit from the Home Office generally.

199. Listening to a person with a stammer requires patience and engagement with a different speaking cadence. A long-term consequence of stammering can be negativity as to whether one is understood by others, even if this is not the case, flowing from strong negative thoughts and feelings about historic reactions. However, Mr Gardner properly did not go as far as to submit that my starting point had to be that accurate interpretation was adversely impacted by the applicant's stammer unless shown to the contrary. I am to be mindful that the interpreters engaging with the applicant are professionals, with core skills including active listening to ascertain a speaker's exact meaning and translate it as exactly as possible, as

well as multitasking when using two languages simultaneously. These skills are not derailed by working with someone who has stammer. A professional interpreter would be expected to raise issues of concern, such as at the Child in Need visit where the interpreter required the applicant to constantly repeat himself. I consider that the issue at this interview is more likely to have been a lack of mutual understanding of Sudanese Arabic than the applicant's stammer. It is observed that the second interpreter was able to work well with the applicant.

200. I observe that the applicant and the Tribunal's interpreter worked well for several hours during the first day of the hearing.

201. There is no cogent evidence before this Tribunal that any of the interpreters engaged in the meetings and interviews had trouble in accurately interpreting consequent to the applicant's stammer. They are professionals and can properly be expected to raise any concern if difficulties arose in respect of their task. I find there is no basis to Mr Gardner's second concern.

202. Returning to the third age assessment interview. The applicant raised no concern as to the mutual ability of the interpreter and himself to understand each other. He accepts elements of the interpretation are accurate. He does not accept that the date of birth provided is accurate. However, the applicant is recorded as giving the same date of birth, 2 July 2005, as he gave via the Sudanese Arabic interpreter at the interview conducted twelve days previously. He complains that he did not say that he travelled to Radom on his own, met some people travelling to Libya in town, and set off in a group of two cars including a couple. I am satisfied that the version provided is sufficiently detailed that an interpreter cannot properly be said to have entirely misunderstood the applicant.

203. The applicant has presented several different dates of birth, as well as several versions of his personal history before he arrived in the United Kingdom. I am satisfied that his evidence as presented has been accurately recorded each time. His primary means of deflecting away from his inconsistencies is to assert that interpreters are not Sudanese, or not speaking Sudanese Arabic. That has been established as not being the case on several occasions. Additionally, he has developed a practice of raising these concerns late in the day, denying the interpreter the ability to address his concerns. I find that he makes such assertions without basis, simply as an inadequate means of addressing significant inconsistencies in his evidence. Whilst I accept that the applicant may well have negative and long-standing personal feelings as to how members of the public consider him consequent to his stammer, and may labour under the genuine impression that he cannot convey himself adequately when speaking, I do not find it to be the case in this matter that his stammer adversely impeded interpreters in their professional role.

204. Additionally, I do not accept that the applicant was “terrified” at the Home Office screening interview. For the reasons addressed below, the applicant has a long history of engagement with various European authorities in respect of asylum claims, or seeking to enter countries, and at no point has he expressed fear of officials in those countries. I observe his reason for ultimately travelling to the United Kingdom was because “the reputation of Britain is the best”. I am satisfied that the false assertion as to being terrified is an ineffectual effort to downplay his answers at his initial asylum interview where provides an entirely different story as to his fear of persecution to that he presented to the Home Office two years later.
205. Consequently, I do not find that the respondent downplayed and/or misinterpreted the applicant’s speech defect as submitted by Mr Gardner.
206. I turn to consider whether the applicant’s birth date is 3 July 2005.
207. Giving the applicant the benefit of the doubt, I do not consider that he ever genuinely advanced the following as being his birth dates: 29 January 1999, 1 January 2005, and 27 August 2005. In respect of the date given on arrival at port, I am satisfied that the applicant gave the year “2005” and consequently for the purpose of records the date “1 January 2005” was entered on the system. As to the social media accounts there was no evidence before me as to who set the account up. In any event, if it were the applicant, there is insufficient evidence before me that he can read either Arabic or English to such degree as to comprehend the instructions required to add his date of birth accurately.
208. The applicant’s case as to knowing his date of birth rests upon being informed by his mother whilst in Sudan, again being informed on his journey to the United Kingdom, and then informed whilst in this country. His evidence as to when he was first informed has varied significantly. He was informed by his mother in Sudan or, alternatively, he asked his mother when he was in Libya, and she informed him because “she was worried about me and gave me my date of birth in case I got lost. She said that this was my information if I am lost”.
209. On the applicant’s own case he did not have any knowledge of the calendar until after he left Sudan. Nor did he have a conceptual understanding of “days”, “weeks” and “years” until he was on his long journey to the United Kingdom. His parents, who were uneducated, had not taught him these concepts whilst he was living at home in Sudan. Nor had anyone in his village taught him. However, on his case, he understood the reference to having a birth date, and the date, when informed first by his mother when he was in Sudan. In the alternative, with no understanding of the concept he

asked his mother for his date of birth, and she informed him when he was in Libya. This information was accepted with no attendant request for an explanation as to why he was required to know his date of birth in case he became lost.

210. I find that the applicant is not truthful on this issue. I do not accept that he would have reached the age of thirteen and not been informed as to the calendar and its components if his mother had known them. If she had it would be expected that such knowledge would have been passed onto him before his teenage years. I do not accept that he would have been ignorant of these concepts if other villagers had knowledge. In a small village such information can properly be expected to be passed on. Though he contends that his mother was aware of his date of birth consequent to custom and talking to others in the village, I am satisfied that no-one in the village understood the concept of a calendar and was able some years later to inform his mother when the applicant was born. I do not accept that whenever his mother travelled to Radom to use a landline, or borrowed a relative's phone, and had the expense of contacting her son, she would on each occasion remind him of his date of birth in case he became lost.

211. I am satisfied that the applicant has grown up in a village environment in Darfur where there is no administrative record of his birth date. He has never possessed official documents. Birthdays are not celebrated. The calendar as used in the west is unknown. Seasons are identified as they relate to farming.

212. The applicant accepts that he has given inconsistent details as to his age when travelling to this country. I find that he is not honest in his assertion that he did not claim asylum in Malta. His travelling undocumented by sea and being placed in a migrant camp, and not removed, establishes that he was being treated as an asylum seeker. As an undocumented foreign national, I find that the applicant was processed as an asylum seeker in Italy following his arrival and his case assigned to the Immigration Office of the Police ('Questura') as is the norm for all those crossing the Mediterranean seeking protection, many of whom are saved from the sea. I do not accept that he is honest as to having never been fingerprinted by the Italian and French authorities, despite having been denied entry to France on occasion and returned to Italy. I do not accept as truthful his assertion that he travelled from Italy to France without paying for a ticket. I am satisfied that the applicant possessed sufficient understanding that the United Kingdom authorities may contact the Maltese, Italian and French authorities about him, that he voluntarily raised that he had identified as being older to authorities on his journey to allow him to pass on. I find this was a means of deflecting any adverse information provided by Third Country States recording him as an adult.

213. Such core understanding of differing internal systems in various countries will have been imparted by those he met on his journey. I am satisfied that he will have been made aware that claiming to be a minor when arriving in the United Kingdom would prevent removal back to France and may well aid him avoid being placed in a detention centre.
214. I am satisfied that the applicant has never known his date of birth. However, he has been content to assert a date to garner beneficial treatment in this country. That he has been unable to be consistent as to the date over time is suggestive that he has struggled to remember the version(s) he previously gave.
215. The applicant is incapable of providing cogent personal testimony establishing his date of birth because he does not know it. I must declare his date of birth, so I proceed to consider the remaining evidence in the round, on the balance of probability.
216. In this matter, I give some weight to evidence from the witnesses, who have interacted with the applicant on a professional level. The weight to be given to Mr Baah is more limited because he did not attend the hearing, but I do not accept Mr Swirsky's submission that it should enjoy no weight. However, the evidence of Ms Kagoro, Ms Patch and Mr Baah is not determinative as to the applicant's age, though I can properly place it in the balancing exercise when assessing the applicant's evidence.
217. I observe that in this matter none of the witnesses have spent significant time with the applicant, but I accept that their evidence is honestly given, and I am grateful for Ms Kagoro and Ms Patch attending the hearing.
218. However, it is proper to note that Ms Kagoro and Ms Patch were not made aware of the applicant's personal history. There is no reason they should have been. Consequently, their observations are based upon an initial assumption that the applicant was a minor, and upon viewing his interaction over a few weeks with others who were minors. Both Ms Kagoro and Ms Patch identified difficulties in talking to the applicant because of his lack of English language skills, and I consider that their interaction with the applicant was, at its core, superficial. I am also mindful that the professional witnesses are not aware as to the applicant's proclivity to be untruthful.
219. I have found the applicant to be untruthful as to his asserted date of birth. I found him to be an unimpressive witness. The significant inconsistencies as to his personal history are strongly suggestive of someone not being truthful, and not being capable of adequately recalling previous untruthful versions of a stated history.

220. I do not accept that there was an attack on the family home from which he fled either on his own or with his mother and sister, and from which he started a journey of approximately 5,000 kilometres via five or six countries, the Mediterranean and the Channel, with no money, no clothes and no intention to leave Africa. That he happened to either meet four men driving to Radom, or several people in Radom, on that very day who were intending to travel to Libya and then onto Europe lacks credibility.
221. Further, I do not accept that from July 2018 to June 2021, or alternatively from July 2020 to June 2021, the applicant undertook a hazardous journey across deserts and seas, without either securing employment en route or enjoying family support and therefore being entirely financially and emotionally dependent upon the charity of strangers.
222. I consider the assertion that traffickers would have permitted him to cross the Channel for free because he had no money to lack credibility. Human traffickers and smugglers engaging in the enterprise of channel crossings are criminals seeking high reward for their actions. Nor do I accept the same as having occurred crossing the Mediterranean. I do not accept that the applicant travelled by train in France without being required to buy a ticket. The applicant is reduced to making these fanciful assertions to accord with his fleeing the family home in a rural part of Africa with no money, no clothes and no family support.
223. I find that the applicant engaged traffickers throughout much of his journey when seeking to leave and enter countries. I observe, and recalled to the representatives during Mr Gardner's submission, the applicant stating that his mother was given his phone number in Libya by a 'facilitator'. I am satisfied he inadvertently referred to a trafficker aiding people move through Africa and onto Europe. Telephones are not only a means of enabling communication between family members on these journeys, but also favoured by traffickers to ensure that clients can make additional requests for money from family members when required.
224. Additionally, I find that the applicant inadvertently gave away that his mother was contacting him by using a relative's phone, rather than undertaking a journey to Radom to use a landline, and he refused to provide the phone number because it would lead the respondent to his family members.
225. I have considered the totality of applicant's evidence with care. Upon careful consideration, and being mindful of the appropriate standard of proof, I find him not to be a truthful witness save for his being a national of Sudan, a former resident of Darfur and ethnically Kresh. As the Secretary of State for the Home Department has given no

basis for his grant of refugee status, I am satisfied that these three facts do not undermine the applicant's status as a refugee.

226. I do not accept that he fled his home in July 2018. On his own account, the only source of this knowledge is information provided by his mother, and I have found that she does not understand the concepts of calendar and dates. I am satisfied that some information he gave soon after his arrival in 2021, to the Kent Intake Unit and at his Home Office screening interview, is closer to the true events than subsequent versions of his asserted history, though underpinned by his false assertion as to his age.

227. I find that the applicant was an adult when he left his home in Darfur in July 2020 and commenced on a pre-arranged journey to travel to Europe. He travelled with adults and stayed in accommodation with adults. He was an adult when he left Sudan in July 2020, and worked in Libya on a farm, before travelling to Malta where he had sufficient sums of money to secure the aid of traffickers to travel to and then around mainland Europe.

228. The applicant's inconsistency is founded upon his inability to recall previous versions of his stated history, particularly when there is a gap of several months between being asked. Such failing is founded upon him not being truthful.

229. Having found that the applicant has never known his true date of birth, I conclude that the respondent's assessment as to age is sufficient and reasonable.

230. I find that the applicant was born on 2 July 2002.

Summary of the Decision

231. It is declared that the applicant's date of birth is **2 July 2002**.

232. Consequent to the declaration, I find as fact:

- i. The applicant was **aged 18** when he entered the United Kingdom on 24 June 2021.
- ii. The applicant was **aged 20** on 13 July 2022, the date the respondent served the age assessment decision upon him.
- iii. The applicant was **aged 21** at the fact-finding hearing of his application for judicial review before the Upper Tribunal.

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