

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

**THE KING ON THE APPLICATION OF**

**NCH**  
**(Anonymity direction made)**

**APPLICANT**

**AND**

**SEFTON METROPOLITAN BOROUGH COUNCIL**  
**RESPONDENT**

**ORDER**

FOLLOWING a hearing before Upper Tribunal Judge Hanson at Phoenix House, Rushton Avenue, Thornbury, Bradford on 14-15 May 2024

AND UPON HEARING Mr Bimmler, as counsel for the Applicant, and Ms Freeman, as counsel for the Respondent.

IT IS ORDERED:

1. The Applicant's claim for judicial review is dismissed;
2. It is declared that the Applicant was born on 1 May 1999;
3. The Applicant is to pay the Respondent's costs, to be subject to detailed assessment if not agreed. Such costs are not to be enforced without the permission of the Upper Tribunal and an assessment of the Applicant's means pursuant to the Legal Aid, Sentencing and Punishment of Offenders Act 2012; and
4. There be a detailed assessment of the Applicant's publicly funded costs.

BY THE TRIBUNAL



Case No: JR-2023-LON-001885

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

Field House,  
Breams Buildings  
London, EC4A 1WR

19 June 2024

**Before:**

**UPPER TRIBUNAL JUDGE HANSON**

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**Between:**

**THE KING**  
**on the application of**  
**NCH**

**Applicant**

**- and -**

**SEFTON METROPOLITAN BOROUGH COUNCIL**

**Respondent**

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**Michael Bimmler**

(instructed by Bhatia Best Solicitors), for the applicant

**Emma Freeman**

(instructed by Sefton MBC) for the respondent

Hearing date: 14-16 May 2024 at Phoenix House, Rushton Avenue, Thornbury,  
Bradford.

**The Applicant NCH is granted anonymity. No-one shall publish or reveal any information, including the name or address of NCH likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.**

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**J U D G M E N T**

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**Judge Hanson:**

IT IS ORDERED:

- (1) The Applicants claim for judicial review is dismissed;
- (2) It is declared that the Applicant was born on 1 May 1999;
- (3) The Applicant is to pay the Respondent's costs, to be subject to detailed assessment if not agreed. Such cost are not to be enforced without the permission of the Upper Tribunal and an assessment of the Applicant's means pursuant to the Legal Aid, Sentencing and Punishment of Offenders Act 2012; and
- (4) There shall be a detailed assessment of the Applicant's publicly funded costs

## The Judgment

### Background

1. The statement of agreed facts reads:
  - a. The Applicant is a male from Vietnam who claimed to have been 15 when he arrived in the UK in March 2021, with a claimed date of birth of 1 May 2005.
  - b. On 15 July 2021 the Applicant was referred to the National Referral Mechanism (NRM) by the West Midlands Police.
  - c. The Applicant received a Positive Conclusive Grounds decision as a victim of trafficking and modern slavery on 3 February 2022.
  - d. The Applicant is recorded by the Home Office as claiming asylum on 15 August 2023.
  - e. The Applicant did not provide and has not provided the Home Office or Respondent with any identification document to confirm his nationality or date or place of birth.
  - f. The Respondent conducted a Brief Enquiry (As to Age) on 28 September 2021 and concluded that the Applicant was significantly over the age of 18.
  - g. On 29 September 2021, the Applicant appeared at Liverpool Magistrates Court where Judge Clarke held that the Respondent was to accommodate the Applicant in Liverpool pending determination of his age.
  - h. The Respondent carried out an assessment of the Applicant's age over the course of four interviews on 25 November 2021, 2 December 2021, 9 December 2021, and 16 December 2021 and one Minded-to-Meeting on 17 February 2022. The assessors were Danielle Holcroft and Julie Atkinson. There were two different interpreters over the course of the four interviews who spoke Vietnamese.
  - i. The Respondent concluded that the Applicant was 18 years or older and did not determine a date of birth. The Minded-to Meeting on 17 February 2022 was conducted by Julia Atkinson as Danielle Holcroft was unable to attend. Ella Hoxey, social worker, and Amelia Henderson, Alternative Approaches Manager, were present at the Minded-to-Meeting.
  - j. The Respondent's assessment of the Applicant's age was provided to the Applicant's support worker at Barnardo's on 3 March 2022.

- k. The Applicant's support and accommodation from the Respondent was withdrawn and in April 2023 the Applicant moved to accommodation provided by Ashiana, a charitable organisation.
- l. A Letter before Action was sent to the Respondent on 20 May 2022, the Respondent responded on 27 May 2022, and proceedings for Judicial Review were issued on 28 June 2022.
- m. Permission to bring Judicial Review was refused by HHJ Pearce on 5 January 2023.
- n. Following oral reconsideration, permission for Judicial Review was granted by Karen Ridge, sitting as a Deputy High Court Judge on 2 August 2023 and the matter transferred to the Upper Tribunal (Immigration and Asylum Chamber).
- o. The Upper Tribunal gave preliminary directions on 4 October 2023, including for a Case Management Review Hearing on 16 January 2024.
- p. The Applicant's asylum claim with the Home Office remains outstanding.

### The legal landscape

2. I remind myself that whether a person is a child for the purposes of section 20 of the Childrens Act 1989 is a question of fact based upon an assessment of the evidence as a whole.
3. I also remind myself that it is necessary to determine issues by application of the balance of probabilities test without resorting to the concept of discharging of the burden of proof, meaning I am required to decide whether, on the balance of probability, NCH was or was not at the material time a child.
4. The starting point has to be the credibility of the evidence placed before the Tribunal.

### The evidence

#### The Applicant's evidence.

5. The Applicant relies upon his witness statement dated as having been translated from English into Vietnamese on 30 November 2023, which he confirmed at the outset of his oral evidence was true.
6. The Applicant states his date of birth is 1 May 2005 which he is certain about as he claims he recalls when in school writing his date of birth at the top of his exercise books. He claims he also sat exams and tests at school where he had to write down his date of birth on many occasions.
7. The Applicant states that one month before he left Vietnam he obtained a passport by travelling to the passport office with a friend. The Applicant states he needed to present his ID card and Household Registration documents and that on both documents was his date of birth. The Applicant claims his passport was handed to the agent who organised his flight to Russia.
8. The Applicant claims he celebrated his birthday when growing up, but the only one he is able to recall was when he was 13 as his friends were there to celebrate and he had candles with food.
9. The Applicant states he arrived in the UK in March 2021, that he is a victim of human trafficking and modern slavery and, as such, entered into the National Referral Mechanism on 3 February 2022 and received a Positive Conclusive Grounds decision.

10. The Applicant applied for asylum on 15 August 2023 but at the date of his statement had not yet had a substantive interview.
11. The Applicant states he was born in a small village in a named district within the Nghe An Province of Vietnam.
12. The Applicant speaks of his parents and one older sister born in the year 2000. Despite the Applicant providing what he states is his and his mother's and father's dates of birth, he claims not to know his sister's.
13. The Applicant refers to other family members that he knew growing up, namely a paternal aunt and maternal uncle who had their own partners and children who lived in the same village in separate houses.
14. The Applicant states he started school when he was 5 years of age at the local primary school. He states he finished secondary school in Year 9 in 2018.
15. At [19] of his witness statement the Applicant claims his mother passed away in 2017 when he was 12 years of age due to heart disease, and his father when he was 14 years of age, from cancer. The Applicant claims to know he was at that age because he was in Year 8 when his mother died and he had already left school when his father died. The Applicant claims in this paragraph that the academic years in Vietnam run from September to May and that he remembered he stopped studying at the end of Year 9 which was in May 2018.
16. The Applicant claims that after both his parents died he went to live with his sister and her family at her house in a different province. The sister had married his brother-in-law when she was aged 18 and left home when she married.
17. The Applicant claims that in 2019 he started a year-long apprenticeship which he finished in 2020. It was unpaid and in TV, Phone and Computer Repair. The Appellant claims the costs the apprenticeship were covered by his brother-in-law and that he was based in Ha Noi City.
18. The Applicant states his sister and brother-in-law wanted him to get a better job and so they paid £13,000 to an agent for him to leave Vietnam. The Applicant states they wanted him to have a stable income and job which they said would be in the UK. His sister had to take out a bank loan to raise the money using their house as security.
19. On 17 June 2020 the Applicant left Vietnam by arrangement. He states he left his sister's house accompanied by his brother-in-law and took a bus to the airport in Hanoi city. The Applicant states his brother-in-law left him with a man who was waiting for him at the airport, to whom he handed over his passport and travel documents in order to enable him to board the flight. The Applicant claims he had never seen this man before.
20. At [25] the Applicant states he travelled in a group with five other people who he understood had all had their journeys arranged through the same source. He states there were four males, including himself, and two females. The Applicant states he does not remember the names of any of the other people and that some seemed around his age, others a lot older, but he states he did not know the ages of the Vietnamese people whom he travelled with.
21. The Applicant stated he was told at the airport they will be flying to Russia where they will be met. They landed in Russia the following morning where they were met by a Vietnamese man at the arrival gate who held up a list of names. The man took all six back to a small warehouse [27].
22. The Applicant states on arrival at the warehouse they were told they were going to stay temporarily before being moved to another country. They

- stayed there for one month after which they were told they will be moved to Poland. The Applicant claims he could not remember the exact date they travelled to Poland, but believes it was towards the end of July 2020. The Applicant stated that the journey took about three days travelling by car but also by foot when they reached the forest, and that he travelled with the same five people with whom he had flown from Vietnam. The Applicant claims when they crossed the border into Poland by foot through the forest they did not encounter any authorities [29].
23. On arrival in Poland the Applicant stated they were collected by a man who was not Vietnamese who took them to a flat, where they remained for one month before travelling to Belgium. The Applicant assesses the period of time, from arrived in Russia to leaving Poland to be approximately three months [32].
  24. The Applicant states they left Poland in a small van with blacked out windows. He claims it took about half a day to reach Belgium. They did not encounter any difficulties with the authorities in crossing the border into Belgium [33].
  25. In Belgium they were dropped off at a flat which, again, they were not permitted to leave. The Applicant states they stayed in Belgium for three months, a fact he claims he was aware of as he was able to check the date on the phone belonging to the man who brought them to Belgium. The Applicant states that whilst in Belgium they were told their next destination would be France and that they would remain in the flat until it was time to travel to France at the end of 2020 [34].
  26. The Applicant states the same man who drove them from Poland to Belgium drove them to France, a journey that took approximately five hours. The Applicant claims he was aware of this as, again, when the organiser's telephone rang he was able to see what time it was. He states they were taken to a flat where they stayed for approximately three months, which the Applicant states again he was able to know by reference to being able to see the phone of the agent who had brought them to France, and that they remained in France for approximately three months.
  27. The Applicant states that they left France at approximately 6 PM and reached the UK by a journey that took about one day, travelling in a lorry. The Applicant states he travelled with the five others who travelled with him from Vietnam. The Applicant states the UK authority searched the lorry but were not able to find them as they hid.
  28. The Applicant states they were met by another person when they arrived in the UK which he claims was in March 2021 as he again states he saw this on the phone of the man who met them on arrival. The Applicant states they were then driven for a few hours and taken to a warehouse.
  29. The Applicant states at [38] that before arriving at the warehouse they had been told they were going to the UK to work for a company, but when they arrived it was different to what they were expecting. The Applicant claims there were weapons physically placed around the warehouse, which made him feel unsafe, in addition to the behaviour of two other individuals. The Applicant claims that after being at the warehouse for about two weeks they escaped.
  30. The Applicant claims when they escaped, he did not have anywhere to go but left hoping to come across someone who would help them and so wandered the streets looking for help. The Applicant states this occurred for about three months. One day a group of people took him into a car and dropped him off at a house in Coventry where he stayed until the police

- came to arrest him. The Applicant claims he was not aware what he was being arrested for [39].
31. After being released the Applicant claims somebody came to collect him from the police station and took him to another house in Coventry. He claims these were different people from the people who took him from the street, but he claims he felt unsafe in that house, although he was allowed to leave and that when he did he went out to a park hoping to find someone who was Vietnamese. He claims this did not happen until one day a group of men took him by force, placed him into their car, and drove him to Liverpool [40].
  32. The Applicant states he was taken to a house in Liverpool but the Police came and raided the house and arrested him. The Applicant states for the second time he was unsure as to why he had been arrested. He remained at the police station for about one day after which he was released and taken to a foster placement in Liverpool [41].
  33. The Applicant was placed in foster care where he remained between September 2021 and April 2023. He claims he was looked after by a woman named Amelia. There were five staff members in total looking after them. The Applicant claims there were four children in total. The Applicant states he spent his free time watching films and TV programmes each day as well as going downstairs for online English lessons. The Applicant states he felt safe in the foster house and he enjoyed his time in the foster placement [43].
  34. The Applicant states during his foster placement he was able to go to college where he studied for one year in maths and English. This was at the City of Liverpool College. The Applicant states at college he interacted with a lot of children of his own age especially as he had spent a lot of his time since 2020 with only five Vietnamese people who were not all his age. The other children at the City of Liverpool College were aged 16 to 18. The Applicant states he made friends at college but could only remember the name of one female Vietnamese national.
  35. In April 2023 the Applicant was moved to accommodation in Bradford [45] but since the signing of the statement had been moved to other accommodation in Sheffield and now in Chester-le-Street where he resides in Home Office accommodation.
  36. In relation to age assessment, the Applicant states that whilst he was accommodated in the foster placement he had a meeting in relation to his age. He does not appear to challenge the information provided that the first session of the assessment took place on 25 November 2021 [46].
  37. At [47] the Applicant states his support worker, whose name he cannot remember in the statement, his care worker Amelia, and two other assessors were there. He states his assessment took place over four sessions with the assistance of the Vietnamese interpreter in the room with him. The Applicant states that he and the interpreter understood each other with no issues arising in relation to the interpretation. He specifically refers to the fact that although they had different accents that did not prevent proper understanding.
  38. The Applicant acknowledges he was told the purpose of the meeting was to assess his age and that the sessions were roughly 3 hours each and that there were four sessions in total, with necessary breaks being given.
  39. At [49] the Applicant refers to the assessment recording that he spent 30 days in Russia and five days in Poland whereas he claims that the period from arriving in Russia until departing Poland was three months. He states

- he was not sure why it was recorded otherwise in the assessment and states *"perhaps this was my error due to nerves on the day as I remember feeling tense"*.
40. At [50] the Applicant refers to it being recorded in the age assessment that he left the family home at 13 years of age to live with his sister whereas he states he left the family home at 14 years of age after both his parents died, and that before that he had only visited his sister, and did not live with her until he was 14.
  41. The Applicant also takes issue with the reference to the Vietnamese education system at [51] of the statement. He refers to the fact that it was suggested in the age assessment that the Vietnamese education system runs from September to May and that, when students complete Year 9 they will be 14 years old. The Applicant claims that when he completed Year 9 he was 13 years old, as he had started Year 1 at 5 years old rather than 6. He claims that whilst typically children begin school age 6 his parents arranged for him to begin earlier. He states he was not the only child in this situation.
  42. At [52] the Applicant also refers to inconsistencies stated to have arisen regarding his apprenticeship in the age assessment. The Applicant states he was 13 years of age when he started the apprenticeship, that it was a one-year apprenticeship, meaning he finished when he was 14 years of age. The Applicant states he started his apprenticeship in 2019, finished in 2020, but could not recall in which month this was.
  43. At [53] the Applicant also states the suggestion in the age assessment that he was strategically watching cartoon programmes during his placement is wrong, as he watched whatever programmes he felt like watching and never paid any attention to who was around. He states he watched cartoon programmes to learn English as they were easier to understand, but that he would also watch the Vietnamese programmes as they were in Vietnamese.
  44. At [54] the Applicant writes *"At the end of the four sessions of my assessment, I was told that I am over 18 years old. I was given an opportunity to respond to their decision. I asked them to go through the answers I had given throughout the assessment, and I asked them to research Vietnam and to examine my teeth"*.
  45. The Applicant at paragraph [55] also refers to records disclosed by the local authority and a reference in the Brief Enquiry (As to Age) in which it is recorded his mother died when he was 10. The Applicant states he does not know why it is recorded as such as he is certain she died when he was 12 as he was in Year 8 when she died.
  46. The Applicant confirmed the content of the statement was true during the course of his oral evidence.
  47. I have also seen witness statements from his solicitors relating to procedural issues, including from Tapiwa Kachika, a paralegal employed by Bhatia Best dated 31 October 2023, in relation to the Applicant's social media in accordance with case management directions issued by the Upper Tribunal. The author of the statement records the Applicant stating that the only social media accounts he has are TikTok and WhatsApp. Attempts to login to the Applicant's TikTok account were unsuccessful, it being indicated *"the account is suspended"*. Ms Kachika also confirmed a proportionate search of the Applicant's WhatsApp account was undertaken on 30 October 2023 with no indication of what, if anything, resulted.
  48. There is also a statement from Iryna Bogdanova-Spittle, a teacher of English for Speakers of Other Languages, dated 7 February 2024. This witness also attended the age assessment hearing and was cross examined.



49. Ms Bogdanova-Spittle sets out details of her background and experience between [3 - 13] of the witness statement. In relation to her experiences with the Applicant, it is recorded that he was enrolled for City and Guilds Entry One ESOL qualification within the academic year 2022/23. Ms Bogdanova-Spittle taught the Applicant's group twice a week for two lessons of three hours duration each, overall six hours a week, on Mondays and Tuesdays between 9:30 to 12:30 PM. She states that, overall, she taught the Applicant six hours each week for four months.
50. The Applicant first attended college on 14 November 2022 until 13 March 2023. It is stated ESOL groups are of an average size of around 20 - 22 young people which was the size of the Applicant's group.
51. The Applicant is described as a good student, although not very talkative, who would often keep to himself which Ms Bogdanova-Spittle stated appeared to be more because of his personality than for any other reasons. She notes there were two other Vietnamese people in the class, one male and one female, and she did not notice any difference between him and the other Vietnamese students who were similarly reserved in their demeanour. She describes the Applicant's personality as being similar to the other two Vietnamese students in his group and previous Vietnamese students she has taught, but that his quiet demeanour said nothing about his immaturity or maturity as it was just his personality [19].
52. At [21] it is recorded that the ESOL lessons consist of individual work, pair work and group work in order to reflect the different skills required across the qualification.
53. Between [22] - [26] is a section of the statement headed "Opinion regarding [NCH's] age". The section includes comments such as the Applicant showing the same level of need as his peers which was different to the level seen in adult groups which is not as a result of linguistic abilities, but which are the differences between adult and child social interactions [22], that the Applicant in their discussions about life back home never raised anything that was suspicious about his age, with his upbringing sounding like one of a child and similar to his peers, and that the Applicant's answers never stood out in any way to suggest that he had a much more mature life back in Vietnam than his peers [23], at no point were safeguarding concerns raised in relation to the Applicant [24], that Ms Bogdanova-Spittle states she was only aware last week that the Applicant's age was disputed (the statement is dated 7 February 2024 meaning this must be a reference to that time) which explained the Applicant's sudden move away from the college in March 2023. She states there was no reason for her to believe the Applicant was not a child because there was nothing that pointed to this and she had no reason to question him [25], she had only come across one or two age disputed students a year, if any, and had been teaching asylum seekers since 2019 and that was the first statement she had made in support of somebody's age, which she would not do unless she believed the Applicant's claimed age and that he was a child when she taught him [26].
54. I have also seen, inter alia, a copy of the GCID -Case Record Sheet dated 23 October 2023 in relation to the NRM referral containing confirmation of the positive Reasonable Grounds decision dated 20 July 2021 and Conclusive Grounds decision dated February 2022 that the Applicant is a victim of modern slavery.

The Respondent's evidence.

55. On behalf of the Respondent, I have seen a witness statement from Amelia Rose Henderson-Smith dated 28 November 2023, who states that at the date she was providing support to the Applicant she was employed as a service manager by Alternative Approach. This witness also gave oral evidence and was cross examined by Mr Bimmler.
56. Miss Henderson-Smith states she was first introduced to the Applicant when he arrived at the placement in or about October 2021 when he was placed on 24 hour support which was normal for all young people that arrive claiming asylum, although that was quickly dropped as a result of the Applicant being quite independent. Miss Henderson-Smith stated she provided support for approximately 15 hours a week.
57. The support included accessing educational courses and shopping at supermarkets, together with the Applicant learning independent life skills such as cooking and cleaning, gaining knowledge of the local area such as locations for places for worship or local grounds, and assisting the Applicant in his asylum claim [5].
58. It is also stated that on a one-to-one basis Miss Henderson-Smith did a lot of work directly with the Applicant around his trafficking, supported him whilst he spoke to his solicitors regarding his criminal cases and/or attending professional meetings, provided pastoral support with private chats, or assisted him with English, until the placement was terminated in March 2023.
59. In relation to the Applicant's personality, he first presented as just confused and upset, cried a lot, and although despite being told he might abscond from the placement, he did not. He would get frustrated mainly about his education and the age assessment that prevented him attending a mainstream school. It is written that the Applicant often lacked understanding and that the criminal court proceedings at the time did not help with that [7].
60. It is also written within the statement:
  8. As NMH settled into placement, I observed that he had a very sweet and caring nature. He had a good sense of humour, and he would often laugh at himself when he tried to speak English. However, I felt at times he would try and present younger than he was and he would do this on purpose. For example, he would often watch a cartoon called Tom and Jerry, drink fruit shoots and would react like a teenager if I told him no, at times this would be with blind anger and would threaten to hurt himself, which is behaviour I have observed young people do during my role as service manager. I often felt this may be due to the traffic process telling victims to act younger than they are.
  9. However, I have observed behaviours that would suggest to me that NMH is older than he was trying to suggest, for example he did not seek out support often, he could live independently by cooking dishes from his culture that appeared difficult, also, he could clean to a good standard. He would also often ask questions and if we didn't like the answer ask another staff member.
  10. I have also observed some behaviours which lead me to think that NMH was attempting to deceive professionals about how old he was. For example, he would often sit in the back room before professional meetings and switch between news channels and cartoons to hide his age, he would also make sure he was clean shaven before meetings to appear younger.

11. As for NMH's appearance, I would say that he did look older than 18. I would describe NMH as having aged skin, a balding and receding hairline with an aged face. I would also say that his hands didn't look like a young person's hands, they appeared to be aged as if he had done manual work.
12. When NMH was informed by social care that his age assessment outcome was over 18, he was quite upset. I recall him asking for me to call the school in his village or his sister and that they will confirm his age. However, it was determined as inappropriate to do that due to the trafficking concerns. Later that evening, the crisis team were called due to NMH's mental state.
61. Miss Henderson-Smith, at [13], states she is unable to provide an expert determination of the exact age for the Applicant but hopes her statement is of some assistance.
62. The reference in statements to NMH was accepted as being a reference to the Applicant who is otherwise referred to as NCH.
63. There is also a witness statement from Ella Hoxey, who is employed by the Respondent as a Team Manager of the Cared for Children Team, who is a qualified social worker, dated 28 November 2023, who also gave oral evidence.
64. Ms Hoxey states she has been employed as a social worker at Sefton Council since 2016 and became the Applicant's allocated social worker on 21 December 2021. At that time the age assessment was being undertaken by two independent social workers. Ms Hoxey undertook an initial home visit on 22 December 2021 and recorded two initial impressions of the Applicant as being "... he presented as clean-shaven and I noted that he was not standing to his full height, however, stooping. He was dropping his shoulders, bending his neck down and had a slight bend of the knees. I believe NCH in this matter to appear smaller than his actual height to impress me that he was under 18 years old."
65. It is recorded that the social care records prior to Ms Hoxey's involvement show the Applicant first became known to Sefton Council following a referral from Coventry Children's Social Care which reported the Applicant was arrested on 13 July 2021 at a cannabis farm. He was accommodated by their out of hours service and became a Looked After Child for their Local Authority in the early hours of 14 July 2021. However, the Applicant left the foster care placement on 14 July 2021 taking his clothes and had not been seen since by professionals in the Coventry area since that date [6].
66. It is recorded the Applicant was arrested on 24 September 2021 in the Sefton area in a cannabis farm. Sefton Children's Social Care were contacted and a request for appropriate accommodation was sought due to the Applicant stating that he was under 18 years of age. Placement with Alternative Approach was identified although the Merseyside Police advised that accommodation was not suitable as the Applicant had previously absconded from the Coventry foster care placement. It is also recorded that the Police Officer suggested the Applicant was older than 16 years and suggested he was in his early 20s. At [7] it is recorded: "*Further update from the Youth Justice Service on 29 September 2021, noted that the assessing social worker Tony Smith for the brief enquiry noted inconsistency in NHC account relating to his family and travel. In addition, he had poor memory of his school and any acquaintances from that time or any friendships when he resided in Vietnam. Mr Smith also noted that NHC's voice became deeper at times and observed NHC tried to cover his facial hair with his hand and hiding his height by bending his knees.*"

*Information was noted by the Youth Justice Service that the Criminal court heard that Coventry Children's Social Care that they had determined NHC has over 18 years, however, an age assessment could not be determined before he absconded from his foster placement. The court also heard that Merseyside Police believed him to be over 18 years old based on visual observation".*

67. At [8] it is recorded that on 14 October 2021 the previous allocated social worker was informed by the placement staff that there were concerns that NHC was an adult and that he was placed with young people and requested 1:1 staffing to be funded to safeguard NHC and others within the placement. (The reference to "NHC" was a consistent error in Ms Hoxey's statement although it was understood to be a reference to the Applicant, NCH)
68. At [9] is reference to the Applicant having various meetings with the independent social workers as part of the age assessment process. It is recorded that during the course of the assessment NHC informed the assessors that when he was arrested in Coventry he underwent a dental check and was confident this confirmed he was under the age of 18. The age assessment was delayed so dental and health records could be obtained from Coventry police. West Midlands Police were contacted around 1 February 2022 who confirmed that while NHC was seen by a health professional in custody and a mouth swab taken for DNA no dental checks to confirm his age were undertaken by Coventry Police. The independent social workers continued their age assessment on that basis.
69. On 2 February 2022, NHC was allocated an Independent Child Trafficking Guardian with Barnardo's National Counter Trafficking Service [11].
70. At [12] of the statement it is written:
  12. On 17 February 2022, the applicant was informed of the conclusion of the age assessment by Julia Atkinson. During this interview, the applicant was provided the option to respond to the reasons for the assessors concluding he was over the age of 18 years. NHC strongly denied the conclusion of his age and began visually distressed. He began pacing around the room, holding his hands over his face, making distressed tearful sounds, however, when his face was visible NHC was not crying. NHC remained in his manner for approximately 15 - 20 mins. Once in a calmer manner, Julie Atkinson attempted to discuss the points that led her to believe he was over 18 years old. NHC repeatedly commented that everyone believed him to be 16 years old and why did Julie Atkinson not believe him and that Julie Atkinson was wrong. NHC was in an agitated state and refused to provide any further information. Repeatedly stating that Julie Atkinson was wrong and that all other professionals believed he was under 18 years old. NHC presented in a deeper voice and held himself at his full height. His demeanour was aggressive towards Julie Atkinson and due to his refusal to respond further to the questions asked the interview was ended at this point. A full written report of the Age Assessment received on 1 March 2022, however, did not provide a date of birth, and requests was made to the independent social workers to provide this. On 8 March 2022, Independent Social workers confirmed assessed date of birth as 01.01.2002.
71. As a result of the assessment Ms Hoxey sought advice from Migrant Help in February 2022 although the Applicant withdrew his consent for her to speak on his behalf. On 22 March 2022 placement staff confirmed the Applicant contacted them directly.

72. At [14] it is noted that at further home visits undertaken on 14 June 2022 and 20 October 2022 the Applicant was observed to no longer be stooping, his behaviour was more challenging to professionals, it was noted that his hair was thinning on top of his head and he has grey hairs, the placement staff noted the Applicant will shave before prearranged visits, and he has highly independent self-care cooking and navigating skills enabling him to attend college and visit friends.
73. At [15] is a reference to the Applicant attending the Criminal Court hearings at which it was reported the Applicant was agitated towards the judge and his solicitor and had commented that the judge had made reference to his clearly not being under the age of 18 at the final hearing.
74. At [16] Ms Hoxey writes:
16. Based on my interactions with the applicant from 22 December 2021 to 15 March 2023, it is my professional opinion that the applicant is aged approximately 25 - 27 years old. This conclusion has been reached through my observations in the changes of NHC's demeanour initially speaking in soft tones to deep tones when agitated or challenging others. NHC attempting to present as smaller and younger, through stooping/bending his knees and ensuring that he is clean shaven on prearranged visits. I believe this was done so to disguise his physical appearance which as stated by previous professionals demonstrated that he was over the year of 18. NHC behaviours has been observed as irate when challenged by others. Age Assessment training also advises that when determining an individual's age consideration of approximately 5 years should be taken into account and therefore, given the age assessment conclusion that NHC is 20 years old at the time of the assessment. I am of the believe that NHC is at the older range of the assessment.
75. The age assessment report completed by Julia Atkinson and Danielle Holcroft, described as Independent Social Workers with Advanced Child Care Assessment Ltd, is dated 23 February 2022. That shows the statement to be read to an unaccompanied asylum-seeking child was read and questions answered, and the Applicant's consent verbally provided for the assessment being undertaken. The purpose of the assessment together with the roles of individuals was clearly explained, and in Sections 1, 2, 3, 4, and 5 is a record of the questions asked of the Applicant and his response.
76. Reference is made to other professionals who were consulted for the purposes of the age assessment and reference to some of the issues recorded in the witness statements set out above. In the section headed 'Conclusion of Age' it is written:

The decision was shared with NCH during the Minded Interview which took place on 17/02/22.

Julie Atkinson informed NCH of the decision. Due to unforeseen circumstances, it was not possible for Danielle Holcroft to attend the Minded Interview. Ms Holcroft sent her apologies via Ms Atkinson.

Ella Hoxey allocated Social Worker fulfilled the role of Appropriate Adult. Amelia Henderson Alternative Approaches Manager was present to provide support.

Ms Atkinson explained to NCH that the decision would be shared, and a break would be taken to allow him to think about his responses.

Prior to the decision being shared NCH said *"I would like to tell you I have been living here for 6 months the way I behave and treat people everybody has a view about it already"*. NCH informed that all seven people residing at Alternative Approaches know him and he advised Ms Atkinson to ask the staff. He stated, *"I really like to live here, and I will try my best to stay here and live here since I have arrived in this Country."*

NCH became extremely distressed when informed that he is assessed as age 18 years or older. Ms Hoxey and Ms Henderson supported NCH until he felt able to share his views.

When able to speak NCH said he had attended 4 Court Hearings and everybody at those Hearings as well as everybody at Alternative Approaches believe he is under age 18 years. NCH asked why Ms Atkinson is the only person who believes he is an adult. Ms Atkinson explained that the age assessment was completed jointly with Ms Holcroft and they both believe he is an adult.

NCH reiterated his views as detailed above adding *"I've been living in here for 6 months that's half the year so if I could be an adult I shouldn't stay here I should get out at the beginning when I arrived in the UK everything happened to me I already told everybody what the plan was I didn't know that you can take me to the house.... If you want to find out take me and asked the landlord if they know me or not"*. NCH asked why he had not been taken to the cannabis house as part of the Age Assessment.

NCH asked why information from Vietnam had not been obtained. Mr Atkinson reminded NCH of the assessment session during which Ms Holcroft explained that this information was not sought because doing so may pose a potential risk particularly to his sister.

NCH said he has had blood and teeth tests completed adding *"why did you give me a disappointing decision."* Ms Atkinson reminded NCH that he claimed to have had a dental x-ray which concluded he is age 16 years, but no proof of this x-ray has been found. NCH said he does not agree with the decision.

NCH referred to Ms Atkinson stating he had told her at the first interview and before that he told everybody about the information from Vietnam. He said no one has done anything for him adding *"I have been living here for 6 months 6 months is quite a long time ... nothing has been done for me and no one has done anything about that"*.

NCH said *"I have been for blood tests for tests for my teeth the Police believe I'm under 18 years old why did you give me that decision"*. Ms Atkinson explained how the decision had been reached. She further explained that NCH had not been consistent when provided an account of his story. NCH responded stating *"I think the information I have provided has been consistent and everybody here I'm living with believes I'm under 18 years old so why only one person does not believe me"* Ms Atkinson explained how MS Holcroft and she had formed of views that he is an adult.

NCH referred to those residing at Alternative Approaches stating, *"lots of people are bigger than me taller than me why is it I'm seen as over 18 years old"*. Ms Atkinson explained that people are all different. She reiterated how the decision in terms of his age has been formed. NCH said he does not agree with the decision.

NCH said he has told everybody everything and they all believe him. He asked why only one person does not believe him.

NCH said *"I went to Court, Court believed me the Police believed me people I live with believe me why is there only one person who doesn't believe me."* He stated *"after the decision has been made, I don't see any future for myself my future is dark and blank."*

When the decision to end the interview was made NCH said *"I cannot believe it and I wish that I wouldn't be in your Country I wouldn't be in this Country."*

77. A witness statement has been provided from Helen Cavanna, a qualified Social Worker who has worked for the Respondent since January 2010 as an Independent Reviewing Officer, Corporate Parenting Team Manager and IRO Team Manager, dated 28 November 2023 with annexed minutes of the "cared for" review meetings of 27 October 2021 and 20 January 2022.
78. At [8 – 9] it is written:
8. I only met with NCH at his reviews and spoke to him through an interpreter. I believe that NCH is older than the age he has reported to be. I believe this because it appeared to me that he was attempting to physically make himself appear smaller often by bending down when standing or sitting during our meetings; and would always attend meetings clean-shaven.
  9. However, his hair appeared to be greying at the sides which would indicate he was older than he claimed. He also provided limited answers to questions asked despite having the opportunity to expand and further questions being asked. From my experience as a social worker, I have found that when people provide limited answers to questions it can indicate that they want to hide information and do not want to be questioned further about specific events. NCH provided limited information and would not expand on a range of subjects, including his family and education; however he became more animated when we talked about Lunar New Year which is a celebration in the Buddhist calendar.
79. There is within the Applicant's statement reference to a Brief Enquiry (As to Age). This document is dated 28 September 2021 and was undertaken by two social workers. It notes the Applicant's claim dated birth already stated to the police was 1 May 2005. In relation to physical appearance and presentation observations it is written (subsequently anonymized as required):
- NCH has developed overall body, shoulders and arms,
  - NCH is small in stature around 5'6" (NCH kept trying to conceal his height by consistent bending at knee kept drooping, lowering himself into the chair.)
  - NCH is well defined hands and facial features
  - NCH has small amount of facial hair, although hair on top lip and chin is dark and defined.
  - NCH has marks on both legs below the knee and kept referring to these throughout the interview, this marks were long length, marks are not fresh, as evidence of healing.
  - NCH said that the police completed a teeth assessment of him to prove that he was 16 years of age - when challenged NCH said he could not remember.
  - Sw observed that when questioned NCH gave a level of rehearsed answers and when challenged remained silent or could not remember.
  - NCH showed no emotion or anxiety, when asked about family of recent experiences, kept hiding his face when relaying that he was upset.
80. In reply to a question put to the Applicant asking him what age he was when someone told him his age, it is recorded he replied *"my parents told*

*me, but I was very little, my mother died when I was 10 years of age, but my mum told me when I was little but I do not remember when".* This reply is clearly the source of a note that the Applicant stated his mother died when he was 10 years of age which he states is incorrect in his witness statement.

81. The Applicant stated it had taken nine months to come to England from Vietnam.
82. In relation to his journey, it is recorded he was specifically asked who he had travelled with to the UK to which he is recorded as having stated "*No I travelled all the time on my own, there was no other Vietnamese only foreigners*".
83. There is also a recording of a conversation that occurred with the Applicant in the following terms:
  - NCH was asked what age he is NCH said "*I am 16 years of age my date of birth is the 1.5.2005.*"
  - When asked how did you know your age - NCH said, "*the police told me they said I was 16 years of age they checked my teeth in July*" when challenged that there is no evidence of this NCH said "*I cannot remember*", and refused to answer further.
  - When asked who told him his age NCH said - "*my mother told me when I was very little I do not remember when or how old I was*"
  - When asked if NCH has other family members NCH said "*No I have no family I have no brothers or sisters, no auntie's or uncles*".
  - When asked where did NCH live - NCH said "*I lived outside Hanoi in a small village, my parents died many years ago, I think I was 10 years of age.*"
  - NCH was asked if he had any documentation - NCH said "*No my parents died, I cannot afford any documentation, no one to care for me.*"
  - NCH was asked, about travel by plane needing documentation, NCH said - "*yes they gave me a passport to fly, when I arrived in Russia, they took passport away from me.*"
  - NCH was asked, if he could remember when he left Vietnam, NCH said - "*no it was many months ago,*"
  - NCH was asked about what weather/season it was in Vietnam NCH said at first again, "*I cannot remember then said it may be March or summer and I was 15 years of age.*"
  - NCH was asked about school and friends - NCH "*I only went to school for little time from age 13 to 15 years I had no friends and I didn't have any certificates,* when asked further about his school and friendships, NCH said "*I cannot remember,*"
  - NCH was asked, that it was only a few months ago that he was in school why he cannot remember - NCH did not answer.
  - NCH then said without being asked "*they hurt me they hit me with a stick in the house the puts marks in my legs*"
  - NCH was asked about his life in Vietnam and the death of his parents and how did he survive on his own - NCH changed his original answer re having no family in Vietnam no parents brothers or sister or aunty on calls, all family are dead saying "*I had an older sister, she is 21 she looked after me, she has two children and is married and my sister paid for me to come to safe country.*"
  - NCH was asked how much did his sister pay - NCH said *£13,000* NCH *I do not know how much this is in Vietnamese money*
  - NCH was asked again about his parents - NCH again changed his answer - NCH said "*I cannot remember how they died, but my mother told me when I was 9 years old my date of birth.*"
  - NCH was asked about his previous arrest and leaving the care of the LA.



- NCH said “yes, the house I went to with the police was very nice, they were nice, I was safe but I heard foreigners voices and I thought they would tell the people where I was living, so I left
  - NCH was asked what he meant by foreigners - NCH did not answer
  - NCH was asked what he did when he left the LA care house - NCH said “I walked around for maybe a month, for many days, I lived off the streets, I found food in the train station, one day a car came past me in black windows and foreigners in black masks got out and kidnapped me and I came to the house in Liverpool where they hit me with a stick.
  - Throughout the interview NCH paused in answering questions on school and family life/friendships, and when asked a further question NCH would without reference would refer to previous comments of “they hit me in the cannabis house also NCH keep holding his hands against his face, hiding his unshaven chin and top lip which was quite prominent in facial hair.
84. The document records the opinion of other professionals, stating there is evidence from other professionals that NCH is over the age of 18, years that in discussion with previous CSC in Coventry they have stated that given photo evidence from the police, they would have completed a brief enquiry on age so as to assess and completed their assessment on NCH being over the age of 18 years. It is also noted Merseyside Police have also commented that NCH has the appearance of being over the age of 18yrs.
85. The outcome of the assessment was based upon the answers given and observations and taking into account the Applicant’s physical appearance and personal storyline, stating both social workers were in agreement that NCH is over the age of 18 years.
86. There are two Grounds on which permission to bring judicial review was sought, Ground 1 a flawed age assessment for reason of procedural unfairness and failure to ensure Merton compliance, and Ground 2 failure to consider relevant matters, such as the applicant’s experiences as a likely/potential victim of trafficking.
87. In his skeleton argument dated 12 May 2024 Mr Bimmler writes:

#### Submissions

10. The grounds on which the Applicant was granted permission to apply for judicial review remain relevant, as they will affect what weight can properly be given to the Respondent’s age assessment when this Tribunal considers the question of the Applicant’s date of birth and age objectively on the basis of all the evidence before it.
11. It is submitted that very limited weight can be placed on that assessment and the opinions of the age assessors, because of the failure to undertake a proper ‘minded-to’ procedure and because of the failure to take into account the potentially traumatic experiences of the Applicant.
12. As to the first ground, the Age Assessment report shows
- a. that at the minded-to interview, the Respondent’s “decision was shared” with the Applicant [HB/C228], with no suggestion that the decision was portrayed as provisional conclusions, which would be finalised after hearing the Applicant’s responses;
  - b. that only one of the two original assessors were present for the minded-to interview [HB/C228], showing that there was never any prospect of the two assessors conferring again to discuss the answers given by the Applicant; and
  - c. that the Applicant was only told that he “had not been consistent when providing an account of his story” [HB/C230] but that he was not informed of the actual inconsistencies that concerned the assessors,

thus being prevented from responding or clarifying the particular alleged inconsistencies by the vagueness of the assessors' criticism.

13. The procedure adopted by the assessors was not compliant with the requirements of a fair minded-to procedure set out by Sir Anthony May PQBD in *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59 at [21]-[22]. The Applicant did not have a "fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him"; rather, the single age assessor attending the meeting with the Appellant presented him with the decision as already made, with no apparent scope for any provisional conclusions to be revisited (with the second age assessor) after that meeting.
14. Moreover, the conclusions set out to the Applicant were not expressed "with sufficient detail to explain all the main adverse points" so that he could make meaningful representations on them. As Deputy Judge Karen Ridge recognised in her permission judgment at §§28-30, the Applicant had responses to the assessors' adverse about his age when attending school, about his television and shaving habits, which he would have been able to make to the assessors if the alleged inconsistencies had actually been put to him in a specific rather than generalised way. To prevent him from doing so rendered the assessment unfair and its conclusions unreliable.
15. As to the second ground, Age Assessment Guidance issued by the Association of Directors of Children's Services in October 2015 reminds assessors as follows:

(pp. 7-8)

Children and young people who have been trafficked into the UK are likely to have had experiences which have an impact on their ability to participate fully and openly in an age assessment. Aside from the physical, sexual or emotional abuse they may have suffered, many trafficked children have been forced by their traffickers to learn a story to tell if they are questioned. Many children and young people are under threat directly themselves, or may have family members elsewhere who are under threat, or perceived threat. Children and young people may not know at this stage who they can trust. As a result, they may give information that is later contradictory to information provided initially. This is not necessarily an indication that a child or young person is trying to deceive social workers, and should not be considered as such. Social workers need to look at the situation holistically and consider the circumstances surrounding each child or young person.

(p. 25) You need to bear in mind developmental stages, the memory process, as well as the impact of trauma. Gaps, inconsistencies or lack of information do not always mean that a child or young person is not being truthful, and this should not be the starting point. Inquisitiveness about finding the right age is better for the child or young person than trying to catch someone in a "lie". Consider also that many children and young people have been told by their families, smugglers or traffickers to tell particular stories about their life in order to protect others, which are not necessarily reliable indicators of their age.<sup>18</sup> Children and young people being age assessed will also often not know yet who to trust, so may not reveal their entire situation at the assessment stage. Note that this is not dissimilar to other young people who are coming into care and may not be clear who to trust.

(p. 38) There is a large body of research which indicates that emotional disorder affects autobiographical memory specificity.<sup>23</sup> Young people who have arrived in the UK as unaccompanied asylum seekers are likely

to have comparative difficulty in recalling specific autobiographical events. In addition, research conducted by Brennan et al (2010) showed that trauma exposure in childhood impairs the ability to recall specific autobiographical memories in late adolescence.<sup>24</sup> Assessing workers must be alert to their own assumptions about what they expect a young person to recall and to narrate.

16. The importance of taking into consideration traumatic and difficult experiences in assessing the consistency of account and whether a young person is a reliable narrator has also been judicially recognised in the cases of MVN and AE above.
17. There is nothing in the age assessment to report that the assessors had any regard to these considerations when making their findings that the Applicant was being inconsistent, deceitful and attempting to mislead professionals into concluding that he is a child. This was a serious shortfall of the assessment, in circumstances where the Applicant's alleged misleading and inconsistent narrative was a primary reason for the assessors not to accept his claimed age. It significantly weakened the reliability of their assessment and is a further reason for which it can only bear very little if any weight as a source of evidence for the present Tribunal.
18. Full submissions on the Applicant's positive case as to his age will be made once oral evidence has been heard. The Applicant contends, in brief, that he has given a consistent and credible account as to how he is sure of his date of birth, and as to his life and upbringing prior to leaving Vietnam, his journey, and events since his arrival in the UK. The Respondent has impermissibly sought to portray him as someone intending to deliberately deceive professionals, rather than considering the impact of his traumatic experience on his presentation and memory. The comments of the Respondent's assessors and witnesses on his demeanour and alleged maturity fail to make the necessary allowance for cultural differences set out comprehensively in Ms Bogdanova-Spittle's evidence who had the advantage of seeing the Applicant regularly, outside the formal context of interviews or meetings, and in direct comparison with other young people aged 16-18 from Vietnamese and non-Vietnamese backgrounds. Notably, the Vietnamese interpreter at the age assessment, Ms Kim Pham, also believed the Applicant to be a child of 17-17.5 years at the time of the assessment, based on his social presentation and her experience of other Vietnamese persons in age assessments [HB/C224].

#### Conclusion

19. The Claimant will invite the Tribunal to make a declaration that he was born on 1 May 2005 and to allow this claim for judicial review, with costs to follow.
88. On behalf of the respondent, Miss Freeman in her skeleton argument, writes:

#### Submissions

30. Essentially, Ground 1as pleaded amounts to procedural unfairness in not adopting an adequate and fair "minded-to" stage. Ground 2 is an "unlawfulness" in the approach to credibility, in failing to sufficiently give consideration to the trauma experienced by NCH as a reason for providing inconsistencies in his account.

#### Ground 1 -

31. The age assessment of NCH was carried out fairly, by appropriately-qualified experienced independent social workers. NCH had the proper support of an appropriate adult and an interpreter. The assessment was conducted over three sessions, and overall adequate time was allowed for the assessment to be carried out.
- a. There is nothing to suggest that the assessors came to the assessment with a closed mind or that they were unwilling to countenance that the claimant was a child.
  - b. The decision was shared with NCH appropriately during a meeting in which he was supported.
  - c. Two social workers were present, one of which was the assessor. It is submitted that it is not mandatory for both assessors to have been present;
  - d. What is required by way of a minded-to process is for the Respondent to put its provisional findings to the applicant and afford the applicant an opportunity to respond (see *Parthan v SSHD* [2020] 1WLR 4506). This was plainly done.
  - e. NCH was given an opportunity to respond – his responses were simply to restate that he was 16 and framed in an aggressive challenge to the SWs in attendance. There was no new information for the assessors to confer upon, as is suggested, with a view to amending or changing their position.
  - f. There is no deficiency in the age assessment itself or the minded-to interview. It is a fair and reliable assessment.

#### Ground 2 –

32. NCH was given ample opportunity over 4 assessment sessions of 3 hours' duration (=12 hours in total) to explain his situation. The account of his trafficking from Vietnam to arrival in the UK and subsequent treatment is set out in the assessment in great detail. It is

#### Further Submissions

33. The Applicant's claim fails to make reference to the obvious issue: NCH is objectively an adult at the time of the assessment. The Respondent's witnesses concur in their descriptions of his physical appearance, stature, greying/thinning hair, and deliberate stoop. The witnesses also agree on a measure of deliberately misleading behaviour on the part of NCH, with the sole aim of achieving an age assessment of under 18.
34. NCH has been deliberately misleading when providing information.
35. There is no bar to considering physical appearance and demeanour when assessing age. The criticisms that have been made by this Court and others where that is the sole basis for a decision (*R (AM) v Solihull MBC* [2012] UKHT 118 (IAC)). That is not the case where NCH is concerned.
36. The Applicant has provided no evidence, save for his own account that was rejected by the Respondent, to establish his age. There are no Vietnamese-origin documents in existence, and none (on NCH's account) are attainable.
37. The Applicant has advised the Court that he has made an application for asylum for the Home Office. The Applicant has not supplied any documentation in respect of that application, or provided any information in his statement as to the grounds upon which he has applied. It is assumed that this application is based on grounds of human trafficking and slavery, but it is likely that NCH's age was included as a relevant consideration.
38. The Respondent notes that the Applicant has not during proceedings applied for Police disclosure or sought to supply contemporaneous health records since arrival in the UK which would assist the court in its fact-finding exercise. There is quite simply a paucity of evidence to support the Applicant's claim.

89. I confirm, for the sake of completeness, that all the documentary and oral evidence has been properly considered with the required degree of anxious scrutiny even if no specific reference is made to it in the course of my assessment of the evidence.

### The Age Assessment

90. The obligation upon a local authority undertaking an age assessment is to undertake what is referred to as a Merton compliant interview process. In *R (B) v Merton London Borough Council* [2003] ECHW 1698 (Admin) it was found:

- The assessment does not require anything approaching a trial and judicialisation of the process is to be avoided.
- The matter can be determined informally provided that there are minimum standards of enquiry and fairness.
- Except in clear cases, age cannot be determined solely from appearance.
- The decision maker should explain to the young person the purpose of the interview.
- Questions should elicit background, family and educational circumstances and history, and ethnic and cultural matters may be relevant.
- The decision-maker may have to assess the applicant's credibility. Questions of the burden of proof do not apply.
- The local authority should make its own decision and not simply adopt a decision made, for instance, by the Home Office, if there has been a referral.
- If the decision-maker forms a view that the young person may be lying, that may lead to that view.
- Adverse provisional conclusions should be put to the young person, so that they may have the opportunity to deal with them and rectify misunderstandings.
- The local authority is obliged to give reasons for its decision, although these need not be long or elaborate.

91. It is settled law that the most reliable means of assessing the age of the child or young person in circumstances where no documentary evidence is available is by a Merton compliant assessment – see *BF (Eritrea) v Secretary of State for the Home Department* [2019] EWCA Civ 872. In this case there is no documentary evidence available.

92. It is also settled law that whilst Merton identifies relevant operating principles, it does not establish a checklist and that the issue is one of fairness of the assessment. In *R (SB) v Royal Borough of Kensington and Chelsea* [2022] EWHC 308 (Admin) it was found that a local authority should not be hobbled by tribunals taking a highly technical approach to challenges, demanding that every box is ticked, but instead should allow flexibility and practical procedures to be deployed.

93. The relevant requirements were summarised in *R (HAM) v London Borough of Brent* [2022] EWHC 1924 (Admin) as follow:

- a) When it is necessary to determine whether a person is a child (i.e., under 18 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];
  - b) 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].
  - c) 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.
  - d) An assessment may, depending on the facts of the case, be unfair if an appropriate adult is not present, [20].
  - e) 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].
  - f) 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].
94. Turning to the age assessment itself, it is a basic requirement that the assessment is undertaken by trained social workers. Accepted practice is that the assessment must be carried out by two trained social workers. In this case it is not disputed that both Julia Atkinson and Danielle Holcroft are suitably qualified independent social workers. I find the requirement for suitably qualified social workers to undertake the assessment made out on the facts.
95. A second basic requirement is that an interpreter must be provided if it is necessary, capable of speaking a language and dialect the child or young person understands. It is recorded in the age assessment that in addition to an appropriate adult an interpreter was provided with no issue being raised of a lack of ability of NCH to be able to understand the interpreter. No issue was also raised in relation to the presence of the independent appropriate adult or indication of material concerns being raised by them during or after the age assessment process.
96. In relation to the ADCS guidance, it is asserted on NCH's behalf that the guidance was not followed which it is argued fundamentally undermines the assessment as this is relevant to the issue of procedural fairness.
97. It is accepted that the guidance is not a statement of law although it is accepted the authors of the guidance possess considerable experience in the field of age assessment.
98. The Merton guidelines are reflected in the Guidance which sets out the relevant legal principles:
- (1) The assessment must be a holistic one and must start with an open mind, with no imposition on the child to prove his age to the assessing social workers.
  - (2) Physical appearance and demeanour are notoriously unreliable factors not determinative of age.
  - (3) Cultural, ethnic and racial context of the young person being assessed must be considered as these may reflect in their presentation as well as their descriptions of their lives.

(4) General credibility is not to be determinative of age. It is more likely that a young person who tells a consistent account of his life which supports his claimed age will be the age he claims to be. Conversely, young people may lie for reasons unrelated to age but related to their claims for protection or the reasons they had to leave their country of origin.

(5) The child should be afforded the benefit of the doubt where evidence can tip one way or the other.

See *MVN v London Borough of Greenwich* [2015] EWHC 1942 at [21].

99. The analysis of the information obtained during the course of the age assessment process is set out in the document itself.
100. It has not been made out that it was unfair for those conducting the age assessment to begin with initial observations in relation to NCH's physical presentation, including his behavioural presentation. Those carrying out the age assessment had a number of sources of information available to them in which there appears to be a common thread relating to the reoccurrence of actions by NCH, interpreted as an attempt to betray himself as being younger than his actual age.
101. Although Mr Bimmler in cross examination asked the Respondent's witnesses about the Applicant's conduct, suggesting alternative reasons for the same such as the material also demonstrated conduct of a person of the age the Applicant claims to be, that did not adequately address the concerns expressed from the very earliest initial short form assessment, supported by the observations of those responsible for the Applicant's care, of deliberate acts undertaken by him to try and create what he saw as a positive impression of being a person of the age he claimed to be.
102. I find that weight may be placed upon the observations of both Amelia Henderson-Smith's and Ella Hoxey, who are trained professionals within their field of employment and expertise, in recording not only what they both observed in relation to the Applicant's behaviour and demeanour but also their interpretation of the reason(s) for the same.
103. I have taken into account the comments made by Ms Bogdanova-Spittle who clearly wishes to do her best for any who she feels responsible for in her capacity as a teacher of the English language.
104. I do not doubt that the subjective view recorded in her statement, and expressed orally, is one that she genuinely believes to be the case. I do not find she is being dishonest but Miss Freeman identified an issue arising from her witness statement in which, despite admitting she had no experience or training in relation to age assessment and therefore cannot be held out as a person with any form of expertise in relation to this complex issue, the statement from [22] under the heading "Opinion regarding NCH's age" is written in the form of an expert report.
105. There are a number of concerns in relation to the methodology by which Ms Bogdanova-Spittle comes to her conclusion. I accept that she had experience of dealing with the Applicant as a member of a class of around 20 to 22 young people. I accept that during the course of her work assessments would have been undertaken of the students, but she confirmed in her evidence that the purpose of such assessments was to rate the progress and standard that had been reached by individuals in relation to their use of the English language. There was no indication of any expertise enabling any other form of assessment to be undertaken.

106. The fact the Applicant may have had a different level of needs to those she experienced in adults takes the matter no further. If the age assessment is correct and the Applicant is in fact an adult, and was at the time he was taught by Ms Bogdanova-Spittle, that would not undermine the finding of a different level of need, but would support the claim that irrespective of an individual's age there is no one set standard of needs an individual may demonstrate. There is no credible comparator to support Ms Bogdanova-Spittle's statement.
107. It is also the case that the period in which this witness was involved with the Applicant was far less in terms of time and intensity and purpose than that undertaken by other professionals involved in the Applicant's care and assessment.
108. At [21] of her witness statement she stated the Applicant never raised anything that was suspicious about his age. It is not surprising as the Applicant was there to study English and it was not the role of Ms Bogdanova-Spittle to enquire as to his age to the same extent as the Independent Social Workers or other professionals involved in his care, where his age was a very specific indicator as to what level of involvement/care/provision should be provided, as well as any safeguarding issues.
109. The witness statement forms part of the Applicant's evidence and I have taken it into account, but do not find the subjective view expressed therein is determinative. The question is whether the subjective view is objectively well-founded when compared to the other evidence and reports.
110. The initial impression of NCH, as recorded both in Coventry and Liverpool, is that he is a young man over the age of 18. Although the Applicant claimed at the Minded To interviews that he had been assessed as being 16 years of age he failed to produce any evidence from any professional body or elsewhere to corroborate his claim that he had been formally assessed as being that age during the time he was in Coventry. The police in Coventry became involved following the Applicant's arrest on 13 July 2021.
111. The Applicant's claim that others in his placement at the time of the Age Assessment believed he was over 16 is not made out, especially as such a generalised statement must include those such as Amelia Henderson-Smith who clearly does not accept the Appellant was 16 years of age or is as young as he claims to be. It is noted that as a result of concerns regarding the Applicant's age and any potential risk to himself and others, as being an adult in a placement in which children were accommodated, one-to-one supervision/assessment was requested.
112. The Applicant's claim he undertook a dental or any other form of examination whilst in police custody in Coventry which determined he was 16 years of age is a claim that has not been shown to have any merit. The Applicant confirmed in answer to a question he was asked in his oral evidence that he had had a dental examination previously. One assumes that was in Vietnam. It is not unreasonable to assume that he will therefore know what a dental examination would involve. There is no evidence that the Applicant's teeth were ever examined by a dentist or an estimation made of his age based upon dental findings, at Coventry or since.
113. In any event, although it is clear in the context of age assessment determinations that human teeth develop as an individual progresses through childhood and into adulthood, how and to what extent the stages of that development is indicative of age and the extent to which it can be assessed by a dental examination is highly debatable: see AS, R (on the



- application of) v Kent County Council (age assessment; dental evidence) [2017] UKUT 446 (11 September 2017).
114. I find that as a result of the Applicant being arrested for cultivating cannabis and taken to the police station in Coventry what would have been undertaken will have been a mouth swab for the purposes of obtaining his DNA, which is standard police procedure for the purposes of the arrest record. I do not find it made out the Applicant has any justification for claiming it was otherwise.
  115. I also find a lack of credibility in the Applicant's claim that he did not know why he had been arrested by the police in Coventry or indeed why he had been arrested later on in Liverpool. The simple reason for this is that when an individual is arrested by the police and taken into custody there is an obligation upon the police to tell them why they have been arrested. The Applicant would have been clearly aware that he had been arrested on the basis of suspicion of being involved in the cultivation of cannabis.
  116. There is merit in the further submission made by Miss Freeman that it is notable that the lack of documents includes a lack of any documents from the Crown Prosecution Service of anything relating to the Applicant's time in custody or subsequent criminal proceedings. There is therefore nothing from relevant authorities to corroborate the Applicant's claim that he was told it was thought he was 16 years of age at that time.
  117. I also find that there is no evidence that Judge Clarke who heard the Applicant's criminal case in Liverpool made a judicial finding that he was under 18 years of age. Even if Judge Clarke expressed an opinion that this was so, that is not a formal judicial finding in relation to the Applicant's age. There is no transcript of the proceedings undertaken in the Criminal Courts in Liverpool, which could easily have been obtained by the Applicant's representatives if it was thought it was relevant to or supported his case. In any event, without a formal age assessment and the benefit of knowing the reasoning behind such an observation such comments would only be obiter, warranting little weight being placed upon the same.
  118. The issue of the Applicant's schooling was also raised during the course of the age assessment. The Applicant was critical of the finding in relation to the lack of credibility concerning his claims in relation to his schooling.
  119. The Applicant claimed that he went to school when he was five years of age starting in Year 1. He completed his primary and secondary education leaving at Year 9, aged 13.
  120. The Ministry of Education and Training is responsible for the administration of education in Vietnam at the national level. Formal education in Vietnam consists of 12 years of basic education, four years of intermediate/lower education, and three years of upper secondary education. Primary education is compulsory for children aged 6 - 11 years covering grades 1 to 5. Lower secondary education lasts for four years and covers grades 6 - 9. The observation by the Respondent's witnesses is corroborated by this information. A person would ordinarily enter Year 1 at age 6. Although the Applicant challenges this he has not provided within his bundle any evidence to show that it is plausible that he would have commenced his education a year earlier. I accept that in the UK whether a person is able to start their primary education aged 5, or slightly earlier, or later, may depend upon their date of birth, but the issue of what the Applicant's birth date actually is, is the question before me today. If a person commences their Grade 1 education aged 6 they will finish their grade 9 education aged 14. That is the observation contained as part of the assessment process

- which has not been found to be irrational or outside the range of findings available to the decision-maker.
121. The Applicant also challenged the statement the school year runs from September to May. Claiming he was able to start in January. Again, with education at primary level being compulsory that would infer that individuals will be expected to commence their basic education from September. The observation by the respondent's witness to this effect has not been shown to be outside the range of those reasonably open to them on the evidence. The Applicant's claim that he was able to start on a different date is not supported by the evidence. I accept there is a winter break in the academic calendar in schools in Vietnam from the last two weeks or thereabouts in December to the first week in January. If the Applicant was claiming he started school earlier, in the January before September when he would have commenced, that does not suggest the Respondent's conclusions that he would have been six years old when he actually commenced the compulsory education is incorrect.
  122. The Applicant was cross-examined about issues relating to his contact with family and the family home in Vietnam. The Applicant was recorded in the Brief Enquiry (As to Age) as stating he has no family in Vietnam but later claiming he has an older sister.
  123. He also appears to have been able to have regular views of the telephones of agents responsible for bringing him and others to the UK.
  124. The Applicant claimed he was taken to a warehouse in the UK where he and others were held until confirmation was received that those bringing him to the UK had been paid. That claim is credible. It is known that people smugglers undertaking such work for commercial gain, will arrange for a person to be brought to the stated destination, often only receiving part payment for the services being offered initially, but allowing the person being transported to make a telephone call to the person responsible for payment once they have arrived at the intended destination after which the balance of any monies due are paid.
  125. The Applicant was asked about how the agent was able to contact his sister. There were discrepancies in his answer as to how the telephone number was provided. The Applicant stated that he gave his sister's telephone number to the agent as he had memorised it. The telephone call was therefore made, and payment organised by his sister. The Applicant was asked in cross-examination why there had been no contact with his sister who, quite understandably, it was suggested was the person who could provide evidence from the school or elsewhere to corroborate that he was of the age he claimed and that the events he claimed occurred in Vietnam were credible. This would have been of use if he left school according to official school records and could have provided evidence of the duration of his alleged apprenticeship of one year, which may have assisted him. However, no such evidence was forthcoming.
  126. The Applicant's claim he is unable to contact his sister as he was without telephone may have been correct in relation to his journey to the UK and arrival in the UK, but there is evidence of him requesting a phone when in his placement, having access to the same, and to assistance being provided to him from other professional sources. I accept, however, that when the Applicant did ask for contact to be made after the age assessment he was advised that it was not thought it was appropriate to do so as he was by then accepted as being a victim of trafficking and there were concerns about the risk to his sister if such contact was made. On this point, I accept

that although the Applicant does not appear to have made any effort to contact his sister to obtain corroborative information, by telephone or even in writing to her at her known address, which would have been at the property from which the Applicant claimed he left to travel to the airport to leave Vietnam, when he did make a subsequent request after the age assessment process had been completed, telephone contact was not facilitated as it was found to be inappropriate.

127. The Applicant was asked in cross-examination about the reasons he had come to the UK. The Applicant provides that answer in his own evidence in answer to questions put to him when he claims he came to the UK to work for a better lifestyle for himself and his family. That is a plausible answer.
128. It is known that many young people are trafficked from Vietnam to Europe, including the UK. They may be targeted by people smugglers/agents in Vietnam who promise them jobs and a better lifestyle in return for payment. Many families of such individuals, if they do not have access to immediate savings, will borrow money either from official sources or unofficial sources to raise the funds required. It is often anticipated that the person being brought to Europe will then work and send funds back to enable the debt to be repaid. I do not believe the Applicant came to the UK not believing that this is what was occurring. He makes a specific comment that when taken to the warehouse the work he was asked to do was not that which he was expecting. That is a typical comment of many who are trafficked for employment when the real purpose of those bringing them into the UK is to exploit the individual concerned, especially in light of their precarious immigration status, for their own criminal or illegal purposes. Many encountered by the law enforcement agencies are those who have been found to be cultivating cannabis for criminal gangs.
129. Having been arrested by the police the Applicant was put in a place of safety in a foster home in Coventry. Although the Applicant tries to suggest otherwise in his oral evidence it cannot be disputed that the placement he was placed in was a safe house with foster parents specifically approved for caring for individuals such as the Applicant at short notice. The Applicant tried to explain why he left after one day but his explanation was not satisfactory. There is no credible evidence to show the Applicant faced any risk from any source during the foster placement or any reason why he could not have stayed there. Miss Freeman in cross-examination suggested to him that he was aware that it was not believed that he was a minor and that the indication of those he dealt with was that they believed he was over 18, and that he left the foster placement before any proper age assessment could be undertaken. The Applicant denied this was so. I accept that may well have been the case, as those within this jurisdiction, including myself, have judicial knowledge of many individuals being trafficked in a position such as the Applicant being discovered by the authorities, and police, being placed into the secure accommodation, yet absconding, and later being discovered by police elsewhere in the UK in very similar circumstances.
130. I find there is merit in Miss Freeman's suggestion to the Applicant in cross-examination that he had not provided a plausible explanation for the period of three months between his absconding from the secure foster placement in Coventry and his arrest in Liverpool. The Applicant perhaps himself provides an answer when he refers to being taken by individuals in a van from wherever he was at that time up to Liverpool to continue cannabis cultivation. If the Applicant was arrested in Coventry by the police those

- responsible for placing him there may well have been interested in the outcome and what happened to him. Organised criminal gangs undertaking such work are quite sophisticated in the way they operate. It is not implausible for the Applicant to have left the secure foster placement and have been met at some later date, by arrangement or otherwise, and taken to Liverpool with a much shorter timescale than he claimed.
131. In relation to the various observations made by a number of professionals in relation to the Applicant's appearance, it is noted that specific comment is made in relation to receding hairline and grey hairs on the side of the Applicant's head. I was unable to see this when the Applicant appeared before me as he has had a haircut which shaved the sides of his head which removed any evidence of grey hairs.
  132. Whilst I accept the Applicant is entitled to have whatever haircut he wishes, and that in isolation this does not appear to be an issue of any importance per se, it needs to be considered together with the other comments made in relation to what are described as deliberate acts by the Applicant to make him appear younger than he is.
  133. It is clear that in the Brief Enquiry (As to age) dated 29 September 2021, under the heading physical appearance and presentation, a number of observations are recorded indicating the Applicant was older than he claimed. The attempt to conceal his height is a constant theme running through the evidence as noted above. There is no evidence of any medical issue that would require the Applicant to adopt such a stance or behave in such a way.
  134. The fact the Applicant shaved is not of itself a conclusive issue as there is clear evidence he has facial hair. Unless he wishes to grow a moustache or beard he would have to remove that by shaving. What is of relevance is the observation by the professionals as to when he was observed to do so. There appears to be a specific correlation between a situation in which the Applicant would come into contact with professionals, i.e. at prearranged meetings, and when he would shave. Whilst it is also plausible that the Applicant may wish to appear at his best at such meetings, and therefore would shave, it is equally plausible that he was doing so to remove evidence of physical hair to make himself look much younger when observed.
  135. These matters must be considered in context. The Applicant was aware of doubts about his actual age and that his age was being assessed. The observations that were undertaken by professionals within the Age Assessment were specifically for this purpose. In his placement, however, similar observations were undertaken as there was a discrepancy raised in relation to his age and concerns that he was an adult placed in accommodation occupied by those who it was known were children. There was therefore a valid reason why the Applicant was subject to intense observation and assessment.
  136. A further example of this related to the Applicant's television choices. It is not disputed that the Applicant was entitled to watch whatever television programmes he wished to watch. It is stated he watched Tom and Jerry cartoons. They have been around for a considerable number of years and are very popular. In isolation watching such cartoons or drinking Fruit Shoots, a fruit drink, does not in isolation support the fact the Applicant is not the age he claims to be. What is of relevance is the observation by the professionals of the circumstances in which the Applicant was seen to watch the different types of programmes and when he would switch

between a cartoon, ordinarily for a much younger target audience, and news items relating to Vietnam which would ordinarily be of interest to people of a much older age. Again, in isolation, switching between the programmes may not be sufficient to support the Respondent's findings, but when considered in relation to the other evidence it corroborates the claim of a course of conduct being undertaken by the Applicant to try and enforce his claim that he was born on 1 May 2005.

137. The observation in the Brief Enquiry and Age Assessment in relation to the Applicant remaining silent when challenged was a matter that was observed in cross examination. Although the Applicant did answer a number of questions put to him, when specifically challenged by Miss Freeman towards the end of the cross examination there were periods of silence with no response being made to points put to him to give him an opportunity to comment upon them.
138. In relation to the age assessment itself, I find that the social workers did not undertake the assessment solely on the basis of the Applicant's physical appearance. Although his physical appearance is suggestive of a person older than the age he claims to be this is not a matter that can be determined solely on the basis of his appearance. It was as a result of the Applicant contesting his age that he was subjected to the full age assessment.
139. I now move on to consider whether the assessment was Merton compliant and whether the Applicant was given the opportunity to verify his age both during the course of the age assessment and at the 'Minded to' meeting.
140. In relation to Ground 1 of the Grounds seeking permission to bring judicial review, Mr Bimmler relied on the decision of the Court of Appeal in *R(Z) v Croydon London Borough Council* [2011] EWCA Civ 59. In that case the Applicant was an unaccompanied asylum seeker from Iran. On his arrival in the UK he claimed he was under 18 years of age as a result of which he was transferred to Croydon LBC for child welfare services. His age was disputed as a result of which two social workers carried out an initial age assessment, without giving the claimant the opportunity to have an appropriate adult present during the interview. The social worker stated that the age and date of birth that the claimant had given were inconsistent with each other and could be given little weight since they could not be verified, and they assessed his age on arrival as over 18. The local authority upheld the decision on review. The local authority gave the claimant no opportunity to respond to their adverse findings, either after the initial decision was made or after the review. The judge refused the claimant's permission to bring judicial review proceedings, concluded that the procedure adopted by the local authority had been correct according to previous case law. In particular, the judge found that there was no realistic prospect that, at a substantive fact finding hearing, the court would conclude that the claimant was younger than the local authority had determined.
141. The Court of Appeal allowed the appeal finding:
  - i. That the correct approach of the court to the grant or refusal of permission to bring judicial review proceedings, where a claimant sought to have the court determine on the evidence that his age was not that which the local authority had determined, was to ask whether the material before it raised a factual case which, taken at its highest, could not properly succeed in a contested factual hearing; that where the answer was "yes" permission should be

refused, but that where the answer was “no”, permission should normally be granted subject to other discretionary factors such as delay; that the claimant given a consistent factual account, the initial apparent inconsistency between his claimed age and his claimed date of birth was capable of being explained, and that there was no glaring inconsistencies in his account, nor clear reasons why his account was unbelievable; that merely because the social workers would have been able to judge the claimant’s general appearance and demeanour and to make a credibility judgement from the manner in which she had answered the questions did not mean that the court would be bound to make the same judgements; that general credibility, judged by others, was not alone sufficient for the court to refuse permission for a factual hearing before the court, when it was for the court to determine in a disputed case the fact of the young person’s age; and that, accordingly, permission to proceed to a factual hearing on evidence ought to have been granted since, inter-alia, the claimant’s factual case taken at its highest might succeed in a contested factual hearing.

R (B) v Merton London Borough Council [2003] 4 All ER 280 and R (A) v Croydon London Borough Council (Secretary of State for the Home Department intervening) [2010] PTSR 106 SC(E) considered.

- ii. That it was axiomatic that a claimant should be given a fair and proper opportunity, at a stage when a possible adverse decision was no more than provisional, to deal with important points adverse to his age claim such as the absence of supporting documents, inconsistencies, or a provisional conclusion that he was not telling the truth; that children or vulnerable people should have the opportunity to have an appropriate adult present when interviewed; and that, the local authority’s failure to satisfy those procedural requirements contributed to the decision to give permission to proceed with the judicial review claim.
- iii. Since the judicial review claim involves a factual determination of the claimant’s age uncontested evidence, which the Administrative Court did not habitually and was not equipped to decide, it was appropriate that the matter be transferred to the Upper Tribunal under section 31 A (3) of the Senior Courts Act 1981.

142. Mr Bimmer referred me to the specific part of the judgement in which the finding regarding procedural unfairness is made. At 20-22 it is written:

- 21 In our judgment, it is axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him. Obvious possible such points are the absence of supporting documents, inconsistencies, or a provisional conclusion that he is not telling the truth with summary reasons for that provisional view. In the absence of formal central government guidance, we would not be prescriptive of the way in which this might be done, and we stand aside from requiring in every case a formal “minded to” letter sent after the initial interview. It is accepted that these matters should not be over-judicialised. It is theoretically possible that a series of questions appropriately expressed during the course of the initial interview might fairly and successfully put the main adverse points which trouble the interviewing social workers. But that would be a haphazard way of doing it and one which would be intrinsically likely to lead to subsequent controversy in the absence of an expensive transcript of the interview. Mr Luba agreed that fairness could be achieved in

this respect if the interviewing social workers were to withdraw from the interview room at the end of the initial interview to discuss their provisional conclusions. They could record these with brief reasons in writing on a form by means of which, upon returning to the interview, they could put the adverse points which trouble them to the person whose age they are assessing, thereby giving him the opportunity to deal with them. The young person may be able to deal points then and there or he may say he needs more time, for example to obtain more documents. Either way, the interviewers could then withdraw again to consider his answers and reach their decision. This would be a modification of the procedure adopted in this case. We emphasise that this suggested outline procedure is not the only way in which fairness might be achieved in this respect.

- 22 In our judgment, the procedure adopted in the present case did not achieve this element of the Merton requirements. Mr Hadden was constrained to accept that he was unable to show on the material available to him that it did. The deputy judge considered that it was sufficient that the assessors' conclusions were put to the claimant in writing and that he signed that he understood them. Although the interviewing social workers withdrew to consider their decision, when they returned, they presented him with their conclusions without first giving him the opportunity to deal with the adverse points. Further, the conclusions were not expressed with sufficient detail to explain all the main adverse points which the fuller document showed had influenced the decision. It is also evident from subsequent correspondence that, given the opportunity, the claimant would have been able to explain with reference to the Iranian calendar, for instance, an apparent inconsistency between his date of birth and the age which he claimed to be. On the face of it, therefore, there is substance in the first ground of appeal. The initial deficiency was not corrected by the holding of a review, since the review only dealt with the more recently produced vaccination card and the procedure adopted had the same deficiency as had affected the initial interview.
143. The Applicant asserts that the single assessor who attended the minded to meeting presented him with the decision as already made with no apparent scope for any provisional conclusions to be revisited with the second age assessor after that meeting.
144. It is accepted the second age assessor was not present at the 'Minded to' meeting, which was explained, but it is clear that an appropriate adult was present and support provided as recorded in the age assessment.
145. Reference to the decision being a foregone conclusion may arise from the statement in the section headed "Conclusion of age" by Julie Atkinson that "*Julie Atkinson informed NCH of the decision*". It cannot be a fair criticism of the social worker who was giving an indication to the Applicant of the provisional view of the age assessment panel. There is nothing in the age assessment that shows that the social worker went into the 'Minded to' meeting with a closed mind such that it was pointless as it would have denied the Applicant the ability to comment upon the reasons for that decision.
146. It is accepted that if a young person's credibility is an issue, it should be made clear and should be dealt with head on during the investigation process. In cases where the local authority is minded to conclude the young person claiming to be a child is lying, that provisional view and the reasons for it should be explained to them and they should have an opportunity to respond before a final decision is taken: see R (HAM) v. London Borough of Brent [2022] EWHC 1924 (Admin), at [13].

147. It is also an impermissible artificial separation of the evidence to focus only upon the comments that Julie Atkinson informed the Applicant of the decision from the other available evidence. It is clear from the witness statements to which I have referred above, including the Applicant's own evidence, that the 'Minded to' meeting was conducted in a Merton compliant manner. There is clear evidence the Applicant was not only informed of the view of the age assessment panel but also the reasons why and that he was not denied the opportunity to comment upon the basis for that conclusion, which he clearly did. Disagreeing with the outcome of the age assessment did not establish any unfairness in the manner in which it was conducted.
148. It is clear that the Applicant became distressed when he was informed of the assessment. It is also recorded that he was supported until he was able to share his views. There is evidence in the witness statements that the reasons for the conclusion that the Applicant was over the age of 18 was explained to him and that he was given an opportunity to respond. Indeed, his responses are recorded in the age assessment. The Applicant clearly disagreed with the assessment and made various statements as to why he believed it was wrong. It does not support the contention of procedural unfairness in the Applicant not being made aware of the reasons for the decision and not having the opportunity to make appropriate comment.
149. It is not made out that had issues arisen in the 'Minded to' meeting that warranted a different conclusion as to the Applicant's age, or further consideration or deliberation in relation to relevant issues, that the meeting would not have been adjourned until Julie Atkinson was able to speak to her colleague and appropriate discussion arranged. The inability of the second assessor, Danielle Holcroft to be able to attend the meeting is described as unfortunate, which indeed it was, but in light of there being nothing advanced by the Applicant that warranted the view initially communicated to him not being recorded as the final finding of the Panel as to his age, no procedural unfairness is made out.
150. It is also the case that the Applicant's reaction to being told of the assessment was that he reacted in what has been described as an aggressive manner towards Julie Atkinson, which indicated a demeanour that would not have been conducive to any further discussion even if one was required at that time.
151. The skeleton argument also refers to there to be nothing in the age assessment to indicate the assessors had due regard, when making their finding that Applicant had been inconsistent and deceitful in attempting to mislead professionals, to the traumatic and difficult experiences experienced by the Applicant as a person who had been trafficked within the UK.
152. I accept this is an important element as the Applicant has been found to be a victim of trafficking in a Conclusive Grounds decision. Ms Freeman submitted those undertaking the age assessment were aware of the Applicant's circumstances as this issue was raised during his time in Coventry when he had been arrested on suspicion of producing cannabis.
153. It is fair to say there are some discrepancies in the Applicant's recollection, one of which was raised by Ms Freeman in cross examination in which he claimed that he was brought United Kingdom with a number of other individuals, as recorded by the age assessors and in his statement, yet his claim as recorded in the Brief Enquiry (As to Age) when he stated he had travelled all the time on his own with no other Vietnamese people, only



foreigners. If one accepts the Applicant's replies that he was brought United Kingdom in company of others, as this is the modus operandi of people smugglers there may be a number of reasons for the Applicant giving an incorrect response. What I do not accept is that there is any arguable merit in the challenge to the decision of the professionals that the Applicant was deliberately employing deception to frustrate the assessment of his actual age. It is also clear that a number of reasons relied upon by the professionals in coming to that conclusion are not based upon any ability of the Applicant to recollect what has or has not occurred to him. Bending his knees, not standing up straight, shaving, and other issues recorded are points of real evidence rather than the Applicant claiming or not claiming something had occurred in the past.

154. It is also the case that a number of claims made by the Applicant, such as his claim that he had been x-rayed and concluded to be 16 years of age in Coventry, were clearly not true. This is not a case of an error of recollection. At its highest, so far as the Applicant is concerned, it may have been a misunderstanding of the purpose of the DNA swab. But even if that point is taken, it does not explain his claim he had been told he was 16 years of age when there is no evidence to support such a conclusion.
155. Even though there is no specific reference to his traumatic and difficult experiences I do not accept it has been made out this was not a matter of which the assessors were aware or a matter that, even taken at its highest, provides an explanation for the discrepancies identified by the professionals involved with the Applicant, sufficient to undermine the conclusion in the age assessment. I find no procedural unfairness made out on this point. It is not made out the age assessment failed to adhere to the central safeguards applicable to young persons who may be victims of trafficking. It is not made out the local authority in undertaking the age assessment breached section 51 of the Modern Slavery Act which required it to presume that an individual who may be a victim of trafficking is to be treated as being a child until an age assessment is completed. It is clear the Applicant was housed in semi-independent accommodation with other children and indeed treated as a child while the assessment was awaited and during the assessment process.
156. It is also known that people smugglers tell customers to provide an age that would indicate they are a child as it will enable them to be accommodated and provided for in the UK and lessen the chance of being returned to their home country if discovered by the authorities. Observations to this effect are on the evidence credible.
157. So far as the reasons challenge is concerned, I find a reader of the age assessment is able to fully understand the reasons why Social Workers came to the conclusions they did especially when considered together with the other evidence. Ella Huxley, whose evidence I find warrants weight being placed upon it, after interaction with the Applicant from 22 December 2021 to 15 March 2023, also concluded in her professional opinion the Applicant is aged approximately 25 to 27 years of age.
158. It is correct that the age assessment did not provide any specific date of birth but that was provided later following an enquiry being made. Whilst the letter confirming the date of birth is not supported by further reasoning that was not required. Mr Bimmler in his submissions specifically referred to this but the reasons are fully set out in the Age Assessment and it is based upon those that a view as to the Applicant's date of birth was communicated. Age assessment is not a science, it is a difficult process, the

date of birth provided is what the assessors believed to be the Applicant's correct date of birth.

159. Although physical appearance is not a determinative factor it is clear that the Applicant when he appeared before me is an adult and indeed a young man. I do not find it made out on the evidence, to any degree, the Applicant was born on 1 May 2005 as he alleges. I do not find it made out that he was under the age of 18 when he entered the UK in March 2021. I find the weight of evidence supports the conclusion of the Respondent that the Applicant was over the age of 18. I make a finding of fact that the weight of evidence supports a conclusion that at the date of the hearing before me the Applicant is more likely than not to be 25 years of age with a date of birth of 1 May 1999. I make a declaration to that effect.

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