



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

**JR-2021-LON-000335  
[previously JR/493/2021]**

In the matter of an application for Judicial Review

The Queen on the application of

**A A  
[ANONYMITY ORDER MADE]**

Applicant

versus

**KENT COUNTY COUNCIL**

Respondent

**DECLARATION AND ORDER**

**BEFORE Upper Tribunal Judge Gleeson**

**HAVING** considered all documents lodged and having heard Ms. A Benfield of counsel, instructed by Osbornes Law, for the Applicant and Mr. A Shattock of counsel, instructed by Invicta Law Limited, for the Respondent at a hearing held on 25-27 January 2022

**AND UPON** the Respondent having sought permission to appeal to the Court of Appeal

**IT IS DECLARED THAT:**

(1) The Applicant's date of birth is 10 November 2003, such that he was 16 years of age when he arrived in the UK on 11 August 2020 and was taken into the Respondent's care, and aged 18 at the date of this Order.

**IT IS ORDERED THAT:**

- (1) The Applicant shall not be identified either directly or indirectly.
- (2) The Respondent's application for permission to appeal is refused.
- (3) The order for interim relief made on 6 May 2021 is hereby discharged.
- (4) The Respondent shall pay the Applicant's reasonable costs of these proceedings, to be assessed if not agreed.
- (5) There shall be a detailed assessment of the Applicant's publicly funded costs.

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

Dated: **21 February 2022**

**The date on which this order was sent is given below**

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**For completion by the Upper Tribunal Immigration and Asylum Chamber**

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 22 February 2022

Solicitors:  
Ref No.  
Home Office Ref:

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### **Notification of appeal rights**

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

IN THE UPPER TRIBUNAL

JR-2021-LON-000335  
[previously JR/493/2021]

Field House,  
Breams Buildings  
London  
EC4A 1DZ

25-27 January 2022

**BEFORE**  
**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**AA**  
**[ANONYMITY ORDER MADE]**

**Applicant**

**and**

**KENT COUNTY COUNCIL**

**Respondent**

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Ms Antonia Benfield, Counsel instructed by Osbornes Law, appeared on behalf of the Applicant.

Mr Alex Shattock, instructed by Invicta Law Ltd, appeared on behalf of the Respondent.

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**APPROVED JUDGMENT**

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JUDGE GLEESON:

1. The applicant claims to be a citizen of Sudan from West Darfur and asserts that he is a minor with a date of birth of 10 November 2003. He is an asylum claimant who entered the UK on 11 August 2020.
2. The respondent considers that he was born on 10 November 2000 and was an adult at all material times.
3. The applicant, on his own account, became an adult on 10 November 2021. His litigation friend served notice of termination on that date. He now pursues these proceedings himself, with the assistance of his solicitors.
4. **Anonymity.** Pursuant to rule 14(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, the applicant has been granted anonymity, until this application is finally determined. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. **Failure to comply with this order could amount to a contempt of court.**
5. **Agreed facts.** The parties filed a Statement of Agreed Facts, the material parts of which are as follows:
  - “3. The Claimant previously spent time in Italy, France and Belgium. He recalls being fingerprinted in Italy and France. He states in his witness statement that his friend falsely gave his age to Italian authorities as 17 years old on his behalf.
  4. The Applicant entered the UK on 11 August 2020 by boat and claimed asylum. AA informed the Home Office of his claimed date of birth (10/11/2003) but was issued with an IS97M stating that on the basis that he had failed to produce any satisfactory evidence to substantiate his claimed age, his age was not accepted. On the basis that his physical appearance and demeanour did not strongly suggest that he was 25 years of age or over, the Home Office agreed to treat him as a child of his claimed age until further evidence becomes available.
  5. On 11 August 2020, the Applicant was taken into the Respondent’s care under section 17 and 20 of the Children Act 1989 and placed at Appledore Reception Centre.
  6. The Claimant states that he has not been able to contact his family since arriving in the UK.
  7. On 12 August 2020, the Applicant was interviewed by Kelly Chapman at the Home Office in relation to his asylum claim. On the same day, Jim Kelly from Kent County Council met with the Applicant and noting the Home Office’s dispute as to AA’s age confirmed that “I do not have significant concerns regarding his claimed age.” ....”
6. The respondent relies on an age assessment carried out between 19 October 2020 and 18 December 2020, by social workers Ms Zahraa Adam

and Ms Michelle Appiah. Their conclusion was that the applicant was likely to be in the age range 19-22 years old and most likely to be 20 years old.

7. The date of birth of 10 November 2000 was shared and became effective on 18 January 2021. The applicant was moved to adult accommodation in Derby, out of the respondent's geographical area of responsibility.

### **Procedural history**

8. On 3 March 2021, the applicant issued a claim for judicial review and interim relief in the Administrative Court, challenging the decision of the age assessors as to his date of birth. On 4 March 2021, Mrs Justice Lang granted him anonymity and ordered expedition.
9. On 29 March 2021, Mr Justice Mostyn granted permission to seek judicial review on the applicant's precedent fact challenge, which the respondent did not oppose. He also directed that the application be transferred to the Upper Tribunal, giving me jurisdiction to determine the applicant's age in these proceedings.
10. On 6 May 2021, Upper Tribunal Judge Smith granted the applicant interim relief, requiring the respondent to support and accommodate the applicant as a child of his claimed age under the Children Act 1989, pending determination of his age or further order.
11. The applicant was returned to Appledore Reception Centre ('Appledore'), then transferred briefly to Millbank Reception Centre ('Millbank'), and on 27 May 2021 he was moved to a placement at Bridging the Gap (BTG) in Gillingham, Kent.

### **The Upper Tribunal's task**

12. The primary object of the present proceedings is to determine the applicant's age, as a finding of precedent fact. I have had regard to all of the evidence that was placed before me and I have particularly taken account of the fact that whatever his age, this applicant is young.
13. The parties have agreed a statement of issues to be determined at the substantive hearing, as follows:
  - (1) The applicant's age and date of birth;
  - (2) The credibility of the applicant's account of his age and date of birth;
  - (3) Whether the respondent's age assessment process was procedurally fair and the weight to be placed upon it; and
  - (4) The weight to be placed on the evidence of third parties.
14. This application is not an asylum appeal and I am not seised with fact finding in relation to the credibility of the applicant's international

protection account, or whether he now has in Sudan a well-founded fear of persecution for a Refugee Convention reason which would entitle him to international protection in the United Kingdom. That is a matter for the Home Office in the first instance and for a statutory appeal if the outcome is not what the applicant wants.

### **Evidence before the Upper Tribunal**

15. The Upper Tribunal received four lever arch files of documents, together with electronic versions and argument, both oral and written. I have had regard to all of this material, but particularly to those documents to which the parties drew my attention during the hearing. In addition to the witness statements of those who gave oral evidence and letters or e-mails sent by them I have the age assessments, handwritten notes of the age assessments where they were available, social care records and immigration documents.
16. Witness statements have been received from Mr Apollo Kawoya, the Shift Leader at Appledore, who completed an Age Assessment Observation Report on this applicant, Mr Alex Stringer, Service Manager for the respondent's Service for Unaccompanied Asylum-Seeking Children (SUASC), and Ms Michelle Appiah and Ms Zahraa Adam, who prepared the age assessment report. Those statements stand unchallenged, as Mr Kowoya, Mr Stringer, Ms Appiah and Ms Adam were not called (the age assessors by order of the Tribunal).
17. The Tribunal heard oral evidence from the applicant, and from two of the respondent's witnesses:
  - (1) Ms Susan Okonkwor, who was the applicant's social worker from August 2020 to January 2021 (when the applicant left the respondent's care) and again from May to August 2021. After August 2021, the applicant had a different social worker, but the Upper Tribunal has no witness statement from him.
  - (2) Ms Aimee Saber, manager of Bridging the Gap (BTG), which provides semi-independent placements for unaccompanied asylum-seeking children, and is accountable to the respondent for the service provided. The applicant has been at BTG since May 2021.
18. Mr Shattock accepted in submissions that the evidence of Ms Saber was neutral in relation to this applicant's age. Ms Benfield agreed that she had not shaken Ms Saber's evidence in cross-examination.
19. The disputed evidence is therefore that of the applicant himself, and Ms Okonkwor, who was his social worker for two periods, from August 2020 to January 2021 (when she accepted his age as asserted) and following the age assessment, from May to August 2021, when she considered that he seemed older and revised her opinion.

### **Applicant's evidence**

20. The applicant gave evidence through an interpreter, using Sudanese Arabic. He confirmed that he understood the interpreter and that there were no issues with the interpreter's dialect. He adopted his witness statements of 2 March 2021 and 27 April 2021, each signed digitally following interpretation of their contents. The applicant asked the Tribunal to treat those two statements as his evidence-in-chief and was then tendered for cross-examination.
21. The applicant showed no signs of distress, anxiety, shyness or inability to understand or answer the questions asked during his evidence, although on occasion, he seemed unwilling to answer directly.
22. The following is a summary of the evidence in the applicant's witness statements. In his first witness statement in March 2021, his core claim was that he knew his date of birth because his parents taught him that age when he was 14 years old. The applicant knew his approximate age before that, because he was born in autumn, and he understood that every year, he became a year older just before the winter. The applicant had asked his father for his birth date as he was comparing ages with friends. His father told him that he was born on 10 November 2003. The applicant was unable to relate this to the passage of time as he still did not understand the workings of the calendar months and days.
23. The applicant set out his personal history. His father was a fruit and vegetable trader in the local market. The applicant never asked his age, and does not know it. They were not wealthy: they lived in a hut made of bricks and clay, with a wood and straw roof, divided in two parts, one for his parents and one for the children. They had no car, but they did have some electricity in the day time, a radio, and running water from a communal stand pipe outside the house. The family had a dog, and two goats, but no car.
24. The applicant had two brothers, one about two years older, and the other about two years younger. They played outside the home with other children in the village, the applicant enjoying football but also making animal and other shapes out of local mud.
25. The applicant and his brothers were close. He was close too to a paternal uncle, who lived next door. The uncle was younger than his father, but again, he never asked the uncle's age. There was a baby cousin, who was less than two years old when the applicant left Sudan. There were other relatives, but they lived in different villages and the applicant did not know them.
26. The applicant was raised in the Muslim faith, his father sometimes teaching the Qur'an to the applicant and other boys in the village. The applicant attended early morning Khalwa (Islamic school), and also went to a normal nursery school for about three years, between the ages of three or four, and six or seven years old. He learned the alphabet, and

how to count, but after three years it was too expensive for his parents to afford and his formal education ended.

27. The applicant began to fast for Ramadan when he was 14, just before he left Sudan, but did not fast continuously like an adult at first. His mother advised him to fast 'only a little bit sometimes'. The applicant fasted like an adult in 2019 and 2020, when travelling through Europe on his way to the UK.
28. The applicant would sometimes buy vegetables for his mother on his way home from Khalwa, but in 2018, he got mixed up in a demonstration while coming home from the market. His account is that he was detained for 14 days, then released on reporting conditions. His father decided it was time the applicant left Sudan, and arranged and paid an agent for his journey.
29. The applicant left Sudan in the agent's car in the autumn of 2018. He reached Tripoli in Libya about a week later, and spent a month there, working for a week on a building site, but mostly not being paid for his work. He met another young Sudanese man and they agreed to travel on to Italy together. The applicant's travelling companion made arrangements for them both with an agent who was filling a small boat with refugees. There were 107 people on the boat, according to someone else. It was very dangerous, but after three days they were rescued and taken to Italy.
30. On the applicant's account, he was then just 15, and he told his friend that. The applicant's travelling companion told him to say he was 17, if anyone asked, so that they were not separated. When they were interviewed, the applicant's friend told the authorities that they were both 17, and the applicant did not contradict him. After a week in a refugee camp in Milan, the two boys travelled on, first by train to Ventimiglia, then on foot to a refugee camp at Cambroya. This time, the applicant told the French authorities he was 15 and they recorded that as his age. They were there for one or two weeks, before travelling on through France by train to Marseille, Lyon, and Paris, then down to Calais by early 2019. They began trying to reach the UK, including going to try from Belgium in case that was easier. The applicant was fingerprinted in France, but not in Belgium. The UK no longer has access to the Eurodac fingerprint database.
31. The applicant did not make it to the UK until August 2020, arriving in a small boat. His friend had been detained by the French authorities, so by this time the applicant was travelling alone.
32. The applicant's second statement made on 27 April 2021 described his circumstances in the adult accommodation in Derby. It was given through a Sudanese Arabic interpreter, following video link meetings. The adult accommodation only had a reception/security person at the front door of each of eight accommodation blocks. The young people signed in and out, but there was no other support.



33. While living there, he had learned from another Sudanese man living there, how the washing machines worked, and could clean his clothes. He missed his three friends from his Kent accommodation, and the WiFi had failed in his accommodation, so that he could not text or contact them, and also, his English lessons online had stopped working. He felt very isolated and bored.
34. The applicant had learned 'how to boil an egg or warm up some milk' but otherwise he could not cook. He often ate tuna from the tin with bread, in his room. He did not feel safe in the local area and only went outside to get food or walk to the park. He worried that he might get lost and be unable to call anyone to help him.
35. The applicant had burning pains in his feet for which he had been unable to organise medical help. He pleaded with the Tribunal to return him to the respondent's care:
- "...so that I am moved from adult accommodation and looked after again as a 17 year old child by [the respondent's] social workers and support workers. I understand that this would also allow my health problems to be addressed, for my education needs to be met, and also to be supported with shopping and cooking. Also, I would then be closer to my Sudanese friends ...and hopefully able to communicate and exchange messages again. "
36. In cross-examination, the applicant said that all three versions of his name were transliterated and were the same in Arabic. He was asked about the scars on his head. He gave an account of circumstances which may well be relied upon in his asylum claim. This Tribunal is not concerned with that part of his account.
37. However, it is relevant to record the applicant's evidence about a scar on his eyebrow, which he now says he got aged 7 separating two fighting 'aunties'. The applicant said the aunties did not mean to harm him: it was an accident. The applicant told the age assessors that the eyebrow scar was caused in a fight with his brother. He admitted having lied to the age assessors because '... I was just fed up, those people kept asking me same questions'. Having answered the question several times, he just made something different up, because he was annoyed.
38. The applicant said he had many scars and injuries on his body. He offered to take his clothes off and show them. That is neither necessary nor relevant in these proceedings but a medico-legal report will be required for his asylum claim in due course.
39. The applicant told the age assessors that he did not yet have his wisdom teeth. When he was examined by a dentist, he had all four. He then said he had no pain and so had not noticed their arrival. In re-examination, he said he did not know what wisdom teeth were.

40. The applicant was unable to give a coherent account of whether he had been to hospital in Sudan. He could not remember how he had broken his ankle: at first, he said he could not remember at all, then when he was reminded that he told the age assessors he got it riding, when he was 6 years old, the applicant said he could not remember whether it was a horse or a donkey he rode. He did not always remember everything and did not want to be called a liar if he forgot.
41. The applicant said that he knew when younger that he became a year older when winter started. He knew the month (the eleventh month of the year) after he was 14 or 15, in 2018. He did not know it before that. He explained repeatedly that in Sudan, people dated their age from the season or the Eid when they were born. He gave this answer even when it was not precisely germane to the question asked: it was difficult to avoid the conclusion that he had learned it and was determined to get that part of his account into the record.
42. Birthdays were not celebrated in Sudan. The applicant had never had any document about his date of birth. When asked if his parents ever wrote anything down about his date of birth, he said there was a piece of paper in a small bag, which his parents kept with the family Qur'an. He had not mentioned that to the age assessors: he was angry with them as they did not want to believe him. The applicant blamed his solicitor, whom he said he had told about the little bag kept with the Qur'an. The questions from the age assessors were about whether he had a birth certificate, which he did not. His parents would understand dates of birth better than the applicant because he was a child and they were the adults.
43. Mr Shattock asked the applicant about his siblings. He had two brothers, one two years old and one two years younger. He had never told Mr Kelly how old his elder brother was, just that he was two years older. The interviewers did the maths. The applicant denied having omitted to mention his younger brother on two occasions. The notes were wrong and that was not what he had said.
44. The applicant had last had contact with his elder brother indirectly, through a friend from the same district, when he was in Italy. That friend had another friend in France, who had spoken to his brother. The applicant then corrected the oral evidence he had just given, denying that he had said the news reached him in Italy: his evidence was that he got news of his brother when in the Calais Jungle in France. Mr Shattock reminded the applicant that he had told the age assessors that he got the news in the UK. The applicant denied that: he had said it was just *before* he came to the UK, when he was in France. The applicant denied having any contact with this brother when he was in Libya, although they were both there at the same time. The applicant's elder brother left Sudan later than the applicant: he was still there, when the applicant came here.
45. The applicant's evidence about his education in Sudan was equally confusing. At first, he said he only attended Khalwa (Qur'anic teaching),

not ordinary school. Then he agreed that he had one or two years of what he described as 'nursery school' between the ages of 6 and 7. He did not count that as schooling, though he learned his numbers and the Arabic alphabet. He had difficulty 'keeping them in mind'. He was very young, and did not learn much.

46. The applicant was then asked about his work history. He insisted that he had only helped his father on the vegetable stall in the market. He had not been a shepherd, as he was recorded as saying, although sometimes he helped with the family's two goats. He did not receive wages, but his father sometimes gave him about ten Sudanese pounds, to buy things. The applicant was not prepared to say that Ms Okonkwor had made a mistake in recording that for a year he worked as a day labourer on the market, but in fact, he only ever worked for his father.
47. The applicant was asked why when interviewed in July 2021, he talked about having access to medications such as paracetamol, when other Sudanese people found these difficult to get. They were only for those who could pay. He denied saying that in Sudan his father could just go and get things like that. He denied, or rather evaded, a question whether he had a more privileged and wealthy life than other young people from Sudan.
48. The applicant said that his organisation for his lessons was just because he was keen: he wanted to be able to interact directly with people and not have to have an interpreter in every aspect of life. Being organised was personal: the staff did not know what he was like before he came to the UK. He had been told to be tidy and clean up after meals.
49. The applicant had learned his English in the UK. When he arrived, he could not even say 'how are you?'. He had a discussion with Mr Kawoya at Appledore when he was newly arrived in the UK. However, Mr Kawoya had misrecorded what he said: the applicant denied telling Mr Kawoya that his father was a biology teacher, or saying later to the age assessors that he regretted opening his heart to Mr Kawoya. The applicant now denied that his father was a biology teacher, and that he was from a middle class family: he asked Mr Shattock, 'what is your evidence?'. I reminded the applicant of the purpose of cross-examination and that it was for Mr Shattock to put the questions.
50. The applicant said he left Sudan around his birthday month of November in 2018. He spoke about his time in Libya, where he worked for a man, who sometimes paid him but mostly just provided him with food in return for the applicant's work. He travelled with that man to Italy. In Italy, the official interpreter noticed that the applicant was the shorter of the two and said they thought he was younger. The authorities thought he was 17 and the applicant went along with that, but as soon as they came off the ship, he told them he was 15. There was a very long queue. Later, he told the interpreter he was 17, guided by his travelling companion. The applicant now said it was he, not his travelling companion, who told the

Italian authorities he was 17, so as not to be separated from his travelling companion.

51. There followed a number of questions about the journey and where and if the applicant was arrested on the way. They are germane to the asylum claim but not to the age assessment. The applicant's responses were confusing.
52. The applicant denied having told the age assessors that he had no mobile phone when in France. He said that he had a small basic phone, but not a smartphone. A charity gave him a telephone with some credit on it, to allow him to call home, then he had to give the mobile phone back.
53. The applicant's evidence about celebrating Ramadan and Eid was as expected. When asked about the leadership role he took at BTG, the applicant denied having given instructions to the other young people there. When they all stopped cleaning, it was not he who gave that instruction, nor did he tell everyone when to start again. He felt he was penalised in the age assessment for being respectful and not making trouble.
54. The applicant said he had learned to manage money in the UK, and also to cook Sudanese food. Everyone had their day for cooking. He did not know how the social workers and staff knew his food was good: they had never tasted it. He had learned to cook from other Sudanese people when he was in Derby. That is discrepant with the April 2021 statement in which he said he still could only boil and egg and heat milk.
55. The applicant was asked about his recorded comment to BTG staff that his cleaning and being perceived as a boss was not good for his age assessment. He had stopped cleaning for a while for that reason. He said it was racism: the applicant had not brought anyone to the UK and was not responsible for any of them. 'This is exact discrimination, it's not right, a lot of people lived in this accommodation before me'. Everyone cooked, shopped and cleaned alone. The applicant was not a leader. He said, 'I am not the boss of anyone, I don't give instructions to, or influence, anyone. I don't have to influence anyone, I stopped cleaning because they are reporting me with the wrong information'.
56. The applicant was then asked about his religious views, in particular on LGBT and female cutting. He said it was a question of tradition and custom. The views reported were not his, and he would certainly never have answered a teacher in the manner suggested. He had not expressed any view on female genital cutting and everything written about that was simply nonsense. He did agree that he had said the rainbow Pride flag was 'very bad' and that in Africa, and to his knowledge in Sudan, people were killed for being gay.

57. The applicant pointed out that he was not the President of Sudan: if he was happy with the general views of the government of Sudan, he would not have left and come to the UK. When pressed, the applicant changed his account. He said, 'I don't agree that someone [gay] would be killed, but at the same time, I have nothing to do with this'. He had nothing to do with gay people and was neither with them nor against them.
58. In re-examination, the applicant said that the question of female cutting had not been discussed in his family. It was not the sort of thing you talked to your parents about: he knew, however, that some people did circumcise their daughters, and others not. He said he had learned that on the internet. He also knew that female cutting had ended in Sudan: he had been aware of it when living in Sudan.
59. In answer to further questions, the applicant said that he did not know what 'biology' was, what 'middle class/working class meant', or what wisdom teeth were. He had told both his firms of solicitors that he only knew the months of the year, and could not reckon calendars in the Gregorian day/date system.
60. The applicant did not have a clear memory of his interviews on entry or what he had been asked (or answered). Such money as he was paid in Libya, the applicant consumed by buying food with it.
61. The applicant confirmed that he and his family were 'poor' in Sudan. They lived alongside other people in similar circumstances, and he did not know how to compare their circumstances. He had not talked to the other Sudanese boys at Appledore or BTG about their circumstances there.
62. Finally, the applicant was asked about the leadership and cleaning issue. He said this:

"You were asked about when you stopped cleaning because reports were being written about you? Y.

How long did you stop cleaning? Just two or three days, and when they sent a letter asking why, I said I'd been singled out. I did all my cleaning after that, again.

Why did you restart? I said, you singled me out and wrote this about me, not the others. What I'm saying is that on three occasions, five or three of us, we all gave an opinion, same as me, why not pick on the others?"

63. That concluded the applicant's evidence.

### **Respondent's witnesses**

#### **Ms Susan Okonkwor**

64. Ms Susan Okonkwor qualified as a social worker with a Masters' Degree in social work in 2009. In 2010, she obtained a Postgraduate Diploma in Consolidation of Initial Competence in Social Work and in 2014, a Masters

in Child Care Law and Practice from Keele University. When living in Nigeria, before coming to the UK, in 2007 she obtained an undergraduate degree in Geography Education from Lagos University.

65. Ms Okonkwor had initially worked in Social Care before qualifying as a social worker. She had worked for a number of local authorities, but for the respondent since 2011 in various positions. In August 2020 she joined the respondent's SUASC as an Experienced Social Worker. She had received age assessment training and refresher training with both London Borough of Croydon and the respondent.
66. Ms Okonkwor was the applicant's allocated social worker on arrival, from 26 August 2020 to 18 January 2021 when he left the service, following an age assessment that he was an adult. When he returned to the respondent on 7 May 2021, she was once again assigned as his social worker. Ms Okonkwor noted the applicant's change of name which had occurred during his absence from the respondent's care.
67. Ms Okonkwor had seen the applicant on 5 occasions: 4 September 2020, 10 September 2020, and 21 October 2020, then following his return to the respondent's care, on 11 May 2021 (over video link, as the applicant was isolating following his return from the community) and on 3 June 2021.
68. Ms Okonkwor gave an account of the applicant's absence from Appledore on 10 May 2021, three days after he returned to the respondent's care. He was absent from 12:27 pm until 08:46 am the following day. His absence was reported to the police, who found and returned him. The missing person review interview with the applicant (held remotely) was interrupted by his walking out on numerous occasions and he was verbally aggressive. Staff at Appledore supported him to calm down and return to the room to engage with the video meeting.
69. The applicant was quite clear in that meeting that he had no need of a social worker or of social work involvement. He did not want to be placed at Appledore and was unhappy about his care plan.
70. Although she directed herself that 'physical features should be given very limited weight' and that '[she was] aware appearances over video can at times not be as accurate as face to face meetings and therefore [she had] not placed too much emphasis on [her] observations of him during this meeting', it seems that Ms Okonkwor in fact gave considerable weight to the applicant's appearance.
71. Ms Okonkwor's statement set out a number of observations made over the video link: the applicant now had a receding hairline, which could be seen because his hair was shorter, as well as more skin blemishes, and lines on his forehead. She attached two photographs, one taken when the applicant arrived, and the other, on 7 May 2021 when he returned to the respondent's care. Ms Okonkwor made a number of unsourced observations about the likelihood of the applicant having these features as

a person from Sudan. He had lost weight, and had a more adult physique, with broader shoulders and a slimmer waist.

72. The applicant's care needs were assessed, as part of his Pathway Plan, and he was then transferred to BTG on 27 May 2021. Ms Okonkwor did not attend his placement planning meeting the next day, 28 May 2021. She read the notes taken by Mr Abubakar Yakubu, the respondent's duty social worker who did attend, and noted that the applicant remained 'vocal about his dislike for the placement as he preferred independent living'.
73. On 3 June 2021, Ms Okonkwor attended BTG and saw the applicant. He complained about the amount of Essential Living Allowance he was receiving: Ms Okonkwor said it was the same as that received by all unaccompanied asylum-seeking young people in the respondent's care. She also saw him virtually on 4 June 2021 for a Looked After Child (LAC) review, when he was 'able to present himself and put forward his views in a clear way'.
74. On 6 June 2021, the records available to Ms Okonkwor record that the applicant had managed to buy 'lots of food' with the money he was given but had not provided receipts to them. On 9 June 2021, at his next LAC review, the applicant complained again that he did not want the staff to oversee his weekly shopping and ELA allowance for the first few weeks. He was unhappy with the response and his solicitor made a formal complaint. On 21 June 2021, he received an ELA card with money loaded on it: he 'did not have to be shown how to use the cash machine'.
75. On 10 June 2021, staff at BTG recorded that the applicant would help interpret for the other young people in the accommodation. He was not bullying or rude, but they looked up to him and he was 'almost in charge'. He did a lot of the cleaning in the house, delegated tasks to other young people, and could cook, use the washing machine, and keep his clothes clean.
76. The applicant, in common with other BTG residents, had been given an iPad provided by Virtual Schools Kent, loaded with English as a Second Language (ESOL) lessons. He was recorded as being a 'really keen learner, he really enjoys the sessions and is sitting at the table on time ready for them to begin'. He wanted to be a pilot and was 'very confident in the lessons'.
77. Ms Okonkwor concluded from all this that the applicant was an adult, had attended formal education, was used to studying and had a 'developed understanding of the importance of education'. She placed significant weight on the conclusions of the age assessors that he was 'an intelligent individual with the developed psyche of an adult'. She now agreed with the age assessors' conclusion that he was an adult when he reached the UK, and not 17 years old as he was asserting.

78. The applicant was no longer the shy adolescent Ms Okonkwor met in 2020, but was now more aware of the care system and how to navigate it. He could articulate his needs without an advocate or interpreter. She considered that he believed that he had no need of social worker support nor that of staff at his placement, which were an inconvenience to him. When she visited the applicant, he could talk calmly of what he did and did not want and 'he quietly informs me that he does not want to see me, or that he is fine'.
79. The applicant never called nor texted Ms Okonkwor while in her care: he was never in distress and could regulate his emotions. He had shown resilience and willpower, and had not needed therapeutic input. In a very short period in BTG, he had been observed to be a leader for other residents, even those who were in BTG long before he arrived. He could cook meals without support and clean up after himself and other residents. He presented as mature and 'speaks from a wealth of wisdom and understanding far above his claimed age'. She perceived him as 'a competent equal and not a vulnerable young person'. He would say often 'don't treat me as a kid, you know', when he was frustrated by delays in processing his requests.
80. Ms Okonkwor adopted her witness statement and confirmed that she wished it to stand as her evidence-in-chief. She was then tendered for cross-examination.
81. Ms Okonkwor stated that 'all meetings are conducted with an interpreter, we confirm understanding and language match'. It was her duty to book an appropriate interpreter and prepare for meetings by reading the staff observation notes. She would form her own view over time without being swayed by other views.
82. Ms Okonkwor could not remember specifically the initial interview: it was too long ago. Normally, young people were age disputed before coming into local authority care. The duty social worker had a duty to raise concerns about the applicant's age, or safeguarding or health issues. Ms Okonkwor was under the same duties: her remit was from birth to 18 years old, and if a young person seemed older than 18 she would be required to raise that.
83. During the first period when the applicant was in her caseload, Ms Okonkwor had no doubts about his age. She saw him three times, and allowing for the benefit of the doubt, she considered him to be between 16 and 18 years old, based on the applicant's interactions with herself, and with staff at Appledore. Ms Okonkwor confirmed that she was not tasked with the age assessment. Any concerns that the Appledore staff had would be raised with the age assessors, including the views of Mr Kawoya.
84. Ms Okonkwor's duties were more practical: she was required to register the applicant with a general medical practitioner and dentist, make sure he was attending his English lessons, and monitor his interactions with



other young people. Safeguarding concerns were also her responsibility, and sometimes, but not always, Appledore staff would raise concerns directly with her as his social worker.

85. When asked to see the applicant on 4 November 2020, just at the end of the first period when she was his social worker, Ms Okonkwor initially said she did not know him, because of his different name, before realising that this was the same young person. The name difference was more than just transliteration: Ms Okonkwor confirmed that the applicant had raised his name being incorrectly recorded, the first time she met him. Ms Okonkwor told the applicant that he should raise the matter through his solicitors as it was not open to her to correct the Home Office record.
86. Ms Okonkwor nevertheless considered the incorrect name on the Home Office file to be relevant to the applicant's overall credibility. He would have had an interpreter at the Home Office interview. She had seen the age assessment when it was completed, but not in draft.
87. Ms Okonkwor was no longer working for the respondent, but for the Home Office, dealing with young people on entry.
88. Ms Okonkwor explained about the quarantine arrangements at Appledore: when a young person came there, either from overseas or having lived in the wider community, they were placed in Covid quarantine for 10 days before being allowed to mix with the other Appledore residents. There was an extension in Appledore which was used for this purpose. In this case, the applicant had been away for several months so quarantine was necessary. There were lots of different boys in Appledore, 10-20 of them, all damaged by their previous history.
89. The first meeting she had with the applicant after he went missing had been very difficult: the applicant did not want to stay in Appledore, to engage with a social worker or to be in the care system at all. Following his age assessment, the applicant understandably felt negative about Appledore. Ms Okonkwor did not consider that his running away was an adolescent reaction: she considered that the applicant knew what he was doing, and was making his own decisions.
90. Ms Okonkwor had two or three official meetings with the applicant when he came back to the respondent's care, but also saw him when she visited other young people at BTG. The financial arrangements were that the young person would be given an amount of pocket money and BTG would keep back a sum for savings, to be given to them when they left care. The same arrangements occurred in foster care as well. The applicant would not engage in the financial supervision which was normal for young people in BTG. He wanted the savings money as well as the pocket money, and did not like the idea of being supervised or monitored.
91. In Derby, the applicant had lived among adults, which he did not like. He struggled to cope, had pain in his foot and could not organise medical

treatment. The young person in the respondent's accommodation did not like English food: they would go together to town and get ingredients, then cook together as a group.

92. In BTG, there was a mixture of people the respondent considered to be adults, and those assessed as under 18. The presumed over-18s were there following interim relief orders. That was not the position at Appledore.
93. There was no doubt in Ms Okonkwor's mind that the applicant was one of the leaders: all the other Arabic speaking boys in both Appledore and BTG looked up to him, and he looked considerably older than his claimed age.
94. There was a group of young people who did not want to spend time at Appledore: they were all waiting for their age assessments to begin. The applicant led them in a campaign of criminal damage and intimidation, giving the instructions to the others. They damaged property, broke fire alarms, broke the television and several video games. More seriously, they accused staff of racism and held staff hostage in the office, refusing to leave, squaring up to them in the face and swearing in their own language. It was a very tense period: there were weekly sessions between the managers and the leaders.
95. Ms Okonkwor accepted that returning to Appledore after an adverse age assessment was likely to make relationships with key workers such as his social worker: it was fair to say that young people in this situation felt hurt by having been disbelieved as to their age. She had a better relationship with the applicant during the first phase than she had when he returned to Appledore and BTG.
96. In BTG the applicant was also an obvious leader, even to young people who appeared older than he was. He spoke the best English in the house: she did not believe that his leadership was just because he had better cooking skills. On the other hand, she did not consider that the applicant presented as someone who had a privileged life in Sudan.
97. Ms Okonkwor was social worker for some of the other Sudanese young people in the house. The group was not static: other boys who were not age disputed went to college, and some of them moved on to different placements, but the applicant's leadership role was constant.
98. Ms Okonkwor was unwilling to accept that the applicant getting up and walking out of meetings, or running away, were teenage behaviours, but rather considered them to be signs of maturity. Ms Benfield reminded her of an incident when there was a competition in a lesson, and another boy won the prize, which was a cap. The applicant was indignant, and wanted one too, then sulked when he did not get it. He had not understood that it was a prize for just one person. On another occasion, one of the other young people deliberately used the applicant's preferred mug for his tea, and the applicant again sulked: the other boy, seemingly unbothered,

drank his tea and smiled. The applicant needed to be in control: this was not just teenage behaviour.

99. Ms Okonkwor did not think that his having gained confidence, and lost his initial shyness, was a natural consequence of having been in the UK for longer. The applicant's time line did not add up and he had no documents, which raised credibility questions.
100. Ms Okonkwor was satisfied beyond any reasonable doubt that the age assessors were not wrong in assessing him as a confident adult, able to control his emotions. She had not raised her own views as he was already age-disputed. She believed the age assessment to be careful and fair. It had been properly completed and she had also relied on her own observations after the applicant returned to her caseload, following the negative age assessment. Ms Okonkwor would stand by her belief that he was not the age he claimed to be. Ms Okonkwor adopted and endorsed the age assessors' conclusions as to the applicant's age and was not willing to venture a separate assessment of his likely age.
101. There was no re-examination.

### **Ms Aimee Saber**

102. Ms Aimee Saber gave evidence remotely. She adopted her witness statement of 23 July 2021, in which she stated that she had been in a managerial position in BTG for six years and had worked there for ten years. Ms Saber had a Level 5 NVQ qualification in Health and Social Care, along with relevant qualifications for her role, which were updated regularly. As a BTG manager, she was in the office Monday-Friday, in the house next door to that where the applicant was living. She assisted his keyworker and BTG staff to produce the weekly reports which Kent Children's Services required from BTG.
103. Ms Saber met the applicant first when he moved to BTG after the interim order on 27 May 2021. She had no knowledge of him during the age assessment phase. He was really happy with the room he was given, attended his key working sessions, including English lessons, and was a polite and friendly young person who interacted well with the staff and other young people in the house.
104. All of the young people were unhappy at having their shopping and use of money supervised until their ELA card arrived. Staff explained that this initial period of supervision was part of the process: the applicant was not pleased, but explained it to the other young people and calmed them down.
105. Ms Saber described the applicant as something of a leader among other Sudanese students in the house, respected by them, instructing and guiding them in cooking and cleaning, assigning a fair share of the task to

each of them, but doing more than his share. As a result, all the Sudanese young people in BTG were more independent than before he came.

106. The applicant had better English than others in the house, and was also a good cook, having learned at Millbank. He could make traditional bread, and meat dishes, with halal meat, and sauces based on tomatoes, onions and chilis. He used a local halal butcher, and was able to use spices in cooking. He was unhappy at how expensive lamb was in the UK, but found a different halal butcher with a good range of meats. The applicant was well able to manage his money and to shop on a budget and within his means.
107. The applicant was not a bully: when the others did not pull their weight, the applicant would do the cleaning himself, including keeping the kitchen clean and emptying the bins. Ms Saber considered that the other Sudanese people in the house might recognise him as being older, or having a higher social standing in Sudan, or perhaps he was more educated than they were.
108. The applicant had high standards for the behaviour of other young people: he was shocked and disgusted when a football went into a neighbour's garden and one of the young people just jumped the wall and went to get it back. He thought that was very disrespectful.
109. Ms Saber had seen the applicant cajoling and encouraging other Sudanese residents to go to the mosque, so that they were not late. He was very proud of his Muslim religion.
110. When the applicant first arrived he was easily angered when crossed, but he quickly changed and was now very polite and friendly to the staff, holding mature and respectful conversations with others. He wore glasses to watch television or when doing a lot of written work. He was strong and confident in his presentation and always well presented when going out. He changed his clothes during the day, to be correctly presented for education sessions or for going out. He had good personal hygiene, and washed his clothes regularly.
111. On arrival, the applicant had very short hair, but it had grown out, and he was keen to have it cut. Staff explained that he would be responsible for paying for that. He wanted hair clippers and nail clippers 'and will mope when told no'. He was confident in getting around locally via train and foot.
112. The applicant did not have visible wrinkles on his face and his face was neither mature, old, nor obviously teenage. He had no acne, and never seemed to have full stubble on his face but did have a shadow on his upper lip. The applicant had a scar which looked like puncture wound, over his left temple. It was an old, healed scar. He also had a light scar on his right cheek.

113. The applicant was capable and sensible. He could understand complex information and come to a reasoned conclusion, responding differently depending on whether the option was good for him, or not. He had told staff that he did not plan to live in the UK for ever, and would like to be a pilot or an engineer. He did not want a job involving manual labour.
114. Ms Saber explained that staff had reported that the applicant had strong views on homosexuality: he thought it was 'bad', and could not understand why the rainbow flag was used both for Pride and for the NHS. Eventually, he accepted that 'this is what it is in Europe'.
115. After adopting her witness statement, Ms Saber was tendered for cross-examination. She said that there could be up to 15 young people in the BTG properties in the two houses, ranging between 16 and 25 years old. The houses were linked by closed circuit television.
116. The young people were all age disputed and somewhat in limbo. The remit of BTG was to teach young people to live independently, and to make sure they had the tools they needed, both practical skills and looking after their emotional well being and health needs. BTG found that depending on what they had done at home and whatever they had picked up along the way, their young people transferred skills to each other while living in the accommodation. Language ability was also a factor.
117. When the applicant first arrived back at BTG, he was one of three Sudanese men, and there were also two Ethiopians. The applicant took the lead among the Sudanese young people. One of the Sudanese boys was assessed as older than him (a court found him to be 23 years old) and the other one as younger, just 18. The elder was assessed at the same level of education as the applicant, while the younger was at a very low educational level. Those particular young people were all now in their own accommodation, but there was another young Sudanese man at BTG now.
118. Ms Saber said she had no behavioural concerns about the applicant while he was at BTG. It was difficult to describe what a typical teenager should look like. The applicant did not have a wrinkled face but did not look like a typical teenager. However, BTG did find that young people who arrived there by the asylum route looked older: their skin was different, probably because of the journey and 'everything in between'.
119. What was clear was that the applicant needed to have control of what he felt was his, including his benefits money. Generally, young people went along with the staff shopping with them, but this could be frustrating if they were used to shopping for themselves.
120. The applicant liked things to be clean and tidy. Ms Saber did not consider that to be age-related. The applicant's skills in cooking, cleaning and self care could have been acquired in his time in adult services in Derby: but the other boys had also spent time in adult services without learning them.

121. She also did not consider that his cajoling others to come to the mosque was an age indicator. The applicant's reaction to the disrespectful behaviour of another young person in jumping over the fence to retrieve a ball was not age specific but more a question of his upbringing.
122. Regarding the applicant's views on homosexuality and female genital cutting, the applicant had shown a firm belief which he was not willing to discuss. That might mean he was older, or that it was what he had been taught at home, a question of background. Again, Ms Saber did not know whether this was age related. In discussions, the other Sudanese young people were initially reluctant to comment, but then were open to a discussion of what they had observed while travelling through other parts of Europe. The applicant just waited to shut down the conversation.
123. There had been issues around the applicant's education bursary, which was delayed. Other boys were going to college to study, and he was definitely frustrated that he did not have the same advantage. BTG had no input into that, it was a matter for the respondent. The applicant had finally been given a time for a College interview on the afternoon of 26 January 2022 (the second day of the hearing), which was positive news. Young people did get frustrated if others received what they did not.
124. Overall, Ms Saber did not consider that BTG had firm evidence that the applicant was older than he claimed to be. He could be independent and confident, he engaged well, but that could equally be because of his travels and his background, rather than his age.

### **Other witness statements**

125. The witness statements of Ms Michelle Appiah and Ms Zahraa Adam set out their qualifications as social workers undertaking age assessments. The lead assessor was Ms Adam, while Ms Appiah as second assessor was responsible for note taking during the interviews. Ms Appiah noted that the applicant had engaged very little with the assessors, or where he did engage, provided contradictory responses. He was very reserved and did not respond to light-hearted comments about his hobbies, the weather, or his home in Sudan.

### **Ms Zahraa Adam**

126. Ms Zahraa Adam set out her qualifications and experience. She had worked in the refugee camps in France after the closing of the 'Calais Jungle' in 2016, for two weeks. She had been an independent age assessor for two local authorities, and provided 'consultancy services including Age Assessment training, peer mentoring and [running] an online webinar commissioned by Research in Practice on how to conduct lawful age assessments'.

127. She described the applicant as 'avoidant, resistant, and gave the assessors what I consider to be the bare minimum'. He would give a short answer, and not expand on it. His voice was 'low but harsh and the tone was commanding as though not to invite more questioning'.
128. The applicant was not responsive to remarks about the weather, or remarks which had 'everyone else laughing or smiling', which were intended to put him at ease. He rolled his eyes at some questions. He was visibly frustrated, and his demeanour 'hostile and short...making great efforts to hold in his anger'. Ms Adam thought this was adult behaviour: her experience was that children and adolescents 'rarely think before they act and often lash out or show emotions like anger and frustration very easily'.
129. At the end of the meeting on 18 December 2020, after being very uncooperative, the applicant is said to have pointed to Ms Adam and said, 'Next time you come if the outcome is not good then I do not want to see anyone'. Ms Adam considered this to be 'a way of intimidation that I would not expect from an adolescent'. The applicant treated the assessors like peers, and 'people he could overbear with his commands and gestures', not like older persons with professional status. Ms Adam said the applicant attempted 'to advise us on cultural aspects to make us feel like we made the mistake in our calculations because we did not take cultural aspects into consideration'.
130. Ms Adam also commented on the applicant's physical appearance, as well as his 'very telling' behaviour and demeanour during the age assessment process, initially presenting as 'reserved and quiet' but later, as frustrated and unhappy about being assessed. His evidence about his father's profession, his academic timeline, and a number of other matters was discrepant and there were substantial conflicts in dates and his age at various stages. He was able to guess how old the people were in the room, but not to estimate his family members' ages. He was able to manage his own needs and his level of independence was high.

### **Ms Michelle Appiah**

131. Ms Michelle Appiah thought the applicant was unusually stern and collected for a person of his claimed age, and made a number of observations about his facial structure (wrinkles and coarser skin), his bone structure, and the fact that he held himself comfortably, had broad shoulders, and his limbs were neither loose nor gangly 'as one would expect from a 16 year old'.
132. At [7] she says that 'At no point throughout the assessment process did I view [him] as a child. ... In my opinion, [his] gradual escalation of hostility was calculated and considered, compared to being impulsive'. She said that the applicant had verbally threatened Ms Adam and that they had made an holistic age assessment. Ms Appiah did not consider that the assessors' finding that the applicant was an adult was unreasonable.

## **Mr Alex Stringer**

133. Mr Alex Stringer's first witness statement, dated 11 June 2021, said that he had worked with unaccompanied asylum-seeking children since 2005 before training and qualifying as a social worker. Since qualifying, he had worked for the respondent and also for the NSPCC. Since June 2019, Mr Stringer had been the SUASC service manager, with ultimate responsibility for the accommodation and support provided to newly arrived unaccompanied asylum-seeking children in the respondent's care.
134. Mr Stringer exhibited to his statement extracts from Connect2Kent records which show that Sudanese Arabic interpreters were provided and that the applicant's representatives did not notify the respondent that he needed a *South* Sudanese interpreter. Mr Stringer disputed the applicant's account of interpreter difficulties, stating that they were not mentioned during the age assessment process. The applicant had been asked if he understood the interpreter at the time, and said he did.
135. Mr Stringer's second witness statement, dated 21 January 2022, was not admitted, but the exhibit containing the results of an information request to the Italian authorities was admitted. It showed that the respondent made enquiries of the Italian authorities (the Sistema Informativo Minori) on 13 January 2022, very shortly before the hearing of this application. Although the applicant said he had been fingerprinted in Italy, the Italian records did not contain any information under the names and date of birth provided to the UK authorities. It is possible that the applicant gave different details in Italy to those he used in the UK. Enquiries were made of the Italian Minister of the Interior, to which no response has yet been received.
136. Mr Stringer also gave details of social media research he carried out, but that is not admitted. It came very late and the applicant's representatives were not given any opportunity to consider this alleged research before the hearing.

## **Mr Apollo Kawoya**

137. Mr Apollo Kawoya's statement indicated that he knew the applicant at Appledore under a different name from that which he uses in these proceedings. Mr Kawoya has three young adult children himself, now all older than 17. He observed the applicant at Appledore for an Age Assessment Observation Report, but without disclosing that he was doing so.
138. Mr Kawoya said that the applicant was 'an introvert and noticeably nervous' when speaking to people in authority, or his seniors. The applicant had pitched in to stop a fight on a few occasions at Appledore, although it got him into trouble. Once he gained confidence he started to open up.



139. Mr Kawoya thought that the applicant was likely to be the age he claimed to be, and his perceived maturity to be a result of the environmental conditions in which he had grown up.

## **Submissions**

140. For the applicant, Ms Benfield relied on her speaking note and skeleton argument. After setting out the legal framework, Ms Benfield submitted that the variations in the applicant's account were not fatal nor were they an indicator of poor credibility. Human memory was imperfect, and the applicant was a person who came to the UK with very little education or literacy to assist him in making a consistent account.

141. It was natural that he should continue to try to piece together his life and his history: any improvements or refinements in his account which resulted from that were not indicative of fabrication or exaggeration. Ms Benfield relied on the Joint Presidential Guidance Note No.2 of 2010 entitled *Child, Vulnerable Adult and Sensitive Appellant guidance* for what it said about the likelihood that children or vulnerable applicants might be shy, embarrassed, or not know the answers, and the higher likelihood that they might guess an answer in those circumstances.

142. Ms Benfield reminded me that Mr Shattock had not directly challenged the credibility of the applicant's asserted age in cross-examination, nor in particular, how he knew his age at various times (as distinct from his date of birth). Given the matters not challenged (set out at [7] of her speaking note) the Tribunal should find that the applicant's age was as stated.

143. The applicant's variant names were a question of transliteration: he could not spell in English when he arrived. The Tribunal should not make findings about his scarring, which were for the asylum claim.

144. The Tribunal should place no weight on the applicant having said on entry that he had only one brother, then later, that he had two, nor on his assertion (mainly) that his father ran a vegetable stall, but in speaking to Mr Kawoya, that his father was a biology teacher. When given the opportunity to correct this in re-examination, the applicant had clearly said he did not know what 'biology' was. Similarly, the record of his saying that he worked as a day labourer in the market, or was a shepherd, rather than sometimes helping his father on the market stall, were likely to be mistranslations.

145. The Tribunal should place no weight on the applicant's willingness to lie in Italy, saying he was 17, not 15, in order to stay with his friend. There were no records in Italy accessible to either party to either support or contradict that account.

146. The applicant's competence with money, cleaning and cooking, and his leadership among the other boys, were not determinative of his age. His views on homosexuality and female genital cutting were appropriate for

his upbringing and he should not be criticised or found to be older for not having changed them en route to the UK. The applicant's alleged 'mature behaviour' was not necessarily indicative of any particular age. Ms Saber at BTG considered that there was no evidence on which properly to doubt the applicant's asserted age.

147. The only evidence supporting the respondent's position was the revised view of Ms Okonkwor and the age assessment. All the other evidence pointed to the applicant's age being as stated (see [26] of the speaking note). Ms Okonkwor's assertion that the applicant looked older and had wrinkles on his face when seen over a video link was not consistent with Ms Saber's account, and she had seen him in person over a longer period.
148. The applicant was not challenged about his failure to notice the arrival of his wisdom teeth. Dental development was not determinative of physical age.
149. For the respondent, Mr Shattock relied on his skeleton argument and speaking note. The applicant had been an unimpressive witness. Everything was someone else's fault, not his. He had disavowed having friendships at BTG and alleged that his representatives had failed in their professional duties. The applicant's evidence about the note in the family Qur'an had never been mentioned before and was a clear fabrication. Mr Shattock set out the key inconsistencies at [16]-[26] of his speaking note.
150. The Tribunal should conclude that much of the applicant's account of his life and journey was likely to be false, and in particular his account of how he knew his age. Overall, the applicant's evidence was insufficiently reliable to be determinative or probative of age as asserted. His evidence was evasive and he did not answer questions. This should be regarded as substantially damaging his credibility, as he was given opportunity to explain but did not take it. The applicant presented as calm, collected and determined: his demeanour, for such weight as it would bear, was not that of a teenager.
151. Mr Shattock accepted that the dental evidence that the applicant had all four wisdom teeth was not probative of age and could be given very limited weight: see *R (ZM) v London Borough of Croydon* [2016] UKUT 559 (IAC) and *R (AS) v Kent County Council* [2017] UKUT 446 (IAC) at paragraphs (1) and (2) of the judicial headnote.
152. The Upper Tribunal should rely on the observations of others, including his demeanour (although that carried limited weight). Weight should be given to those who had long term opportunity to observe the applicant: see the UTIAC judgment of Vice-President Ockelton and Upper Tribunal Judge C Lane in *AM, R (on the application of) v Solihull Metropolitan Borough Council (AAJR) (Rev 1)* [2012] UKUT 118 (IAC) (14 June 2012). This applicant had sulked on several occasions when he did not get his own way, walked out of Appledore and gone missing.

153. These were arguably adolescent behaviours, but there was only a small margin of dispute in this application, such that it would be very surprising if the applicant's behaviour were entirely adult, with no adolescent responses.
154. The applicant had admitted lying to assist his claim on two occasions, and the Tribunal should infer that he did so in order to be treated as a child. Mr Shattock relied on *TS v London Borough of Croydon* [2012] EWHC 2389 (Admin) at [97]-[99] in the judgment of Mr Justice Fulford (as he then was). The Tribunal should find that the applicant had shown a marked degree of maturity.
155. There was only a small margin of difference between the age asserted by the applicant and that which the respondent advance. It would be surprising, even if the applicant were legally an adult, if there were no teenage behaviours such as the sulking described by Ms Saber, whose evidence had been rigidly neutral as to age.
156. The racism allegation had not been put to her in cross-examination and the Tribunal should give it no weight: she was hard working and a good employee. Her evidence was careful, fair and non-partisan.
157. The written evidence of Mr Kawoya and Mr Kelly was based on relatively brief observation when the applicant arrived in the UK. The applicant had 'opened his heart' to Mr Kawoya.
158. The evidence of Ms Okonkwor was not fatal to the respondent's case. She was entitled to change her mind and clearly genuinely traumatised by the incidents she had described regarding the television and so on. Her evidence covered the period up to November 2021, but she had stopped being the applicant's social worker in August 2021. Ms Okonkwor's evidence was that she provided the new social worker with an extended handover and did not leave the respondent's employment until November 2021.

### **The legal framework**

159. The disagreement between the parties arises on the credibility of and the weight to be given to various elements of the evidence before me. The legislative framework within which I reach my decision is well established and there is no disagreement between the parties on this. There is no burden of proof and no formal benefit of the doubt principle.
160. The starting point for assessing the applicant's age is the credibility of the applicant's own evidence (see *AE, R (on the application of) v London Borough of Croydon* [2012] EWCA Civ 547 at [44] in the judgment of Lord Justice Aikens, with whom Lord Justice Lloyd agreed). My primary focus must be on the applicant's account of how he knows his age and date of birth, but it is permissible to have regard to credibility more generally, as long as the primary focus is not forgotten and care is taken to ensure that

particular importance is afforded to the credibility of evidence in relation to his age (see *MVN v London Borough of Greenwich* [2015] EWHC 1942 (Admin) at [27] in the judgment of Mr Justice Picken.

161. In *R (on the application of AM) v Solihull Metropolitan Borough Council (AAJR)* , [2012] UKUT 00118 (IAC), the Upper Tribunal (Vice-President Ockelton and Upper Tribunal Judge Lane (as he then was)) considered that almost all evidence of physical characteristics was likely to be of very limited value as there was no clear relationship between chronological age and physical maturity in respect of most measurable aspects of such maturity. The Tribunal in *AM's* case found that it was difficult to see that any useful observations of demeanour or social interaction or maturity could be made in the course of a short interview between an individual and a strange adult, including the asserted expertise of a social worker, but that a person such as a teacher or family member, who can point to consistent attitudes and a number of instances over a period of time, or the reactions of an individual's peers or those who work with groups of young people should carry more weight, particularly if any necessary allowance for cultural differences is made.

## **Analysis**

162. My conclusions are not predicated upon the respondent's view or which witness evidence is to be preferred. I have reached my view on the evidence before me, the oral evidence and the documentary evidence, even if I have not specifically referred to it earlier. I must assess his age and reach a decision on his date of birth on the basis of his evidence and that of the witnesses called by the local authority.

163. On any view, the applicant is already an adult as he is now 18 years old, but he is young. The applicant's oral evidence when considered with the witness statements both in the process of these proceedings and to the Home Office was contradictory and inconsistent. There were numerous discrepancies and inconsistencies in the applicant's evidence. They are set out in Mr Shattock's speaking note and it is not necessary to rehearse them here.

164. The decision of the age assessors is based almost exclusively on the applicant's demeanour and physical appearance, although they recognise that this is not a proper basis for age assessment. To that extent, it is not reliable and I am unable to give it much, if any, weight in reaching conclusions on the applicant's age.

165. I have considered the oral evidence of Ms Okonkwor and Ms Saber. Neither of them is an expert but it is not possible to be an expert in determining age. Their evidence is opinion evidence. In deciding what weight I can give to their evidence, I considered their contact with the applicant and the experience and the contact that each individual has with other young people whether as asylum seekers, refugees or non-asylum seekers.

166. These inconsistencies do not impact on the applicant's age in the sense that they are indicators of his age but they impact on his credibility as a witness, in particular his willingness to assert the wrong age in Italy, his resiling from what he told Mr Kawoya about his father's job, and his stopping cleaning for a few days, when it became apparent that his competence, and his leadership, were disadvantaging him in his age assessment. The applicant's competence, and his leadership ability, are not necessarily determinative of his age, though they may indicate a higher social status in Sudan, or respect for his religious observance, or any of a number of other possible variables.
167. The respondent's case rests on the age assessment, and on the evidence of Ms Okonkwo, who changed her mind about the applicant after seeing the age assessment, and who saw physical signs of ageing on a video link meeting which were not apparent to Ms Saber, who was in the house next door to the applicant for several months. I am also very concerned by Ms Okonkwo's addition of the applicant giving instructions to others to commit various episodes of criminal damage, and barricading staff in the office. That account appears nowhere in the notes, is not in her previous witness statements, and is not borne out by Ms Saber's evidence. I do not treat Ms Okonkwo's evidence as reliable after the age assessment was made public. I consider that she decided that the age assessors had made a viable decision and that this influenced her thinking and her evidence.
168. I consider that this applicant knows approximately how old he is, but his evidence was so confused and at times evasive, that it did not greatly assist me in reaching a conclusion on his age. It is right to say that he admitted to altering his account to improve his case, or out of frustration, but equally, he was observed being petulant and sulking, and running away and ending up sitting on a park bench, which are adolescent behaviours.
169. On the other hand, those who dealt directly with the applicant more frequently considered that he was likely to be the age he said. Mr Kawoya said he was not sure; Ms Okonkwo (initially) had no concerns about his age; and Ms Saber did not consider that there was evidence which could lead to a conclusion that he was older than he claimed to be.
170. Overall, I consider that the lower age which the applicant has given and the date of birth of 10 November 2003 is likely to be right.

## **Decision**

171. I remind myself of the issues identified by the parties at the outset of the hearing:
- (1) The applicant's age and date of birth;
  - (2) The credibility of the applicant's account of his age and date of birth;

- (3) Whether the respondent's age assessment process was procedurally fair and the weight to be placed upon it; and
- (4) The weight to be placed on the evidence of third parties.

172. I do not find that the age assessment process reached a reliable conclusion since the decision made rested on the demeanour of the applicant rather than any more objective factor, but neither am I satisfied that the interpreter errors asserted made it procedurally unfair. The applicant did not complain of inadequate interpretation at the time and he is an evasive and confusing witness, even with an interpreter who has the right dialect and language.

173. Taking all the evidence before me into account, and doing the best I can with that evidence, I find that the applicant was born in the calendar year 2003 and is now 18 years old.

**174. I declare that the applicant's date of birth is 10 November 2003.**

### **Costs**

175. The respondent will pay the applicant's costs of these proceedings, to be assessed if not agreed.

176. There shall be detailed assessment of the applicant's publicly funded costs.

### **Appeal**

177. The respondent seeks permission to appeal, on rationality grounds. Mr Shattock argues that the respondent does not know why it has lost.

178. Mr Shattock contends that my findings as to the poor credibility of the applicant's evidence should have been fatal to his asserted age; that his account was fabricated, crafted and inconsistent, such that he should be considered to be a mature individual, thinking clearly and acting calmly (see *TS v London Borough of Croydon* [2012] EWHC 2389 (Admin)); that the judgment does not 'grasp the nettle' of the respondent's written and oral submissions about the applicant's observed behaviour at BTG; and that overall, the reasoning in my judgment is inadequate. He also argues that it was not open to me to make the findings at [165] above, which it contends were impermissibly perfunctory.

179. By way of response, Ms Benfield for the applicant contends that my reasons are adequate and that my findings were open to me on the evidence. She sets out at some length her reasons for so contending.

180. I do not consider that my reasoning is inadequate or that my findings of fact were not open to me on the evidence. The respondent and its witnesses have relied to a very great extent on appearance and demeanour, and the respondent's principal witness, Ms Okonkwo,

changed her opinion to align with that of the age assessors after reading their report, and added startling new accusations at the hearing which brought into question the credibility of her evidence as a whole, which runs counter to the rest of the respondent's evidence as to age.

181. I refuse permission as I am not satisfied that the proposed grounds of appeal disclose any properly arguable error of law in the judgment I have given. ~~~~0~~~~