



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

JR-2023-LON-
000937

In the matter of an application for Judicial Review

The King on the application of

MAA
(Anonymity Order made)

Applicant

versus

LEICESTER CITY COUNCIL

Respondent

ORDER

BEFORE Upper Tribunal Judge Kebede

HAVING considered all documents lodged and having heard from Mr J Swirsky of Counsel, instructed by Leicester City Council, for the Respondent, and from the Applicant in person, at a fact-finding hearing on 13 December 2023

IT IS ORDERED AND DECLARED THAT:

- (1) The Applicant was born on 1 May 2003 and was therefore 20 years of age as at the date of the hearing on 13 December 2023
- (2) The application for judicial claim is dismissed, for the reasons in the attached judgment.

Costs

- (3) The Applicant shall pay the Respondent's costs from 8 August 2023 on the standard basis, to be the subject of a detailed assessment if not agreed, otherwise no order for costs.

Permission to appeal to the Court of Appeal

- (4) No application for permission to appeal to the Court of Appeal has been made but in any event such application would be refused on the basis that there is no arguable error of law in the decision.

Signed: S Kebede

Upper Tribunal Judge Kebede

Dated: **22 December 2023**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 22/12/2023

Solicitors:

Ref No.

Home Office Ref:

Notification of appeal rights

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

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

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



Case No: JR-2023-LON-000937

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breems Buildings
London, EC4A 1WR

22 December 2023

Before:

UPPER TRIBUNAL JUDGE KEBEDE

Between:

THE KING
on the application of

MAA
(Anonymity Order made)

- and -

LEICESTER CITY COUNCIL

Applicant

Respondent

The Applicant, in person

Mr J Swirsky of Counsel, instructed by Leicester City Council, for the
respondent

Hearing date: 13 December 2023

J U D G M E N T

Judge Kebede:

1. The applicant, a national of Sudan, claims to be a minor and asserts that he was born on 1 May 2006, and was thus a child of 16 years of age when he entered the UK on 27 November 2022. Following an initial, short-form age assessment completed on 11 January 2023, the respondent assigned a date of birth to the applicant of 1 May 1997. That date has since been revised to 1 May 2003 further to a full age assessment on 23 May 2023, making him 20 years of age at the time of the hearing rather than his claimed age of 17 years. This judicial review challenges the age assessment, maintaining that the applicant was born on 1 May 2006 as claimed.

BACKGROUND

2. The applicant arrived in the UK on 27 November 2022 and claimed asylum, providing his date of birth as 1 May 2006.
3. According to the Home Office GCID Case Notes at pages 82 to 84 of the trial bundle, the applicant was interviewed at the port in Dover on 28 November 2022 by an immigration officer who believed that he was older than claimed and considered that his demeanour and appearance suggested that he was an adult of 25 years of age. The interview was observed by a social worker from the Kent Intake Unit (KIU) who agreed with the interviewing (immigration) officer and recorded his observations in a short form age assessment. The applicant was then formally registered as born on 1 May 1997.
4. The applicant was sent to a hotel in London and attended an initial asylum screening interview on 1 December 2022 which was conducted remotely by Skype with the Midlands Intake Unit, in which he claimed to have left Sudan illegally in 2020 and to have been helped by traffickers to travel to Chad, Libya, Tunisia, Algiers, Morocco and then to Spain where he arrived in July 2022. From Spain he travelled to France and then came to the UK by boat. He stated that he had come to the UK to claim asylum due to living in a war zone in Sudan.
5. The applicant was then served with illegal entry papers and transferred to NASS accommodation on 10 December 2022. He was also referred to the NRM as a potential victim of trafficking in relation to his experiences when in Libya.
6. Further to a referral by the Red Cross arising from the applicant claiming to be a child, two social workers from Leicester City Council, Surjan Sharma and Lauren Holland, visited him on 11 January 2023 at the hotel where he was staying and completed an age assessment by way of a short meeting. Following the meeting, and in a letter dated 11 January 2023, Megan Hill, Team Manager of the Single Assessment Unit at Leicester City Council, concluded that "*it is very obvious from the claimant's appearance that he is significantly older than his claimed age of 16 and very obviously over the age of 18*". The letter stated that the view of the social workers was that there was no uncertainty about whether the applicant was a child or an adult because he was at least 23 years of age.

7. On 31 January 2023 the applicant, through his then solicitors, sent the respondent a pre-action protocol letter challenging the lawfulness of the respondent's decision. The respondent replied on 16 February 2023, maintaining the decision.
8. On 13 March 2023 the applicant filed a judicial review claim in the Administrative Court challenging the decision of 11 January 2023 that he was an adult and claiming, in three grounds of challenge, that: he was a child with a date of birth of 1 May 2006 and that there should be a fact-finding hearing in the Upper Tribunal to assess his account of his age; the respondent had failed to conduct an age assessment through a fair process; and the respondent had failed to give adequate reasons for concluding that he was significantly over 18. The applicant also filed an application for urgent interim relief seeking interim support and accommodation from the respondent together with an order for anonymity. The applicant prepared a witness statement dated 8 March 2023 which was included with the claim bundle.
9. On 18 April 2023, in the Administrative Court, His Honour Judge Rawlings made an anonymity order and granted permission for the applicant to apply for judicial review, without a litigation friend, observing that *"Whilst in cases where it is obvious from the asylum seeker's appearance that they are over 18 it acceptable not to carry out a full "Merton" compliant enquiry into the asylum seeker's age, the decision does not give even the barest indications of what it is about the Claimant's appearance or demeanour that caused the Defendant to come to the conclusion that it was obvious."* The Judge ordered that the case be transferred to the Upper Tribunal to determine the applicant's age.
10. Further to the grant of permission, the respondent conducted a full 'Merton compliant' age assessment which took place over three interviews on 15 May 2023, 17 May 2023 and 23 May 2023, with the decision on the assessment made on 23 May 2023. The assessment was conducted by two social workers from Leicester City Council, Claire Payne and Rafiat Adamson. As part of the assessment, one of the social workers, Claire Payne, had a telephone conversation with the applicant's brother, on 22 May 2023. The age assessment concluded that the applicant was an adult of age 20, and a date of birth of 1 May 2003 was assigned to him.
11. On 23 May 2023 directions were issued by the Upper Tribunal Lawyer for the filing and service of documents relevant to the determination of the applicant's age and date of birth, including documents from the applicant following a proportionate search of his social media accounts, and for a case management review hearing to be listed.
12. On 21 June 2023 the applicant's then solicitors, Bhatia Best Solicitors, conducted a proportionate search of his social media accounts and served the relevant information on the respondent.

13. On 8 August 2023 the applicant's solicitors filed form UTIAC16 notifying the Tribunal that they were no longer representing him and advised the Tribunal that the applicant would be representing himself.
14. On 23 August 2023 the respondent filed and served a bundle of documents together with a 'Statement of Issues to be Determined at the Substantive Hearing'.
15. The matter then came before Upper Tribunal Judge Mandalia for a Case Management Review Hearing conducted by telephone on 24 August 2023 which the applicant attended in person, with an interpreter appointed to assist him. The applicant confirmed that he had taken no further steps to secure legal representation but that he intended to do so. Directions were given for the filing and service of evidence for the substantive hearing in an order issued on 29 August 2023 and the applicant was advised that any further evidence and witness statements must be filed and served before 21 September 2023.
16. The matter was listed for a substantive fact-finding hearing on 13 and 14 December 2023. Prior to the hearing the respondent filed and served a trial bundle and skeleton argument. There was nothing further from the applicant.

DOCUMENTARY EVIDENCE

17. The respondent's consolidated bundle of documents comprises three sections: section A includes applications and orders; section B consists of the applicant's documents including his grounds of claim, witness statement, subject access request documents comprising Home Office GCID case notes, and Facebook disclosure; and section C consists of the respondent's documents including the summary grounds of defence, age assessment report and notes, and statement of facts and issues.
18. I also have the judicial review permission bundle which was before the Administrative Court containing a Note from the Administrative Court Office lawyer setting out the case, the respondent's acknowledgement of service and summary grounds of defence, the applicant's judicial review claim form and grounds of claim, the age assessment decision of 11 January 2023 from Megan Hill of Leicester City Council, the applicant's statement and UK immigration documents, the applicant's pre-action protocol letter from his former solicitors challenging the decision of 11 January 2023 and the respondent's reply, photographs of the applicant and age assessment case law.
19. All of these have been carefully read and considered, and the following is a summary of the main parts of the documentary evidence.

GCID Case Minutes

Interview of 28 November 2022

20. The GCID case minutes for 28 November 2022 (at page 82/3 of the trial bundle) record the applicant's interview with an immigration officer, in which he stated that he was 16 years of age, born on 1 May 2006, and had left Sudan at the age of 15 years in March 2021. He said that he had attended primary school for 6 years from age 7, in 2013, and had been in school until he was 14 years of age in 2020. He said that he was 11 or 12 in 2017. He said that he looked older because of the area where he grew up, in the West of Darur. He claimed never to have shaved in his life, but it was observed that he had evidently been shaving for a long time, with heavy growth, and had a deep voice, and that he denied being 25 years of age.

Short Form Age Assessment by Kent Intake Unit 28 November 2022.

21. The GCID case notes also record the observations made by the attending social worker from the Kent Intake Unit (KIU):

"All assessments begin with initial impression made from visual presentation. An initial impression of age range is formed based on height, facial features including facial hair, skin line/folds, etc; voice tone, and general impression.

I therefore looked at the applicant to be satisfied with the assessment. In the absence of documentary evidence and based on their size, facial and body hair, and behaviour I was not satisfied that he is the claimed age.

Applicant has deep voice, established wrinkles in forehead, around eyes, nose, and mouth. His facial structure is fully developed, he has defined jawline and pronounced adams apple. He has wide, broad shoulders that go past the hip area and large manly hands. Deep frown lines and facial hair which has been closely shaven, leaving a shadow on his face.

His demeanour is very adultlike. Very confident and self-assured. Making good eye contact, challenging some of the information put to him, very insistent. Spoke over the interpreter and officer on a number of occasions.

Based on the assessment I am in agreement with IO Phillips, that the applicant is 25 years of age and he will be registered on our system as born 01/05/1997 (25 years of age). IS97M and BP7 have both been completed and issued as appropriate.."

22. The social worker noted in addition that, according to the applicant's claim to have known his age when his mother told him in 2007 or 2008, he would have been 2 or 3 years old at the time. It was noted that, whilst he said that he was aged 7 in 2013, he also said that he was 15 in 2017 and the dates did not add up, but made him at least 20 years old. He claimed to have left Sudan at age 15 or 16 and to have been given a year of birth of 2004 when fingerprinted in Spain. The social worker observed that the applicant's facial features evidenced adult development in line with an approximate age of between 24 and 26 years old. The social worker's professional opinion was that:

"On observation of demeanour and physical appearance, as well as the answers given during assessment, it is my opinion that the applicant is not a child and is

significantly over the age of 21 years, and could well be between the ages of 24 and 26 yrs old.”

Initial short-form Age Assessment dated 11 January 2023 (page 84 of the permission bundle)

23. The initial age assessment decision was a letter dated 11 January 2023 from Megan Hill, Team Manager, Single Assessment Team, at Leicester City Council comprising two main paragraphs as follows:

“...Based on the meeting with you, Leicester City Council does not accept your claim that you are a child and considers it clear and obvious that you are an adult. The social workers who visited you are trained to assess the ages of people claiming to be children and they have assessed you to be an adult.

In line with the ruling in the case of R (B) v Merton (2003] EWHC 1689 (Admin), in cases where it is 'very obvious' that a person is under or over 18, there is normally no need for 'prolonged inquiry'. In your case, it is very obvious from your appearance that you are significantly older than your claimed age of 16 and very obviously over the age of 18. For the avoidance of any doubt, this is the view of two assessing social workers that there is no uncertainty about whether you are a child or an adult because you are at least 23 years old.”

24. **‘Merton’ Compliant full Age Assessment dated 23 May 2023**

The age assessment was conducted by two social workers from Leicester Council, Claire Payne and Rafiat Adamson. The report confirms that the age assessment was conducted over 3 sessions, two meetings on 15 and 17 May 2023 and a “minded-to” meeting on 23 May 2023. Each meeting was conducted through the same Arabic speaking interpreter and each was attended by the same appropriate adult.

25. Under the heading “Physical Appearance, Demeanour”, it was noted that the applicant appeared to be under 6ft tall and that he had a small amount of hair on his upper lip and was otherwise cleanly shaven with a small amount of stubble around his jaw line. He had lines on his forehead and an Adam’s apple was noted. He was clear and consistent throughout the meeting.
26. Under the heading “Social History and Family Composition”, the assessors noted that the applicant gave his date of birth as 1 May 2006 and said that he was 17 years old on 1 May 2023. He said that he knew his date of birth as his mother had told him. He said in his first and second meetings that he left school when he was 16 years of age, but in the ‘minded to’ meeting said that that was not correct and that he was 15 when he left school. He said that he had no identity documents confirming his age and had left Sudan with no identification, but later said that he had an ID card but had lost it when he was in Libya. He said that he was born in Darfur and lived with his parents and siblings. He said that he worked for about 9/10 months after leaving school before he left Sudan, but subsequently said that it was 3 months. The applicant gave details of his journey to the UK, which the social workers recorded. He said that when he was in Spain in July/ August 2022 he called his mother

to check his age and she told him that his date of birth was 1 May 2006. The assessors noted that the applicant's description of his journey and the timeline and date he claimed he left Sudan and arrived in the UK appeared credible and was consistent throughout the meetings. They noted that it was consistent with his claim to have been travelling for around 2 years, but was not consistent with his claimed age.

27. Under the heading "Developmental Consideration" it was noted that the applicant had said that he did not have any friends at the hotel and only knew a few people in the Sudanese community. He did not like it at the hotel because everyone was older than him and he spent all his time in his room.
28. Under the heading "Education", it was noted that the applicant stated that he had started school in around 2012/3 and that he started when he was about 7 years of age and left when he was 16 and worked for 9 to 10 months before leaving Sudan. It was noted that in the 'minded to meeting' he changed his account and said that he was 15 and not 16 when he left school. The assessors observed that the chronology the applicant had shared was not consistent with his stated age. He claimed at the second meeting to have left school in 2020 when he was 16 years old and to have worked for 3 months before leaving Sudan and then travelling for 2 years before reaching the UK, which would make him 19 years of age.
29. Under the heading "Information from Documentation and Other Sources" it was noted that the applicant had provided the contact details for his brother who resided in Leicester and had consented to the social workers contacting his brother. The social workers then recorded details of the telephone call to the applicant's brother, who confirmed that the applicant had been about 12 years old when he (the brother) left Sudan, that he (the brother) had left Sudan when he was 24/25 years old and that he was now 32 years old, and that the applicant was born in 2006 although he did not know the month or date.
30. In their analysis of the information obtained and their conclusions, the assessors recorded the applicant's response to queries put to him about discrepancies arising out of the timelines he and his brother had given. In their analysis they observed that, based upon the timeline that the applicant had given them, he would already be 20 years of age. They concluded that he was not credible on how he knew his own date of birth/chronological age. They noted that he had maintained the same account throughout the assessment until the discrepancies were put to him at the 'minded to' meeting and that even on the changed account given at the 'minded to' meeting, including the age at which he finished school, he would still be at least 20 years of age. The assessors accordingly deemed the applicant to be an adult of 20 years of age, giving him a date of birth of 1 May 2003.

**Telephone interview with applicant's brother on 22 May 2023
(Page 944)**

31. A telephone discussion was held on 22 May 2023 between Claire Payne, social worker, and the applicant's brother, Adam. The applicant's brother confirmed that he was now 32 years old and had left Sudan when he was 24/25 years of age, at which time the applicant was around 12 years of age. He said that he was sure that the applicant was born in 2006 but he did not know the month or date. He said that the applicant sometimes came to his home. He confirmed that he remained in contact with his mother.

The Applicant's Witness Statement dated 8 March 2023

32. In his statement the applicant explained that his date of birth was 1 May 2006. He stated that he knew that because his mother told him his date of birth when he started going to school in Sudan. He needed to know his date of birth so they could register him for school. He went to school for about 6 years, and stopped attending school in 2020. He said that his date of birth had been repeated to him on several occasions during the years he attended school. He had never had a birth certificate, but when he was in Sudan he was given a card which had his date of birth on it. It was given to him by a charity in Sudan so he could receive support from them such as clothing and food. He no longer had this card as he had lost it. The last time he was told his date of birth was when he was in Spain. He was asked to contact someone to confirm it as the Spanish authorities said he could be older or younger than his claimed age because he had no documents to prove his age, so he had called his mother and had asked her to confirm his date of birth. Once she had done that, the authorities accepted his age. This was the last time he had contact with his mother. He had not been able to speak with her since he arrived in the UK. The applicant stated that everyone in the hotel where he was staying was much older than him. He did not speak to anyone in the hotel because they were all older than him and he was scared. He did not have any friends in the hotel, and had not made any friends outside the hotel either because he did not go outside. He did not attend college. He said that he would like to attend college and play football but no one was his age.

THE HEARING

33. The applicant was not legally represented at the hearing and appeared in person, with his brother Adam. He explained that he had tried to find legal representation but had been unable to do so and was content for the hearing to proceed in the absence of a legal representative. The nature and format of the proceedings were clearly explained to him and he was told to request a break at any time if he needed it. A Sudanese Arabic interpreter appointed by the Tribunal interpreted for him and confirmed that they understood one another. There were no interpretation issues arising during the hearing and I was entirely satisfied that the applicant and the interpreter understood one another.
34. There were no witnesses for the respondent. The applicant wanted to call his brother Adam as a witness. Mr Swirsky objected on the grounds that no witness statement had been produced and neither had there been any

prior notification that the applicant's brother would be giving oral evidence, despite it having been made clear to the applicant, at the case management review hearing on 24 August 2023, that any witness statements and evidence had to be filed and served by 21 September 2023. Although I agreed with Mr Swirsky in principle I allowed the applicant's brother to give evidence, in the interests of fairness, given that the applicant was not legally represented. It was made clear to the applicant and his brother, though, that his brother would have to sit outside the court room whilst he gave his evidence, which they both accepted. The applicant was initially concerned about his brother not being present but his brother came back into the courtroom momentarily to reassure him and there were no further concerns during the hearing

35. The applicant also produced and sought to rely upon a copy of a document entitled "Certificate of Entry" from the Nyala Central Register Office as evidence of his date of birth, which he said was a national identity card. The applicant said that he had received it a month ago but had been told to wait and bring it with him to the hearing. Mr Swirsky had no objection to me considering the document, albeit that it had not been produced until the hearing. It was accepted that the name in the document had been mistranslated and that it was the applicant's name.

Oral Evidence

36. The applicant gave oral evidence before me. Although, as I have mentioned above, I had no concerns about the interpretation and no concerns about his understanding of the questions put to him, I noted, similarly to the observations of the age assessors, that he often appeared distracted and would play with pieces of paper in front of him. However it was clear that he understood and was able to answer the questions and, when asked if he was fit and well and content to continue, he confirmed that to be the case. I was therefore satisfied that it was appropriate to proceed with and complete the hearing.
37. The applicant was referred to his statement, dated 8 March 2023, which he confirmed was true. When cross-examined, the applicant said that his mobile phone had been broken since the age assessment and that was why he had not been answering calls from the local authority. He said that the document he had presented today was sent to him by his mother. He had spoken to her about a month ago before his phone broke and had told her that his age was not accepted by the authorities here and asked her to send him a certificate, which she did. He received it approximately a month ago. His brother had since sold him another phone.
38. The applicant said that he had lived with his family in Nyala, Sudan, in a hut with only one room. There were 19 of them living in the hut. His father had a second wife. The hut did not have electricity or running water and there was no telephone. His father used to farm on other people's land. The applicant said that he had 7 sisters and that there were 12 brothers including himself. He had 3 full sisters and 3 full brothers, so there were 7 full siblings in total including himself. Two of his

full siblings were younger than him. The brother at the hearing was his half-brother from his father. None of his half-siblings were younger than him. When asked by Mr Swirsky why he had said at the age assessment that he was the youngest he said that he did not remember but that there were definitely two who were younger than him.

39. The applicant said that he went to school in Sudan and studied Arabic language, the Quran, maths and Fikeh/Hadith. He did not remember the age when he went to school and he did not remember at what age he left school. When reminded that he had said in his age assessment that he left school when he was 16, the applicant said that he did not remember. The applicant said that when he was in Sudan he would not have known the year, month or day of the week. When asked why, then, had he been able to give dates and years in the age assessment, the applicant said that he did not know. He said that he did not celebrate birthdays in Sudan. He did not know his own birthday and he did not know the birthdays of his parents or siblings. His mother was not educated but could read the Quran. His father could read, but only basic reading. The applicant said that his mother told him his date of birth but he did not know how she knew it. She told him his date of birth when she took him to school but he did not remember what she said was his date of birth. When asked why he had told officials that his date of birth was 1 May 2006 when he arrived in the UK, if he did not know his date of birth, the applicant said that he knew the month and year but not the date. He knew the month and year because his mother told him when he was in Spain. When asked how he was able to tell the authorities the age and year he attended school if he did not know years, the applicant said that they asked him and if he did not know he would tell them he did not know. He did not remember what the social workers asked him and he did not remember what he told them.
40. The applicant was taken to page 12 of the age assessment report (page 927 of the trial bundle) and confirmed as correct that he left Sudan in 2020. He agreed that he worked in Sudan for 9 to 10 months before he left. He said that he did not remember saying that he left school when he was 16 years of age, but he agreed that it was possibly autumn when he left. He did not remember saying that the journey took 2 years. When referred to his response at the end of page 12 where he said that he was 15 years of age and not 16 when he left school, the applicant said that he was upset at the time he was asked, as his father had had his leg amputated in Sudan, a matter he accepted that he had not mentioned to the assessors. The applicant said that he had told the assessors that he was young when his brother left Sudan but he did not know his age at the time. He did not know his brother's age then or now.
41. The applicant said that he had first had a Facebook account when he was in Libya as someone helped him open an account when he was there. Mr Swirsky referred the applicant to some of the photographs in his Facebook account, the first of which was dated 5 July 2020 and which he confirmed was taken when he was on his journey from Sudan, but he did not know where. The photograph dated October 2020 was in Libya. The applicant said that he could have left Sudan before July 2020 but he

could not remember. He left with his cousin, because he was assaulted by the Janjaweed. The rest of his family remained in Sudan and did not leave their house.

42. In response to my enquiry the applicant said that the certificate of identity was sent off to be translated in the UK. The document was photographed in Sudan and sent to his mobile telephone. His mother gave the document to one of their neighbours who took the picture and sent it to him. In response to Mr Swirsky's further questions, the applicant said that he had not seen that document before but had seen a different one when he was in Sudan which he had taken with him when he left the country. It was taken from him in Libya. The applicant said that the document had to be kept at all times in case the police searched you and asked for proof of identity.
43. The applicant's brother, Adam, then gave evidence before me. He said that he had contacted his family in Sudan to send a certificate to prove the applicant's age and the applicant's mother had sent that certificate. He had not had a document like that himself when he was in Sudan, but he was aware that if you did not have that certificate you could not get a passport or go to school. The document was sent to the applicant's friend's phone. He kept in touch with his family in Sudan, although not frequently. He confirmed that the applicant had five younger siblings. Adam said that he came to the UK as an adult and successfully claimed asylum. He was 24/25 years of age when he arrived in the UK on 17 May 2015. His journey took a year and 3 to 4 months. He was currently 33 years of age and had been here for 8 to 9 years. The applicant was 6 or 7 when he left Sudan. It was not correct that he had told the social worker that the applicant was 12 years old when he left. He had been helping the applicant since he came to the UK.

Submissions

44. Mr Swirsky submitted that the starting point was the second age assessment, of 23 May 2023. The age assessment was Merton compliant and was undertaken with all the required safeguards. Every effort was made to enable the applicant to put his side of the story and he was repeatedly told that no one was trying to catch him out. He was given plenty of opportunity to make comments. The age assessment should accordingly be given considerable weight. Mr Swirsky then addressed the three types of evidence presented today, namely the certificate, the applicant's brother's evidence and the applicant's evidence. With regard to the certificate, Mr Swirsky gave reasons why it was not accepted that it was a genuine document. With regard to the evidence from the applicant's brother, Mr Swirsky submitted that there were contradictions in his own evidence and with the applicant's evidence and that he was clearly changing his evidence to suit the circumstances, so that it did not assist the applicant at all. As for the applicant's evidence, it had been impossible to get a coherent and consistent version of events and he had given different stories to different authorities at different times. His evidence was totally unsatisfactory. Mr Swirsky submitted that the only really detailed analysis was that carried out by the age assessors who

concluded that the applicant was an adult and he asked me to uphold their conclusion that the applicant was 20 years of age as at 23 May 2023.

45. The applicant wanted his brother to provide a response to Mr Swirsky's submissions. His brother, however, despite being reminded several times, was unable to respond other than by way of giving further evidence.

THE LEGAL FRAMEWORK

46. The legislative framework within which this case is to be considered is well-established. I set out the following relevant principles.
47. Where the age assessment of the local authority is in dispute, it is for the court or Tribunal to reach its own assessment of age, as a matter of fact (R (A) v Croydon London Borough Council [2009] UKSC 8).
48. The various authorities make it clear that there is no burden of proof in such cases. In R (CJ) v Cardiff City Council [2011] EWCA Civ 1590 the Court held that the application of a legal burden of proof is an incorrect approach to adopt. It is not the function of the court (or Tribunal) to ask whether a local authority has established that a claimant is an adult, nor to ask whether a claimant has established that he is a child. Rather, it is for the court or Tribunal to decide on a balance of probability whether a claimant is or is not at the material time a child. The role of the court or Tribunal is inquisitorial. The Tribunal is required to conduct a "sympathetic assessment" of the evidence in favour of the applicant:
49. In R (on the application of AM) v Solihull Metropolitan Borough Council (AAJR) [2012] UKUT 00118 the Tribunal made general observations about the impact of evidence of various sorts and from various sources, concluding that "[14] ...almost all evidence of physical characteristics is likely to be of very limited value" and "[19] ... So far as demeanour is concerned, it seems to us that there may be value to be obtained from observations of demeanour and interaction with others made over a long period of time by those who have opportunity to observe an individual going about his ordinary life. But we find it difficult to see that any useful observations of demeanour or social interaction or maturity can be made in the course of a short interview between an individual and a strange adult."
50. At [21] of MVN v London Borough of Greenwich [2015] EWHC 1942, Picken J referred to the ADCS Age Assessment Guidance of October 2015:

*"The **Merton** guidelines have also been reflected in the 'Practice Guidelines on Assessing Age' as developed for local authorities by the London Boroughs of Hillingdon and Croydon. That document sets out the relevant principles, as helpfully summarised by Miss Luh in her opening skeleton argument, without objection from Miss Screeche-Powell, as follows:*

(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."

51. And went on to say at [27] that:

"It would, therefore, appear that the primary focus is on the credibility of the person's evidence concerning his or her age, but that it is permissible to have regard to credibility more generally provided that, in looking at credibility more generally, the primary focus to which I have referred is not forgotten."

DISCUSSION

52. It is relevant to note, as a starting point, that the shortcomings of the age assessment conducted on 11 January 2023, as pleaded in the applicant's second and third grounds of claim, have since been addressed by a full, evidently Merton complaint age assessment conducted following the grant of permission, in May 2023. The original grounds of challenge have, to that extent, become academic, although Mr Swirsky accepted that the challenge to that assessment was potentially relevant to the issue of costs, particularly given that it was after permission was granted that a full Merton compliant age assessment was undertaken. Mr Swirsky agreed that, given the shortcomings of that initial assessment, relevant adjustments would be taken when assessing costs.

53. The applicant has not filed any further grounds or sought to amend his original grounds of claim to make a specific challenge to the full age assessment of 23 May 2023. There is, therefore, no challenge to the lawfulness of the updated age assessment process which was, in any event, unarguably properly conducted in accordance with the Merton guidelines and in compliance with the correct procedures, with the relevant safeguards in place and with the applicant being given ample opportunity to address and respond to the assessors' concerns and conclusions.

54. Accordingly the sole challenge before me was to the respondent's factual conclusion on the applicant's age.
55. The respondent's case relies partly upon the observations of the Kent Intake Unit following the assessment on 28 November 2022 which was based largely on the applicant's appearance, but for the most part relies upon the age assessment report of 23 May 2023 which involved a much more detailed analysis. The conclusions reached in that later report were very much based upon the timeline given by the applicant himself. According to that timeline, namely leaving school aged 16, working for at either 3 months or 9-10 months after leaving school, then leaving Sudan in 2020 in autumn and travelling for 2 years before arriving in the UK in November 2022, he would have been at least 19 years of age when he arrived in the UK and would have been 20 years of age by the time of the age assessment. Likewise, according to the timeline provided by the applicant himself, and by his brother Adam to the social worker on 22 May 2023, namely that he was 12 years of age when Adam left Sudan either 7/8 years ago or 9/10 years ago, he would have to be at least 19 years of age by the time he arrived in the UK and 20 years of age by the time of the age assessment.
56. The applicant was given every opportunity, throughout the age assessment and in particular at the 'minded to' interview, to address the conclusions inevitably reached from his own evidence. As Mr Swirsky submitted, it is clear that the assessors went to great lengths to assist the applicant by providing him with the relevant timeline and repeatedly talking him through the concerns arising from that, showing him how it did not correspond to the date of birth he was maintaining. However the applicant, despite attempting to change his evidence, was unable to explain why it was that, even on his amended account, the evidence still corresponded with an earlier date of birth than he was claiming and made him an adult. As already pointed out above, there has been no challenge by or on behalf of the applicant to that age assessment, other than by way of his insistence that he was the age he was claiming to be and, as Mr Swirsky submitted, there was nothing said in the evidence at the hearing to undermine the assessment in any way. In the circumstances I agree with Mr Swirsky that the age assessment is a weighty piece of evidence.
57. The applicant, on the other hand, has no independent supporting evidence other than a photograph of a document produced at the last minute at the hearing. He was repeatedly made aware of the need for supporting documents and had the benefit of legal assistance and representation up until August 2023 but yet, despite remaining in contact with his mother who was in a position to provide him with documentary evidence, and indeed contacting her from Spain in July 2022 about his date of birth, did not produce anything until the day of the hearing. He has not provided any explanation as to why it was only at the very last minute that he produced the document and neither has he explained why, if the document was issued in 2019 and thus already in existence at

the time he left Sudan, he did not request and produce it earlier. That in itself raises concerns about the provenance of the document.

58. Further reasons for doubting the reliability of the document are that it provides a different date of birth to that maintained by the applicant, namely 22 May 2006 rather than 1 May 2006 and, in addition, as Mr Swirsky submitted, it is not clear what the document actually is. The applicant's evidence about the document was inconsistent. He claimed that such a document was required by everyone as proof of identity and that it needed to be kept with the person in case of being stopped and checked by the Sudanese authorities, yet he also said that he had never seen the document before and, in his age assessment, he claimed not to have had any identity document other than the card given to him by a charity in Sudan, which he lost in Libya. Further, his brother Adam said that he had never had such a document himself. In addition, whilst the applicant claims that the document is a photograph of the original, it is not clear from the copy produced that the photograph was of an original or a copy document. The applicant claimed to have received the photograph of the document on his own mobile phone but that he had since lost his phone. Therefore the document could not be viewed. Yet his brother Adam said that the document was sent to the applicant's friend's mobile phone. The applicant claimed to have received the document a month previously whilst his brother said it was received four months previously. There are therefore significant inconsistencies in the evidence about the document, about its purpose and its provenance, and, in the circumstances, I share Mr Swirsky's views as to its reliability as a genuine piece of documentary evidence and do not consider it to be a reliable indicator of the applicant's date of birth.
59. The only other evidence upon which the applicant seeks to rely to support his claim is his own assertion as to his age, as supported by his brother. The credibility of that evidence is therefore a key issue, but I agree entirely with Mr Swirsky that the evidence of both the applicant and his brother was wholly unsatisfactory and unreliable.
60. Addressing firstly the evidence from the applicant's brother Adam, it is clear that there were significant discrepancies within his own evidence and between his evidence and that of the applicant. It was the applicant's evidence before me that he had 2 younger siblings (although he told the age assessors that he was the youngest), whereas Adam claimed that the applicant had 5 younger siblings. Adam's evidence before me was that he arrived in the UK at the age of 24/25, whereas he had told Claire Payne that he left Sudan at that age. Most significant, however, was his evidence about the applicant's age when he (Adam) left Sudan. When interviewed by the social worker Claire Payne on 22 May 2023, Adam confirmed that the applicant was 12 years of age when he (Adam) left Sudan, which was consistent with the account given by the applicant to the assessors. Yet in his evidence before me he changed his account and said that the applicant had been only 6 or 7 years of age when he left Sudan. I agree with Mr Swirsky that the applicant's brother was evidently attempting to change his account to suit the circumstances and that, rather than assisting the applicant, his lack of

credibility served only to undermine the reliability of the evidence as a whole.

61. As for the applicant's evidence before me, that was equally unreliable and was, likewise, a clear attempt to disengage himself from the timeline he had previously provided to the age assessors. Whereas he had provided years, months and even specific dates for events in the age assessment, as indeed he had when interviewed by the immigration services and KIU in November 2022 and in his witness statement of 8 March 2023, he claimed before me that he did not know about years and months and dates when he lived in Sudan, that he did not remember his age when he started and left school, he did not remember how old he was when his brother left Sudan, he did not remember how long it took him to travel to the UK from Sudan and he did not remember what he had said to the age assessors. Although he told the age assessors that he knew his age and date of birth because his mother told him and that every year she would tell him it was his birthday and he would add an extra year, his evidence before me was that he did not know birthdays, either his own or his parents' or siblings'. He told the age assessors that he was the youngest of 12 or 13 siblings, whereas his evidence before me was that he had 18 siblings of whom 6 were full siblings and that he had 2 younger full siblings. Indeed, there was nothing about the applicant's evidence before me that was consistent with what he had said to the previous age assessors and the evidence he had given to the assessors was, likewise, far from consistent. As Mr Swirsky submitted, it was simply impossible to get a coherent and consistent version of events from him.
62. I am mindful of the guidance provided in the relevant jurisprudence as to the caution to be exercised when considering credibility in general. I refer again to the ADCS Age Assessment Guidance set out above, that "*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.*" However, it seems to me that the above adverse findings are directly relevant to the credibility of the applicant's account of his age. I do not accept that he has provided a truthful account. On the contrary his account has been deliberately untruthful. The same can be said for his brother.
63. Accordingly, there is no evidence at all which supports the applicant's case. His own evidence relating to his age is significantly lacking in credibility, for the reasons set out above. There is a comprehensive and well-reasoned age assessment report which provides various bases, in particular his own timeline, upon which the applicant has been assessed as an adult of 20 years of age at the time of the report. Whilst it is the case that reliance upon physical appearance is, as held in NA, R (on the application of) v London Borough of Croydon [2009] EWHC 2357 at [27] "*a notoriously unreliable basis for assessment*", it is relevant to add to all of the other evidence already discussed that the applicant's appearance

was considered by the KIU social workers, for the reasons set out in the GCID notes as referred to above, to be that of an adult.

64. Taking all the evidence before me into account and doing the best I can with that evidence, I am satisfied that the overall evidence is supportive of the age the respondent considers the applicant to be and is consistent with the date of birth assigned to him and relied upon by Mr Swirsky, namely 1 May 2003.

DECISION

65. The applicant's claim for judicial review is accordingly dismissed. I find that the applicant was born on 1 May 2003 and is currently 20 years of age and I make a declaration to that effect.