IN THE UPPER TRIBUNAL **Case No.: JR/1337/2021 JR-2021-LON-000853**

IMMIGRATION & ASYLUM CHAMBER

JUDICIAL REVIEW

In the matter of an application for Judicial Review

BETWEEN :

THE QUEEN
on the application of AM

Claimant

- and -

LIVERPOOL CITY COUNCIL

Defendant

ORDER

UPON the fact-finding hearing on 19 May 2022 before Upper Tribunal Judge Rimington;

AND UPON the Tribunal's judgment being handed down on 19 July 2022; declaring that the Applicant's date of birth is 15 September 1997;

AND UPON Mrs Justice Lang having granted an order on 5 May 2021 protecting the anonymity of the Applicant, who is referred to as 'AM';

IT IS HEREBY ORDERED THAT:-

1. The application for judicial review is dismissed.

2. The anonymity order dated 5 May 2021 shall remain in force and the Applicant shall not be identified directly or indirectly.

3. The Applicant is to pay the Respondent's reasonable costs to be assessed if not agreed, such costs not to be enforced without the leave of the Tribunal. The Applicant having the benefit of cost protection under s26 of the Legal Aid, Sentencing and Punishment of Offenders

Act 2012, the amount payable is to be determined following an application by the Respondent under regulation 16 of the Civil Legal Aid (Costs) Regulations 2013.

4. There is to be a detailed assessment of the Applicant's publicly funded costs.

5. **Permission to appeal to the Court of Appeal is refused**. Neither representative attended and no grounds were raised at the hand down and I consider there to be no arguable error in my judgment.

Signed: Helen Rimington **Upper Tribunal Judge Rimington**

Dated: **19th July 2022**

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): *25 July 2022*

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).

IAC-FH-CK-V1

IN THE UPPER TRIBUNAL

JUDGMENT GIVEN FOLLOWING HEARING

JR/1337/2021
JR-2021-LON-000853

Field House,
Breams Buildings
London
EC4A 1WR

19th May 2022

THE QUEEN
(ON THE APPLICATION OF)
AM

Applicant

and

LIVERPOOL CITY COUNCIL

Respondent

BEFORE

UPPER TRIBUNAL JUDGE RIMINGTON

- - - - - - - -

Mr M Spencer, instructed by Instalaw Solicitors appeared on behalf of the Applicant.

Ms C Rowlands, instructed by Liverpool City Council appeared on behalf of the Respondent.

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ON AN APPLICATION FOR JUDICIAL REVIEW

APPROVED JUDGMENT

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JUDGE RIMINGTON: The applicant is a national of Iran and asserts that he was born on 15th Shahriwar 1382, which translates into the Gregorian calendar as 6th September 2003. He claims he entered the UK in 2021 and presented himself at a police station on 6th February 2021. He was assessed initially and briefly at a police station by a single social worker on 6th February 2021 and again by two different social workers in a short form assessment on 26th February 2021. His age was given by the local authority as at least 24 years old.

The legal framework

2. Section 20 (1) of the Children Act 1989 establishes that

> "Every local authority shall provide accommodation for any child in need within their area"

3. As explained by Lady Hale in **R (on the application of A) (FC) (appellant) v London Borough of Croydon** [2009] UKSC 8 at paragraph 51

> "It seems to me that the question whether or not a person is a child for the purposes of section 20 of the 1989 Act is a question of fact which must ultimately be decided by the court. There is no denying the difficulties that the social worker is likely to face in carrying out an assessment of the question whether an unaccompanied asylum seeker is or is not under the age of 18. Reliable documentary evidence is almost always lacking in such cases. So the process has to be one of the assessment. This involves the application of judgement on a variety of factors, as Stanley Burnton J recognised in **R (B) v Merton London Borough Council** [2003] EWHC Admin 1689,… But the question is not whether the person can properly be described as a child."

4. Indeed, **R (B) v Merton** sets out the approach to be taken in the assessment and the burden of proof, and, at paragraphs 37 and 38, the court confirmed the following

> "37. It is apparent from the foregoing that, except in clear cases, the decision-maker cannot determine age solely on the basis of the appearance of the claimant. In general, the decision-maker must seek to elicit the general background of the claimant, including his family circumstances and history, his educational background, and his activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the claimant's statement as to his age, the decision-maker will have to make an assessment of his credibility and he will have to ask questions designed to test his credibility.
>
> 38. I do not think it is helpful to apply concepts of onus of proof to the assessment of age by local authorities. Unlike cases under section 55 of the Nationality Immigration and Asylum Act 2002 there is in the present context no legislative provision placing an onus of proof on the claimant. The local authority must make its assessment on the material available to and obtained by it. There is should be no predisposition, divorced from the information and evidence available to the local authority, to assume that a claimant is an adult, or conversely that he is a child. Of course, if a claimant has previously stated that he was over 18, the decision maker will take that previous statement into account, and in the absence of an acceptable explanation it may, when considered with the other material available, be decisive."

5. Indeed the age of the young person is relevant because of the material support that is to be provided by the LA even beyond the age of 21 years, the approach the Secretary of State may take to any asylum claim and the issue of credibility. It has also been decided that age is an objective fact which admits one right answer.

6. In **R (NA) v the London Borough of Croydon** [2009] EWHC 2357 (Admin) the court stressed the importance of transparent, fair and careful assessments of extremely difficult questions noting the importance, in the age assessment itself, of giving the benefit of the doubt to the claimant in the case of real doubt when every other factor for and against has been appropriately weighed.

7. The correct approach to the "benefit of the doubt" was discussed in the two-judge panel in **R (on the application of AM) v Solihull Metropolitan Borough Council** [2012] UKUT 00118 (IAC) at paragraph 12, which in turn reflected the judgment from the Court of Appeal in **R (CJ) v Cardiff County Council** [2011] EWCA Civ 1590. At paragraph 23 per curiam the Court of Appeal observed that

> "… There is no hurdle which the claimant must overcome. The court will decide whether, on a balance of probability, the claimant was or was not at the material time a child. The court will not ask whether the local authority has established on the balance of probabilities that the claimant was an adult; nor will it ask whether the claimant has established on the balance of probabilities that he is a child".

8. Indeed in **R (on the application of AE) v the London Borough of Croydon** [2012] EWCA Civ 547, Aikens LJ at paragraph 23 confirmed that the court

> "is, effectively, acting in an inquisitorial role in which it must decide, on a balance of probabilities, whether the young person was or was not a child at the material time… In doing so the court must clearly consider all relevant evidence. Ultimately, however, the court has to make its own assessment based on the evidence before it".

9. **R (AM)** and **R (FZ) v the London Borough of Croydon** [2011] EWCA Civ 59 set out that the purpose of the assessment is to establish a person's chronological age based on information derived from the child and assessment of the credibility and plausibility of that evidence. If the chronological information is consistent, plausible and believable then no apparent observation about chance appearance and demeanour is likely to tip the balance against the age stated by the child.

10. Additionally, as set out in **R (KA) (Afghanistan) v SSHD** [2012] EWCA Civ 1420 at paragraph 35, credibility is relevant and

> 'In any case, credibility often does have a very significant part to play in resolving an age assessment dispute'.

History

11. The applicant states in his witness statement dated 27th April 2021 that he was born in Dulatu near Sardasht City in Western Iran in September 2003 and that he attended school for around one year "maybe [aged] 6 or 7". He claims that he then worked for his father on a farm [which would be approximately 10 years] and then [effectively in 2020] worked with his father as a 'kolbar' (a worker carrying goods across borders) "for six - seven months". 'Maybe a year ago' [in late 2020] he claims he overheard his mother saying his sister was

turning 12 and he was told his mother's age was 42 and his father was 38. He claimed that in late 2020 he was ambushed at work and had to leave Iran. He was taken by his uncle to Northwest Iran and taken over the border. He stayed in Turkey for approximately two weeks and was fingerprinted in an unfamiliar country where he gave his date of birth. He stayed for ten days in a storage building and for twenty days in a house. He did not know the locations. His journey took around two months before he got to the UK. He arrived at the age of 17 years (on his calculation he would be 18 years in September 2021).

12. On 6th February 2021 he attended St Anne's Police Station in Liverpool and claimed asylum. He was interviewed by a social worker employed by the respondent in the presence of a police officer and with the assistance of an interpreter where he gave his date of birth as 15th Shahrivar 1382 (converted by the interpreter as 6th September 2003), which would have made him 17 years old. The social worker briefly assessed him and found him to be an adult.

13. On 26th February 2021 two social workers employed by the defendant (Julia Walimbwa and Rashid Chashy) visited the claimant at his accommodation and conducted an age assessment. They completed a "brief enquiry form", in which it was concluded that the claimant was "an adult of at least 24 years of age". There were handwritten notes in the bundle of this interview.

14. 0n 26th March 2021 the claimant was visited by Katherine Dean, an Age Disputes Adviser with the Refugee Council's Children's Panel, who assessed that the applicant was his claimed age of 17. On 27th April 2021 the applicant's representatives issued judicial review proceedings challenging the defendant's age assessment.

Grounds for judicial review

Ground 1: Procedural unfairness

15. It was asserted there was insufficient justification for an abbreviated assessment and the age assessment was not **Merton** compliant. It was correct that **Merton** envisaged that there may be cases where there is “no need for prolonged enquiry” or “no enquiry at all” as to age on the basis that it is obvious that a person is or is not a child, **Merton** [27]. However, this was not a sufficiently clear-cut case for the defendant to be able to discharge its duties lawfully by conducting a brief assessment of physical appearance and demeanour alone.

16. The assessors’ own conclusion based on physical appearance and demeanour was that the claimant could be as young as 24 and if the margin of error was taken into account this should have been considered as a borderline or at least disputable case. Further, the assessors’ view was contradicted by the opinion of two experienced advisers employed by Refugee Council that the claimant’s appearance and demeanour was consistent with his claimed age.

17. There was no appropriate adult present, there was no genuine ‘minded to’ process and there was a failure to acknowledge the margin of error.

Ground 2: There was an unsound and factually wrong reasoning

18. The defendant’s cursory assessment was vitiated by flawed reasoning and was factually wrong.

19. The defendant took no account of the fact that it is well-established that physical appearance is an unreliable indicator of age and the defendant took no account of the

effect of the claimant's journey and that may well explain why Ms Dean of the Refugee Council, who met with the claimant a month later on 26th March 2021, considered that his appearance was consistent with that of a 17 year old.

20. Taking account of the unreliability of physical appearance in assessment of age and the impact of cultural, ethnic and other factors such as trauma and experience on the presentation of physical maturity, there was nothing in the description which supported the conclusion that he was significantly over the age of 18.

21. The assessors relied on his overly childish and not "organic or authentic" behaviour. Even if he were overly childish, this did not mean he was being untruthful about his age and the grounds submitted that this is consistent with the claimant's account that he was "nervous" during the assessment. It was therefore a fragile foundation on which to base an adverse conclusion.

22. Demeanour, particularly if facilitated through an interpreter, was notoriously unreliable and **R (AM) v Solihull MBC** [2012] UKUT 00118 (IAC) held that "almost all evidence of physical characteristics is likely to be of very limited value" ([15]).

23. The court should consider the claimant's own account in his statement and the statement of Ms Dean and take his claim at its highest. The claimant set out a clear and coherent account which was capable of belief. He explained how he knew his date of birth and he provided a timeline.

24. **MVN v LB Greenwich** [2015] EWHC Civ 1942 confirmed that the primary focus in the assessment of credibility should be the credibility of an account of age and he had provided a clear explanation for how he knew his year of birth.

25. Ms Dean was a professional with experience of working with unaccompanied asylum-seeking children and her opinion should carry weight. In sum the applicant should be granted judicial review of his age assessment.

Grant of permission

26. On 24th May 2021 Michael Ford QC sitting as a Deputy High Court Judge granted permission for judicial review of the age assessment and ordered that the judicial review application be transferred to the Upper Tribunal.

The hearing and submissions

27. A trial bundle, pages 1 to 216, was agreed and provided together with an agreed bundle of authorities.

28. At the hearing before me I confirmed that the applicant understood the interpreter and the language they were speaking was Kurdish.

29. In the interests of justice I admitted a witness statement of Ella Royle, the trainee solicitor, dated 10th May 2022 and the two exhibits thereto, Exhibit 1, which was an email chain in relation to input of notes from Ms Dean on AM's file, and Exhibit 2, which was a copy of medical notes from Asylum Seeker Service in relation to the applicant.

30. The applicant gave oral testimony and was the only witness. I have not set out in this decision the extent of his oral evidence as it was recorded but have referred to relevant parts of that evidence in my findings below.

31. In her submissions Ms Rowlands submitted that the claimant when assessed was clearly and obviously over 18. The first assessor had fourteen years of experience and, looking at the photograph at page 106, it was clear why she reached the

decision he was an adult. A more thorough assessment was undertaken on 26th February 2021, and it was the view of the assessors that he was so obviously over the age and maturity that they did not need to go further and conduct a more detailed assessment. The assessment referred to his facial hair. He had stated in response at the assessment that he had only shaved once and now in his oral evidence confirmed that he had, in fact, shaved previously more often but stated that there was a difference between shaving with a razor and with a 'machine' and this explained the discrepancy in his response. There was no evidence that there was more than one word for shave in Kurdish. The applicant clearly had a five o'clock shadow and needed to shave regularly and could grow a heavy beard as disclosed in his Facebook photograph when at a demonstration. The assessors thought he had the facial bone structure and hairline of an adult and clearly had shaved more than once. They also considered he had adopted fake behaviour during the course of the interview and there was a contemporaneous note in the form of the handwritten notes.

32. She wholly rejected the suggestion that the two social workers had made up lies about his immature behaviour during the course of the interview. If that were the case, they would be perverting the course of justice and they had not been called for cross-examination in accordance with directions, which indicated their evidence had been accepted. In his witness statement the applicant had stated that he had left when his sister was 12 and in his oral evidence that there was an age difference of six or seven years (which would make him 19 on entry). In his oral evidence he said his sister was *currently* 12 but the age difference remained. When he was challenged on this in his oral evidence, he went off script and gave a clue to his real age and started lying by stating that the age difference was not six or seven years but only

five or six. That was a very important piece of evidence. He also changed his answer when asked when he started working as a kolbar from about 17 to nearly 17. The applicant had told us in oral evidence that he had lived independently in Manchester and found his way from Manchester to London on his own which showed independence. He had given an inconsistent timeline which was vague; there were no statements from friends, and he was older than claimed. His oral evidence left his evidence and credibility in tatters. His claim to be a minor on entry to the UK should be rejected.

33. **AB v Kent** [2020] EWHC 109 (Admin**)** confirmed that there was no absolute need for an appropriate adult and the later assessment included a 'minded to' process. It was not enough to say merely that there was no appropriate adult; the question was what effect it had. There was no suggestion the applicant was nervous, and he was content that someone from the hotel, albeit from Serco, was in attendance. There was no requirement for a qualification as an appropriate adult because it may be legitimate for an authority to conduct an abbreviated assessment.

34. Mr Spencer submitted that the real question in relation to the age assessment was how much weight should be given to the social workers' assessment. That was tempered by the view of other people such as the evidence of Ms Dean although he acknowledged that she had only met the applicant for twenty minutes and her expertise was not as extensive as that of the social workers. In the medical record there was a note from Bethan Jones-Hughes, (although we did not know her role or qualifications), that the applicant sounded very young. I was also referred to the email from Danai Nyamondo a Migrant Help worker in the Liverpool Office.

35. The question was what level of obviousness was acceptable in order to undertake a short form assessment? Some people who had met him did not think he was over 18, let alone 24. The absence of a proper appropriate adult meant that no-one could verify the assessors' impressions of the demeanours and the interpretation of such could be subjective.

36. I was referred to **MA v Coventry [2022] EWHC 989** particularly [109] which referenced the need for an appropriate adult even possibly at the initial stage where the applicant may have had a long and arduous journey.

37. The first assessment was after he had been travelling for some time and I was reminded to be careful about the photographs, which could be affected by clothing and lighting. The assessment of his physical skin condition was really a matter of medical opinion, and the social workers could not provide a medical opinion. Observations such as facial structure should not be given more than limited weight. The role of the appropriate adult is a broader role and page 20 of the Association of Directors of Children's Services practice guidance ("ASDCS guidelines") explained that. The 'hopping and skipping' ascribed to the applicant during the second assessment was not written in the handwritten notes and the fact that there was no cross-examination of the social workers did not mean that the evidence of demeanour had to be accepted. There were not the proper safeguards to be able to accord those assessments with any weight.

38. The focus should be on credibility and **MVN** at [27] to [28] was helpful and some principles about the approach to credibility expanded upon. The typographical errors in the preliminary questionnaire should be ignored because that was supplied by his asylum solicitors. The applicant had given a clear account about how he learnt about his birthday and in

evidence he did get confused about the age difference between him and his sister, but this was a skip of his memory rather than a lie. Initially, when describing when he started work as a kolbar he said it was around 17 and the interpretation was challenged, and he said nearly 17 but that was a significant difference and not an inconsistency merely a point of interpretation.

39. There was an issue about his reading and writing level. When he was described as illiterate that was meant to be referring to his ability to sign a witness statement and to refer to the fact that he could not read it himself. His own witness statement gave evidence of his literary ability. He had said he had sent some text messages to his legal representatives and had help. But on whether he was able to live independently, his evidence was clear that he had been struggling and that other people were not friends to him, and he referred to the fact that he was younger, and his people did not like him, and he was alone. His age as claimed should be believed.

Analysis

40. I turn to a holistic assessment of the evidence, bearing in mind the legal principles I have set out above. The first social worker attended the police station on 6th February 2021 owing to the concerns of the police that the applicant was not the age he claimed, that is 17. That assessor was an experienced social worker (fourteen years' experience) and found the applicant's account to be vague and without a timeline and stated that "due to the person's physical appearance, lack of documentation and ID and his vague account, it is my assumption that he is not a child but and (sic) adult man".

41. I was encouraged to give no weight to this assessment by Mr Spencer owing to the brevity of its duration and its failure to comply with any of the **Merton** guidelines. He submits that this was not an obvious case whereby the **Merton** guidelines could be ignored, and a full assessment could not be undertaken. Even if no weight were given, I record the observation of the first social worker. I accept, however, that this assessment was conducted when the applicant had just entered the country and he was likely to be tired and to look haggard as he does in the photograph at around this time.

42. Nor do I consider the photographs overall, particularly from this time, to add weight to the assessment of age. Indeed the legal authorities rightly caution against reliance on photographic evidence and in one photograph, from his immigration bail record, the applicant looked positively elderly because the image was clearly affected by the lighting and his apparel.

43. Following the first interview there appeared to be a safeguarding concern raised on 17th February 2021 which might have had implications for his age assessment. I was referred to the GCID notes, which identified in the minutes note of 17th February 2021 that:

> *"A very concerned that police on arrival incorrectly recorded age as being 30, states he is 17 and gave his DOB in the Iranian calendar which is all he knows. A certainly sounds very young, he is feeling frightened and isolated and is anxious for the Home Office to know about what has happened."*

The Case Record Sheet, however, later added and identified that *"I have now told Serco etc. that he has had an initial assessment and was found clearly to be an adult"*. The reference then states: *"Can I clarify if anyone has actually*

seen him [my emphasis] or was the assessment over the phone and was the concern around also looking young?"

44. It was then confirmed in the notes that there was no "*F2F contact sorry"*.

45. This exchange appeared to emanate from a medical record, and I note the email exchange between Migrant Help UK and the Refugee Council and a reference to a telephone conversation between Danai Nyamondo and a Serco staff member who apparently said "there is no way he is over 30 years of age" and that his appearance and demeanour suggest he is "really 17 years of age". I can place no weight on this reference within the email exchange. Neither person involved in the exchange, that is Danai Nyamondo nor the Serco staff member, made a witness statement. Their expertise to make this statement was not explored.

46. The underlying safeguarding concern therefore emanated from a telephone contact with the Asylum Seeker Service (presumably from the Refugee Council) and a medical record from PC24 (Primary Care 24), a social enterprise delivering NHS services in Warrington and Halton where the applicant was residing. The medical records disclose an exchange and administrative note on 17th February at 9.12am which recorded that the "patient stated he is only 17 not 30. Have escalated this to Safeguarding Home Office/Serco". It would seem a photo was also appended. However, a telephone consultation with Ms Bethan Jones-Hughes (and we do not know her role) recorded that it was a "*health assessment completed by telephone*".

47. Even if Ms Bethan Jones-Hughes was a health professional, she had merely had a telephone conversation with the applicant with possibly the aid of a photograph, which, as identified, can be unreliable, and she stated: "Certainly sounds quite young and vulnerable on the phone … Referral to GP." That

was the extent of her opinion and the contact which founded the safeguarding concern.

48. I am not persuaded on the strength of this evidence that any weight can be placed on this statement as contributing to the assessment of the applicant's age. Ms Jones-Hughes did not see the applicant and merely proceeded on the information she had in the form of a photograph and what the applicant sounded like and perhaps told by those referring him.

49. On 26th February another assessment was undertaken by two social workers, and I turn to the specific criticisms of the second assessment, which was said not to be **Merton** compliant. The first criticism was that there was no appropriate adult present, and where it is not a clear and obvious case which can lawfully be determined on appearance alone and discussion and questioning is required, then an appropriate adult should be present, secondly, that there was no genuine 'minded to' process. It was asserted there was no indication that he understood, after they retired to consider their conclusions and then returned, that he was being told anything other than the final decision and he was given no genuine opportunity to challenge the conclusions and thirdly, there was a failure to acknowledge the margin of error as per **R (AB) v Kent**.

50. As acknowledged by the case law identified above, short form assessments or "reduced local authority assessments" are permissible on occasions and the Age Assessment Guidance (ADCS) confirms that in some "rare cases" some adults do claim to be children. In **AB v Kent**, as indicated above, it was *not* accepted that as a

> *"matter of principle, an initial assessment, based on physical attributes and demeanour, should not be treated as determinative by the local authority unless*

it concluded that the person in question was 25 years or over".

That was considered too high a standard and the margin of error should depend on the facts in each case.

51. That said, Ms Rowlands submitted that a police officer was present at the first assessment and at the second a member of staff from the claimant's accommodation was present. Indeed, the guidelines are just that and as noted in **R (AK) v Secretary of State for the Home Department** [2011] EWHC at [32]: "The presence of an 'appropriate adult' is best practice but not part of the Merton guidelines." Even if I placed no weight on the first assessment, in relation to the second assessment the applicant made no complaint that he was hindered in giving his responses and a member of staff (a Serco official was identified in the handwritten notes) was present.

52. At the hearing the applicant denied hopping, skipping or bubbling, which was asserted to be part of his nervous behaviour, but the applicant during the interview itself denied being nervous. Indeed, during the hearing the applicant comported himself with composure and without undue anxiety. The applicant had an interpreter at the second assessment and confirmed at the second meeting that he was feeling well.

53. There was no challenge to the two social workers' experience and their account was not challenged save the query over the interpretation of hopping and skipping at which point Ms Rowlands leapt to her feet to demonstrate those actions. The applicant, having observed her, denied that he had engaged in any such behaviour although he accepted that he was asked to stop biting his nails. The social workers were not called for cross-examination as per the direction of Upper Tribunal Judge

L Smith dated 14th December 2021 at [8] and I have no reason to conclude that experienced social workers would merely make up such unusual assertions.

54. The detail of his history prior to his entry to the UK was asked and the response was given by the applicant but was very brief. There was an interpreter present at the interview and there was no indication that the social workers in the second assessment were not aware of the applicant's cultural background. I note there was no requirement for a medical report.

55. The interpreter was by way of phone but in view of the pandemic this was a wholly reasonable adjustment and there was no indication that there were significant errors in interpretation.

56. In relation to the 'minded to' process, by the second interview it was evident that his age was not accepted, and he had complained that his age had been misjudged. The handwritten notes identified that his account was taken and that after discussion the applicant was given the social workers' preliminary view on the basis of his demeanour and presentation. The applicant was then recorded as making further representations and then the conclusion is given that he was assessed as being older than 17 years. Not least, it was not accepted that he had only shaved once and that was a week ago.

57. The two social workers, Ms J Walimbwa and Mr R Chashy, were from the specialist UASC team and they were both of the opinion that he was an adult. This was not just based on his physical characteristics but his compromised credibility owing to his behaviour and statements. The social workers did take down his journey details and his account, acknowledged that the out of hours social worker felt that he was "very

obviously an adult", the police thought him much older than claimed and the Home Office appeared to have recorded him at 30 years of age, but they made their own independent assessment. Despite him stating that he only shaved once "full hair growth and beard around his mouth seemed to have been shaved on several occasions". The conclusion was that he was an adult of at least 24 years. Even if a margin of error of five years had applied, the applicant would still have been 19 years and in my view that is not close enough to minority to breach the 'margin of error'.

58. **MA v Coventry** [2022] EWHC 989 at [109] (with reference to [61]) identified that an experienced social worker might be able to conclude that an individual was clearly significantly over 18 based on physical appearance and demeanour even in circumstances where an immigration officer might not reliably be able to do so: making the 25 year threshold more apt for the immigration officer than for a social worker. At [61] it was noted that the 'ADCS' guidelines (which indeed are just that, guidelines) acknowledge that short form assessments *may* take place and stated that '*because a comprehensive Merton assessment has not taken place, although these reduced assessments still have weight, they may not be supported by a second trained social worker, or have taken place in the presence of an independent adult. This does not necessarily affect the weight that can be applied to them, but they are additional reasons for checking that the assessment is reliable*'.

59. In this case there were two trained social workers who conducted the assessment and bearing in mind there is no particular qualification set out for an independent adult, I note a member of Serco was present at the second assessment. It was suggested that no-one could verify the assessors' impressions of the demeanours but that is not necessarily the

role of the independent adult particularly as the impression is exactly that - subjective. There appeared to be no issue with the interpreter and having noted the contents overall of the assessment (together with the handwritten notes). I am satisfied that the applicant had the opportunity to give his views prior to a final decision being made.

60. Overall, I conclude that it was open to the social workers to conduct the short form assessment they did and in all the circumstances that I have described, and the procedure adopted was fair, and I am not persuaded, in the circumstances, that the assessment breached the guidelines laid down in **Merton**.

61. I therefore attach weight to the second social workers' assessment.

62. I have also considered the statement of Ms Dean. She herself describes herself as an Age Disputes Adviser at the Refugee Council's Children's Panel. The panel advocates on behalf of unaccompanied and age-disputed children, helping them to access legal representation and to bring challenges in age disputes. By the time she made her statement she had worked in that capacity for only three months and had worked previously with vulnerable asylum seekers for almost two years. She spoke to the applicant on the phone about nine or ten times for ten minutes and she stated that when she met him for twenty minutes he was "very timid and could not maintain eye contact". His behaviour in court did not reflect that description. She stated he was stressed and anxious. Being stressed can cause behaviour adjustments but does not necessarily indicate that someone is a minor. I do not find that her statement is made in anything other than good faith but it was based on a very short meeting and there was no indication that she knew the full history of the applicant; she is an adviser and the mere fact that she has worked with

vulnerable asylum seekers for two years does not indicate that she has worked with children or that she has had the training and experience to judge ages of children. Her role is to advocate on behalf of those seeking relief from inter alia local authorities and I am not persuaded, although she had brief experience of children that she is entirely impartial and objective but moreover, trained in the special field of assessing age. I give limited weight to her view.

63. There was no statement or letter from Danai Nyamondo.

64. I turn to the credibility of the applicant, which was described as being an important factor by both representatives. In terms of credibility I was urged to take into account the applicant's statement which says that the applicant is "clear and coherent". Both the statements were brief with little detail of the applicant's background. His history is simple and, obviously, the ability to omit years in those circumstances would not be difficult. There was no documentary evidence and in my view the fact that he was merely told by his parents his date of birth on each year in the light of all of the evidence is not persuasive.

65. I found his oral evidence to be inconsistent. There was no indication that he had any health difficulties or special educational needs and there was no unresolved issue raised in relation to the interpretation. Indeed, the applicant had his own interpreter present and any failure to interpret to the satisfaction of the applicant's interpreter was brought to the court's immediate attention although there was no undue or disproportionate interference with the court process. When asked under cross-examination how old his sister was now, he responded 12 years old. He stated that the age difference between him and his sister was six to seven years. It was then put to the applicant that on entry to the UK in February

2021 the applicant had stated that his sister was 12 (in fact in his April 2021 statement he said she was 12 in 2020), and that on those figures it would mean that even on *his own* calculations and evidence, he was then 19 and now even possibly 21. He then changed the age difference to five to six years when his calculations were clearly incorrect, and he claimed that he meant he was doing farming at 6 to 7 years old. Even that contradicted his witness statement at [12] where he stated that he was 6 to 7 when at school.

66. When asked about shaving, initially the applicant stated that when they were leaving the place (in France) they bought shaving machines because “when you arrive you need to look clean in order to conceal that we were refugees, and we were seeking asylum” and he repeated “to be smart on arrival”. The applicant later in his oral evidence denied the agent had guided those seeking entry about their asylum claim and stated that he did not know he was coming to seek asylum. When I clarified this with him and reminded him of what he had said he claimed that he did not know he was coming to seek asylum and he contradicted his evidence by stating that it was not about arrival but departure from the house abroad where they were hiding and attempting to conceal themselves. That was contradictory.

67. Further, his explanation that there were two forms of shaving – with a machine and with a sharp instrument – did not offer an adequate explanation for his claim to the social workers in late February that he had only shaved once by the time of their interview.

68. He also told the court that his asylum solicitor had advised him, rather than on his own initiative, to attend a demonstration against the Iran regime in the UK to show sur place activity, which he did. I find this disingenuous.

69. Turning to his educational claims, in his oral evidence he stated that he had spent one year at school and learnt “basic stuff” to do with numbers and basic knowledge about the “alphabet” and then interpreted this as “letters”. He stated he started work at 7, helping his father on the land. At the start of the hearing it was submitted he was illiterate, but I was then directed to his witness statement. In his witness statement he stated that “*I cannot read or write well in any language, though I can recognise some numbers or letters*.” That was the extent of his literacy.

70. I pointed out that he had claimed in his preliminary interview questionnaire that he had referred to his mobile phone as follows: “*When we were ambushed and I threw away my load in order to be able to escape, I had my coat on the load with my mobile inside.”*

71. At the hearing he then produced a smartphone, and it was confirmed on joint inspection by Counsel that there were text messages on his phone, and he then stated that he contacted the solicitors by this method. He also stated that he had help. It also transpired that he had a Facebook account and had the WhatsApp app on his phone. I do not accept that he was unable to read and write owing to the use of this smartphone.

72. Throughout, the applicant had maintained that he only spent one year at school. However, the Country Background Note: Iran, Version 6.0, October 2019 states at section 14.1 (and I am mindful of **MVN** at paragraph 28(2)as to country reports and their ability to corroborate a person’s account):

> *“The British Council report ‘Voices - What does school education look like in Iran?’, dated 21st April 2015, stated that:*

> *The education system in Iran is divided into two main levels: primary education and high-school education. All children attend compulsory primary level from ages 6 to 12 and high school from ages 12 to 18. There are many free public schools as well as private schools with high tuition fees. There are also schools called "Nemuneh Mardomi", which are believed to be better than public schools and more affordable than private schools."*

73. When I referred the applicant to his witness statement that he had a shenaznarmas, a type of national ID document back home in Iran at [9] he confirmed that he had had this document from when he was born. As I pointed out, the authorities were thus aware of him because he had been registered. He had started to attend school and therefore was not going "under the radar". Mr Spencer submitted that there was no evidence on statistics for the take-up of education, but the applicant had clearly started school. I accept that there was no evidence of 'dropping out' but in my view the applicant's use of the mobile phone was consistent with having a more developed and extensive education than he claims and although he stated he was helped with his phone, in his statement at [39] he claimed "*I am given no help and no support. There are some staff but no-one I can go to if I need help really*". I simply do not accept that the applicant does not use his phone on his own, bearing in mind this statement.

74. In my view the applicant has omitted six years of education in Iran and thus six years of his life. His family were not so poor that he could not be funded to travel from Iran through Europe via agents to the UK. He left school, on my calculation, at 12 to 13 years, worked for ten years on the land with his father, which is consistent with his account, and then claims that he worked as a kolbar for six or seven months and spent at least two months coming to the UK. That

would make him approximately 24 years old on entry to the UK. That is the age that the social workers assessed him to be in the second assessment and to which I have accorded some weight. He maintains his birthday is on 15th September. Overall, on the evidence before me, I find he is now 25 years old, and I conclude he was born in 1997. His date of birth is thus 15th September 1997, and he entered the UK at the age of 24 years.~~~*0*~~~~