



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

In the matter of an application for Judicial Review

The King on the application of

S

(By his Litigation Friend Francesco Jeff)  
(Anonymity Direction Made)

Applicant

and

LUTON BOROUGH COUNCIL

Respondent

**ORDER**

**BEFORE Upper Tribunal Judge O'Callaghan**

**HAVING** considered all documents lodged and having heard Ms. A Patyna of counsel, instructed by Osbornes Law, for the Applicant and Mr. J Swirsky of counsel, instructed by Legal Services, Luton Borough Council, for the Respondent at a hearing held at Field House on 15 and 16 September 2022

**IT IS DECLARED THAT:**

1. The age assessment of the Applicant undertaken by the Respondent on 16 June 2021 was procedurally unfair and so unlawful.
2. The Applicant's date of birth is 27 December 1999 such that he was 21 years of age upon entry to the United Kingdom.

**IT IS ORDERED THAT:**

- (1) The application for judicial review is dismissed.
- (2) The Order protecting the Applicant's anonymity shall remain in place. It is prohibited to publish details which shall directly or indirectly identify the Applicant.
- (3) The Order for interim relief granted by David Lock KC on 20 October 2021 is hereby discharged.

- (4) The Applicant shall pay half the Respondent's reasonable costs (including the costs reserved) to be assessed if not agreed. Such costs shall not be enforced without the leave of the Tribunal. The Applicant having the benefit of costs 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.
- (5) There shall be a detailed assessment of the Applicant's publicly funded costs.
- (6) Permission to appeal to the Court of Appeal is refused, there being no arguable error of law in the decision

Signed: D O'Callaghan  
**Upper Tribunal Judge O'Callaghan**  
Dated: 12 October 2022

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

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

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): *12 October 2022*

Solicitors:  
Ref No.  
Home Office Ref:

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**Notification of appeal rights**

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

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

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



Case No: JR-2021-LON-000053

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

Field House  
Breems Buildings  
London, EC4A 1WR

12 October 2022

**Before  
UPPER TRIBUNAL JUDGE O'CALLAGHAN**

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**Between**

**S**

**(By his litigation friend, Francesco Jeff of the Refugee Council)  
(ANONYMITY DIRECTION MADE)**

Applicant

**-and-**

**LUTON BOROUGH COUNCIL**

Respondent

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Ms. A Patyna (instructed by Osbornes Law) for the Applicant  
Mr. J Swirsky (instructed by Legal Services, Luton Borough Council) for the  
Respondent

Hearing date: 15<sup>th</sup> and 16<sup>th</sup> September 2022

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**JUDGMENT**

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**Judge O'Callaghan:**

**The Tribunal confirms the anonymity order issued by the High Court on 13 July 2021 in the following terms:**

**Unless the Upper Tribunal or a Court order otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the applicant. This direction applies to, amongst others, the applicant and the**

**respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.**

### **Introduction**

1. By an Order sealed on 21 October 2021 (CO/2396/2021) David Lock KC, sitting as a Deputy Judge of the High Court, granted the applicant permission to apply for judicial review against the respondent's decision as to his age and transferred the claim to the Upper Tribunal.

### **Issues**

2. The applicant seeks a declaration that he was born on **27 December 2004**.
3. The primary issue for me to resolve in these proceedings is the applicant's age, which is in dispute between the parties. In resolving this issue, I am required to identify the applicant's age as of the date the respondent concluded its age assessment, namely 16 June 2021.
4. The applicant asserts that he was born on 27 December 2004 and was aged sixteen (16) when he arrived in the United Kingdom on 28 May 2021. He further contends that he was the same age when the relevant age assessment was undertaken, concluded and subsequently served. The applicant asserts that he is presently aged seventeen (17).
5. The respondent has assessed the applicant to be aged twenty-four (24) at the date of the age assessment and considers him to be presently aged twenty-five (25).
6. An additional issue is whether the short form age assessment undertaken by the respondent was procedurally fair and lawful. The Tribunal is invited by the applicant to consider the weight that can properly be placed upon the assessment.

### **Anonymity**

7. By an Order sent to the parties on 13 July 2021 Griffiths J issued an anonymity order and no application was made by the parties before me to set it aside.
8. I am satisfied that it is presently in the interests of justice that the applicant is not publicly recognised as someone seeking international protection. I am mindful of the protection provided to the right to information by article 10 ECHR, but I am satisfied that such protection is outweighed in this matter by the applicant's protected rights under article 8 ECHR. The consideration of his international protection claim is ongoing, and the applicant will be required to provide further

information to the Home Office in confidence. I give weight to the wider harm to the public interest in the operational integrity of the asylum system consequent to the disclosure of material that is confidential to that system. In reaching such conclusion I observe paragraphs 27 to 30 of Upper Tribunal Immigration and Asylum Chamber Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private.

9. I confirm the order in relation to the applicant above.

### **Litigation Friend**

10. Ms. Roxanne Nanton, at the time an employee of the Refugee Council, was originally appointed as a Litigation Friend following the commencement of these proceedings. She continued to act on the applicant's behalf until the Upper Tribunal was informed that she was leaving her employment. I discharged Ms. Nanton from acting by an Order sent to the parties on 29 June 2022 and appointed Mr. Francesco Jeff, an employee of the Refugee Council, as the applicant's litigation friend.

### **Background**

11. The applicant states by means of witness statements filed with the Upper Tribunal that he is a Sudanese national and grew up with his parents and two younger siblings in a village situated in the Darfur region of Sudan. He confirms that his father is a national of Chad. For the purposes of this decision, there is no requirement that I make a finding as to the applicant's nationality.
12. In 2017 the applicant states that his father was killed during an attack by the Janjaweed, and the family home was burnt down. The family relocated to the Abu Zar internally displaced peoples' ('IDP') camp situated near the West Darfur state capital of Geneina (Al-Junaynah). Whilst at the camp, the applicant states that he overheard adults saying that he was aged thirteen. This was the first time he was informed as to his age. He subsequently returned to his home in the camp and asked his mother what the adults had meant, and she informed him that he was born on 27 December 2004. This was the first time he had been informed as to his date of birth.
13. He was further informed by his mother that his father possessed a document confirming his age, but it was lost when the family home was burned.
14. In December 2018, the applicant states that he left the IDP camp after having broken a boy's arm. He was fearful of reprisal. He travelled through Chad to Libya, then to Niger and Algeria, where he worked on a strawberry farm. He states that he phoned his mother via an uncle, and she confirmed his date of birth.

15. The applicant travelled to Morocco in August 2019 and then onto Spain, arriving by dinghy on 20 May 2020. He informed the Spanish authorities that he was born in 2003, and aged seventeen. He states that he gave this year of birth and age so that he could remain with his travelling companions, rather than be placed with a family.
16. From Spain, the applicant travelled to France and reached the 'Jungle', a camp situated in Calais, in late September 2020. He fell ill in January/February 2021 and was taken to hospital, where he informed the authorities that he was born on 27 December 2004, and aged sixteen.
17. The applicant crossed the English Channel on 28 May 2021 and was rescued at sea. He was interviewed two days later and assigned 27 December 1995 as his date of birth by the Home Office.

#### *Age assessment*

18. Two social workers, Alton Bailey and Shumi Mhepo, acting as agents or servants of the respondent, conducted a short form assessment of the applicant's age on 16 June 2021. It was noted in the two-page document, *inter alia*:
  2. You were unable to recall or share the dates of births or ages of your immediate family members when requested.
  3. You told us that you did not go to school, however you attended a local place where you learned [the] Koran, when requested you were not able to share how old you were at this time.
  4. You were asked about your childhood and you stated that you played with other children in your village however, when asked if they went to school or not you did not know. We find it difficult [to] accept that you will be unaware of the whereabouts of your friends in the same village you were born.'
19. The social workers held the opinion that the applicant's physical appearance and demeanour very strongly suggested that he was an adult: 'In the absence of any credible documentary evidence to the contrary, the two social workers do not accept that you are a minor'.
20. In relation to the applicant's appearance, the social workers detailed in their report, at [10]-[11]:
  10. From our observations, the appearance of your skin does not reflect that of a teenager. Your body presents as fully developed and that suggests that you have completed

puberty. There are no signs of acne or recent acne scars and you have a prominent and protruding Adam's apple.

11. You have distinctive lines on your forehead and jaw line. There is an absence of 'excess fat' on your face, neck, arms and you appear to have well-defined facial features and the lean appearance of an adult in his mid-twenties.'

21. Also noted was the applicant's evidence as to events in Spain, at [12]:

'12. In 2020, when feeling safe in Spain, you came to the attention of the authorities and you told them that you were an adult and you did not seek any further support from them. Your presentation and physical appearance was not questioned by the Spanish authorities to consider that you may be a minor.'

22. The social workers opined that the applicant presented strongly as aged over eighteen and, further, presented as an adult in his mid-twenties. Their conclusion was that the applicant was aged twenty-four.

#### *Independent social worker*

23. An independent social worker, Kirstie Baughan, met the applicant on 20 June 2021 and conducted a screening interview to provide her opinion on age. She concluded in a report prepared without paragraph numbers that the applicant required a full *Merton* compliant assessment to explore his claimed age. Whilst not giving her own opinion as to age, she observed, *inter alia*:

'[The applicant's] physical appearance makes him appear slightly, but not significantly older than his claimed age. His calm confidence in our meeting was also in line with a slightly older adolescent/young adult.'

#### *Judicial review*

24. The applicant filed his claim with the High Court on 12 July 2021, seeking expedition and interim relief by means of an urgent application filed at the same time.
25. By his Order dated 13 July 2021, Griffiths J granted a modest abridgement of time in respect of the filing and service by the respondent of an acknowledgment of service and summary grounds of defence, which were subsequently filed and served on or around 23 July 2021.

26. HHJ Gore KC, sitting as a Judge of the High Court, refused the applicant permission to apply for judicial review by an Order sent to the parties on 4 August 2021.
27. At an oral renewal hearing held on 20 October 2021, David Lock KC granted the applicant permission to apply for judicial review. The Deputy Judge transferred the claim to the Upper Tribunal under section 31A(3) of the Senior Courts Act 1981 for a fact-finding hearing.

### **The legal framework**

28. Age assessments are carried out in order to determine whether young people without identity documents are in fact children and so entitled to services provided by local authorities.
29. Section 17 of the Children Act 1989 ('the 1989 Act') establishes that local authorities have a general duty to promote the welfare of children within their areas. Although this is a general duty, when read with paragraphs 1 and 3 of Schedule 2 to the 1989 Act a local authority has a duty to assess the needs of any child in its area who appears to be a child in need. Section 17 is therefore the gateway to other local authority services, including the provision of accommodation under section 20 of the 1989 Act.
30. The obligation to conduct an age assessment is a *Tameside* duty, i.e., an obligation for the local authority to equip itself with the necessary facts to decide whether or not to exercise its statutory functions under the 1989 Act.
31. Thornton J observed in *AB v. Kent County Council* [2020] EWHC 109 (Admin), [2020] P.T.S.R. 746, at [18]:
  - '18. The law requires a wholly different treatment of young asylum seekers depending on whether they have passed their eighteenth birthday. This is of course in itself an entirely artificial and inflexible dividing line, bearing little relationship to human reality but it is built into the structure of not only domestic law but international law in this area and it has to be applied as best as can be (Underhill LJ in *BF (Eritrea) v Secretary of State for the Home Department* [2019] EWCA Civ 872 at §52). Thus: a number of rights and obligations under the Children Act depend upon the distinction. Local authorities are under a general duty to safeguard and promote the welfare of children within their area who are in need (section 17). This includes the provision of accommodation (s20). 'Child' means a person under the age of eighteen (s105). It is unlawful for the Secretary of State to detain asylum seeking children.'
32. There is no statutorily prescribed way to identify how local authorities are obliged to carry out age assessments. As confirmed by the Court



of Appeal in *BF (Eritrea) v Secretary of State for the Home Department* [2019] EWCA Civ 872, at [53], the law proceeds on the basis that the most reliable means of assessing the age of a child or young person in circumstances where no documentary evidence is available is by the so-called 'Merton compliant' assessment: *R (B) v Merton London Borough Council* [2003] EWHC 1689 (Admin), [2003] 4 All ER 280 ('Merton'). Relevant requirements have been considered in several judgments, including *VS v. Home Office* [2014] EWHC 2483 QB, at [78], and were summarised by Swift J. in *R (HAM) v. London Borough of Brent* [2022] EWHC 1924 (Admin):

- a) When it is necessary to determine whether a person is a child (i.e., under 18 years old) for the purposes of its duties under the 1989 Act, there is no burden of proof, and so no assumption that a person is a child or an adult, at [10];
  - b) It is likely to be rare that a fair assessment would be based on physical appearance and demeanour alone, [10]. However, there will be cases where physical appearance and demeanour will suffice, [32].
  - c) An age assessment must be fair in function and substance, not merely form, [14]. What is fair will depend on the circumstances of the case.
  - d) An assessment may, depending on the facts of the case, be unfair if an appropriate adult is not present, [20].
  - e) Where further enquiry as to a young person's age entails interviews, these interviews must be undertaken fairly. What is necessary for this purpose must take account of the circumstances of the person, [32].
  - f) While the question of whether a process was fair is a matter for the Tribunal, it is for the social workers to justify why such steps were taken or not taken, [34].
33. Lady Hale confirmed in *R (A) v. London Borough of Croydon* [2009] UKSC 8, [2009] 1 W.L.R. 2557, at [51], that the question whether a person is a child for the purposes of section 20 of the 1989 Act is a question of fact which must ultimately be decided by the Tribunal and the process must be one of assessment. This involves the application of judgment on a variety of factors and however difficult it may be to resolve the issue it admits of only one answer. As it is a question of fact, ultimately the question must be a matter for the Tribunal.
34. The Court of Appeal held in *R (CJ) v Cardiff County Council* [2011] EWCA Civ 1590, [2012] 2 All E.R. 836, at [21] and [23], that once a court or tribunal is invited to make a decision upon jurisdictional fact

it can do no more than apply the balance of probability to the issue without resorting to the concept of discharge of a burden of proof. I am therefore required to decide whether, on a balance of probability, the applicant was or was not at the material time a child. Consequent to the claimed age, I proceed to consider whether the applicant was a young person aged under 18 at the date of assessment.

35. I proceed on the basis that it may well be inappropriate to expect conclusive evidence of age from the applicant in circumstances in which he has arrived unaccompanied and without original identity documents. The nature of the evaluation of evidence depends upon the particular facts of the case. In the absence of any corroborative documentary evidence as to age, the starting point is the credibility of the evidence placed before the Tribunal, as confirmed by Aikens LJ in *R (AE) v. London Borough of Croydon* [2012] EWCA Civ 547, at [23].
36. The Tribunal is not confined to choosing between the positions of the parties: *R (W) v. London Borough of Croydon* [2012] EWHC 1130, at [3].

### **Evidence**

37. The parties filed an agreed bundle containing documents placed within two lever-arch files. Both parties filed skeleton arguments. On the second day of the hearing the parties filed a helpful list of agreed propositions of law.

### ***Applicant***

38. The applicant relies upon three witness statements dated 8 July 2021, 8 October 2021 and 12 July 2022.

#### *First witness statement – 8 July 2021*

39. The applicant explained that he did not know the age of either parent as they did not inform him, and he did not ask. He stated that as of July 2021, his siblings were aged around 7 and 5 years of age. He confirmed that the family lived in a one-room hut, and his family would go to the toilet outside.

40. As to his father, the applicant detailed:

‘8. My father didn’t have much money. He just had a farm with our animals on it. We had some sheep. My father used to milk the animals and sell some sometimes to buy us things. He would also grow crops for us to eat and to also sell to buy us clothes and food.’

41. The applicant confirmed that he resided in his village, Kandabo, until he was aged nearly 13. He described his village as being ‘very small

and rural' but further detailed, 'I do not remember the village well as I was young at the time, and I was not allowed out of our area because of the trouble when we were there'. There were few children of his age so he would spend a lot of time on his own: 'There would have been children my age in the village centre but we would only go into the village if my parents needed to go to a shop.'

42. He attended Koran lessons at the home of a friend of his father, every day except Wednesday and Thursday. Other children would attend, but they lived too far from his home for him 'to see much' outside of the lessons.
43. He left the village in 2017, around a month after his father was killed. The family relocated to a camp near Geneina where they resided with a maternal aunt. He played with fellow children, helped his mother and looked after his siblings. One day, whilst playing football, he collided with another child, who broke his arm. The applicant felt threatened by the boy's brothers, so he ran to his mother who took him to his uncle. The applicant was advised that his uncle could not protect him, so he left the camp and was taken to Chad and then onto Libya by some people who knew his uncle. Some neighbours travelled to Chad with him, and he could read one of their phones confirming that they commenced travelling on 20 December 2018.
44. The applicant confirmed as to his arrival in Spain:
  - '28. We were rescued at sea by people guarding the coast, and were taken into Melilla in a small boat which had an engine. We were first met by the Red Cross who gave us some clothes because we were cold. Later the police came who took our names, ages and fingerprints. I said that I was 17 and born in 2003 when they asked me because I wanted to remain with my Sudanese friends and did not want to be kept with a family. When in Morocco I met a Sudanese man who had been deported from Germany and was making his second attempt to seek asylum in Europe. He knew a lot about European countries and told us that in Spain I would be separated from my friends and kept with a family if the authorities knew my real age. I discussed this with them and they told me to only give my real age if I wanted to stay in Spain. I wanted to remain with my Sudanese friends, and we were not planning to stay in Spain. I was asked by a refugee organisation if I wanted to claim asylum in Spain and I declined the offer.'
45. The applicant travelled to France and reached the Jungle camp. He fell ill in late January 2021 or early February 2021, 'having problems in my shoulders and a kind of tummy ache resulting from acidity, gastric or heartburn problems'.

46. As to his admission to hospital in Calais, the applicant detailed in his statement:

'33. The hospital asked for my age and date of birth, which I provided telling them my true age (16) and date of birth (27/12/2004). The next day, when I was allowed to leave, I was taken to a hotel for children in a place called Tantamere. This hotel was somewhere in-between Calais and Lille. I stayed there for over 3 months, during which time I was sometimes taken back to Calais hospital for treatment.'

47. As to how he knew his age at this time, the applicant stated:

'38. I did not know my age or date of birth until 2018, when I was in Geneina. I was at my maternal uncle's house when he was speaking with my mother and other adults while I was playing with my siblings and other children there. I heard the adults talking about our ages and them saying I was 13 years of age. When we arrived back at our room in the camp, I asked my mother if I heard correctly, that I am 13 years of age. I also asked her what the age means. She then told me that my date of birth is 27/12/2004, and that the age is the number of years since being born. My mother also told me that in 2017 when I was 12 years old my father had got an official card from the authorities in Geneina showing my full name and date of birth, but that was lost when the Janjaweed burned down our house.'

48. He further explained that whilst in Algeria, he was informed that it was important that he know his date of birth. He could only remember the month and year and so contacted his uncle before speaking to his mother:

'39. I was however able to contact my uncle when I managed to get a mobile because I had his phone number written on a piece of paper. This was Mohammed's phone which was later stolen in Morocco. My uncle said that he would tell my mother that I am safe and would arrange for me to speak with her. I later managed to speak with my mother and uncle together. My mother told me that the day of my birth is 27 and confirmed that my date of birth is therefore 27/12/2004. I asked my mother and uncle whether it would be possible for them to obtain a replacement official card to send to me when I have a settled address, but my uncle said that there is no money to pay for the fees of a replacement card.'

49. In respect of his physical appearance, the applicant observed that he has had a difficult life, especially since the death of his father. Additionally, he has spent a lot of time outside in the sun.

*Second witness statement - 8 October 2021*

50. The applicant detailed his current accommodation in the United Kingdom and his current health. He continued to suffer from problems with his shoulder, and with heartburn.

*Third witness statement - 12 July 2022*

51. The applicant explained that he does not know whether his father was targeted when the Janjaweed attacked. He was a military man, who was often away from home and the applicant sometimes saw him in uniform. There was a rifle and bullets at home.

52. The applicant stated in respect of his hospital admission:

‘10 ... while at the Calais hospital I only remember providing my age. I do not remember being asked for my date of birth. The reason I provided my real age at that point, rather than waiting until reaching the UK, is because I was being asked by the hospital rather than by police or officials in France.’

*Oral evidence*

*i) Personal background*

53. In answer to questions from Ms. Patyna at the hearing, the applicant stated that he had first seen a genogram - a computer generated graphic representation of his family tree displaying detailed data on relationships among family members - prepared by his social worker, Ms. Abbam, at his solicitors' office. He explained that he had previously met Ms. Abbam at his home where, with the aid of an interpreter on the phone, there was general discussion as to his health and personal needs. He was asked about close family members and confirmed that in addition to his parents he had two siblings. Ms. Abbam wrote the details provided by him on paper. He then discussed his mother and her siblings when the phone call to the interpreter ended because of a poor network connection. The applicant recalls Ms. Abbam stating that she would continue the appointment with an interpreter at another time. They then proceeded to discuss the applicant's personal needs in English, with the applicant wanting a television, a bicycle and a telephone to contact his family. The applicant confirmed that there was no further discussion as to his family once the interpreter ended the telephone call. He denied providing Ms. Abbam with details as to his paternal family.
54. In cross-examination the applicant stated that he grew up in a single hut in a village, Kandabo, until the age of 12. He resided with his mother and two siblings. His father would sometimes "come to stay with us, once in a month or once a year". He did not know where his father was when he was not living at the family home. In re-

examination he explained that his father was in uniform, "but I do not understand which group. It was simply a uniform". When asked whether his father was in the military, the applicant stated, "sometimes when he came home, he was not in uniform and remained without it, so difficult to know whether he was in the military. I did not ask him".

55. The hut did not have electricity or plumbing, and no-one in the home had a phone. He could recall no-one in the neighbouring village having a phone. The village was situated approximately 10 minutes away. The family's livestock was looked after by a shepherd, but the applicant did not know him.
56. When asked whether any other family members resided in the village, the applicant responded, "I do not know".
57. He understood that the nearest city, Geneina, was situated approximately 20 kms away from the village.
58. He confirmed that his village had no school. Along with other children in the village he was taught the Koran by a friend of his father. Some of the children would use a wooden bar to write from the Koran and recite it. He was just starting to learn to read when he left the village. He could not write at this time, nor did this man teach him to count. He informed Mr. Swirsky that his parents taught him to count in "his" language. He subsequently learned to count in Arabic. Whilst he cannot calculate anything but simple numbers, he can add numbers up to twenty.
59. The applicant stated that he did not know whether his mother had resided in Kandabo all her life before leaving for the Abu Zar camp, but she resided with him there until they left.
60. He could not confirm whether his mother was able to read or write, though he accepted that he never saw her reading. He gave the same answers in respect of his father. Save for a copy of the Koran there were no books present in the family home.
61. He was asked how he knew the age of his siblings. He accepted that he did not know their ages when he lived in Sudan. He confirmed that he was guessing their age.

*ii) Informed as to his age and date of birth*

62. When asked if he celebrated birthdays in Sudan, he stated, "I don't know". He accepted that he did not understand the concept of the calendar when living in Sudan. He explained that he was able to understand the days of the week, as he was aware as to when he was

to attend Koranic study, but he had no understanding of months and years.

63. He explained the occasions when he was informed as to his age and date of birth.
64. The first occasion was whilst he was at the home of his maternal uncle, 'AA', playing with other children. Various adults were discussing the age of the children and he heard people say that he was aged thirteen. He informed Mr. Swirsky that he had not understood what was meant when it was stated that he was aged thirteen.
65. When asked how he knew the precise year, he replied, "at that time we were playing football, and I did hear people say that we were in the year 2018". He confirmed that he did not know what they meant when they said the year was 2018.
66. The second occasion was when he returned to the camp later that day and asked his mother about what he had heard. It was then that he was informed as to his date of birth. He stated that he did not understand what his mother was saying and so asked her to explain. She informed him that "when someone is born, there is a year, month and day they are born into". He accepted that he did not know how his mother knew this information. He recalls that the conversation took place not long before he left Sudan, "maybe months, do not know; one month, a month and a half". The conversation took place before he broke the boy's arm.
67. In re-examination he informed Ms. Patyna that he had not been aware of numbers such as 2000 at the time, and he did not understand the number 2018 when his mother spoke to him. He asked his mother to explain, and she tried to make him understand but he was unable to. He did not think it that important.
68. His mother also informed him that the previous year his father had secured an official document from the authorities in Geneina detailing his full name and date of birth. The applicant had previously seen the document but did not know its contents.
69. The third occasion was whilst he was in Algeria. He informed Mr. Swirsky that he was chatting amongst a group of people, discussing the future and telling stories. When discussing their ages, he understood that he was aged fourteen, as he was thirteen when he discussed his date of birth with his mother. He was informed that it was very important when travelling to Europe to know his date of birth and his age. At the time he did not understand the difference between the concepts of age and date of birth, only that it was important to know this information. The importance of such

knowledge was not explained to him. Nor was he informed that it was better to be a child when entering Europe.

70. He could remember the month and year of his birth, but not the day, so he contacted his uncle by phone. He had been given a piece of paper with his uncle's phone number before leaving Sudan and so was able to contact him. He borrowed a phone from Mohammed Saleh, who was "responsible" for him and called his uncle. This was approximately six months after he left Sudan.

*iii) People accompanying the applicant on his journey*

71. The applicant was asked about several people who accompanied him on various legs of his journey to the United Kingdom. He recalled being present with his uncle and his uncle's neighbour, Mohammed Saleh, before leaving Sudan. They were in a car depot, and he recalls his uncle asking Mohammed Saleh to be responsible for him. He left Sudan accompanied by Mohammed Saleh alone, not in a group as detailed in his first witness statement.
72. He confirmed that his uncle arranged his journey, with his mother and uncle paying for it. He does not know where the money came from. He explained that his mother was not happy about him leaving, but Mohammed Saleh was going to a gold mine in the Sahara, and she thought he could work there. The applicant denied that the plan was to work in a mine in Libya, observing that it would be dangerous to work in Libya. He would work as a miner in Chad and after a while travel elsewhere in Chad where his cousin 'AM' lived. He is a maternal cousin. He informed Mr. Swirsky that it was his intention to work as a miner when he left Sudan.
73. He changed his mind after talking with friends and decided to travel to Europe as "Europe can protect people". He was unable to explain from whom Europe could protect him.
74. He met Othman Abakar in the Sahara between Libya and Chad, and they travelled together to Niger. In his first witness statement, the applicant stated that Othman had been in the group travelling from Sudan, and they became friends during the journey, but in cross-examination he stated that they met on the journey.
75. Othman decided to stay in Algeria, despite having persuaded the applicant to travel to Europe. When asked why, the applicant stated, "maybe he has some problems to sort out".
76. He continued travelling with Mohammed Salah to Spain, via Morocco. They separated before crossing the Mediterranean, and met up again in Spain, not Melilla.



77. When asked by Mr. Swirsky as to whether smugglers or agents were involved in his journey from Sudan to Melilla, the applicant responded that he was “helped by Mohammed and Othman” but he did not pay for help as they knew he did not have any money to pay them.
78. The applicant made friends with two people in Morocco, Bakheet who he knew for five months before crossing into Spain, and Hussain, who he had known for seven months. Hussain was said to speak “some French”.
79. In his first witness statement, the applicant stated:
- ‘29. ... We were then taken from Melilla to a hotel in a place called Cadiz. We were there for around 2 weeks or maybe a bit more. We were given 15 Euros each per week, and food at the hotel. We were then asked by the charity who helped us if we wanted to go to France. We said that we wanted to go, and they gave us 150 Euros to help with the journey.
30. We first took a bus from Cadiz to Madrid. I was still with my friends, Hussain and Bakheet, although we were meeting other Sudanese people along the way. It cost around 20 Euros for the bus from Cadiz to Madrid. We then took another bus from Madrid to Bilbao, which was about 30 Euros. From Bilbao we paid very little money to get a bus to Irun. We then walked from Irun into France to a place called Hendaye. We walked through a forest area to avoid the French authorities. From Hendaye, we took a bus to a French city called Bayonne, which I remember costing only 1.20 Euros.
31. We were in Bayonne for 2 days. On the third day we went to a small office and bought bus tickets to Paris. I remember the bus journey starting at around 5pm and arriving in Paris at about 4pm the next day. We then took a train at around 11am going to Calais.’
80. He explained at the hearing that a group of ten travelled from Cadiz to Calais over three days. The applicant explained that having remained in Cadiz for two weeks, the group travelled to Madrid, changed buses and travelled to Bilbao, changed buses and travelled to Irun, changed buses and travelled to Hendaye, changed buses and travelled to Bayonne, where they stayed for a day before taking a bus at 5pm and arriving in Paris at 4am. They then changed buses ‘straight away’ and travelled to Calais. I observe that in his first witness statement he detailed that the group walked across the Franco-Spanish border from Irun to Hendaye.
81. He explained the ability of the group, none of whom were said to speak Spanish, to negotiate several changes of bus in Spain without any difficulty or delay, “in Cadiz there is a screen [at the bus station]

and there is a map and names of the cities we need to take to France. There is a charity that explained how to get to France and change buses. Friends have telephones to check where to change for the next station". As for travelling in France, Bakheet and Hussain spoke "a little French or English". Upon reaching Paris where Hussain had friends, the group separated into two groups, the first travelling to Calais and the second making the same journey soon afterwards.

82. He was explicit that Hussain wanted to go no further than France, and so would not accompany him on his journey across the Channel. However, Hussain travelled with him to Calais and informed him, "I will find a way for you to go to the UK". Hussain also informed him that he could "join new friends to go to the UK".
83. Having left hospital and been placed in the children's home, the applicant remained in touch with Hussain by Messenger - a messaging app operated by Meta (formerly Facebook).
84. The applicant confirmed that Hussain remains in France, whilst he understands that Bakheet has reached the United Kingdom.

*iv) Providing a false age to the Spanish authorities*

85. The applicant previously explained in his first witness statement that he crossed the Spanish-Moroccan border into Melilla via the sea with his friends, Hussain and Bakheet, and when asked for his age by the Spanish police he said that he was aged 17 and born in 2003. He was asked by Mr. Swirsky as to why he provided a false age and year of birth to the Spanish authorities the applicant explained, "when we got there, we learn that if you are under 18 you will be placed with a family. One of my friends gave an estimated date of birth for him and me, and said I was aged 17".
86. Mr. Swirsky put the inconsistency to the applicant, who stated, "I told Bakheet and Bakheet told the police, Firstly, I cannot speak Arabic or French. I told Bakheet who knows a little English". It was not explained how speaking a little English would aid in a conversation with a Spanish police officer.

*v) Identification of dates on journey*

87. The applicant explained that he knows he left Geneina on 20 December 2018 because the date was written on Mohammed Saleh's phone in Arabic, and he could read the numbers.
88. As to his entry into Spain on 20 May 2020, he was aware that the date was recorded at the police station and both Bakheet and Hussain could read, though only Arabic and not Spanish. He accepted that the date was not recorded in Arabic.

89. Mr. Swirsky reminded the applicant that in his first witness statement he had recalled knowing the date 'so clearly' because it was during Ramadan and 'people discuss the dates much more frequently than usual. People tend to record how many days have passed, and how many days remain. I was fasting and keeping a record in my mind of this. I spent part of Ramadan in Morocco, and part of it in Spain.' The applicant was asked by Mr. Swirsky as to why he made no mention of the Spanish police writing the date down. He promptly gave a third version of events stating, "when we entered Spain, there is another group with whom we were with in Morocco. In our discussion when we arrived, I learned I entered on 20 May. I forgot to add this in my statement".
90. He was aware of when he arrived in the United Kingdom, both by being told by someone on the boat and by subsequently seeing it placed in documents.

*vi) Why no claim for asylum in Spain*

91. The applicant explained that he did not seek protection in Spain because he listened to his friends who said that they did not want to stay there, rather they wanted to go to France.
92. He confirmed that he made his decision to travel to the United Kingdom whilst in Spain. When asked why by Mr. Swirsky, the applicant simply explained, "I am Sudanese. Better off learning English".
93. He denied using an agent for his journey from Spain to the United Kingdom.

*vii) Second call to his uncle, Abduallah Arafat*

94. The applicant detailed that he phoned his uncle on a second occasion, whilst in France. He initially stated that a friend, Osman, had two phones whilst in Spain and lent one to him. He was clear that when he was in France he was "able to use that phone". 'Osman' was not mentioned previously or again by the applicant and considering the evidence detailed below, for the purpose of this appeal I consider 'Osman' and "Hussein' to be the same person.
95. He subsequently informed me later in cross-examination that Hussain gave him a phone in Spain because he had two phones. He did not know where Hussain got his phones from, "sometimes he goes away and comes back".
96. The applicant confirmed that Hussain did not have any phones whilst in Morocco. When asked by Mr. Swirsky on two occasions whether

Hussain secured the phones in Spain, the applicant simply stated that it was “possible”. He confirmed that it was Hussain’s phone that he used to call his uncle. He could not use the phone in Spain as he had no money, though he subsequently accepted in relation to a later question that he was given money in Spain. As to the phone credit, he detailed that he was given money in Cadiz, but did not have time to charge his phone, and secured credit once he reached Calais, from where he phoned his uncle. He subsequently informed me that Hussain gave him the money for phone credit. He explained that he had wanted to find out how his mother was, but his uncle had moved away from Geniena, to Sennar, a state in the south-east of Sudan, and so did not live near his mother.

97. Mr. Swirsky asked how the applicant could phone his uncle when he lost the piece of paper with the number in Morocco. The applicant explained that he had obtained a phone in Spain and used Messenger to contact Mohammed Saleh who gave his uncle’s number to him. He detailed that whilst in Algeria, Mohammed Saleh had opened a Facebook account for him, and he was “on the page twenty-four hours” a day in that country. The Facebook page was in Arabic, and he accepted that he was unable to read it. He simply watched videos and left voice recordings. He was taught how to use Facebook and Messenger by Mohammed Saleh. When asked by Mr. Swirsky as to why he had never mentioned having a Facebook account before, he stated that no one asked him how he had contacted his uncle. He further explained that the account had been closed. He had tried to access it when in the United Kingdom, but he could not open it.
98. The applicant stated that he phoned his uncle from Calais as his uncle believed he would have been in the United Kingdom by that time. I observe the decision to come to this country was said by the applicant only to have been made when he was in Spain, and so after he last spoke to his uncle from Algeria. When asked by Mr. Swirsky why his uncle would be expecting him to have travelled to the United Kingdom, the applicant responded, “I do not know what was in my uncle’s mind, but everyone knows the UK is the best place”. He again stated that he had not always planned to travel to this country, that it was a recent decision made after hearing people talk about the United Kingdom.
99. The applicant lost his phone when trying to cross the English Channel, the device having become wet in his pocket because of the waves.

*viii) Hospital in France and subsequent placement in care as a child*

100. The applicant fell ill and was taken to hospital in January/February 2021. He informed me that he was unable to speak directly to

hospital officials, so asked a friend to confirm his age as being sixteen.

101. After leaving hospital he was taken to a hotel for children, where he was treated as a minor. He did not ask the hotel authorities how long he would be permitted to remain there. He left without informing the authorities that he was leaving and did not return. Mr. Swirsky asked the applicant as to why if he wants to be treated as a child in this country, he did not stay in France and be treated as a child. The applicant replied, "I have no desire to stay there". He was unable to explain what was wrong with staying in France save for having a desire to travel to the United Kingdom.

102. When asked why he left the hotel, he stated that he wanted to visit his cousin, AIA.

*ix) Visiting AIA in France*

103. The applicant explained that he did not know about his paternal cousin, AIA, when he left Sudan and so did not remember AIA visiting his family when he was very young.

104. AIA had come to know that the applicant was in France by engaging with a WhatsApp group where members included people the applicant had met in Calais as well as Hussain.

105. AIA called the applicant on Hussain's phone, and they spoke. The applicant stated that this event was in approximately February 2021, after he lost his phone. He confirmed, "I went to hospital, after I went to the hotel and after I left the hotel" the phone call took place.

106. The applicant stated that during the call AIA did not explain that he was a cousin, a fact the applicant only found out when he subsequently visited AIA at his home. During the phone call, AIA confirmed that he wished to meet the applicant, who agreed. When asked by Mr. Swirsky why he would travel to meet someone he did not know, the applicant responded, "when we talked on the phone, he said he knows me but did not give any details". AIA paid for a train ticket, which was sent electronically to Hussain's phone. It was not said that AIA had additionally paid for a train ticket to be used by Hussain.

107. Hussain accompanied the applicant on the train journey to Paris, and then aided him to travel across Paris to the train station from which he could travel alone towards AIA's home in the French department of Meurthe-et-Moselle, Lorraine, close to the Belgian border. Hussain handed the applicant a phone, which he kept for the duration of his trip, and subsequently returned when he met Hussain at Calais train station on his return.

108. AIA met the applicant at a local train station and took him to his home where he stayed for ten days. AIA sought to persuade the applicant to remain with him, and indicated that he would help him with his protection claim, but the applicant refused the offer. He decided that he would return and try to cross the Channel. If he was unsuccessful, he would take up the offer and return to AIA.
109. Mr. Swirsky observed that none of the applicant's three witness statements referred to AIA, despite a detailed history of other events said to have occurred whilst he was in France. The applicant responded that no-one asked him about relatives residing in France.
110. When asked why the applicant had not mentioned AIA to his social worker, Ms. Abbam, in circumstances where AIA was the last relative he had seen, the applicant stated, "I was going to mention him, but as I said the phone was a bad network. We changed the topic to things that I wanted".

*x) Attempts to travel to the United Kingdom*

111. The applicant detailed in his first witness statement that he arrived in Calais two days before the end of September 2020 and stayed in the Jungle. He made numerous efforts to get into lorries but was unsuccessful. At the end of January or beginning of February 2021 he was taken to hospital. Upon leaving the children's hotel after three months, he confirmed that did not return to the Jungle but remained in touch with Hussain using friends' phones. Eventually, he crossed the Channel on 28 May 2021.
112. In his oral evidence he detailed that he arrived in Calais probably in December and tried regularly to cross the Channel by lorry. He then tried to cross by sea, and on the first unsuccessful attempt his phone was damaged. He again tried to cross by lorry, but fell ill and returned back, before being taken to hospital. A period of three months passed between when he fell ill and his finally reaching the United Kingdom by sea.

*xi) Refusal to engage in family tracing*

113. The applicant confirmed that when Safe Haven, the organisation providing his present care and accommodation, had discussed with him the possibility of the International Red Cross tracing his family, he stated that he did not require the service. He explained to me that he had been informed through his own network that his mother was well.

*xii) Limited evidence provided by family members*

114. The applicant informed me that his uncle, AA, was unable to provide a witness statement as he is busy farming and does not have enough money “to send paper”.

**AIA**

115. The applicant relies upon a witness statement from his paternal cousin, AIA, dated 4 February 2022. At the time of his statement, AIA was aged 30. He is a national of Chad who resides in France and is recognised as a refugee. He confirmed that the applicant’s father was born in Chad, but left to seek work in Geneina, Sudan. The only time AIA met the applicant in Sudan was in 2009. AIA has never met the applicant’s siblings and his knowledge of them is solely through the applicant.

116. In respect of the meeting AIA states:

‘5. In 2009 I went to visit my family in Sudan, who were living near Geneina [in a village]. It is around 15 to 20 kilometres away from Geneina. I remember there being two huts. One from wood and one from mud-brick. The place was very rural, with lots of animals. This was the first time I met [the applicant]. I remember the trip very well because I had not seen my uncle since he left for Geneina, and I stayed with him and [the applicant] for five days. I was excited to meet [the applicant], because he was the first cousin I had. I remember thinking how small he was. I know that he was four years old at the time, and wasn’t even going to pre-school. He had no siblings at the time, and I remember his family referring to him in conversations as four years old. I remember holding both of his hands and swinging him in the air, and putting him on my shoulders.’

117. AIA found out about the death of the applicant’s father through his own mother in Chad.

118. The applicant wished to call AIA to give oral evidence at the hearing via videolink from France. A request was made by the Foreign, Commonwealth and Development Office (‘FCDO’) to the French authorities to secure permission for AIA to give evidence to the Upper Tribunal from French territory, but no response was received.

**Edward Taylor**

119. Edward Taylor, associate solicitor at Osbornes Solicitors, filed and served two witness statements, dated 11 October 2021 and 10 June 2022. The latter detailed efforts to secure further evidence supportive of the applicant’s claimed age.

**Ms. June Abbam**

120. In addition to the age assessment, the respondent relies upon a witness statement from June Abbam, dated 7 April 2022. Ms. Abbam is a qualified social worker, employed by the respondent. She opined that the applicant does not present as a child aged below 18; rather he presents as a mature adult. She observed his physical appearance to be 'more like a fully developed young adult'. She referenced his wish to live in a place of his own, and his highly demanding approach to what he believes he is entitled to and what he should be provided with.
121. In respect of AIA, Ms. Abbam observed:
- '10. I am aware that [the applicant's] solicitors have obtained a witness statement from [AIA], who states that he is [the applicant's] cousin (paternal side). In my work with [the applicant] I completed a genogram with him, he told me that his father died when he was young and he does not know much about his father and his relatives. [AIA] was not named by [the applicant] as one of his relatives.'
122. A genogram prepared by Ms. Abbam was placed in the bundle of evidence, at [434]. The applicant's parents are named, with his father noted as deceased. The applicant and his two siblings are named. An attendant note states, '[the applicant] has a brother and sister. He does not know where they are as he has lost contact.'
123. One paternal aunt is named, 'GS'. with the attendant note, '[the applicant] said his dad died when he was still young, he does not know much about his father and his relatives'.
124. A maternal aunt and two paternal uncles are named, with the attendant note, '[the applicant] has two uncles and an aunt. [The applicant] said he does not know them that well. Unable to provide their location.' I note the applicant's evidence in these proceedings that he resided along with his mother and siblings at the home of a maternal aunt upon relocating to the IDP camp, and further that he was in regular contact with AA, his maternal uncle, at the same time.
125. A son of his maternal aunt is named, 'AM', with the attendant note, '[the applicant] said he only knows of this cousin. [The applicant] said [AM] fled the war in Sudan. [The applicant] believes [AM] may be in Chad.'
126. Ms. Abbam attended the hearing on the second day. She confirmed that she was employed by the respondent in November 2021 and was allocated the applicant's file in December 2021, so he was one of her first cases. She was aware when she was allocated the file that the applicant had been age assessed as an adult but was being accommodated as a child pending proceedings.



127. As to the genogram, she confirmed that it was prepared on the instruction of a manager so as to “get to know” the applicant’s family and arrange contact with members if he so wished. She detailed that she attended the applicant’s property and they spoke using an interpreter at the end of a phone. She recalled having no problems with the interpreter. She recorded the information provided by the applicant in a notebook and the notes were subsequently shredded in accordance with relevant confidentiality policy once the information had been transferred to the genogram. All of the family members apart from the applicant were identified on the genogram as having birth dates of ‘15 December’, though different years of birth. Ms. Abbam believed that it may have been the system generating the date as she only entered the family member’s approximate age. The date of 15 December was the day she commenced preparing the genogram; it was concluded on 29 December 2021.
128. When asked by Ms. Patyna as to why she did not go back to the applicant to check that the genogram was correct, Ms. Abbam replied, “that day I spoke to him and asked him if the information was correct. We went through everything.” She had no recollection of there being difficulties with the interpreter and the phone.

### **Analysis of the evidence**

129. I have had the benefit of considering the totality of the evidence upon which the parties seek to rely, whether expressly referred to me or not at the hearing.
130. I have also been aided by the very high-quality submissions provided by counsel, for which I am grateful.
131. The applicant is presently seeking international protection and so I do not address the substance of the claim in my decision, nor do I make any findings or observations upon the core of the claim. That is a matter to be considered by the Home Office. The adoption of this approach was confirmed to the representatives at the hearing and no complaint was made.
132. I remind myself that in deciding facts I am required to apply the balance of probability without resorting to the concept of discharge of a burden of proof. I consider the evidence, both oral and documentary, in the round.
133. For the avoidance of doubt, before I embark upon the search for an answer to the question I am required to address as to the applicant’s age and date of birth, I confirm that I have done so without any predisposition that the applicant is or is not a young person.

### ***Vulnerability***

134. When assessing the applicant's credibility, I have had particular regard to the Joint Presidential Guidance Note No. 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance, and my assessment has been considered in the round, taking due account of the evidence presented. Whilst the applicant contends that he was not trafficked, nor utilized the services of an agent, I informed Ms. Patyna at the hearing that I was satisfied that he had been aided in his journey to this country by agents and people smugglers. I therefore give due allowance for the fact that many child asylum seekers and victims of smuggling will have problems in presenting a coherent account of their personal history and travel to this country.

### **Consideration**

#### *Short form age assessment*

135. There are occasions where there is no requirement to conduct a Merton-compliant full assessment as to age. Stanley Burnton J noted in *Merton*, at [27]:

'27. Of course, there may be cases where it is very obvious that a person is under or over 18. In such cases there is normally no need for prolonged inquiry; indeed, if the person is obviously a child, no inquiry at all is called for. ...'

136. I confirmed at the hearing that it is not very obvious from the applicant's appearance alone that he is aged over eighteen.

137. The respondent identifies its decision as to the applicant's age as being a 'short form assessment'. The document runs to two pages, solely providing reasoning as to why two social workers reached the conclusion that the applicant was aged twenty-four.

138. In *R (MA) v Coventry City Council* [2022] EWHC 98 (Admin), a matter concerned with Home Office guidance issued to social workers in Kent, Henshaw J confirmed that in respect of short form age assessments there is a requirement that adequate safeguards are provided, such as the attendance of an appropriate adult and an opportunity for the assessed person to clarify or correct the information they had given before a final decision on age was reached.

139. Having considered the handwritten notes made by the social worker during the assessment meeting, I am satisfied that the approach adopted at the meeting on 16 June 2021 failed to comply with adequate safeguards, particularly in respect of the applicant being provided an adequate opportunity to clarify information he had given, which was adversely relied upon by the social workers, before the

final decision on age was reached. The assessment was therefore conducted unfairly.

140. I therefore conclude that no weight can properly be placed upon the assessment. For clarity, the applicant's recorded answers to questions put to him in interview form no part of my assessment.

141. The fact that no weight is given to the assessment does not mean, *per se*, that the applicant succeeds. I am required to consider the question posed in my inquisitorial role, and so proceed to consider the rest of the evidence relied upon by the parties.

*Applicant's knowledge of his age and date of birth*

142. I turn to the three instances where the applicant states he was informed as to his age, date of birth or both:

- i) Whilst playing football close to his uncle's house he heard adults discuss between themselves that he was aged thirteen. This was on an unknown day in 2018.
- ii) On his return home that day, he was informed by his mother that he was born on 27 December 2004.
- iii) He telephoned his uncle from Algeria on an unknown date and spoke to his mother who again informed him as to his date of birth.

143. As to his mother knowing his date of birth, the applicant relies upon her having informed him that his father had secured an official document from the authorities in 2017 detailing his full name and date of birth. In his oral evidence the applicant recalled seeing his parents have "some paper" in their hands, but he did not personally know whether the document showed his date of birth.

144. The applicant further relies upon the evidence of AIA who confirms that they met in 2009 at the applicant's home. AIA recalls that, 'I remember thinking how small [the applicant] was. I know that he was four years old at the time and wasn't even going to pre-school ... I remember his family referring to him in conversations as four years old.'

*Travel through Africa*

145. In undertaking a holistic assessment, I commence with the applicant's use, or otherwise, of agents and people smugglers, the latter adept at physically transporting persons across international borders. On the applicant's own evidence, he crossed either seven or eight international borders on his journey to this country, with there

being a contradiction as to whether he crossed into Libya. The use of agents, skilled in advancing their clients to the final country of choice, and people smugglers may, on the facts of a particular case, be relevant in the assessment I am required to undertake.

146. For reasons addressed below, I find to the requisite standard that the applicant was aided by various agents and people smugglers during his long journey. There may be several, often complex, reasons as to why a person seeking international protection may subsequently deny engagement with agents, people traffickers and people smugglers, and I observe that an applicant for international protection may on occasion have had to engage with members of serious organised criminal groups with attendant threats to their personal safety or the safety of loved ones. Consequently, I do not consider an applicant's untruthfulness on this issue to be such as to require me to find them incredible as a witness *per se*. However, the use of, and travel alongside, agents is a fact that is properly to be placed in my overall assessment.
147. The applicant's credibility as to his journey through Africa is undermined by several significant inconsistencies, which cannot adequately be explained by vulnerability. On occasion, the evidence presented at the hearing was diametrically opposite to that presented by witness statements.
148. In his first witness statement the applicant accepted that he used a people smuggler to drive the ten-day journey from Geneina to Libya, via Chad, as 'the smuggler knew where to take us so there were no police or checkpoints to get into Chad'. During his oral evidence, he denied that he was aided and supported by agents or people smugglers during his journey from Sudan to the United Kingdom. He informed me that various people aided him for free, because they knew he had no money. However, he subsequently accepted that his journey from Sudan was arranged by his uncle, AA, and paid for by both his mother and uncle. He informed me that he was unaware as to how much his family paid for his journey. That he set off from Sudan to Europe and finally reached the United Kingdom is self-evident, and so I accept that the family secured what money they could to fund the start of the journey. As to the sum secured, it was his evidence that he had lived in relative poverty before relocating with his mother to the IDP camp and that his uncle, AA, was too poor to afford to send a witness statement for his hearing. Whilst there is conflicting evidence as to the uncle's circumstances, his move across the expanse of southern Sudan from the West Darfur region in the south-west of the country to the Sennar region in the south-east sometime in or around 2020 was unexplained, I am satisfied for the purpose of this matter that he is a small-scale farmer as is the case for many in the region. I find, on balance, that the close family, identified on the maternal side as two uncles and one aunt in addition

to the applicant's mother, would not by themselves have been able to raise the funds required to enable the applicant to travel to the United Kingdom over a one-and-a-half-year period. However, I find to the requisite standard that they secured sufficient funds for a human smuggler to transport the applicant to gold mines situated in northern Africa.

149. The role of Mohammed Saleh in the applicant's journey is opaque. I note the applicant's evidence at the hearing that he commenced the journey with Mohammad Saleh alone, but in his first witness statement he explicitly confirmed that Mohammad Saleh travelled with him and others on the journey to northern Africa. I find that the applicant was truthful in his witness statement; the evidence at the hearing being an ineffective effort to hide the fact that his journey through Africa was undertaken from the outset with other migrants seeking to travel to Europe.
150. I therefore accept that the applicant was truthful when he stated that he travelled with Mohammed Saleh and others from Sudan, using a people smuggler to cross the border into Chad. I accept the applicant's evidence that he met with Mohammed Saleh at a car depot with his uncle before setting off on the long journey.
151. There is no further reference to Mohammed Saleh in the applicant's witness statements, save that his phone was used by the applicant in Algeria, and subsequently lost in Morocco. He is not identified in the first witness statement to have accompanied the applicant to Niger; only Othman is said to have undertaken that journey. There was an expansion upon Mohammed Saleh's circumstances at the hearing, with him signing the applicant up to Facebook and Messenger with attendant explanation as to how to use them, providing help to the applicant in Spain, as well as the applicant subsequently contacting him from France for further help.
152. There is strong whiff arising from the evidence that Mohammed Saleh is an agent, particularly with the applicant's acceptance at the hearing that he was aided by Mohammed Saleh on his journey, provided with a phone by him, and that his uncle requested that he be 'responsible' for his nephew. However, I conclude on balance that such suspicions are not sufficient to establish that he is an agent. I am satisfied that he too left Geneina as a migrant intending to travel to Europe.
153. As to Othman, I am satisfied that the applicant was truthful in his first statement that Othman accompanied him on the journey from Sudan to Chad and then onwards to Algeria. The applicant's assertion at the hearing that he only met Othman in the Sahara and not in Sudan was a late effort to deny that he had travelled in the company of several

other men when leaving Sudan. I consider the asserted detour by the two men to Niger below.

154. I find that the applicant was truthful in respect of there being an intention shared with his family that he would seek employment in Saharan mines. I am satisfied that he has sought to minimise this element of his journey to hide that fact that he worked for a time in Libya with at least several of those who travelled with him from Sudan. He states that he changed his intentions during the ten-day journey from Geneina and decided at the instigation of Othman to travel to Europe, though he was very vague as to why such a momentous change of plan was adopted, save that there were organisations and charities in Niger who would 'protect' him and that after talking to people he believed he would be protected in Europe. He was clear in his first witness statement that his intention was to work in the gold mines of Libya and was driven there by a people smuggler. At the hearing he confirmed that he left Geneina intending to work in the mines but denied that he travelled to Libya. He asserted that his intention was to work in the mines in Chad, and then to relocate to live with his cousin, AM, elsewhere in that country. His evidence on this matter was so contradictory as to be significantly diminished. Having previously found that his family could not provide the required funds to enable the applicant to travel all the way to Europe, I conclude, on balance, and taking judicial note of the number of migrants working in the Libyan black economy, that the applicant travelled to Libya with others, including Mohammed Saleh and Othman, and worked for a time in the gold mines to secure sufficient funds to facilitate his travel northwards where he would be required to pay for the services of both agents and people smugglers to enable him to enter and cross Europe. The notion that he would undertake the arduous journey to the gold mines in Libya, situated in and around the Tibesti mountains in the central Sahara, and upon reaching them decide within a short period of time to take a taxi with Othman to Niger is implausible. The applicant's vague evidence as to his time in Chad and Niger with Othman, coupled with his contradictory evidence relating to his time in Libya is properly to be considered an ineffectual effort to hide the length of time he spent in Libya and his employment in the mining industry, his accepted intention when he left Geniena. Consequently, the applicant's timeline is no longer to be considered consistent as it does not accurately cover his time working in Libya.

155. The applicant has not stated that he held a Sudanese passport, and so it is more likely than not that along with Mohammed Saleh and Othman he travelled from Libya to Algeria and then onto Morocco towards Melilla with the aid of agents and people smugglers, who required payment. He continued to seek and secure work on his journey. Whilst the applicant is more likely than not to be truthful as to having not been paid for some of the time he worked on a farm in

Algeria, I do not accept that he would have resided in the country for a further four or more months without employment before travelling to Morocco. It is not his evidence that he was turned back from the Algerian-Moroccan border on several occasions, causing him to reside in Algeria for an extended time after he stopped working on the strawberry farm. With the intention of travelling to Europe, there appears no good reason for him to simply wait in the country if unable to find work.

156. The ease with which the applicant and his group found a people smuggler to aid their journey across the border for the sum of 200 Euros each – and I note the average monthly wage in the Algerian public sector is approximately 260 Euros – establishes, on balance, that the group had an agent or agents aiding them in their journey across north Africa.
157. Whilst I accept that the applicant endured poor housing conditions for some or all of his ten or eleven months in Morocco, I find that he was engaged in black market work to secure further funds for his onward journey. I consider that his effort to hide the work he undertook on his journey is a simple, but ineffective, means of trying to hide the fact that he required the services of agents and smugglers on more occasions than he was willing to accept before me, such acceptance being limited to when he left Sudan and when he later entered Morocco. I am satisfied that by seeking to hide such reliance he has distorted the timeline in respect of his journey.

#### *The journey to Europe*

158. I accept the applicant's evidence that he met Hussain in Morocco but find that the connection was made through Hussain working as an agent. The applicant gave no cogent explanation as to how Hussain was able to secure telephones and give them to others, to leave Paris and travel to the Jungle in Calais then remain there with no intention of travelling onto the United Kingdom, to remain in Calais having 'claimed asylum' and to travel back to Paris with the applicant having paid his fare for the journey, all without any visible means of income. He was central to organising the splitting of the large group of migrants in Paris into smaller groups, through the help of friends. On balance, the only cogent explanation is that Hussain was acting as an agent, moving several migrants from Morocco to Europe and then onto their intended destination, in many cases the United Kingdom. As evidenced by the swift and well-executed journey across Spain and then through France, Hussain had experience of complex transit routes, and arranged the navigation of his group over the Franco-Spanish border without detection. He was able to call upon assistance in both countries, whether to confirm bus timetables in Spain or arrange the separation and onward movement of the group in Paris. I consider the applicant to have shone a partial light on Hussain's

activities when questioned by Mr. Swirsky as to where Hussain secured his phones when he replied, "sometimes he goes away, and comes back". Hussain was operating independently of his charges.

159. I am satisfied that Bakheet was a migrant travelling with the group but had sufficient language skills to aid Hussain at various points during the journey.

160. I find that through Hussain the applicant engaged a people smuggler to secure his entry into Melilla by boat, with such service coming at a price. In his witness statements he is silent as to how he and others managed to obtain the boat, and I conclude that this silence was again an effort to hide his use of agents and people smugglers on his journey.

### *Entry into Spain*

161. I have considered the applicant's reasons for knowing the date of his entry to Spain. There is noticeable inconsistency between his witness statement and his evidence at the hearing as to how he can remember the date and such inconsistency cannot be explained by vulnerability. He detailed in his first witness statement that he recalls the date because it fell during Ramadan, a time when 'people discuss the dates much more frequently than usual. People tend to record how many days have passed, and how many days remain. I was fasting and keeping a record in my mind of this'. At the hearing, the applicant was asked how he recalled the date and was clear that having arrived in Spain, he went to a police station with Hussain and Bakheet, and the date was written down by the police. He accepted that neither he nor the other two men could read Spanish and acknowledged that the date was not written down in Arabic. He then proceeded to give as his third explanation that after his arrival he met a group he had known in Morocco, and they informed him of the date during general discussion. The evidence at the hearing very strongly suggested an effort to bolster a previously weak effort to detail how the date of entry into Spain was one of the few dates the applicant could remember with clarity in relation to life events.

162. I am satisfied that having spent time with an agent in Europe, the applicant had a limited but effective awareness that the United Kingdom enjoyed access to data recorded by the Spanish authorities, such as the date of his being fingerprinted soon after his arrival in Spain. The impact of Brexit upon the United Kingdom's engagement with the Dublin III Regulation would have been beyond his knowledge, but for years most agents facilitating the entry of migrants illegally into the United Kingdom would have been aware of the benefits afforded by EURODAC to the British authorities. I conclude that the importance of the date was impressed upon him by Hussain, his agent, to ensure consistency and not by his recording in his mind the



days that passed during Ramadan, his friends observing an entry in a police report in a language they could not read, or through discussion with other friends.

*France and AIA*

163. The applicant's evidence as to his arrival in Calais and subsequent events is adversely undermined by inconsistency and vagueness.
164. In his first witness statement the applicant was clear that he arrived in Calais two days before the end of September 2020 (28 September) and that he tried many times to get into lorries before falling ill in January or February 2021. He went to a hospital and was discharged the following day to be placed in a hotel for children that he recalls as being named Tantamare, situated between Calais and Lille. He remained there for over three months, until the end of April or beginning of May at the earliest, during which time he was sometimes taken back to Calais for treatment. No reference is made to his leaving the hotel without informing the authorities. During these three or more months he remained in contact with Hussain by 'logging into the Messenger App on other young people's phones' before Hussain arranged the crossing in May 2021.
165. The applicant's version of events was significantly amended at the hearing. He arrived in Calais in December, not September. I note the inconsistency. He initially tried to cross the Channel by lorry. This is consistent with his first witness statement. He then sought to cross by boat which is when his phone was damaged beyond repair. I do not accept that this event occurred. I am satisfied, even when considering his vulnerability, that the applicant would not have forgotten his first unsuccessful attempt to cross the Channel by boat when preparing his witness statements.
166. He then tried to cross the Channel by lorry, which was when he fell ill, returned and was subsequently hospitalised before being sent to the children's hotel the next day. He now asserts that he left the hotel to reside in an unidentified place, not the Jungle, situated outside of Calais, as he had to travel into Calais to meet Hussain before heading off to see AIA.
167. His evidence at the hearing was confused as to how he left the hotel and proceeded to visit AIA, but eventually he confirmed that he spoke to AIA in or around February 2021, after he had "left the hotel". He then contradicted himself by explaining that his reason for leaving the hotel was to visit his cousin.
168. I note that the applicant did not refer to AIA in any of his three witness statements.

169. Turning to the evidence of AIA, I acknowledge his willingness to attend the hearing to give evidence and that he was denied the opportunity by the failure of the French authorities to respond to a FCDO request. I therefore proceed on the basis that any oral evidence he would have given would have been consistent with his witness statement and the applicant's evidence, so far as the applicant's evidence was consistent with his statement. When considering AIA's evidence, I am also required to consider Ms. Abbam's evidence as to her interview with the applicant in preparing the genogram.
170. There is an inconsistency between AIA and the applicant as to the latter's home. AIA visited in 2009, eight years before the applicant details that he fled with his remaining family to the IDP camp. He recalls the applicant's family having two huts: one made of wood and the other mudbrick. The applicant states that his family had only one hut. He made no reference to a second hut existing at any time during his life.
171. AIA confirms in his statement as to how he became aware that the applicant was in France:
- '7. I met [the applicant] through the Sudanese/Chadian community in France. By coincidence he met one of my friends and [the applicant] mentioned my name, so my friend knew to connect us ... I am part of a big WhatsApp group with other members of the community which was how my friend told me he met [the applicant]. This was in early February 2021.'
172. The applicant's evidence is broadly similar in respect of AIA locating him. However, he confirmed that AIA called Hussain, the agent, to talk directly to him and whilst AIA expressed a wish to meet the applicant, at no time did AIA confirm that he was an uncle, or even a relative. Despite not knowing the familial relationship, the applicant was content to travel with a ticket paid for by AIA to the Belgian border, stay with him in a part of France unknown to him for ten days, refuse the offer to remain in comfortable circumstances whilst he sought international protection, and returned to Calais. Such evidence can properly be considered implausible.
173. AIA is silent as to the date or month when he spoke to the applicant, which is now said by the applicant to have been in February 2021, and as to when the visit to his home took place.
174. Turning to the evidence concerned with the preparation of the genogram, the document itself clearly details the information provided by the applicant to Ms. Abbam as she would have had no knowledge of it otherwise. Such details include that the applicant did not know much about his father and his paternal relatives. There is no reference to AIA. The applicant now states that he had not discussed

his father's side of the family before the telephone connection to the interpreter died, though he does not dispute that the name of his paternal aunt, 'GS', is correctly identified in the genogram.

175. Upon considering the evidence in the round, and taking into account the applicant's vulnerability, I greatly prefer the evidence of Ms. Abbam. She is a professional social worker who aids and supports the applicant. At the relevant time she was recently appointed to her role and the applicant was one of her first files. The meeting was cordial, and the applicant accepts that Ms. Abbam took handwritten notes in respect of the information he provided. The process of creating the genogram eventually took two weeks during which the Christmas holiday season fell. It was therefore not an urgent task. If the appointment had been disrupted by poor telephone communication with an interpreter, there would be no identifiable difficulty in Ms. Abbam making another appointment to complete a task that was designed to identify family members who the respondent could seek to contact on the applicant's behalf. I am satisfied, on balance, that Ms. Abbam was truthful as to her recollection that there was no problem with the interpreter. I find that the applicant expressed very limited knowledge as to his father and his paternal family, that all relevant information was secured, and that the genogram was accurate as to the information provided, save for the 15 December being identified as dates of birth for various family members when she simply imputed their estimated ages. I again observe that the applicant does not dispute that the name of his paternal aunt is correctly identified in the genogram. I therefore find that the applicant failed entirely to mention AIA when discussing his paternal family.

176. Observing the highly unsatisfactory nature of the evidence concerned with the applicant's visit to AIA, I conclude that the applicant has sought during the latter part of these proceedings to introduce evidence from AIA to bolster his contention that he was born in 2004. I do not accept, on balance, that the applicant ever visited AIA at his home, nor, indeed, that AIA is the applicant's cousin. If they had met, and AIA had explained his family relationship, the applicant would not have failed to mention AIA, or the visit, in an interview with Ms. Abbam later the same year, nor fail to mention both his cousin and the ten-day visit to his home in his three witness statements.

177. Consequently, I place no weight upon the evidence of AIA.

*Knowledge of date of birth and age*

178. I accept that the applicant is from Darfur. I further accept for the purpose of this decision that he is a member of the Bargawi tribe, though it is not a tribe previously known to me. The tribe is not referred to in the Home Office's Country Policy and Information Note

'Sudan: Non-Arab Darfuris' Version 5.0 (October 2021). I am satisfied that the applicant and the Darfuri dialect interpreter were able to converse throughout the first day of the hearing when the interpreter attended.

179. I further accept that the applicant had minimal education in Sudan.

180. The applicant's evidence as to his father is wildly inconsistent. In his first witness statement he confirmed that he resided on a farm with his family which included his father who used to milk the animals as well as tend crops. His father sold some of his produce to raise funds. There is no mention of his father regularly working away from home, or the animals being tended by someone else. I note the genogram which records Ms. Abbam being informed by the applicant that his father died when he was young and that he did not know much about his father. The applicant's evidence in this matter is that his father was killed when he was aged twelve, an age where he would be expected to have memories of his father.

181. By his third witness statement, signed over a year later, the applicant's evidence as to his father significantly changed. It was now said that he was a 'military man', who was often away from home. It is in this statement that the first reference is made to his father carrying the document his mother confirmed detailed his date of birth. The applicant's evidence was again amended at the hearing, with the applicant being asked whether his father was in the military and responding, "sometimes when he came home, he was in uniform and remained without it, so difficult to know whether he was in the military. I did not ask him". I conclude that the applicant retreated from his contention that his father was in the military, but provided no clarity as to his father's employment, whether as a farmer, in a militia or in other employment.

182. I conclude, on balance, that the applicant was truthful as to his father's circumstances in his first witness statement. That his father would be a farmer in Darfur is plausible, and by the conclusion of the hearing the applicant's evidence as to his father being in the military was so undermined as to fall away. His evidence as to the document is one of the very few things he can remember about his father, despite not being able to read its contents and the recollection of it being no more than it was in his parents' hands for short while on a day in 2017. I find, on balance, that the evidence presented by the third witness statement and confirmed at the hearing concerning his father being in the military and securing a document from Geneina are no more than untruthful additions to bolster his case.

183. I turn to the three instances when the applicant states he was expressly informed as to his age and/or date of birth.

184. The first two instances are properly to be considered together as they arise from what he heard whilst playing football close to his uncle's home, and his mother's subsequent explanation as to what he heard. I find to the requisite standard that if by the age of thirteen the applicant had not been taught the concepts of months and years by his family, who resided in a village without a school and where education was limited to study of the Koran, this was because neither his mother nor his father understood the concepts themselves. This is reinforced by his confirmation that his parents were only able to teach him rudimentary numeracy. I also observe that his family did not celebrate his birthday. Consequently, I find that his mother did not inform him of his date of birth, nor his age, following a football match where others identified him as being aged thirteen, as his mother does not herself know the applicant's date of birth.
185. The third occasion occurred when he telephoned his uncle from Algeria on an unknown date and was again informed by his mother as to his date of birth. In his first witness statement the applicant detailed that having been informed as to the importance of knowing his date of birth he could not remember the day he was born on, so contacted his uncle using a phone number written on a piece of paper given to him when he left Sudan. This was on a date somewhere between February and September 2019. His uncle stated that he would arrange for the applicant to speak to his mother, which subsequently occurred, and he was again informed as to his date of birth. In his evidence at the hearing, the applicant recalled that the telephone call was made some six months after he left Sudan, which would be around April 2019. Important to my assessment is the applicant's confirmation that it was his mother, not his uncle, who provided the date of birth. As found above, the applicant's mother does not know the applicant's date of birth. Consequently, this event never took place.
186. I therefore conclude that the applicant has never known his date of birth, nor his age.
187. I am fortified in my decision by the applicant's engagement with the Spanish authorities in May 2020. I am satisfied that the applicant did inform the authorities that he was aged seventeen and born in 2003. As addressed above, I have concluded that his agent impressed upon him the need to be consistent as to certain dates and information provided when discussing his journey to this country because of the likelihood that the Spanish and British authorities would share information, particularly dates of fingerprinting and the making of asylum claims, the latter including the age he claimed to be. In seeking to ensure consistency with any information that may have been secured by the Home Office, the applicant accurately detailed the date of his arrival in Spain and the details he provided the Spanish authorities.

188. The applicant's explanation as to why he gave his age as seventeen and his year of birth as 2003 to the Spanish authorities is confused. In his first witness statement the applicant confirmed, 'I said that I was 17 and born in 2003 when they asked me because I wanted to remain with my Sudanese friends and did not want to be kept with a family ... I would be separated from my friends and kept with a family if the authorities knew my real age.' In his oral evidence he stated, "if you are under 18 you will be placed with a family. One of my friends gave an estimated date of birth for him and me, and said I was aged 17." If he wanted to avoid being placed with a family, as stated in his first witness statement, there is no logic to him stating he was seventeen, when he confirmed at the hearing that he would be placed with a family if he were aged under eighteen. There is also inconsistency as to who provided the applicant's age to the authorities, the friend or the applicant himself. Further, the oral evidence indicates an effort by the friend to ensure that they remain together, and in doing so be identified as minors, which does not accord with the applicant's reasoning in his witness statement.
189. I conclude to the requisite standard that the Spanish authorities would have asked the applicant directly for his age, not through a friend, with the information provided being officially recorded. I find that on his own case as now advanced the applicant would not have needed to provide a false age to establish that he was a minor because he was aged sixteen at the relevant time. I am therefore satisfied, on balance, that the reason for the false age being provided was that the applicant wished to be considered a minor, and in order to do so reduced his true age to seventeen. Consequently, I find that he was an adult when he arrived at the Spanish border.
190. I find the true position is that the applicant, with his family's approval, left Sudan as an adult. The intention from the outset was that he travel to Europe, securing funds through employment along the way because his family were not capable of funding the entirety of the trip. The applicant worked in Libya, Algeria and Morocco and used the funds gained to secure the services of agents and people smugglers, who in turn informed him as to what steps would be beneficial to him in successfully continuing with his journey. Before reaching Spain, he was under the influence of Hussain and intended to reach the United Kingdom as evidenced by Hussain's group of adults travelling through Spain and France together and reaching Calais. That the applicant had the intention of travelling to the United Kingdom for some time before entering Europe is evidenced by his phoning his uncle from Calais to explain why he had not yet reached the final destination of his journey in this country. I am satisfied that his assertion that he only decided to come to this country whilst he was in Spain enjoys no weight. He could give no cogent explanation as to why his uncle expected him to be in the United Kingdom, when he stated that he

last spoke to his uncle from Algeria, prior to his entering Spain. I am satisfied that he remained in contact with his family by telephone at various times throughout his journey to this country, keeping them up to date as to his progress, and was required to explain to his uncle the delay occurring at Calais.

191. The applicant at various points in time was informed by agents as to useful means of evading the authorities at border crossings, using boats to cross international maritime boundaries and, in respect of this matter, providing false information as to his age to benefit himself, as evidenced in his dealing with the Spanish authorities. I conclude that being aware that he does not know his date of birth, he accepted his agent's advice to inform the British authorities that he was a minor, aged sixteen, to prevent his being returned to France. I further conclude that the same protective approach was adopted when entering Calais hospital. I find that it was the applicant who informed the hospital authorities that he was aged sixteen, not an unnamed friend. This was his first encounter with the 'authorities' in France, and I am satisfied that he was aware through discussions with Hussain that as an illegal migrant he would be more favourably dealt with if he stated that he was a child.

192. I conclude, on balance, that the applicant left Sudan several months before the date he presently relies upon, more likely than not to be at the beginning of 2018. This permitted him time to secure employment and raise funds from working in Libyan mines before travelling through north Africa and into Europe. I am satisfied on balance that on the day he left Sudan he was an adult and travelled through Africa and Europe with other adults. At no point has the applicant stated that he ever travelled with children and so he was a member of an all-adult group when leaving the car park in Geneina to proceed on the ten-day journey through Chad and up to Libya.

193. An accurate determination of his adult age is not possible on the evidence before me, as is to be expected where the applicant himself does not know when he was born. However, I am required to make a declaratory order. Being generous to the applicant, I find that he was aged eighteen when he left his home in Sudan.

194. To the requisite standard I find the following:

- i. The applicant was born on 27 December 1999
- ii. He was aged 18 when he left Sudan at the beginning of 2018
- iii. He was aged 21 when he entered the United Kingdom on 28 May 2021

- iv. He was aged 21 at the date of the respondent's assessment on 16 June 2021
- v. The applicant was aged 22 at the date of the hearing.
- vi. The applicant is presently aged 22.

195. It is appropriate that I conclude by confirming that I do not accept the applicant's evidence as to his not being able to access his Facebook account since his arrival in the United Kingdom. He was very vague as to why he was unable to access his account, simply stating that it was "closed", without a cogent explanation as to why the account was deleted. I am satisfied that the account has not been deleted and that such assertion by the applicant is simply a means of deflecting investigation of the account which is likely to give a true picture of his journey to this country and his contact with his family.

### **Summary of Decision**

196. It is declared that the applicant's date of birth is **27 December 1999**.

Signed: D O'Callaghan  
**Upper Tribunal Judge O'Callaghan**

Date: 12 October 2022