



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

JR/1588/2020

In the matter of an application for Judicial Review

The Queen on the application of

FAD

Applicant

versus

London Borough of Hackney

Respondent

Before Upper Tribunal Judge Kebede

Application for judicial review: substantive decision

Having considered all documents lodged and having heard from the parties' respective representatives, Ms M Butler, of counsel, instructed by TV Edwards Solicitors, on behalf of the Applicant and Ms C Rowlands, of Counsel, instructed by London Borough of Hackney on behalf of the Respondent, at a hearing at Field House, London on 6 to 8 July 2021.

Decision and Order of Upper Tribunal Judge Kebede

(1) I make a declaration, for the reasons given in the attached judgment, that FAD's date of birth is 13 April 2002.

Costs

(2) The Respondent shall pay 50% of the Applicant's reasonable costs of this claim to be assessed if not agreed. There shall be a detailed assessment of the Applicant's legal aid costs.

Permission to appeal to the Court of Appeal

(3) Permission to appeal to the Court of Appeal is refused on the basis that there are no arguable errors of law in the decision. The grounds submitted by the respondent amount to no more than an attempt to re-argue the issues already fully and properly determined by the Tribunal.

Signed: *S Kebede*

Upper Tribunal Judge Kebede

Dated: **11 August 2021**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 11 August 2021

Solicitors:

Ref No.

Home Office Ref:

Notification of appeal rights

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

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

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



Case No: JR/1588/2020

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breems Buildings
London, EC4A 1WR

11 August 2021

Before:

UPPER TRIBUNAL JUDGE KEBEDE

Between:

THE QUEEN
on the application of

FAD

Applicant

- and -

LONDON BOROUGH OF HACKNEY

Respondent

Ms M Butler of Counsel, instructed by TV Edwards Solicitors, for the applicant

Ms C Rowlands of Counsel, instructed by the London Borough of Hackney, for the
respondent

Hearing date: 6-8 July 2021

J U D G M E N T

Judge Kebede:

1. The applicant, a national of Eritrea, claims that he was born on 13 April 2002 and was thus a child of 17 years of age when he entered the UK on 2 October 2019. The

respondent, following an age assessment completed on 10 January 2020, has assigned to him a date of birth of 13 April 2000 on the basis of him being 19 years of age at the time of the assessment. This judicial review challenges the age assessment decision of 10 January 2020 on the ground that the applicant is the age he claims to be and, as part of that challenge, that the age assessment was not *Merton* compliant, that the reliance of the age assessment upon the applicant's appearance and demeanour was perverse and that the respondent failed to give the applicant the benefit of the doubt.

BACKGROUND

2. The applicant arrived in the UK on 2 October 2019 as an unaccompanied asylum seeker claiming to be 17 years of age. He claims to have grown up in Tesseney, Eritrea, as a Pentecostal Christian, and to have fled to Ethiopia with his mother and siblings at the age of three or four years after his father was arrested and detained by the Eritrean authorities because of his activities related to his faith. He had no contact with his father after that time. The family stayed in Ethiopia with the applicant's maternal uncle and moved around a lot, without any formal identification documents, with the result that his education was limited. His mother worked as a street vendor. Between October and December 2010, the family moved to South Africa as his maternal uncle had moved there a year previously. They claimed asylum there and received abuse from locals because of their immigration status. The applicant went to school for a short time but was then not permitted to continue because of a lack of identity documents. In December 2016 the applicant's mother was attacked and killed when some young people broke into the house and tried to rape his sister. A few months later, in March 2017, his sister went missing and he had not heard from her since then. In September or October 2017, he and his brother left South Africa, using forged South African passports which his brother had obtained. They flew from Johannesburg to Casablanca and stayed in Morocco for a few months before trying to reach Spain by sea. They became separated during the journey and the applicant heard that his brother had travelled to France. He told the UN workers who had arranged food and shelter for the people on the boats that he wanted to go to France to find his brother and he travelled by bus to Paris and then ended up in Calais. He did not find his brother. He spent about a year and five months in Calais and then, after several failed attempts and being sent back several times after he was caught and giving a false name and date of birth, he managed to travel to the UK by lorry.
3. The applicant managed to cut his way out of the lorry. He found his way to a police station and was handed over to social services and placed in the care of the respondent. He was placed initially in Dagenham for about eight days, then Ilford for six to seven months and then Hackney, from June to September 2020, and he made friends and secured a place in college. He had hoped to find his brother here and had been searching for him and had sought assistance from the Red Cross but had not managed to locate him.
4. The applicant was interviewed by the respondent, London Borough of Hackney ("Hackney"), on three occasions, on 5, 12 and 18 November 2019, to assess his age. On each occasion the same Amharic interpreter was available to assist him, he was accompanied by the same advocate, as the 'appropriate adult', from the Refugee

- Council and he was interviewed by the same two social workers, Rosemary Musoke and Memory Meck, who then produced the age assessment report on 10 January 2020. The report concluded that he was aged between 19 and 22 years but recommended the lower age of 19, giving him a date of birth of 13 April 2000.
5. It is that assessment, as slightly amended on 12 February 2020 in order to correct typographical errors, which the applicant seeks to challenge in these proceedings.
 6. Following the completion of the age assessment, the provision of support and accommodation from Hackney under section 20 of the Children Act 1989 was due to be terminated on 24 February 2020.
 7. On 21 February 2020 the applicant filed an application for urgent interim relief in a judicial review claim made in the Administrative Court, seeking the continuance of support from the respondent under the Children Act 1989, including the provision of accommodation under section 20 and financial assistance under section 17. On 21 February 2020 Mrs Justice Eady ordered that the respondent continue to provide support and accommodation under the Children Act 1989 pending determination of his judicial review claim.
 8. On 6 March 2020 Mrs Justice Lang granted permission in the judicial review claim, ordered that the claim be transferred to the Upper Tribunal, and again ordered that the respondent continue to provide support and accommodation under the Children Act 1989 pending determination of his judicial review claim or until further order.
 9. On 21 August 2020 the respondent applied to vary the order of Mrs Justice Lang so that the applicant could be moved from supported local authority accommodation to section 95 asylum accommodation under NASS, given that even by his own account he had reached 18 years of age, although support would be continued on the basis of his claimed age, as a 'former looked after child'. The applicant resisted the application.
 10. Lang J's order was varied by Upper Tribunal Judge Mandalia in an order dated 14 September 2020 reflecting the respondent's application. The applicant sought confirmation from the respondent that a stay would be granted on implementing that order pending the outcome of an appeal, but that was refused by the respondent. Accordingly, on 21 September 2020 the applicant applied for a further urgent interim order requiring the respondent to continue to provide support to him as well as accommodation as a former relevant child. That application was refused by Upper Tribunal Judge Mandalia in a decision dated 22 September 2020, whereby permission to appeal to the Court of Appeal was also refused. That matter is, I understand, being pursued in the Court of Appeal. The applicant was, however, moved to NASS accommodation in Earls Court, West London, on 22 September 2020.
 11. A case management hearing took place on 23 November 2020 before Upper Tribunal Judge Smith and directions were issued for the disclosure and filing of documents and for the listing of the matter which then came before me for a substantive hearing. The case was listed for a three-day hearing, but in the end was

completed at the end of the second day, largely because one of the witnesses, Ms Babalola, did not attend to give oral evidence as previously indicated.

DOCUMENTARY EVIDENCE

12. The parties produced an agreed bundle of documents for the hearing comprising Tabs A to G and including witness statements from the applicant, the applicant's solicitor Lizan Ghafoor, the applicant's allocated social worker Elizabeth Monakana, the applicant's personal tutor and ESOL lecturer at New City College in Romford, Essex, Olubunmi Babalola, Victoria Nassozi a support worker for One Housing in Hackney where the applicant was living from June to September 2020, the applicant's allocated Personal Advisor from Hackney, Federica Graziani and Fiona Curtis, Service Manager and social worker for Supporting Independence Services (SIS) Life Limited; the notes of the age assessment interviews prepared by the Refugee Council and the age assessment and amended age assessment; communications from relevant governmental departments in France, Spain and Germany; various other documents disclosed by the respondent including the applicant's Home Office file, the applicant's Social Services file, health and other assessments and progress reports from Hackney; and psychiatric reports for the applicant from two consultant psychiatrists.
13. The following is a summary of the main parts of the documentary evidence, namely the age assessment report, the written statements of the witnesses who did not attend the hearing to give live evidence and the psychiatric reports. Although I have not provided a summary of the contents of the rest of the documentary evidence in the agreed bundle, that is not an indication of the level of consideration given to that evidence nor the weight accorded to it. I have carefully read all the evidence, whether specifically referred to and summarised in this decision or not.

Age Assessment 10 January 2020 (as amended on 12 February 2020).

14. I start by summarising the salient parts of the decision under challenge, namely the age assessment report written by Rosemary Musoke, one of the two social workers who undertook the assessment, at D46 to D61 of the agreed bundle.
15. Under the heading "Physical Appearance, Demeanour", it was observed that the applicant was of a small stature and slim build and that he had a small beard. The assessor stated that she could not be certain of the applicant's age from his physical appearance but considered that his demeanour and how he interacted with professionals during the assessments was contrary to how a young person aged 17 would behave. It was observed that the applicant faced the interpreter at all times, ignored the interviewers and played with his fingers or his headphones and appeared slightly annoyed at times when he had to repeat himself or clarify his answers. The manner in which he conducted himself during the interview gave the impression that he was mature. He did not present any signs of trauma or loss during the interviews and, when speaking of his late mother, his demeanour did not change and he could not, at first, recall the exact date of her death. He provided limited information about his relatives and childhood experiences and kept on changing information. He did not demonstrate emotions of sadness when discussing difficult parts of his journey and stated that he could not remember

when responding to most of the questions. It was observed, further, that the applicant provided what seemed to be an implausible account of the background information before he travelled as well as during his journey to the UK. He sometimes appeared rude because of the way he responded to questions and his emotional responses and frustrations at the information being asked of him at times during the assessment was as would be expected from an adult.

16. Under the heading "Family composition and history", the assessor noted that the applicant claimed to have left Eritrea when he was a child of three to four years of age. He was the youngest of three children and had a brother born on 8 September 1993 and a sister born in February 1997. His mother was 46 years old when she died. His father was detained because the family members were Pentecostal Christians and after that his mother was the main one looking after the family, with help from his maternal uncle. In Ethiopia his family moved around a lot, in several areas in Addis Ababa and in Awassa. They moved to South Africa in 2010 and lived in Orgis and Witbank, after his maternal uncle had moved there. The applicant talked about the incident in December 2016 when his mother was shot and killed by young people who came to the family home and attempted to rape his sister and explained that his sister had gone missing after that and he had had no further communication from her.
17. Under the heading "Interaction of Person During Assessment" it was observed that the applicant's interaction with the interviewers was poor. He did not maintain eye contact with the interviewers but faced the interpreter and became frustrated at some questions and when clarification was sought. Sometimes he did not seem to be taking the assessment seriously. He could not remember a number of things regarding his life and journey, and he would give estimates and seemed to leave gaps in his account. He could not remember if he went to school in Eritrea and he could not remember what class or level he was in, in Ethiopia, when the family left for South Africa. It was observed that the applicant seemed to be withholding important information and was not forthcoming in his answers and kept on changing answers. The assessor considered that he might have been deliberately vague to avoid further questions, although acknowledged that he could be avoiding upsetting questions due to trauma.
18. Under the heading "Education", it was observed that the applicant had very little memory about his education and could not remember going to school in Eritrea nor the level attended or the name of his school in Ethiopia. He had started from year one in South Africa but had had to stop after a couple of months, in 2011, due to a lack of documentation. He could not remember his age at the time. His next formal education was in the UK.
19. Under the headings "Journey to the UK" and "Experience along the journey", the assessment records the applicant's explanation as to why he and his brother left South Africa following his mother's death and his account of his brother having told him that they were going to the UK, whereas they in fact went to Morocco, flying from Johannesburg to Casablanca in November 2017. They both had forged passports, his being in a different name but containing his picture and they had a hotel booking made in Casablanca solely for the purposes of being able to leave the

airport. After spending between five to seven months in Rabat they went to a place by the sea where he became separated from his brother when getting on a boat to Spain and was collected from the sea by the UN and given the choice to stay in Spain or leave the country. After learning that his brother was in France he was given directions by UN social workers to travel to France and he travelled there by bus and then on to Calais where he stayed in the jungle for about a year and five months before boarding a lorry to the UK. He cut his way out of the lorry and found a person who took him to a police station. The applicant explained that when he was in Calais he was attacked on several occasions and his mobile phone was taken away from him because he was a child, and he was discriminated against by the older people when he was trying to board a lorry for the UK.

20. Under the heading "Clients view on stated age" it is recorded that the applicant said that he may have been 16 when he left Morocco in 2017 and that his brother may have been 22 or 24 at the time. It was observed that the applicant had to have time to calculate when asked a question about his age, which suggested that he might be older than he claimed. It was also observed that arguably the information the applicant gave about his education did not give a true picture of his age.
21. Under the heading "Developmental Considerations/ Independent/ Self-Care Skills", it was observed that the applicant had shown resilience when it came to living alone, which showed that he had developed independent living skills since leaving Morocco. There is reference to the applicant being courteous and respectful to staff and having good independent and self-care skills, but to issues about his behaviour when he permitted a guest to remain in his flat overnight and was smoking and drinking. As a result, he was on a visitor ban and his weekly allowances were apportioned to limit his ability to buy alcohol. It was observed further that he was not seen to interact with other residents within the building and to present and behave as someone older than 18 years of age. He travelled independently on public transport and his level of confidence was mature.
22. Under the heading "Health and Medical Assessment", reference is made to regular medical check-ups, to the applicant having received injuries which were treated in France and injuries from being attacked by a gang in South Africa and to his difficulty falling asleep and being at risk of mental health problems due to the emotional trauma he had suffered.
23. Under the heading "Information from Documentation and Other Sources" it was confirmed that the applicant had no ID when he arrived in the UK and that there was no information from other sources.
24. In her analysis of the information and her conclusions, the assessor, Ms Musoke observed that the applicant was very vague in his descriptions of his family life, that he had little recollection of significant childhood experiences, he had difficulty remembering his age, he was unable to account for gaps in his education history or provide relevant information about schools, there were gaps in the information regarding communication with people in Morocco and about his loss and acquisition of mobile phones and there were inconsistencies in his account of the airport he flew from. In the UK, he had demonstrated a good level of independence

and had not been observed to require the support of adults for tasks, he presented as mature and did not engage with other young people at the unit and his demeanour and manner of interacting with professionals during the assessments was contrary to how a young person aged 17 would behave. It was accepted by Ms Musoke that the trauma the applicant had experienced in South Africa, which included accidental and non-accidental physical injuries inflicted by others, the death of his mother, moving from various places at a young age, the journey to the UK as well as traumatic events in Calais that he did not wish to talk about, were all likely to have had a negative effect on his memory. However, despite that being the case, she concluded that in her view the applicant was older than his claimed age of 17. Her assessment was that the applicant was aged between 19 and 22 years of age and recommended the lower age, namely 19, with a date of birth of 13 April 2000.

Statement from Olubunmi Babalola

25. In her statement of 2 November 2020 (page B31), Ms Babalola, an ESOL lecturer at New City College in Romford, Essex, confirmed that she had been in her role since January 2013, working with young people aged 16 to 18 years. She stated that she had previously spent seven years in other colleges teaching the same age group and had vast experience of working with young people within that age range. From 2010 to 2012 she worked as a community leader teaching community programmes and ESOL to children and young people aged 11-18 years. She stated that she was the applicant's personal tutor and ESOL lecturer when he was a student at the college, from November 2019 to July 2019 (I assume she meant to say July 2020), and that he was 17 when he enrolled and turned 18 in April 2020. Ms Babalola referred to her previous letter of 22 January 2020 (page E83) confirming her belief, at that time, that the applicant's behaviour was that of a typical 17-year-old and she stated that she remained firm in her belief that he was currently 18 years of age. That belief was based upon weekly tutorial sessions where they discussed both personal and academic issues and her observations of the applicant in the classroom as well as in their weekly tutorials. Ms Babalola confirmed that she believed that the applicant acted like a typical 18-year-old, and she did not get the impression that he was trying to act younger than he was. She stated that she had had students who looked and acted older than their age and found there to be a noticeable difference in behaviour between students who were 16 to 18 and those over 18. She found that older students were more likely to follow classroom rules and she gave an example of that in relation to the use of mobile phones during class. She found that 16 to 18-year-olds were more likely to lie about small things and that older students did not like to engage in classroom activities. The applicant fitted in with those observations and his behaviour was comparable to that of her own sons when they were 18 years of age.

Statement from Victoria Nassozi

26. In her statement of 2 November 2020 (page B35), Ms Nassozi confirmed that she was a support officer working for One Housing in Hackney and had been in her current role since 2012, prior to which she was a supported housing officer. She had been working with vulnerable young people since 2000: from 2008 with young people aged 18-25 and prior to that with mixed groups aged 18-60. The applicant was only there from 1 June 2020 until 28 September 2020, when his tenancy ended.

Ms Nassozi said that she spoke to the applicant daily and had weekly key-work sessions on the telephone. After each key-work session she updated his care-plan, which outlined their discussions, goals and actions. She would see him coming and going from the accommodation as she was based two minutes' walk away. Ms Nassozi said that she helped the applicant to contact the bank a few times to make payments for his legal aid and to set up ways of doing telephone banking and she assisted him with independent living skills to make sure he bought and cooked food properly and went out. She enrolled him on the Duke of Edinburgh programme, and she encouraged him to go to the park and play football. Ms Nassozi said that the applicant seemed younger than 18 in some ways as he did not understand some of the things that it would be expected he would understand, such as the ban on having visitors which he breached twice, but in other ways he seemed more mature. He would hang out a lot with other young people in the building and he got on well with the others. She never saw him with anyone older than 18 and most of his friends were 18. She did not see anything different and older in his behaviour to other 18-year-olds.

Medical reports

Report of Initial Health Assessment dated 28 October 2019 (page E1)

27. This report was prepared by Dr Elena Roosinovich of the Community Paediatrics Looked After Children's Health Team, Hackney Ark, at Homerton University Hospital following an assessment on 24 October 2019 in which the applicant was accompanied by his social worker, Elizabeth Monakana, his student social worker Schantal Morisson and an Amharic interpreter. In that report reference was made to the applicant having left Eritrea at the age of eight or nine years due to his family's persecution on account of their Protestant faith and to having fled to South Africa where he remained until 2018. Reference was made to the applicant encountering on numerous occasions physical violence from a gang in South Africa which persistently attacked him and his family and to him and his brother then fleeing South Africa, flying to Morocco and then crossing Europe to the UK where they became separated. Reference was made to his uncle remaining in South Africa and to his sister's whereabouts being unknown following her rape. The report also referred to injuries received by the applicant to his hand and leg from falling off a moving lorry and to the end of his fifth right finger being cut off by a gang and a head and ear injury received at the same time, as well as to events that happened in Calais which were too traumatic for the applicant to talk about. The report concluded that it was likely that the applicant had been chronically malnourished in view of his social circumstances and that he was at risk of mental health problems due to the emotional trauma he had experienced.

Psychiatric report from Dr Jagmohan Singh, a Consultant Forensic Psychiatrist, dated 4 September 2020 (page F9)

28. This report followed an assessment by way of a video call on 3 September 2020, on the instructions of the applicant's legal representatives. The report refers to the applicant stating that the only issues he had relating to mental health were the separation from his brother and difficulties sleeping. Dr Singh found there to be no objective evidence at the time of the assessment of the applicant having any major

mental health illnesses, any cognitive deficits, any major medical condition impacting on his mental health or any history of neurodevelopmental disorders. Neither were there any post-traumatic stress symptoms. Dr Singh could not elicit any significant memory impairment or psychiatric features that could explain the applicant's inability at times to recall information. He found there to be nothing significant from the applicant's history or from his interaction to suggest that he suffered with any intellectual impairment, cognitive impairment or psychological issues and concluded that no special adjustments were required for the court hearing.

Letter dated 8 February 2021 from Psychiatry Liaison Service at Chelsea & Westminster Hospital

29. This letter is headed "Impression: Adjustment Disorder" and followed the applicant's attendance at Chelsea & Westminster Hospital reporting a low mood, feeling depressed and having suicidal ideation, and reported that whilst the applicant was otherwise a resilient and determined young male, he was facing ongoing stressors relating to his asylum application and issues with his accommodation. The letter acknowledged receiving many asylum seekers from the same accommodation, the Amsterdam Hotel, reporting about the conditions there which negatively impacted upon their mental health. It was noted that the applicant was no longer able to access education as his new accommodation had no Wi-Fi to complete remote studies and there was otherwise a two-hour commute to his college. Further the accommodation had no cooking facilities and did not provide hot meals. It was observed that he was a young, vulnerable 18-year-old who was isolated and separated from his brother and that if his situation did not improve it would have a negative impact on his mental health. A request was made for his accommodation to be assessed so that he could have access to cooking facilities and Wi-Fi.

Psychiatric report from Dr Susannah Fairweather, a Consultant Psychiatrist, dated 17 May 2021 (page G1)

30. This report followed an assessment on 1 and 3 April 2021, on the instructions of the applicant's legal representatives. The first appointment was in person at Dr Fairweather's consulting room and lasted for approximately three hours and the second was a continuation, by telephone, which lasted for just over one hour. Dr Fairweather considered that the applicant was fit to give evidence in court but that he should be treated as a vulnerable witness. She found that the applicant suffered from an adjustment disorder with depressed mood and developmental disruption. She noted that he reported significant post traumatic symptoms but that he would not meet the full diagnostic criteria for PTSD. She was of the opinion that the acute stressor for his adjustment disorder was the accommodation move which resulted in less social support, difficulty in accessing education and less contact with friends.
31. Dr Fairweather referred to the applicant's transfer to the asylum seeker support accommodation in Earls Court in West London on 22 September 2020 which resulted in him being unable to continue his college education commenced in East London. She referred to him being told on 3 February 2021 that he was being moved to a different accommodation the following day, but he did not travel there

when the driver came as he was very distressed and anxious, and his mental health rapidly declined over the following days to the extent that a referral was made to the local authority clinical team. He reported thoughts of harming himself and suicidal ideation, which culminated in an urgent mental health assessment at Chelsea and Westminster Hospital where he was assessed and given a provisional diagnosis of adjustment disorder. He was discharged from hospital the same day and went back to the care of his GP. He subsequently disclosed to his solicitors on 19 March 2021 that he was self-medicating with medications obtained from a friend to help him sleep. Dr Fairweather quoted from the documents with which she had been provided in relation to the applicant's history and provided comments on parts of the age assessment report in so far as they related to his psychiatric condition. She set out the applicant's account of his family and background, his experiences in Eritrea, Ethiopia and South Africa and his journey to the UK.

32. Dr Fairweather concluded that the applicant's presentation and the deterioration in his mental health were consistent with the previous report from Dr Singh, the subsequent move to different accommodation and the diagnosis given in February 2021 by the psychiatric liaison practitioner at the time of his attendance at Chelsea and Westminster Hospital. She was of the view that an adjustment disorder diagnosis with the specifier with depressed mood captured the applicant's presentation most accurately, but she was concerned that if his inadequate social situation persisted and his depressed state became more evident, then major depressive disorder would be a more accurate diagnosis. Dr Fairweather noted that she had identified some symptoms consistent with PTSD and that the applicant had been observed to present with symptoms of PTSD by professionals, but she did not currently make such a diagnosis as he did not present with all the required symptoms. She considered that the cumulative impact upon the applicant of multiple adverse experiences in childhood significantly pre-disposed him to developing a psychiatric disorder across his lifetime. She observed that his adolescent development had been disrupted and affected and that that affected his current presentation. Dr Fairweather also commented that the applicant's depressive symptoms would have an impact on his memory and ability to recall information and that his difficulties in providing a history should not necessarily be taken as evidence of a lack of credibility.

Psychiatric addendum report from Dr Susannah Fairweather, dated 23 June 2021 (page G57)

33. In an addendum to her report Dr Fairweather responded to questions from the respondent. In response to the request for confirmation that the applicant's current presentation was not the same as when he was interviewed in the course of his age assessment, Dr Fairweather said that she could not entirely rule out him suffering psychiatric disorder when he was interviewed in November and December 2019, given that there was reference to him experiencing psychiatric symptoms over time. She clarified that her finding of the applicant's concrete thinking, which was not as developed as expected for his age, provided support for him having suffered experiences in his childhood which disrupted his developmental trajectory and also supported his account of limited formal education.

THE HEARING: ORAL EVIDENCE

34. I heard oral evidence from the witnesses. For the applicant there was just himself and for the respondent there were three witnesses, Elizabeth Monakana, Federica Graziani and Fiona Curtis. All gave evidence before me over a period of two days: the applicant and Ms Monakana on the first day and Ms Graziani and Ms Curtis on the second day.
35. Before the applicant gave his evidence it was made clear by the Tribunal, and with Ms Rowlands' agreement, that he was to be treated as a vulnerable witness, further to the indication of such by Dr Fairweather in her psychiatric reports. Careful regard was therefore taken of the Presidential Guidance Note 2 of 2010 in that respect, and the applicant was provided with frequent breaks and was addressed with concern to ensure that he understood and was comfortable with the proceedings. There was no indication that he had any difficulty at any point in understanding what was being asked of him or that he had any problems throughout the proceedings. He had the benefit of an Amharic interpreter when giving his evidence and in summarising for him the evidence of the first witness, Ms Monakana, on the first day. Although he confirmed that he understood and was able to communicate in English, he preferred to use the services of the interpreter to give his oral evidence and confirmed, during the proceedings, that he had no problems with the interpretation and with his understanding of the questions asked of him. There was no Amharic interpreter available on the second day, when the evidence of the last two witnesses was given and for the submissions, since there was a cancellation early that morning, but Ms Butler confirmed that she had no problem proceeding that day without the interpreter as the applicant had completed his evidence and had a good understanding in English. Although she requested an interpreter for the third day, there was no need as the proceedings were completed by the end of the second day.

Witnesses for the Applicant.

The Applicant

36. The applicant confirmed his four statements, dated 20 February 2020 (B1), 21 September 2020 (B3), 2 November 2020 (B7) and 3 June 2021 (G67) and adopted them as his evidence in chief.
37. In his first statement he explained that he had not understood the purpose of the age assessment interviews before attending at Hackney Council and was surprised when he was called back after the first one. There were four meetings and he found them stressful. He was asked a lot of questions and often guessed when asked for dates of events. He felt like he was being interrogated. He was given a copy of the age assessment report at the last meeting, which lasted for about two hours.
38. At the time of his second statement the applicant had been in his accommodation in Hackney for around three months and he explained that he received support from the placement staff as well his friends who lived there. He was helped to secure a place at college and to apply for and renew his oyster card and the support workers showed him around the area and the local amenities. He felt part of a small community in his accommodation, but he also had friends outside his placement

who he had met when he arrived in the UK. He attended college with other Eritreans and played football in the park with his friends and he felt settled. He was stressed at the thought of having to move.

39. In his third statement the applicant stated that he knew his date of birth because his mother has told him many times and he also saw letters when they lived in South Africa with his date of birth and that of his family. His brother's birthday was 8 September 1993 and his sister's was in February 1997. The applicant gave details of his life in Eritrea, Ethiopia and South Africa. He said that his family moved to Ethiopia in 2005 and moved around a lot. He said that it was difficult to give a proper timeline because his memory was confused. They moved to South Africa in 2010, between October and December 2010, and claimed asylum there. He was only able to attend school there for a few months. In 2015 they moved from Orgies to Witbank, where his uncle was living, and his mother was shot on 23 December 2016 and died the following day in hospital. His sister disappeared in March 2017 and there was a lot of speculation as to what may have happened to her. He and his brother left South Africa in October 2017, flying from Johannesburg to Casablanca. The applicant gave details of his time in Morocco and his onward journey to Spain, France and the UK, and his search for his brother from whom he had become separated when he boarded a boat in Morocco. He stated that he took several attempts to get to the UK from Calais and on one occasion he ended up in Germany and was caught by the police and taken to a police station and fingerprinted. He refused to claim asylum there and travelled back to France instead. He was stopped many times by the police and gave a different name every time, as he was advised to do by the older boys. The applicant gave details of his accommodation in the UK and referred to the end of his accommodation with Hackney Council and the move to NASS accommodation on 22 September 2020. He explained how he was unhappy in the accommodation as he could not cook there, there was no Wi-Fi and his friends and college were very far away so he mostly stayed in his room and felt alone.
40. In his fourth and final statement, the applicant responded to information from the respondent confirming his use of different names and dates of birth in France and Germany. He explained that he gave different details every time he was stopped by the police as he was advised to do that by other people he met when travelling, so that the police would not know he had been stopped previously. He also gave different nationalities, to match those of the others in the group with which he was travelling. He understood that there was information from France showing his date of birth recorded in Spain as 19 January 1985 and he explained that he was advised by other travellers to give an older date of birth so that he would not be prevented from travelling from place to place. He was told that the name recorded in Germany was Semir Juher Sherif and he recalled having given this name because he had had a friend in Morocco called Juher Sherif.
41. When cross-examined by Ms Rowlands, the applicant said that he had some friends in Shepherds Bush and Finsbury Park. He learned to speak English in South Africa and was able to communicate in English when he arrived in the UK, although a Tigrinya interpreter was provided on the day he arrived, which was the wrong language. In the first place he stayed in Dagenham, he was not shown around, but

- in his first placement in Ilford, when he was with SIS Life and Fiona Curtis, he was shown around and he asked about a gym and a park to play football. He used to cook meals in his first placement, although at first his roommate cooked for him. He had learned to cook dishes in Morocco. He confirmed that he kept his place clean and tidy because that was the house rule. He was not happy when a third flatmate moved in as he did not speak the same language and so they could not understand each other, whereas the second flatmate was Eritrean and they got on well. The other flat mate would take charge of the TV and that was the main reason they wanted him to move out. The Eritrean flatmate was 17 years old. He (the Eritrean flatmate) was living in the accommodation before him (the applicant). In response to Ms Rowlands' question about meeting people in Elephant & Castle, the applicant said that he went there to meet friends he knew from when he lived in Ilford.
42. The applicant confirmed that Elizabeth Monakana looked after him when he was living in Ilford, but he had not seen her since then. Federica looked after him afterwards. When asked by Ms Rowlands about the age assessment he said that Elizabeth was not the person who explained it to him, but it was someone else. At first, he did not know about the process, but when it happened a few times he started to understand. He did not know about the Home Office not accepting his age. Ms Rowlands told the applicant that Elizabeth had explained to him about the age assessment, at a meeting on 25 October about his pathway plan, but he replied that he did not remember. He only remembered it being discussed after it had happened and not before. He remembered asking her why they were pressurising him like that.
43. Ms Rowlands put to the applicant that later on, when the time came for him to move to another accommodation, Federica came to his home and explained to him many times about the move and when it was going to happen, and she told him that he should pack his bags. The applicant said that he was not so sure it was many times, but he remembered talking to her on the telephone. He did not agree with the way Ms Rowlands explained the situation and said that he was notified in the evening but replied that there was not enough time. He agreed he had a meeting with Federica, but he said that she did not mention that. Ms Rowlands put it to the applicant that Federica had spent three hours with him explaining about the move, on a Friday, and had told him to be ready on the Monday, but the applicant disagreed and said that it did not happen like that. When reminded that this was the move in September to the Amsterdam Hotel and not the attempted move in February, he agreed that she had told him about it, but he said that he was late when they came for him as he had been at a friend's house saying goodbye. He did not recall telling his solicitor that he was only given one hour's notice.
44. Ms Rowlands asked the applicant about his time in South Africa. He said that his brother had brought the false passport which he used to leave the country. He did not recall the name on the passport, only that it was a Muslim name. He did not recall saying that the name in the passport was Semir Anwar Juher. When asked why that name had come up in the age assessment, he said that that was a friend of his from Morocco and he may have given that name when talking about his travels in Europe and the other refugees there. He only knew someone called Juher Sherif

but not someone of the other name. He agreed that he may have given the name Semir Juher Sherif when he was in Germany as he gave so many different names whenever when he was arrested, and he could not remember. He also gave different dates of birth. The agent had advised him to do that, and his brother had told him to listen to the agent. He had never been told to give a younger age as that would not be beneficial. A younger person would not be allowed to move from place to place, so he had been told to give an older age. A lot of times the authorities of the different European countries thought that he was a child, but he told them that he was not, because he did not want to stay there. However, when he came to the UK, he thought his brother would be here and he would stay here so he gave the correct age. He had never been told that it would be beneficial to him to give a younger age in the UK.

45. Ms Rowlands then asked the applicant about his knowledge of his date of birth. He said that the letters he referred to in his statement, which he had seen in his home in South Africa, contained his photograph and date of birth. The letters were written in English. He could not read English well at the time but knew enough to read his date of birth. His mother told him his date of birth in the western calendar, not the Ethiopian calendar. He did not know his date of birth in the Ethiopian calendar. The applicant then said that his mother told him how old he was, but whenever he looked at the letters with his photograph, she would tell him that that was his date of birth. They all had those letters as they were asylum seekers there and they were the papers given to anyone who applied for asylum. They had to be renewed every three or six months. The applicant agreed that that information may be on the authorities' records in South Africa, but he said that he did not know how to request a copy. When asked about efforts to contact his uncle in South Africa who could assist in providing such evidence, the applicant said that he did not how to get in touch with him and that if he could find him, he could help him in so many ways. He agreed that it was possible he did not mention his uncle to the Red Cross and had only mentioned his brother and sister, but if they found his brother then he could help him find their uncle. When questioned about the passport used to leave South Africa, the applicant agreed that it had his photograph in it, but he did not recall going to get a passport photograph and assumed that his brother had used a photograph he already had on his phone. He recalled signing a piece of paper at the airport before leaving South Africa, but he did not understand what it was. He thought it was to do with the hotel booking in Morocco. When asked about his previous reference, at the age assessment interview, to having flown from Frankfurt Airport, which he then changed to Johannesburg, the applicant denied having said that. He said that he had never been to Frankfurt. He was in Germany, but only at the border.
46. When asked about his attitude to the rules of the accommodation where he was staying, the applicant said that he respected the rules, but he did not like them if they were too strict. He did not like the rule that he was not allowed to stay out overnight and that he could not bring friends in. He agreed that he drank with his friend but said that was the first time. He did not recall the incident when 7 cans of beer were found but said that that was possible. He may have lied about that because he had a doctor's appointment in the morning, but he did not lie most of the time. The applicant said that it was possible he told Fiona he was not a child,

and he could handle his shopping himself. They argued a lot as they lived in the same house, but he had never liked anyone telling him he was a child, even when he was little. When asked whether the agent who took him to Morocco told him to say that he was younger than his real age when he came to the UK, the applicant said that was not the case. He was currently 19 years of age and that was the truth.

47. When re-examined by Ms Butler, the applicant said that his English had improved a lot since coming here. When he first came to the UK there were some members of staff in his accommodation whose accents when they were speaking English were difficult to understand, but he understood more nowadays. With regard to the age assessment interviews, he did not know what they were about at first and did not expect to come back for further interviews after the first one. When asked about the passport he used to travel to Morocco and the name in the passport, the applicant said that he did not know anyone called Semir Anwar. The name of the friend he had in Morocco was Joher Sharif. As for when he went to Germany, he said that they caught them, they were released, and they went immediately to France. He was in Germany for one day.

Witnesses for the Respondent.

Elizabeth Monakana

48. Ms Monakana confirmed her two statements, the first undated (B24) and the second dated 6 November 2020 (B26) and adopted them as her evidence in chief. The first statement was prepared in support of the respondent's application to vary the order of Mrs Justice Lang so that the applicant could be moved from supported local authority accommodation to section 95 asylum accommodation under NASS. In that statement, Ms Monakana confirmed that she had qualified as a social worker in August 2019 after obtaining a master's degree in Social Work from Hertfordshire University, that she had been employed by the London Borough of Hackney as a social worker since September 2019 and that she had been the allocated social worker in the applicant's case since 10 October 2019.
49. In her second and lengthier statement, Ms Monakana stated that she did not have access to the applicant's casefile owing to a cyber-attack on Hackney's systems and that she was therefore limited in providing factual dates. She explained that her role was to ensure that the applicant had suitable accommodation, access to education, health services, extra-curricular activities and financial support to meet his needs. She visited the applicant approximately five times in his placement and approximately three times in other settings and also maintained contact with him over the phone. She was responsible for organising the age assessment and had explained the process to the applicant prior to the assessment. She confirmed that the assessment was Merton compliant. Ms Monakana provided information from the placement staff at the applicant's semi-independent accommodation with SIS Life who reported that he presented as mature with good independent skills, that he was able to travel on his own soon after being accommodated and was able to prepare his own meals and ensure that he had sufficient food in his flat. She referred to him challenging the placement rules by allowing a friend to stay overnight and having seven beer cans and tobacco recovered from his room, by smelling of alcohol despite denying having had any although later admitting to it,

and by being reported missing from the placement approximately three times. Ms Monakana referred to having seen a picture of a young girl on the applicant's WhatsApp display and to him not giving a truthful answer about who she was. Ms Monakana responded to the applicant's ESOL tutor's views about his age and commented on the applicant's response to offers of assistance in accessing groups in his area, noting that his ability to consider options and make his own decisions indicated that he was mature and possibly over the age he was claiming to be. Ms Monakana commented on the applicant's failure to mention having been in Germany, which demonstrated an intentional withholding of information, and his use of aliases and adult dates of birth throughout Europe. She was confident that her social worker colleagues in Europe would have ensured that the applicant was safeguarded as a child, if he was a child. In conclusion her view was that the applicant showed behaviour which was synonymous with young people over the age of 17.

50. In her evidence when cross-examined, Ms Monakana confirmed that her job with Hackney was her first job as a qualified social worker. The applicant was not the first young person she dealt with but one of the early ones, although she had previously worked with many other asylum-seeking young people in a different local authority. She confirmed that she had met the applicant about eight times, five in his accommodation and three elsewhere including in their offices and at his medical appointment at the health centre in the Hackney building which lasted for about two hours. She last saw the applicant when he was handed over to Federica in March last year. When asked how many age assessments she had been involved in by November 2019, Ms Monakana said that she had completed one and had arranged others for her colleagues. She did not attend the assessment for the applicant, but she organised it and she told the applicant about it. She was able to say that it was Merton compliant as she had done the age assessment training and the applicant had the relevant people there including an advocate on his behalf who did not raise any concerns. When Ms Butler put it to her that there was no occasion when adverse matters were put to the applicant so that he could respond, Ms Monakana said that that happened at the third interview and that if there had been any concerns, the advocate from the Refugee Council would have raised them.
51. Ms Monakana confirmed that the matters referred to at [7] of her second statement, such as the applicant's consumption of alcohol and the discovery of seven beer cans, were based upon the reports given to her by others. She confirmed that she was aware that a significant amount of 17-year-olds drank alcohol even though not legally permitted to do so, but her concern was that the applicant had previously reported that he did not drink alcohol. It was not the incident itself that was evidence of the applicant being an adult, but the way he went about it, denying that he had been drinking. She confirmed that there were no other reports of such incidents to her knowledge. Ms Butler read out several parts of the psychiatric report of Dr Fairweather in relation to the impact of the disrupted development and adjustment disorder on maturity and ability to recall matters. When asked by Ms Butler if she accepted that inconsistencies in the applicant's account could be because of his past trauma, Ms Monakana accepted that to an extent trauma had some impact upon recollection but said that the applicant had never mentioned to her that he had gone to Germany. Ms Monakana confirmed that the applicant was

given 10 hours of one-to-one support for the first six months of being in the UK and that weekly progress reports were prepared from that support. She explained that there were only three such reports available because of the cyber-attack on Hackney's systems but she was sure there were otherwise more reports which she could not access.

52. Ms Monakana confirmed that the applicant had support with opening a bank account, bursary payments and budgeting, and other support but said that that was all part of semi-independence training. She confirmed that she had helped the applicant when he had concerns about his new flatmate, and she had spoken to the placement manager about it. She confirmed that he had had support from the staff for making applications such as for an oyster card and a lunch card and that Federica was supporting him in dealing with finances and had helped him with matters since he had moved to Earls Court. However, in the initial placement in Ilford, the applicant had said that he did not need support. Ms Butler asked Ms Monakana if she accepted that asylum-seeking children living in Europe would develop independent skills and she said that she did. Ms Butler asked Ms Monakana if she had ever asked the applicant if he had travelled to Germany, to which she replied that she had not, but she had asked him which countries he had travelled to and he had mentioned France, Spain and Morocco but not Germany and so the omission seemed to be intentional. When Ms Butler pointed Ms Monakana to the Home Office Welfare form completed shortly after he came to the UK, she accepted that he had mentioned Germany then, but maintained that he had not disclosed that to her, and she did not accept that he had not deliberately lied about it. Ms Butler pointed out the ADCS Guidance at page 63 which referred to a margin of error of 5 years in assessing age and asked Ms Monakana if her assessment of a 2-year age difference was within that margin, to which she replied that it could be.
53. When re-examined by Ms Rowlands, Ms Monakana said that the correct finding was within the margins of 19 and 22, as stated in the age assessment. She was unable to explain why the lower age of 19 was recorded. Ms Monakana did not accept that, if the applicant looked like a child, the German authorities would simply let him go when he asked to leave, but she considered that they would make an effort to keep him and support him. Ms Rowlands referred Ms Monakana to her case-notes at E195 and asked if she could remember what she meant when she said that "the meaning of an age assessment was explained", to which she replied that she explained to the applicant that the Home Office had an issue with his age because he had no paperwork and that he would have an interview with social workers to try to assess his age. Her manager was with her at the time. Ms Butler reminded Ms Monakana of the case notes about the applicant having been found with beer cans and asked her if she recalled him admitting to drinking half a can of beer, to which she replied that she did not recall all the discussion.

Federica Graziani

54. Ms Graziani confirmed her two statements, the first dated 5 November 2020 (B40) and the second dated 17 June 2021 (G77) and adopted them as her evidence in chief. In her first statement she confirmed that she was based in the UASC Unit Social Care, Community Services, Hackney Service Centre and had been employed by

Hackney as a personal advisor since 2 March 2020. She was allocated as the applicant's personal advisor on 6 April 2020 and, as such, had undertaken three face-to-face visits since then as well as maintaining regular telephone contact via video calling or text messaging. She had assisted him with enrolling into college, moving placement and making contact with his immigration solicitor, as well as reading out letters to him and liaising with other professionals such as key workers and Migrant Help to make sure that he received his weekly allowance and money for transport. Ms Graziani said that she had a good working relationship with the applicant until the last court hearing when she was unable to prevent his move to different accommodation. She had supported him with his enrolment into BSix College in Hackney to study ESOL, but he had stopped engaging with his studies because of the accommodation move and the distance from the college.

55. Ms Graziani said that she had contacted the applicant on 15 September 2020, following the court hearing on 14 September 2020, to explain that he would have to move to adult accommodation in one week as he was over 18 and he did not take that well. She spoke to him again on 16 and 17 September 2020 about the accommodation move and on Friday 18 September 2020 she went to visit him at home. They spent more than three hours together as she was trying to help him sort out his bank card and she kept explaining why he had to move. She advised him to pack his belongings over the weekend and be ready for Monday 21 September 2020. She received an email on 21 September 2020 about transport booked for the move and she called the applicant to let him know, but he was at a friend's house an hour away and was not back home when she arrived there. The move was re-arranged for the following day. She understood that the applicant had contacted his solicitor on 21 September 2020 to inform them that he had been given one hour's notice of the move and the solicitors were complaining that Hackney had acted unreasonably, whereas the applicant had in fact been warned of the move in advance. Since then, the applicant's mental health had deteriorated and he reported that he hated the new accommodation, that he was not sleeping, that he did not have an appetite, that he had not been attending college because of the distance and that he was worrying about everything and wanted to find his brother.
56. Ms Graziani said that the applicant's physical features, such as his beard, hair on his arms and his body shape, suggested that he was an adult in his early 20s. His independent living skills were also consistent with him being in his early 20s. His friends were those from the first two placements and were aged around 17 to 21. Ms Graziani said that she had concerns about the credibility of the applicant's story of how he arrived in the UK as the information from the Home Office did not match the information he had shared with them. He had given different names and places of birth and had never disclosed travelling to Germany or France. It was her view that it was more likely that he was in his early 20s than the age he claimed to be.
57. In her second statement, Ms Graziani added that she made a referral for psychological support for the applicant on 5 February 2021 given his high level of emotional distress and she referred to the letter from the Psychiatry Liaison Service at Chelsea & Westminster Hospital. She stated that she had been trying to help the applicant find his brother, but without success. She last visited him on 16 June 2021

- and observed that he seemed settled in Earls Court and had made new friends, all around the age of 20. He was spending about four days a week at his friends' house in Shepherds Bush and his closest friend was from Eritrea. Ms Graziani stated that she believed that the catalyst for the applicant's mental health concerns was his anxiety about the outcome of the age assessment process and the court hearing and he feared being moved out of London. She still believed that he was in his early 20s due to his physical appearance and stature and his good independent living skills.
58. Ms Graziani gave oral evidence before me. She had requested an Italian interpreter to be available in case she needed any assistance and one was booked for her, but in the event there was no need for the interpreter. Ms Graziani confirmed that her first language was Italian, but she spoke English in her day-to-day work and with the applicant. She was never worried that he did not understand her and had never had any problems communicating with other asylum-seeking children.
59. When cross-examined by Ms Butler, Ms Graziani stated that the applicant was one of the first young people she had worked with since commencing her job with Hackney. She had previously worked for Southwark local authority as a senior support worker with young people and had worked with five or six asylum-seeking children. Prior to that she had done voluntary work with asylum seeking children. She had attended one in-house training session on age assessments at Hackney, last summer. She first met the applicant on 6 April 2020 and met him three times after being allocated his case. They would video-call or text or, mostly, speak by telephone. Ms Graziani accepted that she had only spent a limited amount of time with the applicant to form a view of his age and accepted that he had been an adult for all the time she had known him, aside from the first few days, even on his own account of his age.
60. Ms Graziani agreed that the applicant had needed support and help in adapting to life in the UK and she agreed that 10 hours of one-to-one support such as he had been given in his previous placement would have significantly enhanced his independent living skills. Ms Butler referred to Dr Fairweather's report and to her opinions on some asylum seekers presenting with uneven development and asked Ms Graziani whether she accepted that, in the light of that evidence, people like the applicant had better independent living skills in some areas, which she did. Ms Graziani accepted that the applicant had difficulties adapting at the beginning when he first moved to Earls Court but said that the situation was different now. She did not dispute that he had contracted a mental illness, adjustment disorder, as a result of the move. Ms Butler suggested to Ms Graziani that the applicant could have good independent living skills in some areas but be the age he claimed, and Ms Graziani agreed. Ms Graziani agreed that the applicant had told her that he had passed through Germany and France on his journey to the UK. Ms Butler referred to the ADCS Guidance and the margin of error of five years in assessing age and asked Ms Graziani if she accepted that what she said could be within that five-year range, to which she replied "yes". She accepted that someone could have bodily hair between the ages of 17 and 22 and she agreed that someone of 19 years of age could have the skills that the applicant had. She agreed that that could show that the applicant was 19 and not 21.

61. When re-examined by Mr Rowlands and asked how old she thought the applicant was, on the balance of probabilities, Ms Graziani said that it was not an exact science, but she would give him an age of early 20s in light of his appearance and her experience of working with young people.

Fiona Curtis

62. Ms Curtis confirmed her statement of 5 January 2021 (B47) and adopted it as her evidence in chief. In her statement she confirmed that she was the Service Manager for SIS Life Ltd (Supporting Independence Services Limited) and was a qualified social worker. She had been in her current role since 2006 and had worked as a support worker from 2000 and a service manager from 2006, engaged in the support and supervision of mothers/fathers with babies, children and families and young people from the ages of 16 to 25 years and the provision of support to foster placements and respite to children, young people and families and unaccompanied minors seeking asylum, as well as the management and supervision of staff engaged with those client groups. Ms Curtis confirmed that the applicant was placed within the semi-independent placement of SIS Life Limited in Ilford on 10 October 2019. Ms Curtis stated that the applicant was initially polite and friendly towards staff and his fellow flatmate. Within a couple of weeks, he requested to be able to undertake his grocery shopping alone. She noted that within one month he was seeking to advocate on behalf of his flatmate, and he wanted to read his mail and discuss his finances. She had concerns because he seemed to be taking control of his flatmate and she had to intervene several times, particularly when the applicant would interpret for his flatmate, and she considered him to be a domineering person who wished to control his flatmate. Ms Curtis referred to the applicant quickly being able to navigate his way around London on public transport and asking to meet friends in Elephant & Castle. On 6 December 2017 he was found inebriated and smoking in his flat and after that she instructed staff to supervise his grocery shopping so that he did not buy alcohol. The applicant complained that he was not a child and could manage on his own and, despite a request being refused, he stayed away from his placement overnight. Ms Curtis stated that within a few weeks the applicant did not seek the support of staff but was determined to do things his way. She commented on the photograph of a baby on his phone. Ms Curtis said that they had received at least four young people from Eritrea claiming to be 17 years, since 2013, but their behaviour and demeanour was consistent with such an age. In her experience it was the unaccompanied asylum-seeking minors who appeared older than their stated ages who struggled to accept the rules of the placement. Ms Curtis did not consider the applicant's presentation to be one she expected of a child.
63. When cross-examined by Ms Butler, Ms Curtis said that there were about 14 asylum-seeking minors at SIS Life at the time, as well as the staff and social workers. She confirmed that the applicant had a keyworker called Schantal who was a student social worker and was being supervised. Although she was his point of contact, she (Ms Curtis) also dealt with all 14 residents directly. She was also overseeing the manager of another accommodation in Forest Gate where there were about five or six asylum-seeking minors, so overall she had supervisory responsibility for about 20 or 21 residents as well as her line-manager responsibilities. Ms Curtis said that she was there every day, sometimes until 11pm,

and so she had a lot of contact with the residents, although Schantal did the keywork and came to her if there were any issues. Schantal would do the weekly progress reports and pass them on to her and they would then be sent to Ms Monakana. Schantal would also give her daily feedback. When asked why Schantal was not giving evidence for the hearing, Ms Curtis said that she was a student on a placement which had ended, and she had moved on. Ms Curtis agreed that there were only three weekly progress reports submitted, because of the cyber-attack on Hackney. There were many other reports, but they had not been accessed. It was possible to search for them. She had not checked Schantal's 'sent' messages to see if they were there.

64. Ms Curtis agreed that many young people under 18 years of age would want to do their grocery shopping alone, but she said that being supported in their shopping assisted SIS Life to evidence their shopping, including how much they spent and if they were having a balanced diet. Therefore, they would supervise them for a period of time. Ms Butler asked Ms Curtis why, if she had concerns in November 2019 about the applicant being domineering, that did not feature in the progress report of 15 November 2019. She replied that such information would not appear in those reports because it was a matter of observation over time. Schantal would just raise concerns with her. In any event Schantal was only a student social worker and would not capture everything in her reports as a fully qualified social worker would. Ms Butler referred to Dr Fairweather's report and her diagnosis of adjustment disorder. Ms Curtis was not aware of that, but she agreed that the applicant had difficulties with the move to adult accommodation and made that clear to them. Ms Curtis agreed that 17-year-olds could legally smoke, but she said that it was not permitted in the placements and neither was it permitted to have people to stay. Bringing people into the accommodation to stay was a serious breach.
65. Ms Curtis said that she was not aware of the ADCS guidance for age assessments, but her assessment was based upon her experience working with young people since 2000. She was aware that the applicant had lost his mother and was looking for his brother, but she was not aware that he had lost his entire family and did not know all the details. She only knew about what he shared with Schantal. Ms Curtis said that she was aware that the applicant had suffered trauma after being attacked by a gang in South Africa and she accepted that trauma could affect behaviour and that people of the same age could present and behave differently as a result of traumatic life events. She accepted that people from different cultural backgrounds who had experienced trauma could present in different ways. She accepted that the applicant may present differently to other people she saw because of variations in background and trauma. However, she did not accept that that affected her assessment of his age, as she had worked with a number of young people including Eritreans, many from traumatic backgrounds. She found that the older ones were more resistant to controls. In response to Ms Butler's questions, Ms Curtis accepted that it was impossible to be sure of someone's age, especially when they were around 18 and considering the margin of error referred to in the ADCS guidance and accepted that the factors she relied on could not demonstrate that the applicant was 21 rather than 18. However, she had based her assessment on her experience of

asylum-seeking minors and the different types of people she saw, not on physical appearance.

66. When asked by Ms Rowlands about the lay-out of the accommodation where the applicant was living, Ms Curtis explained that there were nine flats in total, consisting of three-bedroom flats, two-bedroom flats and single units which were mostly reserved for those with higher needs. The applicant was in a three-bedroom flat in the upper floor of the building, sharing with another Eritrean young man aged 17 who was not age-disputed. Of the other young people she dealt with, there were two other Eritreans whose age was disputed. Ms Rowlands asked Ms Curtis if there was anything in particular that led her to conclude that the applicant was older than claimed and she replied that it was his demeanour, his insistence on being independent and his refusal to accept things that he was not allowed to do as a minor. She said that even those born in the UK say that they cannot wait until they are 18 in order to do certain things, whereas the applicant would say that he should be able to do something now.
67. That then completed the evidence. I should mention however, at this point, that prior to Ms Curtis commencing her oral evidence, Ms Rowlands made an application to adduce the social workers' notes and transcripts of the three age assessment interviews, and an internal note referring to the applicant's pre-action protocol letter, which had not previously been available as a result of the cyber-attack on Hackney's systems. Information was still being recovered after the attack and the interview transcripts had now become available. Ms Rowlands said that they had come to light after renewed enquiries were made about the issue of whether the applicant had mentioned being in Frankfurt in his interviews. Although Frankfurt had not been mentioned in the notes from the Refugee Council, it did appear in the social workers' notes. After being given an opportunity to read through the transcripts of the interviews, Ms Butler objected to them being admitted at such a late stage, given that the applicant's claimed reference to Frankfurt airport had been challenged in the pre-action protocol and there had therefore been plenty of opportunity for the respondent to disclose the documents previously, the cyber-attack having occurred as long ago as October 2020. Ms Butler submitted that there had been a serious failure by the respondent to adduce all relevant evidence and there had been a breach of the duty of candour and of the directions issued by the Tribunal. She submitted that it was unfair for the transcripts to be admitted at this stage of the evidence when they included a complex chronology of dates which she would need to consider and cross-reference and take instructions upon. Ms Rowlands maintained her request to adduce the documents, submitting that the contents did not come as a surprise, and they simply set out the basis of the age assessment and did not really add anything to the evidence already available.
68. I decided to refuse the application for the documents to be admitted. I did not consider that the cyber-attack was an adequate explanation for the timing of the application, part-way through the evidence and subsequent to the applicant's evidence, several months after the incident and when much information had been recovered, and when further efforts to recover the transcripts had only been prompted by the mention of Frankfurt airport in the evidence. I agreed with Ms

Butler that the interests of fairness required that the application should be refused and I did not, in any event, consider that the respondent would be prejudiced in any way by my decision. Accordingly, I have not had sight of the interview transcripts or the internal note.

THE HEARING: SUBMISSIONS

69. Both parties then made submissions before me, adopting and expanding upon their skeleton arguments.

The Respondent

70. Ms Rowlands reminded me of the Tribunal's duties, to assess all of the evidence and make a decision based upon the evidence as to the applicant's age. There was no burden of proof and, at this stage, no benefit of the doubt. She submitted that the people who had given evidence were experienced social workers who had been trained and who were used to dealing with a lot of young people from different backgrounds. The age assessment had been conducted because of the Home Office's concerns about the applicant's age. The inconsistencies in the evidence were not particularly relevant. The objective evidence was that the applicant had been in Spain in May 2018 where he was fingerprinted, he had been in Germany in October 2018 where he was fingerprinted and where he sought asylum and he had been in France in July 2019 where he was fingerprinted. He was never treated as a child through Europe and he gave different dates of birth as an adult. He said that that was deliberate, on the advice of the agent, as reinforced by his brother, and he was therefore willing to lie in order to draw a benefit. It was a well-known fact that traffickers advised people to claim asylum as a child and it was therefore not credible that the agent advised the applicant to claim to be an adult across Europe but gave no advice about claiming a younger age in the UK. The authorities of three European countries treated the applicant as an adult and accepted the adult date of birth he gave and Ms Monakana had stated that her colleagues in Europe would not do that if they had any safeguarding concerns. It was not believable that the social workers in Spain, knowing that the applicant was a child, would give him directions to travel to France alone.
71. Ms Rowlands submitted that the applicant was happy to lie about other things, namely drinking alcohol, about not being made aware of the purpose of the age assessment and only being given one hour's notice to move accommodation. Credibility was an important part of the age assessment, as set out in MVN v London Borough of Greenwich [2015] EWHC 1942. The age assessment required a holistic assessment including appearance, demeanour and credibility, as stated in B, R (on the application of) v London Borough of Merton [2003] EWHC 1689. Ms Rowlands referred to the two psychiatric reports and the letter from the Chelsea & Westminster Hospital, submitting that they showed that the applicant's mental health problems only arose after his move to the Amsterdam Hotel, that there had been a lot of reports of problems with the Amsterdam Hotel, and that that was therefore not evidence that the applicant could not cope with change but simply that he could not cope with that accommodation. Lying about an account, or confabulating, was a stressor in itself and could account to some extent for the applicant's mental health problems.

72. Ms Rowlands referred to MVN in relation to considering how the applicant knew his date of birth. She submitted that his evidence on that was very limited and was not believable since, if his mother told him his date of birth as he initially claimed, she would have given the date in the Ethiopian calendar. He then changed his account and said she had only told him his age and he learned his date of birth from the letters in South Africa, yet he did not read English at that time. Further, he did not have a permit there and, if there were any such letters, the question arose as to why they had not been produced. His uncle could have assisted him, yet he had not told the Red Cross about his uncle. In addition, the applicant had given an inconsistent chronology and inconsistent evidence about the passport he used when travelling from Morocco. He had omitted reference to being in Germany and had said Frankfurt before correcting himself and was playing that down because he had claimed asylum there. It was made clear in B v Merton that appearance was an unreliable indicator of age and that there was a margin of error of five years either way. The applicant had come across as markedly more mature than his claimed age and had a mature appearance and body shape of a man in his early 20s, which was a relevant factor to be taken into account as part of the assessment. The applicant had shown an exceptional degree of independence, travelling to see friends on public transport without any help only two weeks after arriving here. That was not explained by having previously travelled through Europe, as he did not travel alone then. The applicant had an amazing degree of ability to make his own mind up, for someone claiming to be a child. Ms Curtis' evidence was that he would continuously say that he was entitled to do something, which a younger person would not have said. Ms Curtis had years of experience and was convinced that the applicant was older than claimed. She had effectively lived with the applicant for some time and had long-term dealings with him, which made her evidence particularly useful, as stated in R (on the application of AM) v Solihull Metropolitan Borough Council (AAJR) [2012] UKUT 00118. Further, her view was consistent with that of Ms Monakana and Ms Graziani. The applicant had demonstrated very good independent living skills and, whilst he was provided with support, that was not because he needed it but because that was what was given to any 17-year-old. There was a body of professional evidence suggesting that he was older than claimed and the evidence of the witnesses should be accorded significant weight. There was no cogent evidence as to how the applicant knew his date of birth. It was not credible that he would not know his date of birth in the Ethiopian calendar if he knew it in the western calendar. There was little evidence from the other side. The two witnesses had not attended to give oral evidence and there was no explanation for that. Their statements could not be accorded weight as a result. In any event, they only saw him in a particular setting when he was with minors and would adopt their mannerisms. There was no explanation for the child's photograph on the applicant's phone and he was lying about that too. As for the age assessment, there was no unfairness in the process as claimed, but even if there was, that was not what this case was about. The third interview was effectively a 'minded to refuse' process and the applicant had had a full opportunity to explain everything. The applicant was at least two years older than claimed.

The Applicant

73. Ms Butler relied upon the case of R (CI) v Cardiff City Council [2011] EWCA Civ 1590 in submitting that a sympathetic assessment was required. She relied upon the case of AS, R (on the application of) v Kent County Council (age assessment; dental evidence) [2017] UKUT 446) in submitting that the applicant should be given the benefit of the doubt. There was no reliable medical test to assess age. The ADCS guidance referred to a margin of error of five years. The respondent's position of two year's difference fell within that margin of error. With regard to the applicant's evidence, he had given a coherent and consistent account which fitted in with his claimed age. He admitted to having used a false passport to leave Morocco and he admitted to having passed through Spain, Germany and France. He had not sought to conceal anything, as suggested. He had admitted to giving false names and dates of birth and had given a plausible explanation for that. His account was consistent with the medical evidence. The fact that he arrived here chronically malnourished was consistent with his account of the time spent in Europe. His evidence was consistent with the psychiatric presentation described by Dr Fairweather. Ms Butler submitted that Dr Fairweather's report was constructive in explaining how the way that he presented to the professionals caused him to appear different to other young people, as a result of the trauma he had experienced and his disruptive development. The applicant's account of how he became aware of his age and date of birth was plausible. Efforts had been made to obtain some evidence from South Africa, but it had not been possible to do so. Ms Butler submitted that it was regrettable that the two witnesses could not attend but their statements should be accorded weight. The applicant's evidence should be accepted as credible.
74. As for the respondent's evidence, the fact that the applicant had shown good independent skills was explained by Dr Fairweather on the basis of the uneven and disruptive development caused by his past experiences and the gruelling circumstances he endured in Calais which required strong survival skills. He was given a significant degree of support when he arrived in the UK, including 10 hours of one-to-one support for the first six months. Being able to cook and make his way across London on public transport was not indicative of him being 19 rather than 17 years of age. The social workers repeatedly relied upon factors which did not show the stated age rather than the claimed age and all the witnesses accepted that. Ms Monakana had relied upon inconsistencies that did not exist and was confident that the age assessment was Merton compliant when it was not. Bending the rules and having a one-off socialising with friends did not show that someone was 19 rather than 17. Ms Graziani said that the applicant had adult friends, but his best friend was 17. Ms Graziani had rarely met the applicant in person and she had only known him as an adult apart from a few days before he turned 18. She relied upon physical traits but accepted that there could be a five-year margin between 17 and 22. Ms Curtis relied upon the applicant's behaviour, but that was not indicative of his age. She said that he was domineering but that was not reflected in the monthly progress reports. No weight should be given to her broad statements about how other asylum-seekers behaved. The statements from the witnesses only went so far. As for the age assessment, no weight should be given to that as it did not meet the Merton guidance and it lacked procedural safeguards. There was no 'minded to refuse' process, there were a significant number of open questions at the third interview and there was no opportunity for the applicant to respond to concerns. Ms Butler relied on the case of FZ, R (on the application of) v London Borough of

Croydon [2011] EWCA Civ 59 which emphasised the adverse effect of open questions. Further, the age assessment was not undertaken by two experienced social workers.

75. Ms Butler concluded that the applicant should be afforded the benefit of the doubt, especially given the two-year difference in the age as claimed and accepted, and that he had given a clear and consistent account which was strongly supported by Dr Fairweather, that the respondent's evidence was not determinative and that no weight should be accorded to the age assessment. The respondent had failed to show that the applicant was more likely than not over 18 years of age.

The Respondent

76. Ms Rowlands wished to respond. She submitted that R (CJ) v Cardiff City Council [2011] EWCA Civ 1590 made it clear that it was the local authority which was to give the applicant the benefit of the doubt and not the Tribunal. It was not the case that the respondent found the applicant two years older than claimed, but that he fell within the range of 19 to 22 years of age. As for the margin of error, that was only in relation to appearance, whereas the local authority assessment was an overall assessment taking account of all factors. Ms Rowlands referred to Ms Monakana's response to the observations made by the witnesses supporting the applicant. She submitted that the applicant had not been open and honest about being in Germany or the child on his WhatsApp page. Ms Graziani had met the applicant more than three times – that was the position at the time of her first statement and she had spent several hours with him since then. The age assessment was Merton compliant. The social workers had sufficient experience. The third interview was equivalent to a 'minded to refuse' process.

THE LEGAL FRAMEWORK

77. The legislative framework within which this case is to be considered is well-established and there was no disagreement between the parties on this. It is not, therefore necessary to set out relevant authorities at length. In brief, therefore, I set out the following principles.
78. Where the age assessment of the local authority is in dispute, it is for the court or Tribunal to reach its own assessment of age, as a matter of fact (R (A) v Croydon London Borough Council) [2009] UKSC 8).
79. It is clear from R (CJ) v Cardiff City Council [2011] EWCA Civ 1590 that the application of a legal burden of proof is an incorrect approach to adopt. It is not the function of the court (or Tribunal) to ask whether a local authority has established that a claimant is an adult, nor to ask whether a claimant has established that he is a child. Rather, it is for the court or Tribunal to decide on a balance of probability whether a claimant is or is not at the material time a child. The role of the court or Tribunal is inquisitorial. The Tribunal is required to conduct a "sympathetic assessment" of the evidence in favour of the applicant:

“[21] *It seems to me that once the court 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. In my view, a distinction needs to be made between a legal burden of proof, on the one hand, and the sympathetic assessment of evidence on the other. I accept that in evaluating the evidence it may well be inappropriate to expect from the claimant conclusive evidence of age in circumstances in which he has arrived unattended and without original identity documents. The nature of the evaluation of evidence will depend upon the particular facts of the case."

80. In AS, R (on the application of) v Kent County Council (age assessment; dental evidence) [2017] UKUT 446 the Upper Tribunal made clear, at [20] and [21], that the application of the 'benefit of the doubt' was to be applied as follows:

"[20] We consider, on reviewing the case law, that application of the benefit of the doubt is nothing more than an acknowledgement that age assessment cannot be concluded with 100% accuracy, absent definitive documentary evidence, and is in the case of unaccompanied asylum-seeking children who may also have been traumatised, unlikely to be supported by other evidence. On that basis, its proper application is that where, having considered the evidence, the decision maker concludes there is doubt as to whether an individual is over 18 or not, then in those circumstances, the decision-maker should conclude that the applicant is under 18.

[21] Thus, the benefit of the doubt is not of use where a specific date or age has to be determined except insofar as it requires a sympathetic assessment of the evidence as indicated in CJ v Cardiff.

81. In R (on the application of AM) v Solihull Metropolitan Borough Council (AAJR) [2012] UKUT 00118 the Tribunal made general observations about the impact of evidence of various sorts and from various sources, concluding that "[14] ...almost all evidence of physical characteristics is likely to be of very limited value" and "[19] ... So far as demeanour is concerned, it seems to us that there may be value to be obtained from observations of demeanour and interaction with others made over a long period of time by those who have opportunity to observe an individual going about his ordinary life. But we find it difficult to see that any useful observations of demeanour or social interaction or maturity can be made in the course of a short interview between an individual and a strange adult."

82. At [21] of MVN v London Borough of Greenwich [2015] EWHC 1942, Picken J referred to the ADCS Age Assessment Guidance of October 2015:

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

(1) The assessment must be a holistic one and must start with an open mind, with no imposition on the child to prove his age to the assessing social workers.

(2) Physical appearance and demeanour are notoriously unreliable factors not determinative of age.

(3) Cultural, ethnic and racial context of the young person being assessed must be considered as these may reflect in their presentation as well as their descriptions of their lives.

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

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

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

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

DISCUSSION

84. This has not been an easy case to decide. That is owing, in particular, to the limited evidence from the applicant's side and the lack of supporting documentary evidence, as opposed to the more prolific evidence from the respondent. However, ultimately, I did not find that the local authority's witnesses presented a particularly persuasive or helpful case for the respondent, whereas the case put for the applicant was a more powerful one, albeit without the benefit of oral evidence from any witnesses other than the applicant himself.

85. The respondent's assessment of the applicant's age as an adult was based very much upon his level of maturity, independence and behaviour. In regard to the latter, reliance was placed upon his challenging of the rules imposed by his accommodation placements. It was also stated that he was not forthcoming with information and was in fact being deliberately vague and leaving gaps in his account. However, it seems to me that those conclusions were based upon a limited knowledge of the applicant's background and history and a lack of understanding as to how his past experiences had impacted upon his behaviour, as is made clear in Dr Fairweather's report.

86. I start by examining the evidence produced by the respondent and, in doing so, make it clear that, as the above authorities state, there is no burden of proof upon the respondent to prove its case. Neither, however, is there any burden upon the applicant to prove his case.

87. Turning firstly to the age assessment itself, at page 3 (D48 of the bundle), I have to say that I am not in agreement with Ms Butler in her assertion that the assessment was unlawful. Contrary to Ms Butler's assertion, it seems to me that there was an opportunity for the applicant to respond to adverse points put to him, albeit that there was no formal 'minded-to-refuse' procedure. The end of page 1 of the age

assessment (page D46) refers to the third session being a review of the information obtained in the first two sessions, with questions aimed at ensuring all information had been collated and checking areas where there were gaps. The top of page 2 (page D47) refers to the applicant being given the opportunity to provide views on any inaccuracies and then signing the document once satisfied that the record was accurate. I agree with Ms Rowlands that the applicant had the safeguard of being accompanied by an appropriate adult from the Refugee Council who, if appropriate, was able to express any objections, but did not do so. Further, contrary to Ms Butler's assertion that the age assessment took no account of the applicant's vulnerabilities and experience of trauma, it is clear from the end of page 6 that the author referred to the report from the Initial Health Assessment showing that he suffered emotional trauma due to past experience and was at risk of mental illness, which might have had a negative impact on him. Further references to emotional trauma are made at the top of page 13 of the report and in the penultimate paragraph on page 15.

88. Having said that, I do have reservations about certain aspects of the assessment, such that I consider its weight to be limited. I note that one of the assessing social workers, Memory Meck, appears to have had limited experience and there appears to be no response to the concerns pointed out at [48] of Ms Butler's skeleton argument in regard to her qualifications at the time of the assessment. In addition, it seems that the author of the report made various unsupported generalisations. By way of example, she found that the applicant's *"emotional responses and frustrations at the information being asked of him at times during his assessment, is as would be expected from an adult"* (top of page 4), but offered no explanation for that conclusion; she did not explain in what way he had provided *"what seemed to be an implausible account of background information"* (page 4, paragraph 3) and *"kept on changing information"* (page 4, paragraph 4) and how *"his demeanour and how he interacted with professionals during the assessments was contrary to how a young person aged 17 would behave"* (page 15, paragraph 4).
89. Further, I note that the author considered the applicant to lack credibility for various reasons which do not seem to me to be properly explained or justified. At page 6, she found him to lack credibility because of his inability to recall details of his education in South Africa, yet his account had always been that he had very minimal education in South Africa. At page 13 of the report, she expressed doubts about the applicant's credibility owing to his inability to give the exact date of his mother's death when initially asked, despite him giving the day, month and year and describing the event in detail. At page 14, paragraph 2 the author makes much of an apparent inconsistency in the applicant's account of when he travelled to Bilbao but I cannot see any such contradiction in the notes from the Refugee Council or elsewhere. Neither do I find any reference to Frankfurt airport in those notes, a matter which the assessor referred to at the end of page 14 and which the respondent considered to be relevant in suggesting that the applicant was not providing an honest account of his journey. Although I am told that the reference did appear in the social workers' notes, which were not admitted (for the reasons given at [68] above), I do not see it as a particularly material point and indeed it may well be that it was simply misheard.

90. In addition to these concerns, Dr Fairweather provided an informative response to some of the matters noted against the applicant in the age assessment, as elaborated upon further at [114] to [116] below, such as the fact that his demeanour did not change when he talked of his mother, that he had poor eye contact and did not look at the interviewers, that he was fiddling with his fingers or headphones and that he could not always give exact information or dates. Whilst those were matters relied upon by the assessor as undermining the applicant's credibility, Dr Fairweather pointed out that they were also signs of trauma and of possible mental health concerns. Although, as I mentioned above, the assessor referred to the applicant's emotional trauma and appeared to have some regard to it when assessing his age, it seems to me that there was no proper engagement with the relevance of such concerns.
91. Accordingly, I do not take the age assessment as being of significant weight in the determination of the applicant's age.
92. There are, likewise, concerns about the evidence of the witnesses for the respondent, all of whom seemed to lack any proper insight into the applicant's history and the impact that could have had on his demeanour and behaviour. Further, they all accepted, when asked by Ms Butler, that the factors upon which they relied to show the applicant's age did not necessarily show that he was the age stated in the age assessment report. In addition, two of the witnesses, Ms Monakana and Ms Graziani, were recently qualified/appointed and had only limited contact with the applicant, having met him face-to-face on only a few occasions.
93. The first witness to give evidence before me was Elizabeth Monakana, the applicant's appointed social worker. It is of note, as stated at [4] of her statement, that Ms Monakana did not have access to the applicant's casefile at that time, owing to the cyber-attack on Hackney's systems. It is also of note that she was allocated to the applicant as his social worker a month after commencing her employment with Hackney and only shortly after qualifying as a social worker. She visited him about five times in his placement and three times elsewhere, although she also maintained contact by telephone, and clearly her contact with him was limited.
94. The factors which Ms Monakana relied upon in particular in her assessment of the applicant's age appear from [7] of her statement and include the fact that he presented as mature and had good independent skills, that he was able to prepare his own meals and ensure that he had sufficient stock of food in his flat, that he challenged the placement rules by allowing a friend to stay overnight in breach of the rules and was caught having drunk beer and smoked tobacco which he initially denied and that he stayed away overnight on three occasions in breach of the rules. At [11] she referred to his ability to consider options and make his own decisions about activities, rather than following those suggested to him. However, when specifically asked questions about each of these matters at the hearing, she accepted that many 17-year-olds drank and smoked even though they were not permitted to and, when referred to parts of Dr Fairweather's report commenting upon events as a child affecting the applicant's maturation and ability to recall matters, she accepted that inconsistencies in his account could be attributed to trauma to an

extent. Further, when questioned about her opinion on the applicant's level of independence, Ms Monakana agreed that he had had 10 hours of one-to-one hour support for the first six months he was in the UK and had semi-independence training with SIS Life, that he needed support with opening a bank account, with his bursary payments and with budgeting and other matters and that he had spent his entire college bursary from college on branded clothes at one time. Although Ms Monakana pointed out that the same help and advice was given to everyone and that the applicant actually said that he did not need all the support offered, she also accepted, when asked by Mr Butler, that an unaccompanied asylum-seeking child travelling around through Europe as the applicant had done would develop independent skills.

95. It was also apparent from Ms Monakana's oral evidence that much of her assessment of the applicant and knowledge of his behaviour was through third parties, with the applicant's main point of contact being a student social worker on a temporary placement, Schantal Morrison. Ms Morrison prepared the weekly progress reports based upon the applicant's progress and incidents that had occurred, which were then discussed with Ms Curtis and passed on to Ms Monakana and it was those reports which largely provided her with the information about the applicant. Indeed, when Ms Butler referred Ms Monakana to the weekly progress report at page E86 of the bundle where mention was made of the applicant having spent his entire college bursary on clothing in January 2020, she said that she was aware of that from the report.
96. Ms Monakana's statement also referred at [9] to the applicant not being forthcoming due to inconsistencies in some of his accounts, but she provided no examples of such inconsistencies at that point other than one, in which the applicant had initially stated that he was Protestant but later said that he was Pentecostal Christian. However, when it was pointed out to her at the hearing by Ms Butler that the latter was part of the former and that there was therefore no inconsistency, she had no comment to make in response. Ms Monakana also referred, later in her statement at [13], to the applicant having failed to mention travelling through Germany and having inadvertently mentioned Frankfurt airport in his age assessment interview which he then retracted, all of which demonstrated that he was intentionally withholding information and lying. However, as Ms Butler pointed out, the applicant had mentioned passing through Germany when interviewed by the Home Office the day after arriving in the UK, as seen at page E166. Finally, in response to Ms Butler's question, Ms Monakana accepted that the two-year age difference fell within the five- year margin of error in the ADCS guidance.
97. In light of the above it is apparent that the reasons given by Ms Monakana in her statement for rejecting the applicant's account of his age simply did not stand up to scrutiny when she was required to elaborate in response to Ms Butler's questions. Although Ms Monakana remained adamant that the applicant was older than the age he claimed to be, I have to agree with Ms Butler that her evidence is of limited weight.

98. I reach the same conclusion with regard to Ms Graziani's evidence which was even less persuasive than that of Ms Monakana and consisted of a simple "yes" response to many of Ms Butler's questions. Ms Graziani was allocated to the applicant as his personal advisor on 6 April 2020, less than a month after being employed by Hackney as a personal advisor, although she had previously worked for another local authority as a senior support worker. She had had only had three face-to-face visits with the applicant at the time of her statement written in November 2020, although she had had telephone contact and some video calls owing to the pandemic, and aside from a few days she had only known him as an adult. Her contact with him was therefore limited and it is clear from her evidence in her statement that he did not open up to her much, that he did not talk to her about his childhood and family, that he only called her when he needed specific help or advice on a matter and that their relationship had broken down at times in particular when he was forced to move to NASS accommodation. In her statements, Ms Graziani's conclusion on the applicant's age is based upon his physical features particularly his facial and bodily hair ([27] of her first statement and [15] of her second statement), his good independent living skills ([28] of her first statement and [15] of her second statement) and his account of his journey to the UK and failure to mention travelling to Germany and France ([31] of her first statement).
99. With regard to the latter point, I refer to my observations made above in respect of Ms Monakana's evidence and note in addition that at the hearing Ms Graziani accepted in any event that the applicant had told her that he passed through Germany and France. As for the other two reasons for considering him to be older than claimed, Ms Graziani agreed with Ms Butler at the hearing that the age she had suggested for the applicant could be in the five-year margin of error range referred to in the ADCS guidance, that someone between the ages of 17 and 22 could have bodily hair and that someone aged 19 years of age could have the skills the applicant had and that that could show that he was currently therefore 19 and not 21. She also agreed with Ms Butler that the applicant needed support and help in adapting to life in the UK and was unaware that he had been given 10 hours of one-to-one support before he turned 18. She accepted that 10 hours of one-to-one support could significantly enhance the applicant's independent living skills and that people under 18 years of age could navigate their way around London. Further, when Ms Butler referred her to Dr Fairweather's opinion and conclusions in relation to the effect of the applicant's history on his maturity and capacities, Ms Graziani accepted that, in light of that evidence, people like the applicant had better independent living skills in some areas. Ms Graziani further accepted that the applicant had difficulties adapting at the beginning but that he settled later on and she did not dispute that he had contracted a mental health disorder as a result of having to move to the hotel in Earls Court. She accepted Ms Butler's suggestion that the applicant could have good independent living skills in some areas but still be the age he claimed.
100. It is therefore clear from her evidence that Ms Graziani knew very little about the applicant, that she spent a limited amount of time with him and that their relationship was sometimes fraught. More importantly, in her oral evidence, when questioned by Ms Butler, she accepted that the factors which had led her to confirm the applicant was in his early 20s could also apply to someone of the age he claimed

to be - accepting that someone could have bodily hair between the ages of 17 and 22, that someone of 19 years of age could have the skills that the applicant had and agreeing that that could show that the applicant was 19 and not 21 - albeit that when re-examined by Ms Rowlands she reiterated her belief that he was in his early 20s. In the circumstances it seems to me that Ms Graziani's evidence carried very little weight in supporting the respondent's view of the applicant's age and, in fact, in view of the concessions she made, could equally be taken as supporting the applicant's account of his age.

101. I turn finally to the evidence of Ms Curtis, the only witness for the respondent who had some years of experience in her role. Ms Curtis' assessment of the applicant's age was based upon his behaviour, his attitude towards authority and his determination for independence and for living according to his own rules. She found him to be domineering and controlling and considered that his behaviour was not what she would have expected from a child. However, Ms Curtis accepted, in her oral evidence, that whilst she was present at the placement every day, the applicant's main point of contact was Schantal, his keyworker, and that Schantal would come to her with issues that had arisen and would also put matters in the weekly progress reports. Ms Curtis was unable, it seemed to me, to give a proper reason, when questioned by Ms Butler, as to why her concerns about the applicant being domineering and controlling did not appear in the weekly progress report for 15 November 2019 and I have to agree with Ms Butler that if there were such concerns, and if they had also been felt by Schantal who had more direct contact with the applicant, it was reasonable to expect that they would appear in a report written at that time, whereas the reports referred, on the contrary, to the applicant being helpful and polite.
102. It is relevant to note further that, as Ms Curtis admitted in her statement, the applicant had never shared with her personally any details about his family, relatives or friends, although he had given some details to his keyworker about his mother having passed away and about having a brother and sister, and that she had no idea of the mental health concerns in Dr Fairweather's report, not even being aware of the report or the diagnosis therein. She was not aware that the applicant had lost his entire family before coming to the UK. Although, when this was put to her at the hearing, Ms Curtis accepted that trauma could affect behaviour and that people from different cultures and backgrounds could present in different ways, and although she accepted the suggestion that the factors she was relying on could not by themselves demonstrate that the applicant was 21 rather than 19, she did not accept that any of that changed her view about the applicant, given her experience of working with young people from traumatic backgrounds. However, I find myself in agreement with Ms Butler's view that Ms Curtis did not have an open-minded approach to the applicant. It is clear that her knowledge of the applicant was limited and that she had no understanding of his background and the impact that his previous traumatic experiences could have had upon his attitude and behaviour. For that reason, I consider Ms Curtis' evidence also to be limited in weight, particularly when compared with the evidence of those who had more of an insight into the applicant's circumstances.

103. I therefore turn next to the witness evidence presented in support of the applicant's case, which, aside from the applicant's own evidence, consists of the written statements of Olubunmi Babalola and Victoria Nassozi, as summarised at [25] and [26] above.
104. Ms Babalola was the applicant's personal tutor and ESOL lecturer for a period of eight months at the time he turned 18 according to his claimed age and she has provided both a letter of support dated 22 January 2020 and a statement dated 2 November 2020, confirming that she had no reason to doubt that he was the age he claimed to be. Unlike with the witnesses for the respondent, the applicant discussed personal issues with Ms Babalola and she therefore had some insight into his background, although it is not clear from her statement to what extent that was. She saw him interacting with his peers aged between 16 and 18 years and also observed him as a student. At [7] Ms Babalola said that she had experience of students who looked older than their age and could tell the difference and she gave a clear explanation for that by way of various detailed examples of behaviour, comparing it to that of other young people. It is also of note that Ms Babalola has made her observations from different experiences and perspectives, both as a teacher and as a mother to three sons who had passed the applicant's age. Ms Monkana, at [11] of her second statement, responded to Ms Babalola's evidence suggesting that the applicant would have been adapting his behaviour before her by observing and imitating others and that other students in his class may also have been age disputed. However, I do not find that as a reason to dismiss Ms Babalola's evidence, particularly given her length of experience and the nature and extent of that experience.
105. Likewise, Ms Nassozi confirmed her view that the applicant was the age he claimed to be. As with Ms Babalola, Ms Nassozi's evidence at [10] indicates that the applicant discussed some personal issues with her, although again it is not clear from her statement to what extent that was. It is relevant to note that they spoke every day in addition to having weekly key-work sessions and that, whilst her involvement with the applicant partly coincided with the period in which Ms Graziani was involved, her level of contact with him was clearly much more frequent and regular albeit over a shorter period of time. Whilst Ms Graziani and the other two witnesses spoke of the applicant's independence, Ms Nassozi's evidence suggests that he simply looked elsewhere for additional support and she referred to his need for assistance with independent living skills and the help she provided for him. Interestingly, whilst the respondent's witnesses considered the applicant's lack of respect for the rules, including having an overnight visitor, to be an indication of being older than claimed (see [20] of Ms Curtis' statement), Ms Nassozi considered that that was an example of him being juvenile (at [12] of her statement). Ms Nassozi also commented, at [15], that she never saw the applicant with anyone older than 18 and it is relevant to note that that is consistent with the evidence of the respondent's witnesses who all spoke of his best friend being a 17-year-old Eritrean boy.
106. It is unfortunate that neither witness appeared before the Tribunal to give oral evidence and no particular reason was given for their absence, other than that it was more difficult for the applicant to ensure the attendance of witnesses than it

was for the respondent. Ms Rowlands did not, as a result, have an opportunity to cross-examine the two witnesses and that clearly affects the weight that I can give to their statements. However, that does not mean that I cannot give any weight to their evidence and that is particularly so where the witnesses for the respondent have not been particularly helpful or persuasive. It is also relevant, when considering weight, that both Ms Babalola and Ms Nassozi have more years of relevant experience working with young people than the respondent's witnesses, particularly Ms Monakana and Ms Grazioni, and appear to have spent more time with the applicant. It is also relevant to note the observations of the Upper Tribunal, albeit referring to the age assessment itself, in the case of R (AM) v Solihull, at [20]:

"The asserted expertise of a social worker conducting an interview is not in our judgement sufficient to counteract those difficulties. A person such as a teacher or even a family member, who can point to consistent attitudes, and a number of supporting instances over a considerable period of time, is likely to carry weight that observations made in the artificial surroundings of an interview cannot carry."

107. Accordingly, whilst I am mindful of the lack of opportunity for their evidence to be tested and the implications of that in terms of the weight to be accorded to their evidence, I do find the evidence of Ms Babalola and Ms Nassozi helpful and I take it into account to the extent that I am able to do so.
108. Finally, I come to the applicant's own evidence. The respondent has pointed to several areas of concern in his evidence which it is believed undermines his credibility as a whole and the credibility of his claim to have been a minor when arriving in the UK. As I have already identified above, reliance has been placed upon inconsistencies in his evidence or his lack of recall of events, which I do not accept exist, such as whether his religion was Protestant or Pentecostal, the date his mother died and how he travelled to Bilbao. The age assessment relies upon a discrepancy in the applicant's evidence of when he left Eritrea, in the Initial Health Assessment, where his account was recorded as him having left Eritrea for South Africa at the age of eight or nine, but I agree with Ms Butler that that was clearly a misunderstanding or error as it omits the applicant's period of residence in Ethiopia to which he had otherwise consistently referred. Otherwise, as already mentioned above, the references in the age assessment to the applicant having given an "implausible account of background information", to have "kept on changing information" and that "the assessment seemed to lack credibility" are little more than unsupported and unexplained statements.
109. Reliance is also placed by the respondent on the applicant's evasive response when questioned about a picture on his mobile phone of a young girl. The suggestion appears to be that the applicant has a child and is therefore older than claimed. However, that is simply speculation. In any event the evidence in that regard is inconsistent and it is not clear if there was one or more pictures. In her statement at [18] (page B51) Ms Curtis referred to a picture of a baby which was the phone screensaver, whereas Ms Monakana referred in her statement at [10] (page B28) to a WhatsApp display picture of a young girl aged 4 or 5. The most that I can draw from this part of the respondent's evidence is that the applicant may not have been

forthcoming about a photograph on his phone, but otherwise I do not see that it carries any particular weight in the assessment of his age.

110. The applicant's credibility was also questioned in relation to his account of his move from the SIS Life supported accommodation in Hackney to the Amsterdam Hotel in Earls Court on 22 September 2020. It is the respondent's case that he lied about what happened, claiming to have been given only one hour's notice whereas Ms Graziani stated that she had given him advance notice on Friday 18 September 2020 about the move the following Monday, 21 September 2020 and had advised him to pack his belongings. The respondent considers that to be another example of the applicant manipulating the truth. However, I do not find any inconsistency in the evidence in that regard. The applicant did not deny having been forewarned about the accommodation move by Ms Graziani and his account of being given an hour's notice on the day is consistent with Ms Graziani's evidence at [19] of her statement, that she received an email from the Routing IA validation team on Monday 21 September at 14.50 giving notice of the collection time at 16.30 the same day and she then called the applicant to let him know. The fact that he was at a friend's house one hour away is not entirely inconsistent with the expectation that he would be given ample notice of the time of the move on the day and certainly not, in my view, to the extent that that should be considered as an example of him being manipulative.
111. Much is made by the respondent's witnesses of the applicant's apparent failure to mention having travelled to Germany, the false name which he gave and the name appearing in the forged passport and his mention of Frankfurt airport at his age assessment interview which he then changed to Johannesburg. With regard to the latter, I refer to my observations above and do not see that to be a matter of significance or indeed consider it may have been misheard by the age assessor, as it does not appear in the notes of the Refugee Council and it makes no sense in what is otherwise a consistent account of flying from Johannesburg to Cassablanca. Further, it is clear that, whilst Ms Monakana noted that he did not mention to her that he had been in Germany, the applicant mentioned travelling there when interviewed by the Home Office in an interview shortly after his arrival and Ms Graziani also accepted that he had mentioned to her having travelled through Germany. Ms Rowlands submitted that the applicant was being deliberately evasive about having spent time in Germany and his evidence at the hearing that he was there for 1 day was contradicted by the information at pages E122 and E166 showing that he was fingerprinted there on 17 October 2018 and claimed asylum on 22 October 2018. However, the document at page E123 from the Federal Office for Migration and Refugees in Germany suggests that his claim was never considered there but that he was to be sent back to Spain, which was not entirely inconsistent with his account of being arrested and detained in various countries and returned to other countries. As for the false name given in Germany and the name in the forged passport used to leave South Africa, it seems to me that there was some confusion about which name was used when. The applicant admitted to having used a forged passport to leave South Africa and admitted to using false names in Europe and I cannot see how anything material turns on this.

112. It seems to me that, contrary to the respondent's view, the applicant has given a coherent and consistent account of his background, his history and his journey to the UK and his experiences in the UK. He has had to repeat his account on various occasions to different professionals, including medical and legal professionals, the Home Office and social workers. It is not the case that one account has simply been adopted by all as part of their own assessments, but the assessments have been by parties on behalf of the applicant and those acting for the respondent and by professionals having varied interests in the evidence, from medical, social care and housing to legal interests. Other than the reference in the initial health assessment to the applicant having left Eritrea for South Africa at the age of eight or nine, which I have found above to have been a simple error, the account he has given to all those professionals about his family, his living circumstances, his experiences and his journey to the UK has remained consistent.
113. In so far as the age assessors were concerned with the applicant's demeanour, in regard to how he interacted with professionals during the assessments and avoided eye contact, the fact that his demeanour did not change during the interview including when he spoke of his mother, that he appeared irritated and frustrated at times, that he played with his fingers or headphones, that he gave little information about childhood memories, that he seemed to leave gaps and did not give exact details or gave vague answers and that he had little memory of his education, these have been addressed by the psychiatric report from Dr Fairweather, as already discussed at [90] above.
114. Dr Fairweather diagnosed the applicant as having adjustment disorder with depressed mood and developmental disruption. She considered that the adjustment disorder had developed as a result of his move from supported accommodation to NASS accommodation. However, in response to the question posed by the respondent, recorded at [2.3] of her second report (page G59), as to whether the applicant's current presentation resulting from the move to alternative accommodation was not the same as when he was interviewed for the age assessment, particularly given Dr Singh's lack of concern about psychiatric issues at the time he saw the applicant, Dr Fairweather stated at [2.3.3] that she could not entirely rule out him suffering psychiatric disorder at the time when he was interviewed for the age assessment. She referred at [6.5.1.2] of her first report to the applicant's demeanour not changing being a possible sign of trauma, at [6.5.1.3] to his lack of eye contact and fiddling with his finger and headphones being signs of a disorder of anxiety, at [6.5.1.4] to his limited emotional responses and lack of information being a possible sign of psychiatric disorder including PTSD and at [6.5.4.1] to his unwillingness to talk about some aspects of his life being consistent with a post traumatic state. At [8.2.4] Dr Fairweather identified some of the applicant's symptoms as consistent with PTSD although she said that she would not currently make a formal diagnosis. At [8.2.6] she stated that any one of the experiences the applicant had suffered would have a profound impact on a child and would cumulatively pre-dispose him to developing a psychiatric disorder. At [8.2.7] she referred to his adolescent development having been disrupted because of these events. At [8.3.3] she explained how the differential effects of trauma led to difficulties in providing evidence, to impaired ability to recall events and provide clear and consistent chronologies and at [8.3.4] she related that in particular to the

applicant, referring to the impact of his depressive symptoms on his memory and ability to recall information.

115. Dr Fairweather's observations at [8.2.9] are particularly pertinent to the conclusions drawn by Ms Monakana and Ms Curtis from the applicant's level of maturity and independence. She states that:

"When considering a young person's capacities, it is important to conceptualise maturity as more than just chronological age. This is particularly the case among asylum-seeking youth who due to atypical and traumatic experiences may be adept in some ways (eg early responsibility to care for self or others) yet apparently delayed in others (eg if they did not receive a formal education). As a result they are more likely to present with 'uneven' development and may not match expected norms in receiving countries. This can be confusing for professionals when presented with a young person such as [FAD]."

and at [8.2.10]:

"I understood [FAD] to present with disrupted development in certain areas. He has a poorly developed ability to identify, communicate and manage his emotional state. He struggled to fully describe his current mental state and make links between his feelings and thoughts. He could say little more than he felt stressed. He lacked an ability to manage his feelings in our interview despite the formal context of a medico-legal assessment. I observed this in respect of his irritability and dismissive approach to me. In this respect he presented more as an early adolescent in respect of what research studies have noted about the ability to process emotional reactions in oneself and others"

116. Dr Fairweather did not provide an indication of her view of the applicant's age, and indeed that was neither her instruction nor the purpose of her report, but it is clear that her view was that the applicant presented as a young adolescent in some ways but as a late adolescent in others. Her reports are informative in the explanation as to how and why the applicant's behaviour reflected both and as a response to the views taken by the social workers and the other witnesses and they provide some context for the gaps in his history and the information he provided to the assessors.
117. There are, I accept, some aspects of the applicant's evidence which the respondent considers particularly material and which I find troubling. The first is his account of how he knew his date of birth. In the absence of any documentary evidence of his date of birth, his evidence as to how he knew it was clearly significant. The respondent considers it lacking in credibility that the applicant would have been told his date of birth by his mother in the western calendar but not in the Ethiopian calendar. I have to agree that that is unusual. However, the applicant later said that his mother actually only told him his age and pointed out the date of birth in the documents received when they were living in South Africa. His evidence clearly changed in that respect, but the explanation he now gives is not implausible, particularly as it is a matter of public record that birthdays and dates of birth are not important in many third-world countries and particularly so when the applicant's family were living as illegal immigrants in Ethiopia without a settled or stable life.

118. The other significant matter is the evidence of the applicant having provided various different dates of birth and identities when fingerprinted in France, Spain and Germany, giving him a much older age, as disclosed in the documents at pages E118 to E123. That evidence is relied upon by the respondent as evidence that the applicant was not a credible witness in general and, further, as evidence that the date of birth now relied upon was only one of various others he had given, none of which could therefore be accepted as genuine. It is also asserted by the respondent as material that the applicant's claim to be an adult was never questioned by the immigration authorities in France, Spain or Germany or the UN social workers in Spain and that, as Ms Monakana said, her colleagues in other countries would have exercised their safeguarding duties if they had any doubts that the applicant was not an adult. Ms Butler's response to that was that they had no reason to treat him as a child if he was presenting himself as an adult. I have to agree that it is reasonable to expect that the authorities of those countries were unlikely to provide the applicant with support as a child when he was not requesting it and when he was claiming to be an adult, particularly as he did not present as a young child. I also agree that the applicant has presented an explanation for giving false dates of birth as an adult whenever stopped in those countries, but then giving his true date as a child when arriving in the UK, and that that explanation is not entirely implausible. He explained that he did not want to be restricted in his movements in any of those countries as he wanted to locate his brother whom he understood to be in the UK and therefore presented as an adult so that he would be free to move about. Further, that by giving different names and dates of birth he would not be located within any records. Had the applicant used the same adult date of birth throughout Europe but then presented a child's date of birth on entry to the UK his explanation may not have held any weight, but I cannot discount the explanation he has given, particularly when considering the broad range of dates of birth he gave, as Ms Butler pointed out in her submissions.
119. Clearly, the applicant's propensity to present different identities gives rise to some concerns about his overall credibility and accordingly, as I said at [84] above, this has not been an easy case to decide. However, there are weaknesses in the evidence from both sides and, having undertaken a sympathetic assessment of the evidence, as I am required to do, I am ultimately persuaded that the applicant's account is true.
120. As previously noted at [112], the applicant has provided a consistent account of his background, his history and his journey to the UK and his experiences in the UK. The chronology of events he has recounted is largely consistent with the age he claims. The date of birth he has given for his brother is consistent with the age gap he claimed and the age he has provided for his residence in Ethiopia is consistent with the stage of education reached (grade two or three). The concerns of the age assessors and the respondent's witnesses leading them to their conclusions on the applicant's age, in relation to his demeanour, his maturity and his independence, have been cogently addressed by the psychiatric report of Dr Fairweather when assessed against his traumatic childhood, his loss of family members, his lengthy journey to the UK including his traumatic separation from his brother, his arrival in the UK chronically undernourished as a result of the gruelling circumstances of

living in the jungle in Calais and the decline in his mental health after being moved into adult accommodation. As mentioned above, the respondent's witnesses all accepted, in response to Ms Butler's questions, that the factors upon which they relied did not necessarily demonstrate that the applicant was not the age claimed. There is the additional evidence of the two witnesses who did not appear before the Tribunal which, although of limited weight in itself, provides further support when taken cumulatively with all the evidence. Furthermore, the reliance upon physical appearance is a notoriously unreliable basis for assessment, as found in NA, R (on the application of) v London Borough of Croydon [2009] EWHC 2357 at [27] and there is nothing obvious about the applicant's appearance in any event which would tend towards being determinative of his age.

121. Accordingly, taking all the evidence before me into account and doing the best I can with that evidence, I am satisfied that the applicant was born on the date he claimed. I acknowledge that there is no actual evidence of a date of birth for the applicant, but the overall evidence is supportive of the age he claims to be and is consistent with the date of birth he has repeatedly given.

DECISION

122. I find that the applicant was born on 13 April 2002 and is currently 19 years of age and I make a declaration to that effect.

Costs

123. Costs submissions were made by both parties in writing. Neither party was required to attend the hand-down hearing and neither party attended.
124. The respondent's submissions were that the appropriate order was that there be no order for costs. That submission was based upon a starting point that the applicant had failed in his challenge to the lawfulness of the age assessment, albeit that his age had been accepted; that the judgment had expressed concerns about the applicant's conduct and credibility; and that the local authority's role was limited to being investigative and they had no stake in the outcome. The applicant submits, however, that he should be awarded his costs in full as he succeeded in his claim, that he was publicly funded and that the respondent had rejected a reasonable offer of settlement.
125. The applicant requests that the respondent's submissions not be considered owing to their late filing following a "generous" extension of time granted by the Tribunal. The submissions were due two days before the handing down of the judgment, which would have been by 9 August 2021 and the extent of the delay, namely one day, was not as extensive as the applicant claims. In any event the applicant had the opportunity to respond to the respondent's submissions by attending the hand-down which he chose not to do. In the circumstances, and given that the respondent's submissions raise no novel matters requiring further input from the parties, I see no reason why I should not admit and consider them.

126. Contrary to the assertion of each party, the relevant challenge in the grounds included both the conclusion as to the applicant's age and also the lawfulness of the age assessment, as is apparent from the Statement of Issues at page A82. I do not agree with the respondent, therefore, that the applicant's grounds all failed in light of the finding that the age assessment was lawful. On the contrary the applicant succeeded in his case as to his age. Having said that, I agree with the respondent that there were concerns about the applicant's conduct which gave rise to the age assessment in the first place including the evidence of his previous use of different identities and dates of birth. For the reasons given at [6] of the respondent's submissions, I do not consider that the applicant's offer of a compromise reduced the impact of those concerns.
127. For those reasons, I am in agreement with the respondent that the applicant should not be entitled to his full costs despite having succeeded overall in relation to his chronological age, although I do not agree that the appropriate order would be no order as to costs. I consider the appropriate order to be that the applicant should recover 50% of his reasonable costs, to be assessed if not agreed.