



IAC-FH-GJ-V1

Upper Tribunal
(Immigration and Asylum Chamber)

THE IMMIGRATION ACTS

R (on the application of MNA) v London Borough of Croydon (AAJR) [2012] UKUT 00326 (IAC)

Heard at Field House

On 9 to 12 and 16 July 2012

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Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

THE QUEEN (ON THE APPLICATION OF MNA)
(BY HIS LITIGATION FRIEND VALBINA MEJZINI)

Claimant

and

LONDON BOROUGH OF CROYDON

Defendant

Representation :

For the Claimant: Azeem Suterwalla, instructed by Harter & Loveless Solicitors

For the Defendant: Rhys Hadden, instructed by London Borough of Croydon

JUDGMENT

Introduction

1. The claimant in the present proceedings asserts that he is a minor, currently aged 17, who is unsure of his exact date of birth but believes that he turned 13 years of age in or around the early part of 2008. In accordance with normal practice, the claimant's current position is that he should be treated for the purposes of the Children Act 1989 as having been born on 1st January 1995.

2. In an age assessment dated 9th December 2010, the defendant assessed the claimant's age, so as to give him a date of birth of 1st January 1992. That determination of the claimant's age is the subject of the application for judicial review, permission to make that application having been granted by a deputy judge of the High Court on 20th May 2011.

3. It is common ground that the claimant is a citizen of Afghanistan who arrived in the United Kingdom on 28th July 2008 in the back of a lorry. Following his interception by the police, the claimant sought international protection, asserting a fear of persecution from the authorities in Afghanistan and also from the Taliban.

4. The claimant's application for asylum was refused by the Secretary of State for the Home Department on 10th October 2008 but on that day the claimant was granted discretionary leave to remain until 1st July 2009. Further application by the claimant for a variation of his leave to remain was refused by the Secretary of State on 27th September 2011. The claimant has appealed that decision to the First-tier Tribunal, Immigration and Asylum Chamber, which has adjourned the hearing of the appeal, pending the outcome of these proceedings.

The Law

5. Following the judgment of the Supreme Court in *R (A) v Croydon LBC* [2009] 1 WLR 2557, the task for me in these proceedings is to resolve the issue of the claimant's age, as a matter of fact. In *R (AE) v London Borough of Croydon* [2012] EWCA Civ 547 Aikens LJ said that:-

"This is because the determination of the young person's age is a 'precedent fact' to the local authority exercising its statutory powers under section 20(1) of the 1989 Act. There is a right and a wrong answer and that, ultimately, is for the court to decide." [3]

6. In carrying out that exercise, I must, effectively, act in an inquisitorial role, and decide, on the balance of probabilities, whether the claimant was or was not a child at the material time (*R (AE)* at [23] and *R (CJ) v Cardiff CC* [2011] EWCA Civ 1590 at [22] and [23]).

7. There is no burden of proof in these proceedings (*R (CJ)* at [22]). So far as the "benefit of the doubt" is concerned, Mr Suterwalla cited *R (KN) v London Borough of Barnett* [2011] EWHC 2019 (Admin) as authority for the proposition that, where a local authority has not given the claimant the benefit of the doubt, the court or tribunal should do so. It is, however, plain from [21] of *R (CJ)* that the Court of Appeal was not disposed to recognise any formal "benefit of the doubt" approach in the judicial determination of a person's age. But, as the court also makes clear in that paragraph of its judgment, the judicial fact finder is not thereby expected to eschew a "sympathetic assessment of evidence" and "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."

8. Without in any way detracting from the ultimate requirement to decide on the balance of probabilities what the claimant's age is, in analysing the various evidential elements, I follow the approach just mentioned, as well as having regard to possible cultural and age-related explanations for what might otherwise be regarded as flaws or deficiencies in that evidence.

The hearing

9. The hearing took place over five days. I heard oral evidence from the claimant, for this purpose (after discussion with, and the agreement of, Counsel) sitting in the body of the court in order to provide a more conducive environment for him to give his evidence. Oral evidence was also given by Maureen McCamley; Hugh Perkiss; Valbina Mejzini; Michael Woodbine; Denise Collins; Lucrecia Brouf; Nomfundo Nyaba; Roxana Salimi; Megan Clement; and Gideon Obeng. These witnesses spoke to their written witness statements, in most cases set out in the ring binders of documents served

pursuant to the Tribunal's case management directions. Also in those bundles are the witness statements of individuals who did not give oral evidence (Helen Johnson; Anwar Wazirwal; and Joe Jakes), as well as a considerable amount of other documentation in the form of reports, letters, notes and emails. In addition, during the course of the hearing, materials were submitted comprising a bail profile report in respect of the claimant; email correspondence between Lucrecia Brouf and Michael Baron concerning an earlier age assessment in respect of the claimant; copy YOYS sentencing history on claimant; email exchange relating to 2008 refusal of asylum; and pre-sentence report on claimant (21st June 2012). On 16th July, in response to submissions by Mr Suterwalla, I gave directions to the governor of Cookham Wood Young Offenders' Institution to disclose a security information report relating to the claimant and an extract from the observations log, concerning a conversation that took place on 23rd June 2012 at Cookham Wood between the claimant and Mr Woodbine (acting as deputy governor) at which Denise Collins was also present ("the Cookham Wood incident"). That direction was complied with and relevant materials were served on the parties, who were given until 30th July 2012 to make any written response. The defendant has chosen to make a substantive response. The claimant indicated that he did not wish to make any submissions on the documentation, save to say that he wished to rely upon and re-emphasise the submissions made about the "Cookham Wood incident" given at the hearing.

10. Although the materials before me include age assessment medical reports on the claimant, including that of Dr Diana Birch, neither party at the hearing urged me to have regard to this medical evidence in assessing the claimant's age. Notwithstanding the holistic nature of my task, one has to start somewhere; and, in view of what I have just said about the medical age-assessment evidence, it is appropriate for me to begin by considering the credibility of the claimant.

The claimant's credibility

11. The claimant confirmed as true his two witness statements. In the first of these, he says his father disappeared before the claimant came to the United Kingdom. The claimant left Afghanistan in early 2008 and he thought it was about a year before this that his father had disappeared. He would have estimated his father as being between 40 and 45 years old at the time of his disappearance. The claimant's mother was about 40. The claimant's brother, I, was younger than the claimant, as was his sister, S. He did not know the ages of his siblings. He came from a village in the district of Helmand Province. His home had three or four rooms and the family's land amounted to three or four jiribs (1 jirib = 150 metres x 100 metres). The claimant was injured in an explosion just outside his village when "I think I was about 10 years old at the time". This was caused by an airstrike. The person next to him was killed.

12. The claimant said that he had told the social workers that his journey to the UK took "27 nights". He had not attended school in Afghanistan since there was no madrassa attached to the mosque. He learned to read some of the Qur'an, with the assistance of his mother. He could also read some Pashtu and speak some Dari. He claimed he did not have an ID or Taskira in Afghanistan.

13. The claimant took issue with both of the age assessments. So far as the 2010 assessment was concerned, the claimant explained that he was able to remember events in Afghanistan because they were vivid and had had a significant effect on his life. The claimant described difficulties that he had had, including his admission to the Bethlehem Royal Hospital. As for being described as "streetwise", including on the basis that the claimant had been shoplifting in Lewisham, he said that he had got into trouble because he found it difficult to cope with his life. Noting that the social workers had accepted that the claimant required some psychological support to deal with trauma experienced as a child in

Afghanistan, the claimant denied that he had provided “articulate and informative” answers to the social workers. Ms Mejzini, who was present with the claimant at the discussions, confirmed that for most of the interview the claimant had sat head down, mumbling answers. He denied that he had been “articulate and informative”.

14. The claimant’s cross-examination by Mr Hadden began by emphasising to the claimant that he should say if he did not understand a question and that he would be able to have frequent breaks if he so chose. I shall deal with that cross-examination, and the resultant re-examination, in the course of giving my reasons for my findings regarding the claimant’s credibility.

15. The claimant’s second witness statement relates to the Cookham Wood incident of June 2012. I deal with that incident below. Because of the necessarily late production of the witness statements of Mr Woodbine and Ms Collins, the claimant’s advisors were given time by me to take the claimant’s instructions on what those witnesses said. The claimant was then recalled to give oral evidence about the incident. Again, this evidence is dealt with below.

16. Throughout the course of his oral evidence, I ensured that the claimant understood the interpreter and was periodically invited to say whether he wished to have a break from giving evidence. I also wish to emphasise that, in considering the claimant’s credibility, I bear in mind that it appears to be common ground that he may have encountered traumatic experiences in Afghanistan and that, whether or not he is the age he claims, he would in the view of most people be a young person. Furthermore, I bear in mind the written medical evidence, which includes a medical report of Dr Roth (C 93 – 95; 10th March 2010) and a psychiatric report of Dr Judith Freeman (C 25 – 45; 3rd May 2011). The first of these reports arose as a result of the claimant’s hospitalisation following fighting with a man who, according to the claimant, had short-changed him in his purchase of a mobile telephone. Having been admitted to Bethlehem Royal Hospital, the claimant was observed over a number of days but it was concluded that “he was not currently mentally ill, and with no evidence of depression or of actual suicide risk”. The claimant was accordingly discharged. Dr Freedman’s report stated that the claimant “may be suffering from PTSD together with cognitive and/or other psychological disturbances. The exact constellation of diagnoses will become clearer over time. He is now a young person who is in need of special care”. An independent social worker, writing in July 2010, had considered it was “most likely” the claimant “suffers from chronic PTSD”.

17. Yet despite all this, and leaving aside for the moment my assessment of the Cookham Wood incident, there are various aspects of the evidence that are seriously problematic, so far as concerns the claimant’s credibility. At his first age assessment in September 2008 the claimant told the social workers (see 42) that “one year ago, his mother told him he was 13 years old”. In his witness statement at B10, however, the claimant said “on 9th September 2010 I underwent an age assessment interview with the London Borough of Croydon. My mother had told me that I was 13 years of age. This was of course before I left Afghanistan. It was about four or five months before my interview that I had been told by my mother that I was 13.” In oral evidence, the claimant said that the period had been three or four months. At his second age assessment (F10) the claimant “stated that he was 13.5 years old when he arrived in the UK in 2008 ... the assessors asked [claimant] to explain how he knew he was born in 1995 and he replied “my mother told me”. The assessors asked him to confirm the date that his mother had told him his age and he reports that it was before he left Afghanistan.”

18. Mr Perkiss, in his evidence, acknowledged that the first letter before action (C 83) had also recorded the period as one year between the first age assessment and the occasion when the claimant

was told his age. Mr Perkiss, however, said that he had made a mistake and that the position was as later recorded by the claimant. Evidence to similar effect was given by Ms McCamley.

19. Whilst in no way questioning the good faith of those two professionals, I see no reason to doubt what was recorded in the first age assessment, despite Mr Suterwalla's criticism of the way in which that document was compiled.

20. In oral evidence, the claimant said that the occasion on which his mother had seen fit to tell him his age was when a female friend of the mother came to visit, bringing with her a child. The claimant's mother took the opportunity to tell the claimant that he was the same age as this child.

21. Mr Hadden, not surprisingly, took issue with this evidence, since it had not featured in any previous statement or other written record relating to the claimant. I then heard evidence from Mr Perkiss, who, having referred to his notes, stated that the claimant had, in fact, previously told him that this was how the claimant's age came to be disclosed. Again, I do not doubt Mr Perkiss's evidence. Furthermore, the revelation of this detail provides some further support for Mr Suterwalla's submission that, in several material respects, the claimant's account had remained consistent throughout.

22. Nevertheless, Mr Hadden's submissions on this issue have force. First, if such was the circumstance in which the mother told the claimant his age, it is highly surprising that he had not been told it earlier. Secondly, in the light of the claimant's evidence about the mother's relative lack of education, and the absence of any formal written record regarding the claimant's birth, there is no credible explanation for why the mother would herself know this information. Thirdly, both in his screening interview and elsewhere (C 5, 19-20, 32-33 and 41) the claimant was unable to give the ages of his parents but, by the time of his first written statement, he could (as I have indicated earlier) give the ages with some degree of accuracy and confidence. Cross-examined as to how this could be, the claimant said that he did not know (an answer which he adopted very frequently during the course of his oral evidence).

23. Similarly, the claimant said in his written statement that he was about ten years old when he was injured in the airstrike. Asked by Mr Hadden how he knew this, the claimant again said that he did not know. Both here and frequently during the evidence of the claimant, one could not escape the conclusion that the claimant was, despite his ostensible demeanour, aware of the purport of the questions and was seeking to deflect them by resorting to claimed ignorance.

24. Further evidence of this kind is to be found in the claimant's assertion that it took him 27 days (or nights) to reach the United Kingdom. That evidence demonstrates a good memory and sense of time; which is, I consider, why the claimant has belatedly sought to resile from it by means of the assertion that it was information that came from companions on the journey. Nor am I persuaded by the assertion at B13 of the witness statement that the claimant "cannot be exactly sure how long my journey to the UK took".

25. Whilst I am prepared to accept that there may be social differences between the United Kingdom and Afghanistan as regards the importance given to a person's age, and as to the passage of time, equally it would be naïve to ignore the indications (recorded in the case law concerning age-disputed persons from Afghanistan) that there are people in that country who are well aware of the advantages (both as to welfare and claims to be made in need of international protection) to be gained by pretending that a person coming from that country to the United Kingdom is a child, when they are not.

26. The claimant has been seriously discrepant regarding the means of travel he employed on his way from Afghanistan to the United Kingdom. In his screening interview (C 6) the claimant describes travelling by aeroplane which stopped, he thought, in an Arab country, from which he flew to another place before being taken to a "forest" where he was put in a vehicle and then taken to a "house" where he stayed for three days. A further vehicle was used to reach another forest, where he stayed for twelve days. In the claimant's asylum statement (C 35) he also describes travelling part of the way by aircraft. In his first age assessment (C 42) the claimant described several journeys by air from and to airports as well as using a "small boat" and then "another boat" before going by "ship".

27. In oral evidence, the claimant on several occasions denied having used air transport. He appeared to blame an interpreter for what had been recorded in the screening interview. He either denied or did not remember referring to a forest. Significantly, at one point during cross-examination on this issue, the claimant asked Mr Hadden "are you checking my age?" It appeared to me that the claimant's somewhat cavalier attitude towards the evidence on this issue can be ascribed to his belief that it has no part to play in the assessment of his age. I consider that it does; and that it is significant in assessing credibility that the claimant is unable to give a comprehensible account of a journey which, for him, was both unprecedented and potentially life-changing.

28. Both parties addressed me on the significance, if any, of the claimant's criminal convictions in the United Kingdom. On 22nd December 2011, the claimant was convicted of theft. On 20th January 2012 he was convicted of criminal damage. On 8th March 2012 he was convicted of assaulting a police officer. On 30th April 2012 he was convicted of criminal damage as well as being found in breach of a youth rehabilitation order. On 14th May 2012 he was found guilty of fare evasion. According to the criminal courts, the claimant has an assessed date of birth of 1st January 1996. How this date came to be chosen is unclear. The claimant asserted that he had not been responsible for it. I am prepared to accept that that may be so. The significance of that date is, however, that in June 2012 the claimant found himself in Cookham Wood Young Offenders' Institution (as to which, see below).

29. There was no independent evidence regarding on what occasions the claimant pleaded not guilty in respect of these offences. The claimant appeared to assert that he had pleaded guilty to the fare evasion charge, but not to the others. Mr Hadden asked me to conclude from this that the claimant's credibility was further damaged, in that he had chosen to deny criminal acts, which had been found proved to the criminal standard. Mr Suterwalla, however, urged me not to make much of this, since it was common for people to plead not guilty and then be convicted. I do not consider that I have sufficient information regarding the details of the circumstances surrounding the offences in question to place as much weight on these issues as Mr Hadden would wish me to do. I consider, however, that this aspect of the evidence does nothing to advance the claimant's case to be treated as a witness of truth in the present proceedings.

30. Although much of the evidence of Maureen McCamley and Valbina Mejzini concerns the physical appearance, demeanour and behaviour of the claimant, as opposed to the direct issue of his credibility, I have nevertheless had regard to their evidence, both oral and written, insofar as it touches on credibility, as well as those other matters. Ms Mejzini in particular has had long-standing contact with the claimant and both witnesses have had the opportunity of assessing him over longer period of times than may be the case with social workers undertaking an age assessment exercise. It is plain from their evidence that both witnesses believe the claimant is telling the truth about his age. It is also true that both have formed independent, positive opinions about him.

31. Whether or not the claimant is in the habit of associating with boys of an older age than his claimed age was an issue in dispute at the hearing.

32. I accept Ms McCamley's point that, as with the claimant, if one is placed in accommodation by a local authority with persons who are somewhat older than oneself, it is likely that one will socialise with those individuals. That the claimant did so is not indicative of his being other than his asserted age. Likewise, I accept Ms Mejzini's evidence regarding the claimant's demeanour in her offices, where he expressed the view that he did not wish to mix with other asylum seekers, preferring to sit on his own.

33. However, there was considerable documentary evidence from the defendant, to the effect that the claimant socialises with other young persons more than he would have me believe. On various occasions when visits were made to him in his accommodation, it was said by others that he was out with his friends. Despite Mr Suterwalla's criticisms of Mr Obeng's evidence, I accept the evidence regarding Mr Obeng's visiting the claimant, who was found in the company of persons whom Mr Obeng knew or had good reason to believe were over the age of 18, at a time when, according to the claimant, he would have been significantly younger.

The Cookham Wood incident

34. In June 2012 the claimant was held in HM Young Offenders' Institution, Cookham Wood, Kent. On the weekend of 23rd /24th June the claimant was present in Cedar House, which houses newly arrived residents and those who are on resettlement. According to the witness statement of Denise Collins, a senior officer at Cookham Wood, who was the manager of Cedar House at that time, on 23rd June she was informed by one of the residents of Cedar House that the claimant was tearful. She spoke to the claimant and discovered that he was "angry that he couldn't make a telephone call to his friends". Ms Collins explained to me that when young people in the institution wish to make telephone calls, they are required to provide certain information in writing about the proposed contacts. The reason is to ensure the welfare of the young person, and concerns child protection.

35. Ms Collins ascertained that the claimant had had his form returned because certain information relating to people whom he wished to contact had not been filled in. She told the claimant that he needed to provide the information as a safeguarding measure because he was considered a child in the eyes of the law. According to Ms Collins, at this point the claimant angrily stated "I am not a child" and said that he wanted to leave the institution. He asked to be let into his room.

36. Ms Collins contacted the duty governor, Mr Woodbine, about another matter (it appeared from oral evidence that this concerned a malfunctioning TV). When Mr Woodbine arrived at Cedar House, Ms Collins informed him what the claimant had said to her.

37. Ms Collins's statement then described how she and Mr Woodbine entered the claimant's room. The claimant was lying on his bed but got up and sat on the edge of the bed. Mr Woodbine asked if he could sit on a chair and the claimant said that he could. Mr Woodbine then spoke to the claimant about what the claimant had said to Ms Collins. She heard the claimant tell Mr Woodbine that the claimant was over 19. When asked by Mr Woodbine if he knew exactly how old he was, the claimant said that he was not sure, but repeated that he knew he was over 19. Mr Woodbine then told the claimant that in order to be transferred to another prison he would need to stop the proceedings he had underway, contesting his age. It was arranged for the claimant to make a telephone call to his solicitor the following week.

38. Mr Woodbine's written statement describes how he was made aware by senior officer Collins that the claimant was upset and was asking to speak to the governor. This was about "having phone numbers cleared and the information he was required to supply". During his rounds, Mr Woodbine visited Cedar House and he and Ms Collins went to speak to the claimant. When introduced, the claimant sat up but remained on his bed. Mr Woodbine asked if he could sit on the chair and the claimant said "yes".

39. The claimant, according to Mr Woodbine, was protesting about giving information in relation to his telephone list. Mr Woodbine explained that due to his being a child, he was subject to additional checks to safeguard his wellbeing. During the conversation the claimant "stated that he was not a child and was in fact over the age of 19. I enquired with him as to his actual age to which he replied that he did not know, but he was over 19 years. I talked [the claimant] through his statement, checking that he understood what it was he had told me. I explained to [the claimant] that he should contact his legal representative as his proclamation would have an impact on his status within the prison estate. [The claimant] clearly understood and took part in the conversation."

40. On leaving the room, Mr Woodbine instructed Ms Collins to submit a security information report and to inform the custody department about the claimant's claim that he was at least 19 years of age.

41. Ms Collins's statement concurs that at no time did the claimant indicate he had difficulty in understanding any aspect of the conversation. The statement ends by indicating that "once he had told the governor and myself that he was over 19, he told the other boys on Cedar that he was over 19 too."

42. In his second witness statement, the claimant has this to say about the incident:-

"2. When I was detained [in] Cookham Wood Detention Centre (sic) I spoke with a Governor. He asked me if I had a family in the UK. I said I did not. He asked me how old I was. I told him I was 17 ½ years old. He said according to the Home Office you are an adult. I told him that my age is in dispute. I told him that according to the Home Office I am over 18 years of age. I did not say that I was an adult nor that I was lying about my age. I might have said that I had been accused of lying about my age. There was no interpreter present during this conversation.

3. On 6th July 2012 when I was to be taken from the Refugee Council children's section to my solicitors' offices by a trainee social worker and volunteer at the Refugee Council by the name of Sophia I said to her ' I am not a child' . I meant that I was quite capable of travelling across London. I am 17 ½ years old. However, I don't feel like a child. In Afghan culture a person is considered to be an adult by the time they reach 15 years of age. "

43. In cross-examination on this issue, the claimant denied saying that he was over 19 years old and suggested that Mr Woodbine and Ms Collins had "misunderstood". The claimant could not remember any conversation regarding his access to the telephone. He said that the pair of them had come to him asking him questions but he did not know why they were asking the questions. They had asked him how old he was. He did not understand them and they did not bring an interpreter. The claimant could offer no explanation as to why Mr Woodbine and Ms Collins would have made up their stories. When it was put to him that he was lying, the claimant replied "what is the truth?"

44. In oral evidence, Mr Woodbine explained procedures and processes at Cookham Wood, and Cedar House in particular. He said that the committal warrant in respect of the claimant had designated the claimant as a child, which informed the way in which the claimant was treated at the institution. Mr

Woodbine confirmed that Ms Collins had told him about the problems regarding the list of telephone contacts. When Mr Woodbine and Ms Collins went into the claimant's room, he was introduced and the claimant sat up on the bed with his left shoulder against the wall. The claimant told Mr Woodbine that he was 19. Mr Woodbine "kept checking", and the claimant said that he was at least 19 but could not be sure of his exact age. Once again, the claimant said that he was over 19. The conversation was not a short one. At no point, according to Mr Woodbine, did the claimant say he was 17 ½ years old.

45. Mr Woodbine stated that the claimant had had no difficulty in communicating, even though English was not his first language. The claimant could hold a conversation and answer questions and "put his points across". At any point five to six percent of those in Cookham Wood were foreign nationals and Mr Woodbine said that he was very aware of the importance of enabling people to be understood.

46. As the claimant spoke to Mr Woodbine, the former was looking at Mr Woodbine and "fiddling with the toe end of his sock, as I recall". The claimant's demeanour was good, with good eye contact, although the claimant was clearly upset. He was nevertheless "polite and engaging". By the end of the conversation, Mr Woodbine regarded the claimant as being "much more upbeat".

47. A good deal of Mr Suterwalla's cross-examination concerned whether Cookham Wood processes such as ACCT assessments ("Assessment Care, Custody and Teamwork") indicated that the claimant was regarded as especially vulnerable. For example, at K22 there was a note of 14th June describing the claimant as having been "very agitated" (although the same note records him as being willing to "open up and laugh and joke with officers he likes" and as "now beginning to engage with the other boys").

48. It was plain from Mr Woodbine's answers that, despite these processes and procedures, he did not regard the claimant as being particularly vulnerable and, in particular, it was plain that Mr Woodbine did not regard them as having had any material effect upon his conversation with the claimant in his room on 23rd June.

49. Regarding events leading to that conversation, Mr Woodbine said that Ms Collins had recorded the claimant having said to her that he was "not a child". Mr Woodbine stated that lots of young people said the same; they did not like to be called children. He accepted that she might on the telephone have said that the claimant complained of being "treated like a child".

50. Mr Woodbine made a point during his weekend deputising for the governor of seeing every single person in the establishment. Although he was aware of the age assessment proceedings relating to the claimant, the warrant of committal had required the claimant to be treated as a child.

51. Mr Woodbine said that he recalled the claimant as saying that he wanted to be transferred to another, adult establishment. It was put to him that it was strange that this was in neither person's statement. He replied that the incident took place several weeks ago. Once the claimant had disclosed that he was an adult, this raised concerns regarding the welfare of other children in the establishment.

52. Mr Woodbine took what the claimant had said about being over 19 as being "honest and truthful". The conversation had lasted five to ten minutes. He had checked what the claimant had been saying. Regarding the claimant's version of events, Mr Woodbine said it was not possible that there had been a misunderstanding. He had repeated what the claimant had said to him about being over 19 and the claimant had confirmed that statement.

53. Mr Woodbine did not accept that there had been a need for an interpreter. He was well used to judging if someone understood sufficiently in order to establish whether a person required an interpreter. He used open-ended questions in order to check comprehension. The claimant was wrong to say that Mr Woodbine had a piece of paper with him. He did not; and it was not really a question of there being a misunderstanding.

54. In re-examination, Mr Woodbine said that the outcome of the conversation had been immaterial to him. He had no "agenda".

55. In oral evidence, Denise Collins said that she had seen the claimant every day whilst she had been on duty and had spoken to him daily. The claimant had never asked her for an interpreter. He appeared to understand and she understood what he wanted. He had been helped by the other boys to fill out his menu requirements. Although "quite insular", the claimant had dined out of his room and had attended the gymnasium, where he had been "told off for not changing into his kit". There had been no animosity that Ms Collins had observed between the claimant and the other boys; the claimant was "quite a likeable young man".

56. Ms Collins herself had considered that the claimant was definitely over 18, judging by his appearance, temperament (not being excitable) and acting older. Ms Collins reiterated the information in her statement regarding the conversation that the claimant had had with Mr Woodbine. During the conversation, the claimant was not abashed and had made eye contact with Mr Woodbine. Ms Collins had been standing by the door. She thought the conversation had lasted ten to fifteen minutes.

57. She was asked about her statement in which she said that the claimant had told the other boys about his age. She said that she had formed the impression that the claimant was "quite relieved". He was seen by her to be joking and laughing with the other boys and they were calling him "uncle". She did not, however, specifically hear the claimant say to them that he was over 19.

58. In cross-examination, asked to give an age for the claimant, Ms Collins said that she thought he was over 25. His hair had been shaved, last thing while he had been in the institution. She also formed her impression from the way he conducted himself with the other boys. He was mature and did not "bash things around", nor was he prone to "mucking around". Ms Collins indicated that it was a relatively easy process to obtain an interpreter for the residents at Cedar House if this were necessary. She did not regard his frustration regarding the use of the telephone as indicating immaturity. The claimant had said "I am not a child" with some force and quite clearly. She regarded him specifically as referring to his age.

59. When the claimant's account was put to Ms Collins, she said that it was not possible that the conversation had involved the claimant saying that the Home Office considered him to be over 18. There had been no misunderstanding. The claimant had said that he was over 19 although he did not know his exact age. The claimant had definitely not been on the ACCT system when the conversation had occurred. Many arrivals go on this programme for a short period of time after they come to Cookham Wood. Ms Collins accepted that she had not actually heard the claimant say to other boys that he was over 19.

60. In re-examination, Ms Collins was adamant that the claimant had never said that he was 17 ½ during the conversation with Mr Woodbine.

61. As I have already indicated, it emerged during the oral evidence of Mr Woodbine and Ms Collins that two records were apparently made of the conversation, at the time. Pursuant to the directions I gave, the governor has served an extract from the security information report compiled at 16.45 hours on 23rd June 2012 by Ms Collins. It reads as follows:-

“AT APPROXIMATELY 16.25 HRS ON 23.06.12, DURING A CONVERSATION WITH GOVERNOR WOODBINE, [THE CLAIMANT] DISCLOSED THAT HE WAS OLDER THAN 19 YEARS OF AGE. HE ALSO STATED THAT ALTHOUGH HE KNOWS HE IS OLDER THAN 19 HE ISN’T SURE EXACTLY HOW OLD HE IS.”

62. Also served was this extract from the Cedar House observation log, compiled at 6.40 hours on 23rd June 2012:-

“During a conversation with Gov. Woodbine, [the claimant] disclosed that he was older than 19 years old (sic). He is to stay on Cedar House until otherwise directed. [signature of Denise Collins]”

63. Despite his considerable best efforts, Mr Suterwalla made no material inroads whatsoever into the evidence of either Mr Woodbine or Ms Collins. Both of them are, I find, entirely credible witnesses. Neither of them had any personal or professional reason to persuade the claimant to make admissions about his true age. Both were well disposed towards the claimant; especially Ms Collins, who had had regular, daily contact with him, and who (it was clear) plainly liked the claimant on a personal basis. Their evidence is corroborated by the contemporaneous written records mentioned in paragraphs 61 and 62 above.

64. By contrast, the claimant’s evidence on the Cookham Wood issue was thoroughly unsatisfactory. He affected not to remember the reason for the conversation and sought to portray it as having been instigated by Mr Woodbine and/or Ms Collins. I have no hesitation in preferring their evidence to that of the claimant. This is having given due allowance to the position of the claimant, in particular as regards the psychological problems described by Dr Freedman. I accept the evidence of Mr Woodbine and Ms Collins regarding the claimant’s ability to understand and be understood during the conversation. Their experience in dealing with foreign national residents would have alerted them to any difficulties in this regard. The claimant’s attempt to invoke language difficulties is, I find, without merit.

65. The Cookham Wood incident also casts revealing light on other contentious evidential aspects of this case. It supports the evidence of the defendant to the effect that, when he thinks he is able to conduct himself in a way that will not have an adverse effect upon his age assessment case, the claimant exhibits behaviour quite different from that which he chooses to employ whenever he thinks he is interacting with persons concerned with the current age assessment proceedings.

66. Thus, in reality, the claimant (whilst not particularly gregarious) is much more of a social animal than he pretends. Furthermore, I accept the defendant’s evidence that, where the opportunity arises, this socialising tends to involve those who are older than the claimant’s claimed age and who are, in fact, at or around the age at which the defendant has assessed him. This is supported by the observations of Ms Collins, that the claimant behaved in a more mature fashion than that of persons under the age of 18.

67. I find that what happened at Cookham Wood on 23rd June 2012 was that the claimant did, indeed, become frustrated at the fact that his claimed age had caused or contributed to his being in a young offenders’ institution, categorised as a child, and that this was having an adverse impact on his ability

to communicate by telephone with his friends. What he said to Mr Woodbine in the presence of Ms Collins about being over 19 was, I find, the truth. The relief that was occasioned by this confession is noted in the evidence of both Mr Woodbine and Ms Collins. Indeed, Ms Collins's description of other detainees laughing with the claimant and calling him "uncle" has the entire ring of truth about it. The fact that, at some subsequent point, the claimant has had second thoughts about the respective merits and disadvantages of being found to have lied about his age does not affect these findings, except further to underscore the claimant's capacity for dishonesty.

68. In so finding, I have very much borne in mind Mr Suterwalla's submission that, were I not to accept the claimant's version of events regarding the Cookham Wood incident, I should find that he lied to Mr Woodbine and Ms Collins, in a misguided attempt to overcome the restrictions regarding telephone usage. Mr Suterwalla's submission was to the effect that, if the claimant did this, it was a further sign of his immaturity.

69. I do not accept that alternative submission. Both Mr Woodbine and Ms Collins, as experienced professionals dealing with young people who fall to be treated as vulnerable, whether as to age, incarceration or psychological difficulties (or all three) were of the view that the claimant had told them the truth. They observed his behaviour after he had told them that truth, which was indicative of a burden lifted rather than anything else (such as hoped for short term gain).

Age assessment

70. Mrs Brouf's evidence concerned her part in the first age assessment (2008). Whilst that assessment, as such, is no longer relied upon, I agree with Mr Hadden that evidence contained in it regarding what was observed at the time can have a part (albeit modest) to play in the present proceedings. The 2008 assessment noted generally distributed facial hair. The claimant was recorded as saying that he started shaving only upon his arrival in the UK and that he had shaved only twice since then. In view of my assessment of the claimant's credibility, I consider there to be no reason whatsoever to accept his evidence regarding when he started shaving.

71. Mrs Brouf noted "a few grey hairs on his head". She observed the same kind of grey hairs on the claimant's head at the hearing. I do not regard this as being of any particular significance. So far as the claimant's demeanour at the age assessment was concerned, I have already noted what was recorded in relation to the time at which his mother allegedly told him he was 13 years old. Other than that, the assessment records the claimant speaking in low tones and being requested to speak up on numerous occasions. That was consistent with what I saw at the hearing. The assessment described the claimant as "not completely psychologically focused". To an extent, that may be true. However, given the credibility problems, I consider that the dominant cause of the claimant's behaviour in this and other contexts (including the hearing in July 2012) was his dishonest attempt to portray himself as younger than he really is, coupled with his belief that this behaviour might minimise the chance of him being "caught out" as to his account of events prior to arriving in the United Kingdom. In short, and although I accept Mr Suterwalla's criticisms of aspects of this age assessment (such as the absence of notes), those criticisms do not advance the claimant's case or damage that of the defendant.

72. Like Mrs Brouf, Mrs Nyaba is one of the defendant's social workers. She carried out a paper review of the claimant's case in May 2011. Much of her evidence involved a disagreement with the evidence of Ms Mezzini as to the significance of the claimant's past behaviour in storming out of meetings, his inability to manage his money and his frequent demands to the defendant for more money. For the claimant, it is submitted that this behaviour was indicative of immaturity, which

pointed to his being the age he said he was. I agree with the defendant that this by no means follows and that there are other equally possible reasons for such behaviour. The same is true of the evidence of Mr Jakes as to whether the claimant previously kept his room clean.

73. Mrs Salimi was involved in the second age assessment. I accept some of the criticisms levelled at Mrs Salimi's evidence by Mr Suterwalla. These include the absence of notes and problems regarding finalising the age assessment. Mrs Salimi mounted a spirited and, at times, impassioned defence of her work, under cross-examination by Mr Suterwalla. Whilst I acknowledge her professionalism, at times her evidence was hard to follow and appeared to lack objectivity. It is, however, plain that, from a professional standpoint, she regarded the claimant's physical appearance as not being compatible with his claimed age but, rather, with someone materially older. She also considered the claimant to be "somewhat evasive". Were that evidence to stand on its own, I might be circumspect in according it weight. As it is, however, Mrs Salimi's description of the way in which the claimant conducted himself at the second age assessment fits perfectly with my findings as to his credibility.

74. Megan Clement, team leader and social worker for the defendant, had occasion to check in November 2009 if the claimant was entitled to benefits. There was a dispute between her and Ms McCamley as to what Ms Clement did or did not say to Ms McCamley on the telephone in January 2010. Ms McCamley noted Ms Clement as agreeing that the claimant "looked young and that he might have learning difficulties". She also said that the claimant was thought by her to be "vulnerable and would be referred to mental health services". The fact that the defendant took the view that the claimant, despite being assessed as born on 1st January 1992 nevertheless needed particular assistance for what might have been thought to be psychological difficulties is not in issue in these proceedings. On the contrary, the defendant's evidence indicates that, whilst not accepting that the claimant is as young as he said, the choice of 1st January 1992 was made with an eye to giving the claimant an age which would enable the defendant to provide the kind of services that were considered to be appropriate, given his difficulties. Mr Suterwalla took issue with this as a reason for alighting upon 1st January 1992. I shall deal with that shortly. So far as concerns the factual dispute as to whether Ms Clement agreed that the claimant looked young, I have concluded that, on balance, this is likely to be what she said to Ms McCamley. However, considered in the round with all the other evidence, in particular that relating to the Cookham Wood incident, I do not regard this as being a matter that has any material significance in my findings regarding the claimant's age.

75. Mr Obeng's relationship with the claimant has been somewhat fraught, since Mr Obeng appears to have had responsibility for dealing with what, at one stage, were the claimant's frequent visits to the defendant's offices to demand more money. I also agree with Mr Suterwalla that aspects of Mr Obeng's evidence were unsatisfactory and that he was, on occasions, prone to vagueness and reliance on generalisations. That said, looking at matters in the round with the other evidence, I consider that Mr Obeng's evidence casts further light upon the nature of the claimant's behaviour at times when he did not feel the age assessment "spotlight" to be directed at him.

Conclusions

76. In the light of the evidence before me, I find that the claimant is not a witness of truth. None of the criticisms advanced of the defendant's witnesses, or the genuinely held views of Ms McCamley and Ms Mejzini, come anywhere near counteracting the effects of that adverse credibility finding. In particular, the evidence regarding the Cookham Wood incident is, I find, of great significance and I give that evidence very substantial weight. Like Mr Woodbine and Ms Collins, I consider that the

claimant was telling the truth when he told them that, although he did not know his exact age, he was over 19 years of age as at June 2012.

77. The defendant's assessment of the claimant, as having been born on 1st January 1992, would put him as 20 years of age as at June 2012. Mr Suterwalla criticised the rationale for the defendant's choice of 1st January 1992. As I have indicated, the evidence suggests that this date was chosen with an eye on the kind of support which the defendant thought the claimant needed at the relevant time. Given that age assessment is not an exact science, the defendant's approach does not strike me as perverse but, rather, as pragmatic and benign.

78. Leaving aside periods of less than a year, the youngest that a person who says they are "over 19" can be is, of course, 20. In all the circumstances, and following the approach described in paragraph 7 above, that seems to me to be the most appropriate choice. So compelling is the evidence on which the defendant relies that there is no reasonable likelihood the claimant was born, as he asserts, on or around 1st January 1995.

79. I will therefore make a declaration that the claimant's date of birth is 1st January 1992. I will hear Counsel if they cannot agree the form of that order or the terms of any further order sought, in particular on the issue of costs.



Signed

Upper Tribunal Judge Peter Lane