



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

R (on the application of JS) v Birmingham City Council AAJR [2013] UKUT 00122(IAC)

Heard at Field House

On 11 and 12 February 2013

Before

UPPER TRIBUNAL JUDGE PETER LANE

UPPER TRIBUNAL JUDGE PERKINS

Between

THE QUEEN ON THE APPLICATION OF

JS

(BY HIS LITIGATION FRIEND THE REFUGEE COUNCIL)

Applicant

and

BIRMINGHAM CITY COUNCIL

Respondent

Representation :

For the Applicant: Azeem Suterwalla, instructed by Bhatia Best Solicitors

For the Respondent: Jonathan Cowen, instructed by Birmingham City Council

JUDGMENT

A Introduction

1. The applicant asserts that he is a child from Afghanistan, who was aged 12 when he arrived in the United Kingdom from Afghanistan. This was in December 2008 (he first came to the attention of the respondent on 15 December). He is recorded as having told the respondent on 19 December 2008 that “he’ll be 13 in January [2009]” (bundle, tab 22/8). On 23 December 2008 the applicant claimed asylum from the Secretary of State for the Home Department. The applicant contended that he was in need of international protection as a result of the hostile interest taken in him by those seeking retribution for certain actions carried out by the applicant’s father, who had been “cruel” to villagers and other people. The applicant’s mother had told the applicant that his father had killed people and that his father’s enemies were now after the applicant. As a result, the applicant had had to move

from his village and live with his grandfather. Eventually, the applicant's grandfather had arranged for the applicant to be sent out of Afghanistan.

2. On 9 April 2009, the Secretary of State refused to grant the applicant asylum. On appeal against that decision, Immigration Judge Juss allowed the applicant's appeal on asylum and human rights grounds. The Immigration Judge's determination was, however, subsequently set aside by a Senior Immigration Judge, who concluded that it was "materially and irredeemably flawed in law and cannot stand. Indeed, it is so flawed that I have concluded nothing can be preserved". Following the re-hearing of the appeal in October 2010, Deputy Upper Tribunal Judge Robertson dismissed the applicant's appeal on asylum, humanitarian protection and human rights grounds, having found the applicant not to be credible as regards his international protection claims. However, she allowed the appeal insofar as she found that the Secretary of State's decision was not in accordance with the law. This was because Judge Robertson concluded that the applicant, though not the age he claimed, was 16 years of age as at the date of the hearing. Accordingly, the Secretary of State had, according to the judge, failed to follow her policy of granting the child discretionary leave to remain in the United Kingdom. The applicant currently has an undecided application before the Secretary of State for a variation of his leave to remain.

B The age assessments

3. Upon the applicant's coming to the attention of Birmingham City Council, Mr Swaran Singh of its social care and health department made a request on 15 December 2008 for the applicant to be admitted to Fairfield Children's Home (bundle, tab 22/44). The applicant was placed in Fairfield on that day. Fairfield is described (tab 22/29) as a community home, catering for up to eight young people, normally for periods of up to twelve weeks, during which time the staff, in conjunction with field social workers "will undertake a comprehensive assessment of the individual's needs of the child/young person. These assessments will be completed in accordance with the framework for the assessment of children in need and their families". It appears that by 8 January 2009 the applicant had been moved to a council facility at 36 Millmead Road.

4. The respondent carried out an age assessment of the applicant in February 2009. Mr Swaran Singh and Ms Ashmarie Berwise were the social workers who undertook the interviewing and subsequent assessment. Following the bringing of legal proceedings in respect of that assessment, the respondent agreed to carry out a fresh assessment, although "it is not admitted by the council that the age assessment completed on 5 February 2009 was not Merton compliant".

5. The February 2009 age assessment had concluded that the applicant should be given a date of birth of 1 January 1990, making him over the age of 18 upon arrival in the United Kingdom. The second age assessment was undertaken in July 2009 by Mrs Diana Bazurto and Ms Elizabeth Cant, social workers in the respondent's social care and health department. They concluded that the applicant was over 18 and ascribed to him a date of birth of 1 January 1991.

6. The applicant applied to bring proceedings by way of judicial review, in order to challenge the July 2009 age assessment. Permission to bring those proceedings was granted by the High Court on 9 December 2010 and Hickinbottom J subsequently decided, in the exercise of the Court's discretion under section 31A of the Senior Courts Act 1981, to transfer the proceedings to the Upper Tribunal. On 13 December 2011, the Upper Tribunal decided to quash the assessment by the respondent, on the ground that it had failed to follow its policy of complying with the terms of the "Age Assessment Joint Working Protocol". The respondent appealed against the Upper Tribunal's decision and in R (on the application of K and Others) v Birmingham City Council and the Secretary of State for the Home

Department [\[2012\] EWCA Civ 1432](#), the Court of Appeal allowed the respondent's appeal on the ground that the respondent had never had such a policy.

C. The law

7. Following the judgment of the Supreme Court in *R (A) v Croydon LBC* [2009] 1 WLR 2557, our task in these proceedings is to resolve the issue of the applicant'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 a young person's age is a 'precedent fact' to the local authority exercising its statutory powers under section 20(1) of the [Children Act 1989]. There is a right and a wrong answer and that, ultimately, is for a court to decide. " [3].

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

9. There is no burden of proof in these proceedings (*R (CJ)* at [22]). We are mindful that at [21] of *R (CJ)* the Court made it clear that, whilst there is no formal "benefit of the doubt" principle, we are 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. "

D. The evidence

10. We have already referred to a bundle of documents. As well as the two age assessments to which reference has already been made, the bundle includes a witness statement of the applicant, statements and exhibits from Swaran Singh and Diana Bzurto, the determinations of Judges Juss and Robertson and relevant correspondence. There is also a document dated 15 December 2008, signed by Ruth Grey of the respondent's social care and health department, which gives the applicant's address as Fairfield Children's Home. Described as an "initial assessment record" (tab 22/16), it recommended that the respondent should undertake a further age assessment, as the applicant's "physical features, appearance and demeanour suggest he is older" than his claimed 12 years (tab 22/19). Amongst the features noted are a "deep broken voice", facial and neck skin textures, "coarser and not supple as expected of a 12 years old child", "established facial hair growth", "no play involved" in applicant's young life, precise information given about "addresses and the group father was affiliated to"... "he was unable to explain a typical day in his life", and that the applicant's mother "told him his age when father went missing seven years ago". A "core assessment" prepared by Mr Singh on 22 January 2009 also contained a recommendation that an age assessment be undertaken.

11. We heard oral evidence from the applicant on 11 February 2013. He spoke through an interpreter in Pushtu. We were satisfied that the applicant could understand the interpreter, and vice versa. We were satisfied that the applicant was fully aware of his ability to take breaks when giving his evidence, should he so require (he did not). We also heard oral evidence from Mr Singh, beginning on 11 February and ending the following day. On 12 February we heard evidence from Mrs Bzurto. In reaching our conclusions, we have proceeded in accordance with paragraphs [8] and [9] above. We have considered the evidence as a whole and in doing so have had regard to possible cultural and age-

related explanations for what might otherwise be regarded as flaws or deficiencies in the evidence emanating from the applicant.

12. There is one document in the bundle, which we have not examined. This is the report on the applicant prepared by Dr Birch in March 2010. Neither party asked us to have regard to that document. On the contrary, Mr Cowen specifically asked us not to do so. We have not had regard to Dr Birch's report as a source of evidence to assist us in our task of assessing the applicant's age.

E. Credibility

13. Notwithstanding the holistic nature of our task, we have to start our assessment of the evidence somewhere. In the present case, it is appropriate to begin by considering the credibility of the applicant. It was plain from both parties' submissions to us that the credibility of the applicant is an important feature of the case. For the applicant, Mr Suterwalla's submission was that the applicant's nominal date of birth of 1 January 1996 should be accepted because the applicant "states that he knows his age and has given a plausible account of how he came to know of it". Mr Cowen, for the respondent, submitted that credibility was the key because, if the applicant was found not to be a witness of truth, then his evidence was unreliable, with the result that the respondent's evidence, in the form of the age assessments, should be regarded as the best evidence available to the Tribunal. It should be mentioned here that there is no documentary evidence emanating from Afghanistan in the present case.

14. We reiterate that we have taken full account of the fact that, whether or not the applicant is (still) a child, he would, even on the respondent's assessment, be in his early 20's. He is, accordingly, a young person, far from his native country, who has had to communicate through an interpreter, during the age assessment interviews and in oral evidence before us. Having said that, we accept the respondent's evidence that, when interviewed on various occasions in connection with the age assessment exercises, no difficulties were recorded or observed, as regards interpretation. That is so, notwithstanding that we accept that, as Mr Suterwalla contended, no specific questions about the adequacy of interpretation may have been put by the respondent's officers to the applicant, at the time of the interviews.

15. In his written statement of November 2010, the applicant complained about the quality of interpretation "provided by a Pakistani interpreter" [38] who spoke somewhat differently from the applicant, and that this accounted for "differences in my answers". This complaint is both belated and vague. It is also contradicted at [32] of the statement, where the applicant gives a quite different reason for any discrepancies in his answers to the social workers. The criticism at [38] refers to the allegedly problematic interpreter as male; but on various occasions the interpreter used was, in fact, female: eg at tab 15/3, which records that on 8 January 2009 the applicant's "interaction with the female interpreter was dismissive"; and at tab 22/12, where Mr Singh recorded that, on 12 February 2009, the respondent's analysis regarding the applicant's age was read out, "item by item" to the applicant" by the interpreter, Nagina Afzal, whom [the applicant] understood completely".

16. It is, accordingly, convenient at this stage to state that we do not consider any of the problems with the applicant's credibility can properly be ascribed to alleged difficulties in interpretation. Our credibility findings are set out below under the following four headings.

(1) Shaving

17. Mr Cowen submitted that, whether the applicant was already shaving in 2008/2009 was highly material to his overall credibility. He submitted that the evidence showed clearly that the applicant did shave and that there was “no middle ground” on the issue.

18. The February 2009 age assessment of Mr Singh has this to say. On 15 December 2009 the applicant made his initial visit to the unaccompanied asylum seeking children team, when the applicant was observed to have “clear facial hair growth... it was evident he shaves but [applicant] denies this, saying his facial hair is just sprouting”. This was coupled with the observation that the applicant’s voice was mature and confident and that his facial and neck skin textures were courser than might be expected of a 12 year old child.

19. At interview on 22 January 2009, Mr Singh noted that it was “evident that the [applicant] shaves, even his small moustache has gone. [Applicant’s] explanation is that there were one or two hairs which he has pulled out”. Reference is then made to a report from the applicant’s key worker at Millmead Road of 18 January 2009 (tab 22/78) that:-

“ On the 18th of January staff noticed [applicant] looked clean shaven. The previous day [applicant] had evidence of facial hair. ”

On 22 January 2009, Mr Singh recorded that “staff at Millmead Children’s Home confirmed [applicant] shaves. But [applicant] denies this”.

20. In oral evidence, the applicant said that he last shaved about five days before the hearing and that he had shaved for the first time not long ago, although he could not say exactly when. He disagreed with the assessments of Mr Singh that he had been shaving in 2008/2009 and then said that he thought he had started shaving at the end of 2011. He denied that he had arrived in the United Kingdom as a young man who was already shaving. Asked by Mr Cowen how Mr Singh and the staff of the home could have all “got this wrong”, the applicant said he did not know. Later in cross-examination, the applicant was asked about the adverse credibility finding on the issue of shaving in the determination of Deputy Upper Tribunal Judge Robertson:-

“ 67. He was observed over a period of time and it was noted that he had facial hair but he denied that he shaved... it was noted by Kay Magee, his key worker that there had been evidence of facial hair on 17 January 2009 and that staff noticed that he looked clean shaven the next day. The appellant’s maintaining that he ‘had one or two hairs that he pulled out’ is not the same as having shaved. Whilst presence of facial hair alone would not indicate that he was over 18, his desire to give the impression that he did not shave was, I find, designed to mislead. ”

21. The applicant said that he had mentioned a number of times, most recently at the hearing on 11 February, that he had not been shaving at that time, and that he could not say what other people thought. Asked if he had not wanted to admit to shaving because it showed him to be older than he was claiming to be, the applicant said that he did not know at that time what the dispute was about and that the social workers had “put me under pressure”.

22. In his closing submissions, Mr Suterwalla questioned rhetorically whether there was “simply a misunderstanding or a miscommunication between the parties” on the issue of shaving. We do not consider that either of those explanations accounts for the discrepancy in the evidence. Mr Singh is a social worker with over twenty years’ experience, who had conducted about 70 age assessments by the time he came to assess the applicant in 2009. The question of whether a young man appears as shaven, as opposed to an adolescent who has plucked out one or two hairs from his face, is not one

that depends upon ethnic differences. Such differences may, we accept, account for why one boy of a certain age might be shaving, when a boy of the same age from a different ethnic background might not yet be doing so. But that is not the issue here; rather, the question is whether the applicant was telling the truth about shaving. Although Millmead Children's Home, unlike Fairfield Children's Home, may not have a specific assessment function, no reason has been given to doubt the veracity of the information emanating from Millmead as to the applicant having shaved there in early 2009; nor has it been shown that those who made the observations were unqualified to conclude that the applicant had been shaving, as opposed to plucking the odd hair from his face.

23. Mr Suterwalla submitted that, even if the applicant "did lie about shaving, this does not of itself mean he is older than claimed". Mr Suterwalla relied upon the following observation of Stanley Burnton J in *R (B) v Merton LBC* [2003] 4 All ER 280:-

" Conversely, however, an untrue story, while relevant, is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for reasons unconnected with the applicant's case as to his age, for example to avoid his return to his country of origin. "

24. In the circumstances of the present case, however, this observation does not assist the applicant. No rational explanation has been advanced as to why, on the hypothesis that the applicant might not have been telling the truth about his shaving, this lie is unconnected with his claim to have been 12/13 years old at the turn of 2008/2009. On the contrary, we consider that the untruth (for such we find it to be) is intimately connected with the "age" issue. Whether or not the applicant was a young man who shaved does not, in itself, have anything to say about whether the applicant is or is not at real risk in Afghanistan from alleged enemies of his father. By contrast, it has, we find, a great deal to say about whether the applicant was telling the truth, in claiming to be a person who had arrived in Birmingham at the age of 12.

25. We find that the applicant has deliberately lied about this matter and has persisted in those lies for some four years. We agree with Mr Cowen that the issue of shaving is, in the circumstances, of profound significance in assessing the applicant's credibility.

(2) Living an independent life

26. There is a degree of interconnection between a number of the other issues relating to the credibility of the applicant. In essence, the respondent's case is that there is a striking contrast between, on the one hand, the applicant's alleged age and his alleged history of extreme social seclusion in Afghanistan (living indoors, in hiding, from age 5 to 12 with only his mother, brother and - on occasions - grandfather for company) and, on the other hand, the speed with which the applicant was, following his arrival in Birmingham, able to live an independent life, involving social interaction with friends (with whom he stayed), surreptitious telephone conversations and finding his own way both within, as well as to and from, Birmingham.

27. In the February 2009 age assessment, Mr Singh recorded that on 22 January 2009 the applicant said he "feels he is cooped up at Millmead Road" Children's Home. His key worker had reported that the applicant "tends to go outside of the unit when he receives calls on his mobile". When asked about this, the applicant said that "this is the only opportunity he has of going outside". Kay Magee recorded in her fax to Mr Singh of 20 January 2009 that:-

" Staff have also witnessed [applicant] has frequent conversations on his mobile. He has not disclosed who he is speaking to but daily will receive and make several calls. "

28. In his exchange with the applicant on 23 January 2009, Mr Singh asked him to describe a day in his life in Afghanistan, to which the response was that he “got up between 9:00 and 10:00am and spent the rest of the day worrying about the enmity he felt from an unknown source”. On 8 January 2009 the applicant had indicated his refusal to participate in in-house basic English education at the children’s home “on the basis he should be attending school”. Mr Singh found that “curious”, as the applicant had told him that “he did not attend any formal or informal education establishment” in Afghanistan. It was, however, noted that the applicant had said his grandfather sent him to “London” to receive an education. Mr Singh recorded the applicant has “mostly stayed at home doing nothing. No playing with children alone or other ages”.

29. Mr Singh noted that at Fairfield Children’s Home, where the applicant was initially accommodated, the applicant had been said to have been able to carry out “a whole range of tasks involving self-care, health issues, cooking, laundry, cleaning etc”. The assessment from Fairfield is at tab 20. The applicant was found to be “independent” as regards stripping and making his bed; general tidying of his bedroom; cleaning of his bedroom; washing up and drying up; cleaning the kitchen; understanding basic hygiene; machine washing clothes; and ironing clothes. So far as cooking was concerned, he was assessed as “independent” as regards preparing a “basic meal” and understanding the need for a balanced diet. As for first aid, he was said to have “no understanding of basic first aid, however if he needs help he knows where to go”. Under “Computer Skills” he was said to be “able to use the internet however if he is given a task on the computer he would need assistance”. He had “a basic understanding of a 24 hour clock” and was “able to travel alone by bus”.

30. Mr Singh regarded it as significant that the applicant made and received phone calls but did not disclose with whom he was speaking, as well as that he would leave the building when he received some calls. Mr Singh also considered it noteworthy that the applicant, although allegedly having “lived in seclusion”, was “able to use the internet”. His general self-help/care knowledge and skills were “incongruous to his statement at the initial assessment that he can conduct basic personal care tasks but everything else, such as preparing food, laundry, was mother’s responsibility”. Also significant was the ability to understand a 24 hour clock.

31. At the July 2009 assessment, the applicant told Mrs Bazurto that his mother was “illiterate” and that he himself “could not read or write”. After the disappearance of his father, his mother had told him that he “wasn’t allowed to leave the house”. He would “stay at home with his mother and his little brother, where his mother would “teach him about the Quran and that he would also play with his brother”.

32. By the time of the July 2009 assessment, the applicant had fallen under the responsibility of NASS, following the conclusion of Birmingham City Council that the applicant was an adult. NASS had arranged accommodation for the applicant in Nottingham. This background helps to explain the following passage from the July 2009 assessment:-

“ On 27-07-2009 Social workers received a phone call from the refugee council stating that [applicant] was there and that he was not going to come to the Sycamore Centre [the respondent’s offices in Birmingham] because he did not know how to get there. [Applicant] had come from Nottingham on his own [on] at least 2 occasions and had been able to navigate the city in the past. When asked about the fact that he was able to leave the Sycamore Centre on his own and knew where he was going, how come this time was different? [Applicant] stated that he did not remember and when asked again he replied ‘I don’t know’. Social workers explained to [applicant] that it was hard to believe that he would not remember how to get to the Sycamore Centre as he had done recently ([applicant] stayed

quiet at that point suggesting that he did not have an explanation). The fact that [applicant] is very vague about a matter that should be straightforward such as do you know how to get to the Sycamore centre suggests that he is either deliberately trying to make it more difficult for social workers to finalise the age assessment or that he is trying to present that he is a vulnerable minor by stating that he does not have the capacity to navigate the city on his own. "

33. At the July 2009 assessment, the applicant reiterated that he had never attended school and was not allowed out of his home; and that he did not know how to read and write. He said he would like to access education in the UK.

34. Under the heading "Independence/Self-Care Skills" we find this:-

"[Applicant] maintains that he cannot look after himself, that he does not know how to cook, wash, clean or manage his money. However it was observed that during the latest age assessment interviews [applicant] was clean and appropriately dressed for the weather. [Applicant] has also stated that he cannot navigate the city; however he has been able to travel from Nottingham to Birmingham and has been to his solicitor's office, the refugee council and the sycamore centre on his own. It is not rare for a young man from [applicant's] background not to be able to cook, wash or clean as it is traditional of his culture for females to do all of the household [c]hores which will [include] such things as cooking and cleaning. Although it is important to take into account the fact that [applicant] may find it difficult to perform the above mentioned self care skill it is also important to take into account the cultural differences that may have led for him not to know how to perform such skills and therefore even though it may point out some of the needs of [applicant] they may not be an accurate way to establish his age. "

35. At some point after the July 2009 age assessment, the applicant returned to live in Birmingham. In December 2011 he was living in emergency accommodation at Bearwood Court Hotel. Starting in early January 2012, copies from the Bearwood Court Hotel daily "sign in" sheets show that there have been numerous occasions when the applicant is recorded as not having stayed the night at the hotel.

36. In the summer of 2012, Mr Singh had a meeting with the applicant, who was concerned that the facilities at Bearwood Court Hotel were not such as to enable him to observe the Ramadan fast. He was offered access to the hotel's kitchen facilities (normally reserved for families) so that he could prepare meals before the fasting time of day began. The applicant rejected this as unsatisfactory. The daily signing in sheets record the applicant as having moved out of Bearwood Court in November 2012. He is now accommodated in a two bedroom house in Winston Green, Birmingham, where he looks after himself. Although it was envisaged by the respondent that a second person would be sent to live in the house with the applicant, as at the date of hearing this had not transpired. Asked how he was managing to live, the applicant said that he was given £35 a week by the respondent and that he lived on takeaway food. He was also taking driving lessons.

37. The applicant said in oral evidence that he had not been questioned by the staff at Millmead Road Children's Home about who he was speaking to on his mobile. He went outside because he wanted to do so and felt depressed. He would speak to two Afghan friends of his own age, Zakir and Ali. One of these was at Millmead Road. He had met them only when he had been at Fairfield.

38. Mr Suterwalla submitted that it was not a "big deal" in the modern world for a person, such as the applicant, to be able to use a mobile telephone. The suspicions raised by Kay Magee at Millmead Road Children's Home were merely insinuations; in any event, no one had challenged the applicant about them at the time. It was, in fact, indicative of childlike behaviour to speak on one's mobile phone to

someone else who was in the same house. The applicant's explanation for wishing to go outside to make and/or receive calls was plausible.

39. So far as absences from Bearwood Court were concerned, Mr Suterwalla asked us to note that the applicant had friends, with whom it was reasonable for him to stay on occasions. In any event, by this time, the applicant had, he submitted, learnt to become independent as a result of his experiences in the United Kingdom. By the same token, being able and willing to go to live in a house on his own in Winston Green in 2012 was incapable of shedding any relevant light on the applicant's age on arrival in 2008. The evidence that the applicant subsisted on takeaways had not been challenged by Mr Cowen and was not indicative of adult behaviour. So far as the use of the internet in 2009 was concerned, the applicant's evidence was that he had been shown by a friend in the children's home how to use the internet and this was what had been observed by the staff.

40. We have taken account of those submissions. We have, however, concluded that the evidence to which we have referred further undermines the applicant's credibility. The cumulative effect of the various pieces of evidence is just too great to be explained away. Furthermore, it is, taken as a whole, strikingly incompatible with the applicant's account of a life, from age 5 to leaving Afghanistan, of extreme social exclusion.

41. It is, frankly, bizarre that as early as 22 January 2009 the applicant should complain of being "cooped up at Millmead Road". It is unclear precisely in what circumstances the applicant came to have a mobile telephone. In any event, within a matter of days he was making frequent use of it, both to receive and to make calls. He says this was to make contact with friends who, despite his social isolation, he had encountered and formed friendships with; again, within a very short period of time of his arrival in Birmingham. Given his alleged background, as a person who had spent most of his life indoors, the explanation that he went outside because he felt "depressed" at being "cooped up" is not credible. Nor is there any evidence to substantiate the assertion that making or receiving a telephone call was the only opportunity that the applicant had to go outside outdoors at Millmead Road.

42. Whilst we accept that the evidence from Ms Magee of 20 January 2009 does not categorically state that the applicant had been asked about the telephone conversations he was having, the fact that Ms Magee saw fit to inform Mr Singh that the applicant "has not disclosed who he is speaking to" strikes us as significant, given her position as the applicant's key worker: a role which presupposes a significant degree of interaction with the applicant. In other words, it is plain that the applicant's keyworker was concerned he was not being forthcoming about his telephone conversations.

43. In coming to these conclusions, we also consider it relevant to note the following matter. In his statement, the applicant describes how, when he got off the lorry in Birmingham "there was an Indian man nearby, I asked him to take me to a police station to get some help. When I was at the police station the social services came..." [25]. In oral evidence, however, the applicant described how he had been picked up after leaving the lorry by someone who took him to a house, fed him and gave him clean clothes, before taking him to the police station. The overwhelming likelihood is that this person was either a friend of the applicant or a part of the people smuggling operation, which clearly involved much more than merely depositing the applicant in Birmingham.

44. Even accepting the applicant's description of someone showing him how to use the internet, the Fairfield evidence describes him as being able to use a computer, which is difficult to reconcile with his claimed total illiteracy. We say that, notwithstanding Mr Suterwalla's submission that even an illiterate person can "click" on an "icon". In fact, the applicant's asserted illiteracy is itself

problematic. He could sign his name on various forms, very shortly after arrival, using a signature instead of a cross or other mark.

45. Also significant, we find, is the applicant's ability, as a person allegedly without education or any real awareness of time and dates, to grasp, again within days, the principle of the 24 hour clock. In so saying, we are mindful that at [19] of his statement, the applicant says the agents who transported him across continents gave him a watch, so as to be ready to leave at a certain time: "I had never used a watch before the agent gave us a watch each, but I learned to on that journey because the agents made us use watches". There is, however, no indication in the applicant's evidence that the watches handed out by the "agents" were of the 24 hour digital variety. In any event, when the issue of knowing the 24 hour clock was put to the applicant on 12 February 2009, it was recorded that he "maintains he doesn't understand the 24 hour clock" (tab 22/12). We prefer the evidence of the respondent on this issue.

46. The applicant's refusal to engage in training in English, because he was not allowed to go to school, is not compatible with his asserted wish to receive an education in the United Kingdom, which was one (if not the main) reason why he was allegedly sent here. We consider it highly unlikely that a person of the applicant's claimed age and background would have had the confidence or maturity to refuse the offer of English training and that his refusal suggests, instead, a somewhat sophisticated appreciation of the link between going to school in the United Kingdom and being regarded as a child, with all that this entails.

47. By the summer of 2009, the applicant was, we find, able to travel from Nottingham to Birmingham on a number of occasions. We do not consider that his alleged inability to do so, as recorded in the July 2009 age assessment, is credible, particularly since he had done this before and could offer no explanation to the social workers as to why he should subsequently lose that skill. At [39] of the applicant's statement, he asserts that "I did not know how to get to the Centre. This was because I had never been there before". That this is not true is plain from tab 22/13, where Mr Singh recorded on 13 February 2009 that the applicant "refused to receive the paperwork and go to the R.C. [Refugee Council] for support. After about an hour [applicant] left the Sycamore Centre". On 16 February 2009, Mr Singh recorded "[applicant] returned to the Sycamore Centre of his own accord ... and was given money for a day saver ticket to go to the R.C." The reality, we find, is that the applicant decided that the proficiency he had hitherto exhibited in finding his way around was incompatible with his claim to be (then) only 13.

48. We see no reason to doubt the assessments undertaken at Fairfield in December/January 2008/2009, regarding the range of skills exhibited by the applicant. The clear thrust of his evidence was that his mother had done everything for him at home, other than as regards personal hygiene. That is strongly incompatible with his ability to cook, albeit a basic meal, use a washing machine etc. At tab 22/101, Mr Singh's manuscript notes of his interview with the applicant record the latter as saying that "he just put them [presumably, clothes] in the [washing] machine". If that was all the applicant was seen to do, the Fairfield assessment (otherwise nuanced, as can be seen from the above) would have said so. Mr Suterwalla submitted that, if the applicant did, in fact, do these things, they were indicative of his desire to please those running the home. That may be the case; but it does not explain how the applicant was able to do so, within only a few days of arrival.

49. Whilst we accept that, by the time of the applicant's return to Birmingham, he had had experience of living in various environments in the United Kingdom, nevertheless, having regard to the evidence as a whole, we find that his decision to absent himself on frequent occasions from Bearwood Court

Hotel and to effectively initiate a move to his present, unsupervised accommodation is indicative of a pattern of behaviour, since arrival in late 2008, that points strongly to the applicant's being significantly older than his claimed age. In this regard, it is noteworthy that at tab 22/12 there is recorded an instance of similar behaviour from as early as 11 February 2009: "[Applicant] informed of meeting tomorrow and advised to pack a bag. Initially obliged then later became challenging and wanted a day saver, supposedly to go to the Mosque. When this was refused, as he goes to the Mosque accompanied, [applicant] left the unit without permission".

(3) Contacting the applicant's family in Afghanistan

50. On 8 January 2009, Mr Singh discussed with the applicant the issue of contacting his family in Afghanistan:-

" [Applicant] states he has had no contact with his birth family since coming to the UK. I suggested a referral be made to the Red Cross to pass on details to the family that [applicant] is safe and well in England. [Applicant] rejected this recommendation saying he will ask his friend, Rahim, to contact his grandfather. I asked for Rahim's details such as his full name, address, etc. [Applicant] said he knew him as Rahim only and did not know where he lived. But if [applicant] goes to a Mosque he will ask around and find him. Also, [applicant] said when he attends a Mosque, he will ask people for his grandfather's contact details: because, when he was about to leave the village, telephone lines were being laid, and, given his grandfather is well-known in the area, someone will have a 'phone number' for him. "

51. In her 2010 determination, Judge Robertson made the following findings on the issue of the Red Cross and contact with the applicant's family:-

" 65. He was asked by social workers, in the context of the age assessment, if he would like the Red Cross to try and contact his family to let them know that he was safe; he declined this offer. This is not the action of a young boy who would want his family to know that he is safe.

66. In declining this offer, he stated that he would ask his friend Rahim to contact his grandfather. When asked by the social workers for Rahim's details, he stated that he did not know his full name or his address but could find him if he goes to the Mosque and asks around. Yet when asked during the hearing what attempts he had made to locate his family in Afghanistan, he stated that so far he had made no attempts because he did not have anyone here. He also said that he had accepted the offer of Red Cross help, which is contradicted in the BSS report ."

52. In oral evidence to us, the applicant was asked about [65] and [66] of Judge Robertson's determination. He said that he probably was asked about the Red Cross but he had "no idea what they were talking about". Asked if he would not wish to know if his family was safe, the applicant replied that Mr Singh had handed the applicant over to the Refugee Council. Asked about Rahim, the applicant said that it was another person who knew Rahim at the mosque and that the applicant himself did not know Rahim. The applicant had been introduced at the mosque to Rahim by someone else, who had told Rahim that the applicant was new to the United Kingdom.

53. All of this is intensely problematic, as regards the applicant's credibility. No cultural, ethnic or other alleged difference has been put forward to explain why the applicant, as a child of 12 or 13 who had lived an entirely family-orientated existence in Afghanistan, should refuse an offer of assistance to trace his family in Afghanistan. The allegation in the oral evidence, that he did not know what the Red Cross was, is extremely belated and directly contradicts what is recorded at [66] of Judge Robertson's

determination. In any event, the point is that the applicant was being offered help in tracing his family, regardless of whether he understood the precise agency involved.

54. Furthermore, the story about Rahim is incoherent. The facts that he knew such a person by name as a friend; that he knew how to find him; and that he considered Rahim capable of contacting the applicant's grandfather, all sit poorly with the applicant's assertion that he knew no one in the United Kingdom. Indeed, the first reference to Rahim is in Mr Singh's notes of a conversation with the applicant on 19 December 2008, when the applicant first rejected the offer that Mr Singh made to contact the Red Cross, on the basis that he would use Rahim, said then to be a friend of his from a "neighbouring village" and that, although he did not know where Rahim lived, "when he goes to the mosque he'll ask about Rahim and someone will definitely know Rahim" (tab 22/8). The thrust of what the applicant is recorded as saying is that he had not yet been to a mosque in the United Kingdom. How the applicant could know so much about Rahim is, accordingly, puzzling if, as the applicant said in oral evidence, he did not know Rahim and had to be introduced by another person at the mosque.

55. We consider that the inescapable conclusion of all this is as follows. The applicant was well aware from the outset of the offer being made to trace his family. He consciously declined to take up that offer, fearing that if he did, there was a danger that his entire story (including that of his age) would unravel. But, in seeking to deflect enquiries by invoking the person called Rahim, the applicant merely created further problems with his credibility.

(4) Mosque attendance and religious observance

56. In speaking to Mr Singh on 8 January 2009, the applicant, as we have already noted, expressed "a very keen desire to attend mosque". According to the assessment the applicant "also very readily said he observed fasting at the appropriate festival times". This caused Mr Singh to observe that "my very basic understanding is that fasting starts post puberty and there is a gradual introduction". We have also noted how, in the same conversation, the applicant said that if he were to go to a mosque, he would ask around and find the person called Rahim. The assessment continues: "also, [applicant] said when he attends a Mosque he will ask people for his grandfather's contact details".

57. In answer to questions from the Tribunal on 11 February, the applicant said that he first went to a mosque in the United Kingdom in 2009. He had not attended a mosque in Afghanistan, although he knew what a mosque was. He then said that he had accompanied his father to a mosque when he was very young; but had not done so after his father had disappeared.

58. That oral evidence, which Mr Suterwalla did not seek to explore in supplementary questioning, sits poorly with the evidence about Rahim contained in the February 2009 age assessment, which demonstrates an awareness of the opportunities for social interaction presented by attendance at a mosque.

59. As for the applicant's having "readily said he observed fasting at the appropriate festival times", we have already noted the evidence concerning the applicant's stated wish to observe the Ramadan fast in the summer of 2012. But he told us in oral evidence that this was the first Ramadan fast that he had observed. When asked how that was so, he said that he had spoken to a Mullah who told him that he should now be fasting. The applicant asserted that he was 16 at that time.

60. This evidence, which Mr Suterwalla did not wish to explore in supplementary questioning, directly contradicts what the applicant said to Mr Singh on 8 January 2009. We consider that the truth of the matter is that the applicant did, as he stated in January 2009, come to the United Kingdom as

someone who had already begun the practice of Ramadan fasting, whilst in Afghanistan. No evidence has been put before us to suggest that boys of 12 or 13 are supposed to fast; on the contrary, the applicant's own case is to the contrary. Accordingly, we consider that this issue also is one that undermines the applicant's credibility. The applicant has, we find, sought to resile from his earlier statement, having belatedly realised that it was indicative of him being significantly older than his claimed age.

Conclusions on credibility

61. Our conclusion is that each of the sets of findings under the above four headings, on its own, is such as to destroy the reliability of anything the applicant has to say on the issue of his age.

62. The applicant's lies in respect of each of these matters cannot properly be said to be for reasons "unconnected with the applicant's case as to his age" (*R (B) v Merton*). On the contrary, we consider their motivation to be closely connected with the applicant's attempt to gain the advantages that he knew full well, when he came here, would be extended by the authorities of the United Kingdom to a child of 12 or 13 years of age.

63. Certain elements of our findings on the applicant's credibility are to be found in the two age assessments of the respondent. Although we have used those assessments, and the materials relating to them, as an evidential source in reaching our credibility findings, those findings are our own. In reaching them, we have not deferred to the views of the respondent's social workers. We have also had full regard to factors that might point to the applicant's being a witness of truth, such as the fact that he has consistently ascribed a need to international protection by reference to the activities of his father, and that he has consistently averred that he was 12 when he arrived in the United Kingdom in December 2009. We have also, as already indicated, borne in mind that, even according to the respondent, the applicant is, even now, a relatively young person, whose communication with those tasked with making decisions about his future has had to be through interpreters. Notwithstanding all this, we are fully satisfied, to the requisite standard, that the applicant's word is not reliable.

F. The weight to be accorded to the age assessments

64. Were we to find, as we have, that the applicant's word is unreliable Mr Cowen submitted that the best evidence in this case was to be found in the age assessments of the respondent. Although it is the July 2009 assessment that is the subject of the present proceedings, it is now common ground that the respondent has in no sense resiled from what is written in the February 2009 assessment and that, accordingly, both assessments may have a part to play in our task of deciding the applicant's true age.

65. That does not mean, however, that, having decided the issue of credibility against the applicant, we should automatically defer to the views expressed by the respondent's social workers in the assessments. Mr Suterwalla advanced a number of submissions as to why we ought to decline to put weight upon the age assessments. We shall address those submissions.

(a) Lack of training

66. Both Mr Singh and Mrs Bazurto accepted that, at the times they made their respective age assessments of the applicant in 2009, neither had received specific training on how to compile such assessments. Mr Singh described what appeared to be an informal in-house system of training "on the job". We accept that other local authorities might, at the time, have offered specific training in undertaking age assessments. However, we do not consider that the absence of such training in Birmingham at the time is such as materially to affect the weight to be placed on either of the

respondent's assessments in the present case. Mr Singh had already undertaken many such assessments in the more than four years that he had been in his current role, bringing him into contact with many unaccompanied asylum seeking minors and those asserting to be such. He has been with Birmingham City Council for some 26 years, as a social worker. Having heard him give evidence, we formed an entirely positive view of Mr Singh's truthfulness and professionalism. We are fully satisfied that he brought a wholly professional approach to his assessment of the applicant's age. We also consider it significant that, when asked at the present hearing whether he stood by the assessment he had made, in the light of his present experience (and having had significant further contact with the applicant since the latter's return to Birmingham), Mr Singh unequivocally stated that he did. So too did Mrs Bazurto, although her recent involvement with the applicant appears to have been more limited. We should say here that we formed a similarly positive view of Mrs Bazurto's honesty and professionalism.

(b) Absence of an independent adult

67. In 2009, Birmingham City Council did not have a practice of offering those undergoing age assessments the presence of an independent adult at the face-to-face meetings. Since 2009, this practice has changed. However, Mrs Bazurto told us that her recent experience is that many of the young persons concerned specifically decline to have an independent adult present. Be that as it may, we have concluded that, in the circumstances of the present case, the absence of such a person at both of the assessments involving the applicant has not been shown to have made a material difference.

68. The applicant has not identified any specific matter, where it is alleged that the presence of such an adult at the meetings would have materially changed what was said or observed. We have, nevertheless, borne this issue in mind in considering the criticisms advanced by Mr Suterwalla regarding the assessments.

69. We note that, in **R (Z)** the Court of Appeal held (at [25]) that "the claimant should have had the opportunity to have an independent adult present". It is, however, important to note that **R (Z)** was the determination of an appeal against the refusal of a deputy judge to grant permission to apply for judicial review and that the absence of an opportunity to have an independent adult present "contributes to our decision whether [the claimant] should be given permission to proceed". The Court was, therefore, not saying that the absence of such an opportunity invariably means that the weight to be accorded to the assessment must be limited. It is a factor to be borne in mind, along with everything else.

(c) Interpreter issues

70. We have considered the interpreter issues mentioned above in the context of our own credibility findings. To reiterate, we do not consider that the applicant has shown that any of the matters in respect of which we have not found him credible, or any of the credibility issues that troubled the social workers, can properly be ascribed to difficulties in interpretation.

(d) Mr Singh's initial assessments

71. Mr Suterwalla submitted that Mr Singh had, in effect, made initial assessments of the applicant's age before the February 2009 assessment (tab 22/19; tab 14/1-8), without going through the proper processes; in particular, without giving the applicant an opportunity to comment on the findings. We reject that submission. It is clear that, because of concerns Mr Singh had on first encountering the

applicant on 15 December 2008, which of necessity were based on limited information, Mr Singh's recommendation for action was that the applicant needed to be provided with accommodation, whilst further assessments were carried out, given the doubts about the applicant's stated age. Such an initial assessment was, thus, in no sense to be equated with a "full" age assessment. In any event, towards the bottom of page 19 we find this:

The completed Initial Assessment and Initial Plan should be discussed with a child/young person and their parents/carers.	Agrees with the information he has provided but maintains he is 12 years old.
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The "core assessment" of 22 January 2009 merely recommended that an age assessment be carried out in respect of the applicant.

(e) Mrs Bazurto's failure to put issues of concern to the applicant

72. Mr Suterwalla put to Mrs Bazurto that she had not raised issues of concern with the applicant, in connection with the July 2009 assessment. Mrs Bazurto demurred. Again, we do not find merit in this submission. Mrs Bazurto's manuscript notes (tab 21/13) include those of a meeting with the applicant, where it is plain that the typed assessment (tab 16) was read to him in translation and where the applicant is recorded as making a number of comments, by reference to specific pages of the typed document. Thus, for example, on page 5 of the latter we find social workers noticing that the applicant said in the past:

" that he was sent to the UK to access education and when asked about how he felt about coming to the UK he stated that he was happy to go to the UK and get an education. Such statements makes SW question if [applicant's] main reason to come to the UK was education rather than trying to escape his father's enemies as he did not make reference about saving his life when asked about specific feelings about leaving Afghanistan ".

73. As to this, the manuscript notes record as follows:-

" Education

I left Afghanistan from my father's enemies and in the UK I want to learn English because every [sic] speak English" .

74. As another example, on page 6 of the typed document, it was noted that in the previous age assessment the applicant had attributed a burn on his left forearm to a deliberate protest on his part "because he was not getting any food from the agent". In the present assessment, by contrast, the applicant had said that he was hungry and lost consciousness "and must have burnt himself with something". Again, the manuscript notes make it plain that the applicant was able to address this issue, as follows:-

" Page 6 - about his burn. On the way to UK I had no food nothing - because of that some [things] happened to my hand and I lost my conscious and burned my arm. "

75. The manuscript notes conclude as follows:-

" Pg 7 - I don't accept the result of age - I will come back to you when you say I am a minor. If you are saying that I am over 18 years I don't accept this. "

76. The interpreter and the applicant signed the manuscript notes.

77. The applicant was given a full opportunity to deal with issues that, given his experience in respect of the first age assessment, he would have known were of concern. Thus, he was asked where his father went and then whether he knew anything further about his father (he said he did not). The notes dated 10 July 2009 record this:-

“ My father’s enemies used to look for us we used to move to other parts.

Q: What other parts?

A: Whenever my grandfather knew they were coming we would go to another city.

Q: How long would you stay there?

A: Sometimes months, sometimes weeks.

Q: How come you did not tell that to Liz when she asked about any events prior to [your] journey to the UK?

A: Because I did not understand the question. Can I change the answer now. ”

78. We also note that in the July 2009 assessment it is recorded that “We discussed with [applicant] that if he said something different than what he had previously stated we could draw out these discrepancies and this would affect his credibility in maintaining his age. [Applicant] said that he understood” (tab 16/2).

79. Overall, we are entirely satisfied that no procedural fairness issue arises, such as to cause us to limit the way that we might otherwise put on the July 2009 assessment.

(f) “Stock stories”

80. Mr Suterwalla criticised Mr Singh’s assessment for saying this:-

“ During the assessment [applicant] informed us he was 12 years of age. He knew this because his mother told him his age seven years ago when his father went missing. Then he said he knows he is 12 years old because his mother told him before he left Afghanistan. I have age assessed a number of Afghan males and a very high proportion state their mothers told them how old they were a short time before leaving their home country. This sounds like a stock phrase and I wonder whether the agent’s advise individuals to say this. ”

81. Mr Suterwalla submitted that this passage demonstrates that Mr Singh “dismissed [the applicant’s] account of how he knew his age without considering it properly... it would appear he was predisposed to reject [applicant’s] account because his case was that [applicant’s] claim was a ‘stock phrase’”.

82. We do not consider that the passage just quoted in any way shows that Mr Singh had made up his mind about the applicant, on the basis that he had heard the same story before about Afghan males not knowing their ages until their mothers told them, shortly before departure. Both this Tribunal and the First-tier Tribunal have heard such evidence, many times. It is, however, plain from the January 2009 assessment, and the rest of the evidence involving Mr Singh, that he assessed the evidence holistically. It cannot properly be said that the rhetorical question he posed caused him to reject out of hand evidence probative of the applicant’s claimed age.

83. In any event, there is no indication in the July 2009 assessment of Mrs Bazurto that she regarded the applicant's evidence regarding what his mother had allegedly said as destructive or even damaging of his credibility. On the contrary, Mrs Bazurto and Ms Cant went into great detail with the applicant as to his account of his experiences in Afghanistan.

(g) "Badgering" the applicant

84. Indeed, the applicant complains that he was, in effect, badgered by the social workers during his age assessment questioning:-

" 31. When I met the social workers, I felt that they asked a lot of questions which were quite complicated and many of them I could not answer. Whenever I would not be able to answer their questions I would simply tell them that I did not know. However they did not accept this and made me guess at answers. When I would guess, which sometimes was not until they had asked the same question 4 or 5 times, they would just accept the answer as if I was certain of it. They would never ask me how I knew the answer even when it was clear that I did not.

32. ...during the interview, the social services would ask me a lot of questions which I could not provide answers to. These largely involved precise dates and places in which events occurred throughout my life, such as when I went to live with my maternal grandfather and when I left Afghanistan. Whenever I was asked a question which I could not give an answer to, I would explain honestly that I did not know. The social services would not accept this and would ask me the same question again and again demanding a precise answer. "

85. We will shortly look in more detail about certain lines of questioning by Mrs Bazurto. However, having had the opportunity of observing the applicant, Mr Singh and Mrs Bazurto give evidence to us, and having regard to the fact that we are being asked to consider interviews that took place in 2009, we do not consider that there is any realistic possibility that the applicant's performance at those interviews was adversely affected by oppressive questioning on the part of the social workers, or that the applicant was otherwise unfairly treated by them. Mrs Bazurto expressly accepted in oral evidence that dates and times are not important in Afghan culture. We are fully satisfied that, in conducting the July 2009 assessment, Mrs Bazurto had full regard to that matter. As we shall see, in any event, the main concerns about the truthfulness of the applicant's story lay elsewhere.

Credibility issues of concern to the social workers

86. As we have already indicated, our own credibility findings have a degree of overlap with those to be found in the age assessments. However, each of the social workers in charge of the assessments had additional credibility issues with the applicant's account. In deciding whether we can place weight on the respondent's assessment of the applicant's age, the Tribunal is not required to determine in respect of each such issue, whether we would or would not take exactly the same view as the social workers. Rather, it is necessary for us to consider whether any of the criticisms advanced on behalf of the applicant is such as to lead us to the conclusion that any weight that we might otherwise place on the age assessments falls to be reduced.

(i) Speaking Urdu

87. Mr Singh, who speaks Urdu, noted that the applicant asked if he could speak Urdu with him, in order to communicate without the need for an interpreter. According to the applicant, this led Mr Singh to insinuate that the applicant does not come from Afghanistan. During questioning of Mr Singh

at the hearing before us, Mr Suterwalla asked Mr Singh if Pushtu and Urdu might be similar. Mr Singh said they might; but we have not been furnished with any objective evidence on this issue.

88. In any event, we consider the matter to be of no material significance. As Judge Robertson noted at [55] of her determination, Mr Singh's "view as to the country of origin does not appear on the list of factors on which the conclusions [of his age assessment] are based, which are set out on page 7".

(ii) Tattoo

89. The social workers noted a tattoo on the back of the applicant's left hand, which he stated was done by his mother. Neither Mr Singh nor Mrs Bazurto considered the presence of this tattoo to be compatible with the applicant's claimed age on arrival. Although we have not chosen to place any weight on this issue in assessing credibility, we do not find that the applicant has demonstrated that it was unreasonable for the social workers to do so. Both Mr Singh and Mrs Bazurto have significant experience of dealing with young Afghan men. They plainly considered it unusual for a person of the applicant's claimed age to have been tattooed, and to have had this done by his mother. Again, their view does not materially impact upon the weight to be given to the age assessments.

(iii) Inconsistencies identified by Mrs Bazurto

90. On page 7 of the July 2009 age assessment, Mrs Bazurto set out what she considered to be inconsistencies in the applicant's story. The first related to where the applicant was born. Mrs Bazurto observed that the applicant had said he was born in Suliki (Paktia province) but later said he was born in Mirzaka, in Gardiz province. When asked about this in oral evidence, Mrs Bazurto said that she understood Mirzaka and Gardiz were different districts within Paktia province.

91. The applicant has declined to put forward any objective evidence on this matter. In the circumstances, he cannot be heard to say that Mrs Bazurto has unreasonably taken a point against the applicant's credibility.

92. Mrs Bazurto noticed clear discrepancies in the evidence regarding when the applicant had moved, after his father's alleged disappearance, and whether he knew how old he was when this happened. Mr Suterwalla submitted that "it would be unsurprising if there were not some inconsistencies in his account". This touches on the criticism that the respondent's social workers had allegedly been predisposed against the applicant. We reject that submission. Having heard Mr Singh and Mrs Bazurto give evidence, and having regard to their professional qualifications, responsibilities and experience, we do not believe this to be the case. It does not, however, mean that they were obliged to agree with the applicant's claimed age, in the face of compelling evidence to the contrary.

93. Likewise, Mrs Bazurto was entitled to find that there was a conflict in the evidence regarding how and when the applicant came to know of the alleged activities of his father. We have already noted the discrepant evidence regarding the circumstances in which the applicant was burnt. He now asserts that he was burnt various times during his trip. However, Mrs Bazurto was specific in her evidence to us that she referred to the visible burn on the applicant's arm and it was about this particular burn that he was questioned.

(iv) The vagueness of evidence regarding childhood

94. On page 7 of the July 2009 age assessment Mrs Bazurto said this:-

" Taking into account that [applicant] was given several opportunities to provide details of his story and that social workers explained to him several times the importance of getting as much information

as possible [applicant's] responses to many of the questions about his story and age [were] limited to 'I don't know' or 'I don't remember' i.e. when trying to make a timeline and social workers asked about significant details of his life. "

95. Mr Suterwalla spent some time in cross-examination of Mrs Bazaruto in an attempt to suggest that the applicant had, in fact, provided appropriate information. Mrs Bazaruto was, to some extent, hampered by the fact that her colleague, Elizabeth Cant, with whom she had conducted the July 2009 assessment, subsequently left the employment of the respondent and Mrs Bazaruto's own manuscript notes did not reflect the totality of what had been asked and answered. Mrs Bazaruto's recollection of events, however, struck us as generally (and genuinely) good and we accept her evidence that, when questioned about what he did as a child, following his father's alleged disappearance, and what memories he had of that time, the applicant was unforthcoming and had to be pushed to say even such generalised things as he eventually did; for example, that he played with his brother. Mr Suterwalla submitted that, following the father's disappearance, the applicant's life may, indeed, have been genuinely boring. However, even (or, perhaps, particularly) if a child is confined to the house for six or seven years from age 5, that child is likely to have memories of specific events, even if these are mundane by objective standards.

96. It is, perhaps, in relation to this line of questioning that the applicant's statement complains of being asked more than once to give answers that he was unable to provide. If so - and it strikes us as highly likely - then the applicant was not being asked anything that assumed any inappropriate knowledge of dates.

(v) Reasons for leaving Afghanistan and emotions on leaving

97. In the July 2009 age assessment, Mrs Bazaruto stated as follows:-

" Social workers asked [applicant] about how he felt when he was told he had to leave Afghanistan and he stated that he was happy to go to the UK and get an education which contradicts the fact that he had to leave in order to escape his father's enemies. Social workers asked how he felt about travelling alone to the UK; if he felt scared, happy, sad or any other feeling towards the journey that he was about to take. [Applicant] stated that he was not scared because he did not know what was happening. When asked again he stated that he was happy ."

98. Mrs Bazaruto commented that:-

"It was hard to believe that a child aged 12 would not have been scared or have any feelings of anxiety towards a journey to the unknown. In addition you would expect a child aged 12 to have feelings of separation and loss given the fact that he spent most of his life in a closed environment not leaving the house and totally dependent on his mother; you would also expect a child aged 12/13 to display signs of anxiety about not knowing his family's whereabouts which has not been the case [applicant]. "

99. We do not accept that Mrs Bazaruto has recorded this exchange inaccurately. Whilst the applicant has asserted that there were two reasons for him to come to the United Kingdom: to escape retribution at the hands of his father's enemies and to receive an education, the social workers were entitled to regard it of significance that it was the education aspect that featured in the applicant's answer to them. Most strikingly, the applicant evinced no sadness or alarm at the thought of leaving Afghanistan. However, by the time of his statement in 2010, the applicant said, "I was very scared of having to leave my family because I was so young but they told me I had to go with the agent as it was

the only way that I would be safe and because of my age I did what they told me” [13]. If that was the truth, it is difficult to understand why the applicant did not say so to Mrs Bazurto. Again, the applicant has failed to show that the respondent was not reasonably entitled to say what is recorded on page 4 of the July 2009 assessment.

Coda: Information from mother that applicant was 12

100. It is entirely obvious that the present proceedings involve the applicant’s challenge to an assessment of age by the respondent, which in turn inevitably involved the conclusion that the applicant has lied to the respondent’s social workers about his age and that his account of his life in Afghanistan is thoroughly unreliable. That was the stance adopted on behalf of the respondent by Mr Cowen at the hearing.

101. In his closing submissions, Mr Suterwalla submitted that it was not the respondent’s case that the applicant “was lying when he said he had been told his age by his mother” and that there had been no cross-examination on this issue. There were, however, questions from the Tribunal regarding the record in the February 2009 assessment that the applicant knew he was 12 “because his mother told him his age seven years ago when his father went missing”. The applicant sought to explain that by saying it was his mistake and that he meant his brother was 7 years old at the time the applicant left the country.

102. Mr Suterwalla attempted to advance the proposition that, in the absence of direct cross-examination on the issue, there was “unchallenged evidence of how [the applicant] came to know his age and what he was told by his mother”. Mr Suterwalla said this dictated that the applicant’s account of his age should be accepted.

103. Mr Cowen took strong exception to this submission. He contended that the respondent’s case was clear. He had challenged the honesty of the respondent’s claim to his age in cross-examination and there was no duty to put each and every point.

104. We have no hesitation in agreeing with Mr Cowen in rejecting Mr Suterwalla’s submissions on this issue. No procedural fairness matter arises. The applicant has been aware for several years of the nature of the case against him, concerning his age. He will have realised that the respondent did not believe the age allegedly told him by his mother. If the respondent had believed him, there would have been no need for the present proceedings. Furthermore, the applicant’s claim to international protection was rejected by Deputy Upper Tribunal Judge Robertson in an undisturbed determination, in which she found that the applicant was not a credible witness by reference to the issue of age:

“I find that he was well aware that if he were found to be over 18 years of age as a result of the age assessment there would be implications in terms of the care that he would receive. I find that his account of his life in Afghanistan lacked credibility... I find that his account was concocted to support his asylum claim”.

As with the respondent’s stance, this finding of the judge inevitably involved a refutation of the truth of any information as to age allegedly imparted by the applicant’s mother shortly before his departure from Afghanistan.

105. In all the circumstances, the submission that fairness “dictates that [the applicant’s] account of his age is accepted” because of what his mother is said to have told him is entirely devoid of merit.

G. The Tribunal’s assessment of the applicant’s age

106. It is necessary to take stock of the position we have reached. There are very serious problems with the applicant's credibility, such that his word cannot be relied on. The respondent has assessed the applicant's age, in the decision under challenge, as "18 plus" in July 2009, ascribing him the notional date of birth of 1 January 1991. This date of birth is not, we consider, incompatible with the assessment carried out in February 2009 by Mr Singh. As emerged in oral evidence, Mrs Bazurto's and Ms Cant's task was to determine whether the applicant was over the age of 18, not to assess by how much the applicant was over the age of majority. The effect of ascribing the notional date of birth of 1 January 1991 is, nevertheless, to put the applicant in the position of being – just – under the age of 18 when he arrived in Birmingham in December 2008.

107. Besides rendering the applicant's account unreliable, our credibility findings have a second function. Leaving aside cases of mental illness or infirmity, a person who lies about their age must be doing so for a reason. In the present case, no reason has been advanced for the applicant's lies, other than that he considered it would be to his advantage, if he were to be treated in the United Kingdom as a child (i.e. a person under the age of 18). Indeed, one of the applicant's stated aims was to come to the United Kingdom for an education. Given the sophistication of the operation that brought the applicant from Afghanistan to Birmingham and then provided assistance to him there, it is highly likely, in our view, that the applicant arrived in the United Kingdom, fully aware of the fact that, if he were found to be under 18, he would receive material assistance at public expense.

108. All this has a bearing on why the applicant claimed to be 12 rather than, say, in his mid teens. In all the circumstances, we consider it more likely than not that the applicant either already knew or was informed by those responsible for smuggling him, that a possible effect of claiming to be significantly younger than he was would be that a relevant decision maker would eventually conclude that, although not 12, the applicant was still significantly below the age of 18, and that this would enable him to secure greater advantages than if he were to be found to be only marginally under the age of 18. We do not consider that this is speculation. On the contrary, we consider it would be naïve to assume that those who have the means to bring a person from Afghanistan to Birmingham are unaware of such matters and do not advise their clients accordingly.

109. Indeed, this is precisely what happened in the applicant's case. In 2010, Judge Robertson, although finding the applicant not to be a witness of truth both as to his claim to be in need of international protection and as to his claimed age, nevertheless found that he was then 16 (instead of 14) years of age. This resulted in the applicant being granted leave to remain, with all that that entails.

110. Mr Suterwalla urged us to have regard to the fact that two judges had found the applicant to be younger than the age assessed by the respondent, and to make our finding in line with them. Judge Juss's determination was, however, set aside in its entirety and it would be inappropriate to regard it as reliable on any matter. Judge Robertson's finding on age was reached without the benefit of the full range of evidence available to us, which includes the oral evidence of the social workers. She also took into account the report of Dr Birch ([15] of the determination). We see no reason to follow Judge Robertson's finding as to age.

111. Accordingly, we find that the applicant's lack of credibility points strongly towards him being above or very close to attaining the age of maturity, when he arrived in the United Kingdom.

112. For the reasons we have given, we reject the spirited attempts that Mr Suterwalla has made on behalf of his client to diminish the weight to be placed on the respondent's age assessments. We consider that we should place weight on the following matters.

113. It is a feature of both assessments that the social workers in question (and other professionals who had had contact with him at the children's homes) considered the applicant's appearance and demeanour to be strongly indicative of someone significantly older than 12. So far as the first assessment was concerned, this was not just the view of Mr Singh but also of his manager, Ms Hall (tab 15/3). They formed this impression from the applicant's body language and interactions, such as "confrontational staring when asked for clarification of his life in Afghanistan". There was also a marked degree of sophistication in the applicant's threat to destroy his ID card and the response, when told that he might require it to show to the police, that "that was alright as he would tell them he was in a children's home".

114. In the July 2009 age assessment, social workers observed the applicant as "comfortable when speaking to adults but was irritated and impatient when asked about details of his life in Afghanistan". We have taken account of the fact that, in places, the assessment might suggest childlike behaviour on the part of the applicant; such as that he "would fidget often and lose concentration" (tab 16/2). However, the clear picture that emerges from the professionals is that the overall impression given by the applicant was far more indicative of a young adult; e.g. becoming "impatient when we asked to give more details and be more specific about his story" and appearing "quite arrogant", as well as not showing "any sign of worry or vulnerability when we explained that by not giving us clear information he could undermine his age assessment". The conclusion of Mrs Bazurto and Ms Cant was that the applicant's "confidence and unphased passive attitude reflected that of an adult rather than a minor".

115. In having regard to these matters, it is important to observe that the respondent's template specifically reminded the social workers, amongst other things, to note both the verbal and non-verbal behaviour of the person; to take account of differing cultural terms; to be aware of cultural variations in attitudes to elders; and to keep in mind that the position of the social worker "will be seen as one of power", which may influence the way the person interacts with you".

116. Both of the age assessments dealt with physical appearance. Mr Suterwalla criticised the emphasis which he said that Mr Singh, in particular, had placed upon this issue. We agree that there are, plainly, dangers in placing too much emphasis on one's impression of the physical appearance of an individual, in assessing his or her age. That said, and having heard both Mr Singh and Mrs Bazurto, we do not find that either of them placed undue emphasis on this matter. We have dealt already with the issue of shaving. Added to this was the fact that, as noted by Mrs Bazurto, the applicant had expression marks and a mature tone. Mr Singh noted the applicant's voice, which he regarded as mature. The applicant says of this in his statement that "I do not remember my voice ever changing throughout my life and think that it has always been the same" [29]. We accept what the social workers said on this matter.

117. We also consider that our findings regarding the applicant's ability to live an independent life fall to be viewed in the round with demeanour, interaction and appearance, in deciding the applicant's true age. We note that the applicant has identified two individuals who, he says, would have been about the same as his claimed age in 2009, and with whom he said he was associating. We are prepared to accept that this may be the case; but we reject the applicant's claimed relationship with these persons as the sole or main reason for his surreptitious telephone calls. The fact that the applicant may have had some interaction with them does not, in all the circumstances, point to his being the same age as them.

118. We also find that the conclusions of the social workers accord entirely with our impression of the applicant, in giving his evidence to us. Having reminded ourselves of other possible factors, such as

ethnicity and cultural differences, the applicant's physical appearance, comprehension and demeanour were each indicative of a person in his early twenties.

H. Conclusion

119. Taking account of all the evidence, we find that the applicant's date of birth is 1 January 1991. We make a declaration to that effect and will hear Counsel if they cannot agree the format of that order or the terms of any further order sought, in particular on the issue of costs.

A handwritten signature in black ink, appearing to read 'Peter Lane', with a stylized flourish at the end.

Signed

Date: 27 February 2013

Upper Tribunal Judge Peter Lane