



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

R (on the application of YK) v Birmingham City Council (AAJR) [2013] UKUT 00565(IAC)

**Heard at Field House**

**On 20 and 21 March 2013**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**QUEEN ON THE APPLICATION OF YK**

Applicant

**and**

**BIRMINGHAM CITY COUNCIL**

Respondent

**Representation :**

For the Applicant: Mr B Bedford, instructed by Sultan Lloyd Solicitors

For the Respondent: Mr J Cowen, instructed by Birmingham City Council

**JUDGMENT**

**A. Introduction**

1. The applicant claims to be a child from Afghanistan who was aged 14 when he came to the United Kingdom in or around May 2010. The respondent alleges that he initially said he was 16 years old and later said he was 14 years old. The applicant says that he has always said that he was aged 14 when he arrived in the United Kingdom. He was accepted into the care of the respondent on the basis that he was a child. There was a screening interview on 3 June 2010 at which point the UKBA disputed the claimed age. However, on 19 July 2010 the UKBA treated the applicant as a child for the purposes of his substantive asylum interview. His asylum claim was refused on 27 August 2010.

2. On 3 September 2010 the respondent carried out an age assessment, concluding that the applicant was over 18 years old. The applicant was given the outcome of the age assessment on 8 September 2010. On 9 September 2010 the council sent a "Merton compliance pro forma" to the UKBA informing them that the applicant had been assessed as being over 18 years old with a date of birth of 1 January

1992. On the same day the applicant was referred to the Refugee Council for NASS support as an adult.

3. The applicant was assessed by Dr Diana Birch on 1 October 2010 and she concluded that his stated age of 14 years and ten months was likely to be correct. The applicant lodged an appeal against the refusal of his asylum claim and the case was heard by First-tier Judge Chohan on 14 October 2010. He dismissed the appeal but deemed the applicant to be a minor, finding no reason to depart from Dr Birch's report. In a letter dated 23 November 2010 the UKBA granted the applicant discretionary leave to remain based upon the First-tier Judge's determination. A review of the age assessment was undertaken, taking into consideration Dr Birch's report and the findings of the First-tier Judge. This review was concluded on 25 January 2011. The respondent maintained its view that the applicant had been born on 1 January 1992.

4. Following the decision of First-tier Judge Chohan, the applicant was granted permission to appeal that decision, and in a Rule 24 reply dated 15 December 2010 the respondent accepted that the First-tier Judge had erred and requested an oral hearing in order for the appeal to be remade. The appeal was reheard by a Deputy Upper Tribunal Judge who allowed the appeal as not being in accordance with the law on the basis that he found that the respondent had not complied with the obligations set out in Regulation 6(1) of the Asylum Seekers (Reception Conditions) Regulations 2005. Permission to appeal was granted against that decision and by consent the appeal was allowed to the extent that it was remitted to the Upper Tribunal for a fresh hearing of the asylum claim. The appeal was heard before a panel of the Upper Tribunal on 14 February 2013, and the asylum appeal was dismissed.

5. On 5 October 2011 a preliminary issue was heard in the case of the applicant and another person (JS) on the question of the impact of decisions remade under the Immigration Acts, on the course or outcome of proceedings for judicial review against the local authority. The Tribunal concluded that the respondent had not followed its policy, had not given any good reason for departing from it but had simply adopted and maintained an age assessment which was different from that adopted by the Secretary of State. The Tribunal quashed the respondent's decisions, leaving it to apply its policy and differ from the Secretary of State's assessment only by following the procedure in the protocol.

6. Subsequently, the Court of Appeal allowed the Council's decision against the decision of the Tribunal in the applicant and JS's cases. The Court ordered expedition of the final hearing in the applicant's case as well as in the case of JS and that of a third applicant Kadri.

7. The applicant had sought an adjournment of the hearing in light of an application he had made to the Supreme Court for permission to appeal the Court of Appeal's decision. This was refused in directions issued by Upper Tribunal Judge McGeachy on 13 March 2013. Insofar as that application was renewed before us, it was refused. The Court of Appeal had ordered expedition and we saw no reason to await the outcome of an application to the Supreme Court, which itself quite apart from any hearing, if permission were granted, could be a matter of many months.

### **The Age Assessments**

8. Following an initial assessment, which was completed on 3 June 2010 by Charles Brewster, a former employee of the respondent, Mr Brewster and Mr Swaran Singh carried out an age assessment on 3 September 2010. We shall say more about the detail of that assessment in due course. For now it suffices to say that Mr Singh and Mr Brewster concluded that the applicant's physical appearance, features and demeanour strongly suggested he was older than his stated age of 14 years, though they noted many discrepancies in the accounts he had given and seriously questioned the accuracy of the

information stated by the applicant and as a consequence questioned his stated age, whether that was 14 or 16. It was concluded that he was significantly older than 14 years of age and well over 18 years of age, making him an adult. His date of birth was estimated to be 1 January 1992.

9. After the assessment carried out by Dr Birch, and after the decision of the First-tier Judge who dismissed the appellant's appeal but accepted his claimed age, a review of the age assessment was undertaken, taking into consideration Dr Birch's report and the judge's findings. This was carried out by Mr Singh and Ms Kanta Chauhan. The conclusions in a report written by Sally McDonagh, the operations manager at Urgency housing organisation, the parent company of Greenway where the applicant was accommodated, concerning his physical features, behaviour and interactions were taken into account. It was concluded that it was on the balance of probabilities more likely that he was an adult than a child.

### **The Law**

10. Following the judgment of the Supreme Court in *R (A) v Croydon LBC* [2009] 1 WLR 2257, our task in this case is to resolve the issue of the applicant's age, as a matter of fact. In carrying out this exercise we must in effect 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) v London Borough of Croydon* [2012] EWCA Civ 547 and *R (CJ) v Cardiff VC* [2011] EWCA Civ 1590). It is clear that there is no burden of proof in proceedings such as these. We have to decide on the balance of probabilities what age the applicant is.

### **The Evidence**

11. In addition to the age assessments, we have a statement from the appellant, and also a statement from Mr Singh with a number of exhibits. We also have the initial report of Dr Birch and a supplementary report that she has provided. In addition there is an independent social workers' report provided on behalf of the applicant, as a consequence of assessment of the applicant's age by John Cooke and Muhumuza Arthur. Mr Cowen opposed allowing in both Dr Birch's second report and the independent social workers' report, but we could see no good reason not to do so, and consequently they form part of our consideration of the issues in this case. We also heard oral evidence from the applicant, from Mr Singh and Mr Cooke.

#### **(a) The applicant**

12. We will set out first the evidence of the applicant. We did not hear from him until after we had heard from Mr Singh, since there had been a mix-up as to who was to pay for his rail ticket, and he was not able to arrive until after lunch on the first day of the hearing. In oral evidence he adopted his written statement, which is dated 12 March 2013. He referred in the statement to the difficulties he experienced while travelling to the United Kingdom. He said that he had entered the country by lorry and tried to wave to cars to stop and eventually a car stopped and the driver said he would help him. The driver spoke to him in Pashtu. The car was stopped by the police and the applicant said that he got out of the car and moved away a little and the police called to him and as he could not give them an address he was taken to the police station. He was then given an interpreter and said that he told him his name and his age, 14 years. He did not remember in detail the questions he was asked but he gave his name and age as his father had told him and said that his mother had died about a year and a half ago. At the end of the questioning he was taken to a hostel where there were other young people and children. He stayed there for a few days and then was taken to the Home Office for an interview. He thought that this was the screening interview. After that he was taken to a different hostel and the

next day Swaran Singh came to see him, told him he was a social worker, through an interpreter, and asked him questions.

13. He referred to the age assessment on 3 September 2010. He said he was seen by the social worker at the hostel and did not have anyone with him in the assessment. He said he was feeling upset because he was missing his family and was scared during the assessment because he did not really understand what was going on but tried his best to answer the questions.

14. He commented on the age assessment report and Swaran Singh's notes as follows. He denied telling the police that he was 16 and changing this to 14. He denied saying that his mother had ever told him his age. He said that his mother had been dead for a long time and he had said this when he was interviewed and this was noted in Swaran Singh's handwritten notes. He said that the height recorded by Swaran Singh in the notes of 4 June, 5'11", was not right as he was not that tall when he first arrived in the United Kingdom, as confirmed by a later measurement of 176cm. He denied having had facial hair at that time, contrary to what was noted by Swaran Singh.

15. He denied saying that the driver of the car that he had stopped had taken him to the police station. He denied not showing signs of anxiety or distress as recorded in the age assessment report. He said he was anxious and scared during the questioning. He said that he did not believe that he was inconsistent and constantly changing his story during the interviews. He said that he gave the same information when he was questioned by the police, the social services and the Home Office. He confirmed that in Afghanistan age and dates of birth are not commonly known by children and even some adults because it is not important. It had never been necessary for him to know his age. With regard to the Taliban commander contacting his father he said this was done via a radio and that his father did not possess a mobile phone so there was no way he could have kept in contact with him.

16. As regards the details of his family members, he said that in the screening interview he had said that his sister was about a year and four or five months old when he left Afghanistan rather than the four years that had been written down, and he said that this was a mistake on the part of the Home Office. He had only given approximate ages for his brothers, when pushed, as he had thought them to be. He had never said that his sister was four to five years old. He said that his mother died in childbirth one and a half to two years ago and that his sister was therefore between one and a half and two years old. He had not been able to give his siblings' ages without hesitation. With regard to the assessment referring to him being able to cook and look after himself, he said that before his mother died his father used to be away for long periods and he used to be at home with his mother and helped her a lot around the house with the cooking and shopping. He said that this was confirmed in Swaran Singh's notes. After his mother died and as his elder brother was still missing he had to take responsibility for himself and his younger siblings as his father was still away from the house and therefore he had some basic skills around the house and kitchen but was not confident with those skills as was presented in the age assessment report. He had been assisted by another Afghan boy at the hostel on how to use the cooker and the washing machine. He did not accept the conclusions reached by Mr Singh and believed that Mr Singh had taken information from his asylum claim and tried to use it against him in relation to his age.

17. He said that after it was concluded in the age assessment that he was 18 years old he was taken to a hostel where adult asylum seekers lived. He was very upset and scared and felt alone and vulnerable. He said that because he had been granted discretionary leave to remain in light of the First-tier Judge's decision, he was told by NASS that they would not support or accommodate him any

longer, and after an application was made to the High Court he was allowed to go and live at the Greenway hostel for children. This was on or around 10 January 2011.

18. With regard to the age assessment review carried out by the respondent, the applicant said that he was seen at the hostel by the social workers on two occasions he thought, but he could not remember exactly how many times they spoke to him because they used to come regularly to the hostel and speak to him even if they had come to see someone else. He said he did not have anyone with him during the assessments. He considered that the report again appeared to rely largely on information taken from the asylum claim, which the First-tier Judge had said was the wrong thing to do. With regard to the report noting that he used to go out to the city centre and walk around most of the day, he agreed that he used to do that because if he stayed at the hostel he got bored. He denied that he had not developed close bonds with other young people in the hostel, commenting with regard to what was said by Sally McDonagh that he had only been at the hostel for about ten days when she wrote her letter. He said that later he did make friends at the hostel and sometimes they used to go out together to the city centre and at other times he would go out by himself and meet other people. He denied being secretive or defensive about this and said he could not give his friends' telephone numbers and addresses out without their permission and they had not wanted him to give this information to anyone as was their right. He also disagreed that he had ever become irritated by spending time with people aged 16 to 18 years. He said that he had developed good friendships with some of the other boys over time and made several friends with whom he still kept in touch even though he did not live at that hostel any more. He denied having asked for an additional bank account. He also disagreed that he had not attended the life skills program at the hostel and said that in fact his attendance on the course was noted as "yes" in Swaran Singh's notes. He said that he attended and learned how to manage money/budget, how to deal with emergencies, how to cook and prepare food and how to use appliances etc., but he had also learned similar skills at the previous hostel and did not feel that he needed to attend all the classes.

19. He confirmed that he had been shaving for about a year at the time of signing the statement but was not shaving before that and disputed that he had been shaving at the time that the second age assessment was conducted or at any time prior to that and said that even now he usually only shaved once a week.

20. He also referred to the holiday to Pakistan he went on with a friend in November 2012. His friend had said he was going to Pakistan for his friend's wedding and he suggested he go with him. His friend, Bakhtiar, had said that friends would help him with the money and he could pay them back when he had money in the future. He was helped by two of his friends, Sameer and Askar with the money from the trip. He had applied for his passport early in the year when one of his friends from college had said he might be going to the embassy in London with his uncle to get a passport and thought it would be a good idea for the applicant to do so also. He had gone to the Afghan embassy in June 2012 with his friend and uncle and applied for his passport. His friend's uncle had filled out the application form for him by asking him questions about his family, where he was born and how old he was, and he also had to show his discretionary leave to remain residence permit. He and Bakhtiar had gone together to get a visa to travel to Pakistan. Bakhtiar had filled out the forms at the consulate and the visa was issued. He did not know what Bakhtiar gave as the applicant's reason for visiting Pakistan but he might have said it was to visit family as the listed reasons on the form were not very extensive. They had stayed in Pakistan for a few weeks and Bakhtiar's friend was married and he attended the wedding with Bakhtiar and the rest of the time they met other people Bakhtiar knew and

went out to see sights. He had made enquiries in the community about his own family but no one had heard that they were in Pakistan. He had returned to the United Kingdom on 13 December 2012.

21. When the applicant gave oral evidence and adopted his statement, he was cross-examined by Mr Cowen who put it to him that he was at least 21. He said that he was about 17 and it was up to Mr Cowen what he wanted to say and his father had told him how old he was. He told him that when he was coming to the United Kingdom and not previously.

22. He was asked why, with reference to what was recorded at page 212 of the bundle, he was recorded as having said to the police that he was 16 and said he did not know. It was made clear to him that this was what Mr Singh said Mr Brewster had told him. It was not correct that he had changed his claimed age to 14. He also denied saying his mother had told him to say he was 14. His father had told him and he had told them that. He also denied having given the reasons that were set out there for coming to the United Kingdom, to receive an education and going to school. He had not been to college in the United Kingdom, having attended very rarely.

23. He was asked whether he had started shaving when interviewed in May 2010 and said not it was about a year after that that he started shaving. He was referred to what Ms McDonagh had said as recorded at page 190 of the bundle, that he had an evident and well-developed shaving shadow suggesting that he had been shaving full face for a significant period of time. This had been in January 2011. He said that he did not have any beard at that time. It was put to him that Mr Singh said he recalled when he had first interviewed him that there was evidence that he was shaving and he said "no Mr Singh was lying" and he could not accept that. He was asked whether Ms McDonagh was lying as well and said "no that was not true".

24. He was referred to paragraph 4 on the first page of Ms McDonagh's report where she said that he regularly went out early in the morning and came back late at night, occasionally staying out overnight, and was asked where he went and he said he was going out with his friends. He was asked why he went out early in the morning and said it was as he was getting bored there. It was put to him that the truth was that he was going out to work and he said that that was not the case. He was asked who the friends were and he said they lived in the same hostel with him, and when asked to give names mentioned Izad, Nazar and others. He said he had other friends who were not living in the hostel. When he went out they went wherever they wanted, to the city centre and other places. As to why he went out early a.m. he said it was as they would call him so he would go out. He was referred to Mr Singh's witness statement at paragraph 23 recording that when he was accommodated at Greenway he did not participate in the life skills training program, and he said he did participate. It was put to him that he had not and that he had left early, came back later, made his own meals and was self-contained. He said they gave them some sheets and during the night he did training. He was referred to the age assessment report and what was said by Marcia Anderson on 17 January 2011, as recorded at page 160 of the bundle, that he had not engaged in the life skills program because he left the building very early in the mornings and returned late in the evening and on return he prepared his own meals. He was asked whether that was correct and he said that he did participate in the program, sometimes during the day and sometimes during the night. He said he did cook some meals. It was right as recorded in respect of 17 January 2011 at page 159 of the bundle, that he went out practically every day to meet his friends in the city centre and just roam around.

25. He was asked why he wanted two bank accounts and said he had not had two bank accounts and only had one. He said he had not wanted two bank accounts. With regard to what was recorded at paragraph 24 of Mr Singh's statement, he moved to Broadway (semi-supported accommodation) on 31

March 2011 as he did not require any assistance living independently and he said this was not true and he had not wanted to go there but Mr Singh had said he had to go there. He was referred to paragraph 30 of Mr Singh's statement where on 12 October 2011 he was recorded as requesting his own flat and on 22 November 2011 requesting his own flat or a foster placement. It was put to him that he had wanted to live independently. He said yes he did ask for the accommodation.

26. He was referred to paragraph 42 of Mr Singh's statement and was asked how he had supported himself financially since November and whether what was said at paragraph 40 was correct about him leaving his accommodation and not collecting financial support or responding to telephone calls. He said that he had gone to Pakistan then with his friend. He was asked how he had supported himself financially when he went to Pakistan and said it was the Pashtun tradition wherever you went they provided you with food. He was asked how he had paid for the travel and said he had taken the money from two of his friends. It was put to him that he had been working in the United Kingdom and that was why he had the money and he said it was not true and if he had had that money why he would borrow from friends.

27. That concluded the appellant's evidence.

**(b) Mr Singh**

28. Swaran Singh has provided a witness statement with a number of documents exhibited to it. He is employed as a senior social worker with the respondent. He currently works with the unaccompanied asylum-seeking children's team – no recourse to public funds team, and has been doing so since November 2004. He is the most senior social worker in age assessments for the respondent. He is aware of the Merton guidelines and applied them when doing age assessments. They had a pro forma. It was usually carried out with another person.

29. He had no reason to believe that the applicant might be younger than the estimated date of birth. He and Mr Brewster had deemed him to be over 18. He was asked whether he could be older and said yes, 18 upwards. Mr Singh had thought he was in his 20s at the time of the interview.

30. The further review had been carried on 25 January 2011. This kind of review would be carried out when new evidence was presented to them and they needed to look at the age in the light of that. The new evidence comprised Dr Birch's report and the First-tier Judge's findings about the applicant's age. Their conclusion, set out at page 261 of the bundle was that he was over 19 and they saw no reason to depart from the earlier decision.

31. Exhibit 9 was the report by Sally McDonagh. Mr Singh accepted from the fax date that it would have been sent on 21 January 2011 and that was the date they had accommodated the applicant. It accorded with his observations and conclusions about the applicant's behaviour and demeanour as relied on in the assessment. The measurement recorded at page 200 was carried out by the nurse, Julie Ellis, on 19 May 2011.

32. Reliance was placed on the entirety of the initial assessment. It had been carried out in accordance with the Merton guidelines, i.e. by two social workers and the applicant was allowed to rest before the assessment. It had been carried out over a couple of visits and he had been given a chance to comment on the adverse findings. Mr Singh stood by the contents and the conclusion. He accepted that it was the case that some of the information had come from other people, for example with regard to the circumstances where the applicant was stopped by the police and the screening interview. It was standard practice to refer to other documents.

33. His initial involvement had been on 4 June 2010. The approximation 5'10" in height he ascribed to the applicant was an approximation and he did not know the metric equivalent. He had most recently seen the applicant about five weeks ago in the applicant's accommodation. He had seen him a number of times over the years. There had been statutory visits and statutory reviews. He had not seen any significant change in his height and it was the same as when he initially saw him. He had not noticed any significant changes in his physical features to cause him to review his decision as to age. With regard to the reference to the applicant having said he was 16 the source was what the police had said to Charles Brewster. There was no further documentary evidence about that of which Mr Singh was aware.

34. He had told Mr Singh he was from Holbesat. He had checked this on the internet. It had not shown up that this village was in Khost province. It was the case that therefore the information the applicant had given was inaccurate. With regard to the comment at page 214 about the applicant frequently backtracking to change his version of events, what he had checked about the village and so on was relevant to this. The point at the top of page 215 referred to Mr Singh not having been able to locate the district his village was in and no mention of Holbesat district in the Khost province, something that could not therefore be substantiated from his research.

35. He was asked what he had relied on to conclude as he had about the applicant's age and he said it was his physical appearance, his demeanour and his credibility. He was asked whether he recalled what he had observed about facial hair on the applicant and said that he had facial hair. He seemed to have been shaving. He was asked whether he had referred to that in the report. He could not see it there but it was his recollection now. The applicant had had facial hair and Mr Singh recollected evidence of shaving.

36. With regard to the reference at paragraph 5 on page 217 as to the applicant's sister's age Mr Singh said that the applicant was getting his information mixed up and perhaps not being consistent with his life story.

37. He was asked whether when he came to his conclusion he gave the applicant any opportunity to comment and said yes, he had. He would read the analysis and get feedback. The team manager saw this. There was an interpreter. He had discussed it with Mr Brewster.

38. The applicant had moved on a number of occasions. Over the last three years Mr Singh had seen him on the basis of a minimum of six weekly statutory visits and also on informal occasions. With regard to Sally McDonagh's report and the question of where he would go if he went out fairly early and returned late it could be that he was working. The applicant had been to Pakistan and back with the assistance of friends who were on benefits but managed to lend him, Mr Singh understood, £300. It could be that that person was also working as benefits would not allow for that. The applicant had never given Mr Singh any other information about his finances. With regard to paragraph 44 of his statement Mr Singh said that in respect of the age on the passport, the source would be with the DLR document and he had set out what he was told as contained at paragraph 44.

39. He was asked where the applicant was now living and said it was in emergency accommodation in a hostel. He had been living there for a week or so since he returned from Pakistan in late December/January. This was bed and breakfast accommodation, emergency accommodation, and he had access to a microwave, a fridge and an electric kettle. The previous accommodation had been let to someone else in his absence as there was a priority for women with young children.



40. Mr Singh was asked whether the applicant had been working as far as he was aware. He said not to his knowledge. The hostel took a log of his comings and goings. He had not absented himself. He did not know whether he went out early in the morning. They would consider re-accommodating when a property came available. The applicant asked for alternative accommodation, his own flat or a room in a house. He came into the office since January every Thursday to get his financial support and there were six weekly statutory visits because he was under Section 20 of the Children's Act. Mr Singh had last seen him six weeks ago. The applicant got £35 or so per week.

41. When cross-examined by Mr Bedford, Mr Singh was asked whether he had seen the applicant yesterday in his office and said he had not. Mr Singh had been off ill but he believed he had come to collect his weekly allowance yesterday. He was not aware of any arrangement being made for the applicant to be accompanied to the hearing today by social services. Mr Singh said the applicant had been brought by his representatives to previous proceedings.

42. With regard to the six weekly visits, Mr Singh had seen the applicant a couple of times this year, initially around late December and then about six weeks later in late January or early February. He said that the applicant had been to a number of colleges, he would enrol, get a bus pass and then stop attending. He had referred the applicant to the Connexions team but he had not attended the meeting. He attended South Brighton College in 2011 and he thought he had been there for several weeks and at another college TBG in the autumn of 2011 he thought. Since then they had referred him to the Connexions team in October 2012. He was now living in a bed and breakfast in Bearwood. This was adult accommodation. Mr Singh had visited the applicant there twice, between 2.00 and 3.00 in the afternoon.

43. 52 Church Street, where the applicant had been accommodated before he went to Pakistan, was a two bedroom house and the applicant had lived there with another Afghan asylum seeker. It was accommodation for 16 to 18 year olds. The other person was slightly older, 17 and a half. The applicant had been there from February 2012. He had been at Greenway from January 20 2011 until he went to Church Street. He had visited the applicant there every six weeks. The time of day would vary. It could be 9.30am or in the afternoon. It was put to Mr Singh that Mr Cooke, the independent social worker, said that currently the applicant was essentially sleeping all day and in a low state of mental health. Mr Singh had said that when he had visited him he had said to him that he needed to get into education and he would help him and the applicant had said that he only wanted to do evening classes and he would try and get a job. He said what efforts he had made to help the applicant find a job and said he had referred to him to Connexions in October 2012 and the applicant had missed two appointments. He had said he would find a job through his friends. He said this after he returned from Pakistan.

44. It was put to Mr Singh that he had said earlier in examination-in-chief that the applicant's comings and goings were consistent with him having a job. Mr Singh said this was when the applicant was at Greenways accommodation. He was asked what period of time that was and said most of the time he was there, a year or so. This was speculation however, he accepted. It was connected with him going to Pakistan and having the funds to finance the journey himself. It was put to him that apart from Ms McDonagh's report there was no evidence that the applicant was going out early and returning late at night which was consistent with the pattern of working. Mr Singh said that Ms McDonagh was the operations manager and they would have recorded it. As regards any other basis for his speculation there was the issue of the applicant not attending college for more than a few weeks.

45. It was put to him that in effect the speculation about the job was limited to a period of some fourteen days, i.e. between 7 January and 21 January 2011, Mr Singh agreed. It was put to him that when he conducted the assessment it was his view that the applicant was working and he said it was one aspect. He was asked whether it would have informed his assessment that the applicant was working and he said it was part of the discrepancy that he presented himself as being 14 and he had not been availing himself of care arrangements.

46. He was asked whether it was the case that although he considered that the applicant had been working it had not played a part in assessing his age and he said it was in respect of him leaving early and returning late. It was put to him that his regular visits to the applicant in the morning and afternoon were not consistent with him working and Mr Singh said that they were arranged visits. He was asked whether he suspected that the applicant had not gone to work on those days deliberately and said that he would remain in the unit for Mr Singh's visit.

47. He was asked whether he recalled when he decided that the applicant should leave local authority care in September 2010 and said yes, when he was assessed as being over 18. Mr Singh agreed that he had assessed the applicant. The effect was that he would have to find accommodation with the Refugee Council, via NASS.

48. He was asked whether he would not have expected the applicant to have been upset to have spent four months without a key worker in accommodation for people of all ages, and said that apart from the key worker the arrangement would be the same. He had been found alternative accommodation, he had shared a house. He was asked whether he had not considered it would not have disturbed the applicant's normal patterns of behaviour and he said that was the same routine, just an absence of a key worker. He was asked whether it would not have been that bad and said not significantly different from the accommodation he had moved out of.

49. He was asked whether when the applicant was at Theo Langston accommodation was he getting up early and leaving late. Mr Singh said there was no report of that kind of activity. He was asked whether he had not thought the four months could account for a change in the applicant's life pattern and said he could see the reasons behind it and also the applicant was in independent accommodation with another person in a shared house, and it could be that comings and goings were a consequence of that independence. He was asked whether he was alive to that particular concern and said he would have been. He had not taken it into consideration. He was asked whether it was fair to say that he was frustrated by the fact that the judge had contradicted his assessment. Mr Singh replied no. Part of the assessment was credibility and the judge had found the applicant not to be credible. That did not tie with the story the applicant had told Mr Singh. The question was repeated and he said that it was part of their professionalism and new information needed to be taken into consideration. He was asked whether he had not been upset and replied no. It was his job to take new evidence into consideration and he had not been frustrated on a personal or professional level.

50. Mr Singh was referred to his review, at page 195 of the bundle, which made reference to Dr Birch as being "a fantastic paediatrician". He agreed that the judge had not said that. He was asked why therefore he had put it as the basis of the judge's conclusions and he said that he himself had been present at the review and the judge had attached significant weight to Dr Birch's report. It was put to him that it betrayed frustration and he said it was a paraphrase only. He agreed that it was the case that her report and the judge's decision led to the review. He was asked whether it was not because of the judicial review application that the review had been carried out. The judicial review claim was dated 6 January 2011 and it was put to him that this had prompted the review. Mr Singh said that they

would have had to take the report into consideration. It was put to him that it was because of the judicial review and he said they conducted a further review based on Dr Birch's report and the judge's decision. He was referred to the letter at page 52 of the bundle from the UKBA to the applicant's representatives, and it was put to him that it asked him to review the age decision given the judge's finding. Mr Singh said a number of things were happening then, and that that was part of it. They had been sent the letter. The UKBA were treating the applicant as 14. Mr Singh had received the letter which was at page 53 of the bundle from the UKBA to him. He was asked why he had not done so then and said that there was still legal discussion taking place as to whether they were bound by the judge's findings. It was put to him that he had not responded to the letter and he said he was awaiting the outcome of the legal discussions. He had telephoned Mr Campbell, the author of the letter at page 53, to say that as the assessment stood they were not bound to review until legal discussions had taken place. He had no clear instruction at that stage. He had not replied by letter. There had not been an age assessment of the applicant in November 2010.

51. Mr Singh agreed that it was part of a Merton compliant assessment to put the reasons for believing an applicant was older than they said they were to them. He had done that, as recorded at page 151 of the bundle. He said that the full report reflected the other aspects such as appearance and the information collated. It was the matter of his physical features as well. It was put to him that that was not mentioned at page 150 and he said it was reflected in the final report.

52. It was put to Mr Singh that the judge had separated credibility in respect of the asylum claim from the age assessment. Mr Singh said that it was not the credibility issue and it was an aspect of his report. He agreed that in the judge's assessment the two were kept separate. It was a question of overall matters in their assessment. He was asked whether he agreed that it was not only credibility and he said it was a composite.

53. With regard to page 212 he was asked what he meant by "demeanour" and he said that it was the way an individual interacted with people. As regards the meaning of "physical appearance" it was the outward sign of a person. It was put to him that this was the place on the form to deal with credibility and he said that the boxes were designed for there to be a flow of information and credibility came in. There could be credibility issues here or elsewhere. It was put to him that at page 213 there were references to height, build and features but there were only three lines about the applicant's physical appearance in a much broader box. Mr Singh said that that was the initial impression that they had formed. It was put to him that otherwise that section dealt with the applicant's credibility and he said that it was the initial impression you developed. It was put to him that under this heading he was preoccupied with credibility and he said that it was an aspect of demeanour. He was asked whether the assessment of the applicant's credibility was UKBA's or his on which he relied and he said that he had to have information from other sources to make it robust. He was asked where his assessment of the applicant's credibility was and said it was the change of claimed age from 16 to 14 and the address not matching up. The reference to "I" at page 203 was Mr Singh. He was asked whether he had felt it was important for him to decide whether the applicant was consistent as to his asylum history and said yes, it was tied in with his life being in danger. He agreed that it was the crux of the asylum claim. If the information did not tally there had to be a reason and if he was not fully honest about one aspect it could be there was misinformation about other aspects.

54. He was asked what was meant by the "one down" position referred at page 214 of the bundle in the first report and said that it was presumably the seating arrangement for making the person feel more careful, and that was his understanding of it. He would want to become the authority figure

while conducting the assessment. It was put to him that it concerned the person being assessed and he said he did not know.

55. He said that it was a coincidence that the date of the refusal letter of 27 August 2010 was the same as his 27 August 2010 meeting with the applicant as recorded at page 141. Mr Singh said it was issued by UKBA and they were still considering the assessment. He was asked whether he had told them his conclusion and he said they were still finalising it. It was put to him, with reference to paragraph 13 at page 394 in the refusal letter that they were aware of the assessment. Mr Singh said that the dates matched up but his final assessment was not completed until September. He had seen the applicant on 27 August at the applicant's home. Before conducting the age assessment he thought he had visited him four times, it seemed that there were meetings on 4 June, 18 June, 27 August and 8 September and therefore there were two meetings before 27 August. He was asked whether 27 August was a desk analysis and he said no, it was a home visit to get feedback from the applicant. He was asked whether it was a coincidence that he was still carrying out home visits on the same day as the refusal letter and they said that the respondent had assessed the applicant as being over 18. Mr Singh said he saw the applicant on 27 August and the report had not been finalised. He could not explain the UKBA letter. The report had not been finalised then. He had put his concerns to the applicant on 8 September.

56. Mr Singh was asked whether he thought it was material to an age assessment to know whether someone was still growing physically and he said yes it was an indication. It could take place after the age of 18. He was asked whether in January 2011 he had thought to ask himself whether the applicant had grown since September 2010 and he said that the health assessment was part of the care package. He was asked whether after the claim had been issued and he had been forced to reassess age had he taken into account the fact that the applicant had grown and he said that they had not had the opportunity to measure him. He was asked whether he thought it would help and he said they had had a lot of information from various sources about the age assessment. He was asked whether he thought he needed to consider whether the applicant had grown and said no, he had only been in care for a few days.

57. He was asked whether he had seen the applicant in January 2011 before a review was conducted and he said no, not until he was accommodated. He had seen the applicant. He had not thought to measure him because their assessments took several meetings to arrange. Health assessments took place but there was only one paediatrician. He agreed that he had noted the approximate height of the applicant as recorded at page 213. He was asked why he had not done so later and said he would have thought the applicant would not have grown and he had not measured him on either occasion. He was asked whether Ms McDonagh had measured the applicant and said that they did not do this and this was left to health assessments. He had approximated the applicant's height on 4 June. The assessment by Ms McDonagh as recorded at page 190 was not said to be approximate. He was asked whether he knew whether she had measured the applicant or not and said he did not know, it was left to the statutory health assessment. As regards the discrepancy between him and Ms McDonagh he said it was an observation based on the applicant's height. He was referred to the measurement carried out by Dr Birch and he said it could be observational and the applicant could have been wearing shoes. It was put to him that they had measured him and he had not done so and he said it was not his role. He was referred to paragraph 35 at page 308 of the bundle in the independent social worker's report that the applicant had grown 3cm since he was measured by Dr Birch. He was asked whether this was relevant to the age assessment and said it might be a growth spurt and they did not know exactly how they had measured him. He was still at 175cm according to Dr Birch's second

report. He was asked whether it was a relevant factor and said that a whole lot of information needed to be brought together and concluded on. He agreed that it was relevant. The applicant had been measured in May 2011 after the assessment but they were not qualified to measure him and it was not their position to measure him. He had been measured at the statutory medical. He was asked whether if the applicant was no longer growing would he have reached maturity and said yes, unless there were developmental reasons.

58. On re-examination Mr Singh was referred to page 141 of the bundle in his notes on 27 August. He was asked whether there had been an interpreter present and said yes, he recalled him being there and there would not have been an interpreter if it was a desk exercise. He was asked about the applicant's height and his saying that it could be a matter of observation and he could have been wearing shoes and he said that with regard to their assessments they had rigid apparatus, there was a ruler and he could not say what others, for example the independent social worker, had done, but Birmingham had a proper piece of equipment. He was asked whether there could be a 2-3 cm different within observation and he said he would say so, approximately 5'8" and Sally McDonagh had agreed. He was asked whether even if an actual measurement was done there could be variation in accuracy and he said yes, it was subjective, for example whether when measured to the top of the head or took into account the hair.

**(c) Mr Cooke**

59. We then heard evidence from the independent social worker Mr Cooke. Mr Arthur, the co-author of the report, had attended the home visit and the interview with the applicant and saw the report and was able to amend/add to it. He had provided his professional opinion in consultation with Mr Cooke. Mr Cooke clarified, with regard to paragraph 17 of the report at page 305, that he had attended as well. He had seen the applicant at a bed and breakfast. He had forgotten its name but it was in Birmingham where the applicant lived. He had assumed that the applicant was not being looked after as a child. He was in an adult bed and breakfast. He was not getting the kind of support Mr Cooke would expect for a looked after child to be receiving. He would expect at least for him to be in a shared housing situation with other young people aged 16 or 17 with regular planning meetings and review meetings to look at their health and education, emotional and psychological needs. Given the date of birth the legal duty with regard to accommodation would be as a Section 20 child with an allocated social worker and to be placed in children's, not adult, accommodation with regular planning meetings addressing all his needs.

60. It was put to him that Mr Singh had said he was the social worker responsible for the applicant and they had regular six weekly reviews and he was asked whether this was appropriate for a Section 20 child and said yes. He did not know the nature of the reviews undertaken but you would expect them to be carried out by an independent reviewing officer. He was asked whether this would be someone other than the social worker and said that there should be an independent reviewing officer to chair the meetings and review the care plan. He was asked of whom the officer should be independent and he said they should be independent of children's services. Local authorities had independent safeguarding boards and provided for children who were being looked after.

61. He was asked how he regarded the fact that the officer who conducted the age assessment was the case officer who carried out the six weekly reviews and said that to him that would not constitute a looked-after child review. The situation had not been addressed as a looked-after child should be. In the circumstances of the case where the applicant had been looked after as a child for the initial four months in the United Kingdom and there were no concerns about him going out early and coming

back late and then going into a hostel as an adult he thought that the applicant would have found it very difficult and would have needed to develop survival strategies very quickly and come to depend on other adults and substitute parents. He would have been forced to socialise with other adults as that was the life he was forced into. It would be quite damaging to be rejected and abandoned in that way and there had been many adjustments in his life and quite naturally he would then still gravitate towards that when he was brought back to the children's setting. He was asked who he would expect to pick up on the disruption that the applicant's enforced socialising with adults would have caused him and he said that the social worker: children's services should formulate a care plan to address concerning behaviour if he was staying out etc. and staying out was quite a concern for a social worker. It depended on how old they were. He was asked whether the independent reviewing officer would pick up on it and he said it should be an issue brought to the review meetings and a decision to be taken at the end of the meeting about the plan for their care and how to address the concerns raised. He was asked whether if an adult was pretending to be a child leaving accommodation with friends it would be consistent with him being an adult and said more so than a child, yes. It could be a child acting beyond their years or an adult. He was asked whether he would be expected to consider only one of those possibilities as a social worker and he said that the applicant was a looked-after child and needed to be treated as such. You could not say you did not believe he was a child so you would not address those concerns as it would undermine the whole procedure.

62. He was referred to the fact that the review in January considered the possibility that the applicant was an adult and his behaviour was inconsistent with him being a child and was asked whether they should have considered the other side of the coin as well. Mr Cooke said the issue was not resolved as to whether he was an adult or a child and legally he was a section 20 child and that imposed duties on children's services to treat him as such.

63. He was referred to the fact that in the report he said he found the applicant to be depressed and he said he had shown signs indicating depression. He was sleeping during the day and not going out. He agreed that that was consistent with what you would expect to occur if a looked-after child had been treated as an adult. He had not been asked to do a height assessment. He was asked if he had measured the applicant and said they had taken a tape measure and he had stood against the wall and put a book over his head. He was dressed and wearing trainers. He had prepared such reports before. He had not usually measured height but he did so in this case as they had Dr Birch's measurement. A one-off measurement did not tell you much. Successive measurements were more indicative of development.

64. Mr Cooke was asked whether it would have caused him to ask questions as a social worker given the discrepancy between Mr Singh's estimate of the applicant's height and what Ms McDonagh had said. He said that he thought certainly that in such a situation as this there should be a medical at least once a year when height would normally be measured, and if Birmingham had done that for 2010 there could have been two or three assessments between then and now and that would be quite useful. He was asked whether he would have been prompt to do anything at all and he said he was not sure that he would, the original height estimate was just that and he would have accepted that he had got it a bit wrong, in contrast to the situation if the applicant had been measured properly. He was asked whether the fact that Mr Singh also had Dr Birch's measurement would have been relevant to the age consideration and Mr Cooke said it was only helpful and it could have been helpful to undertake another measurement. He would not be critical of this. They did not routinely measure height as part of an age assessment. It would happen in the course of a looked-after child's medical. He agreed that there was such a medical report at page 200. He was asked whether he had ever had

explained to him how the nurse measured a person and he said he understood that usually they would have a wooden kind of frame with a sliding level to be placed on the head.

65. In cross-examination Mr Cooke confirmed that both he and Mr Arthur were present during the interview on 9 March at all material times. He had taken handwritten notes but he did not think he had brought them with him today as he had not considered they would be necessary. He had spent two and a quarter hours with the applicant and there had not been a second follow-up meeting so he had not been able to observe him over a period of time. His assessment was that the applicant was 17. He could be 17. He was asked whether he accepted that he could be 21 and said that he could be. It was in terms of what he had read before the meeting having read a number of documents, for example Mr Singh's assessment and the judge's determination. He was asked whether since meeting with the applicant and before writing the report he had read any more documents and he said he had written the report following the meeting. He had not read the decision of 5 March 2013 of the Upper Tribunal and was not aware of it. Before today he had not seen Ms McDonagh's report. He had not read Mr Singh's statement. He was aware to some extent of the number of criticisms of Dr Birch in reported cases. He was aware that in a number of cases a number of applicants no longer relied on her evidence. He was asked why therefore he had given her credence in his report and he said he did not rely on her assessment but mentioned some of her observations which to him were valid from a qualified paediatrician. He did not rely on her methods. He had strong difficulties with her methods. He only referred to her observations of the applicant's behaviour which were not to be dismissed merely because her methods were not accepted. Her observations remained valid. He was asked whether he believed the case law allowed him to rely on her observations as valid and he said yes, as he believed it was her methods not she as a person which had been criticised and she had not been accused of making false representations or untruths. It was put to him that that was not true and the case law criticisms went beyond her methods. We suggested to Mr Cowen that he needed to be more specific and he referred to the authorities bundle, first to the decision of Kenneth Parker J in R v London Borough of Croydon [2011] EWHC 1473 (Admin) paragraphs 51 and 52. It was put to him that this was a criticism going beyond her statistical methods and Mr Cooke said he was aware of what Dr Stern had said. It was put to him that this affected the whole validity of the credibility of Dr Birch's evidence and Mr Cooke said it was largely about the statistical methods. It was put to him that it was more, and Mr Cowen referred also to the decision of the Court of Appeal in M v Mayor and Burgesses of London Borough of Croydon [2012] EWCA Civ 595, in particular at paragraph 70. He said he was aware of what was said there but it did not totally negate Dr Birch's own observations. He had not read paragraph 71 onwards before today. He was asked whether he was aware of deeply unsatisfactory evidence concerning a number of cases where applicants now did not rely on Dr Birch's evidence and he said he had not been, but it did not surprise him, given the criticisms. He agreed that it was important here as the judge had relied on her. It was put to him that it tended to undermine the reliability of the judge's decision and Mr Cooke said no, as he thought it was probably before all this case law and Dr Birch's credibility had not been significantly undermined then. He was asked whether he was troubled about his lack of knowledge when he had carried out the assessment in light of this and said not especially. He had been aware of questions about Dr Birch's methodology. He maintained that he did not think her observations of the applicant's behaviour were so much invalidated or undermined by what had been raised today. It was mainly to do with her statistical methodology and he did not think that she was a liar as he thought Mr Cowen was suggesting. It was put to him that passages showed that Dr Birch's general credibility had been doubted in a number of cases and yet he still maintained it was about her statistical methods only. Mr Cooke said that was the case. It was put to him that it was not the case.

66. Mr Cowen referred to the height issue and he asked Mr Cooke what purpose that had served. He said that it was to be able to ascertain whether the applicant had grown in the period between when Dr Birch had measured him. He did not know what Dr Birch's method had been. It was put to him that that made his measurement of no validity and he said it could give an indication though it might not be perfectly accurate and hence he had done it. He still thought that there was some evidential significance. It was put to him that although it was accepted it could help, there was nothing to show that there had been two assessments of height using the same clinical method over a period of time and he said no, but Dr Birch had measured the applicant at 175cm, the nurse at 176cm and his measurement was 178cm. It was put to him that if we did not know the methods and did not know what was done or what the applicant was wearing then it was unreliable and he said that it could give a general indication.

67. He was asked whether he was aware that Birmingham had carried out a check and did so as recorded at page 200 but the applicant had failed to attend further medical assessments and Mr Cooke said he had not been aware of that. It was put to him that the assessment at page 190 was just a rough guess and there was no suggestion of a measurement of height as opposed to an observation, and Mr Cooke said it was not clear. He had no evidence as to the method of measurement of height done by Ms McDonagh or anyone else at Greenway.

68. As regards what she said about a shaving shadow he was referred to his assessment and was asked whether he had not read what she said and he said that the sentence was in one of Mr Singh's reports. He could not say whether the applicant was shaving two or three years ago. He was asked whether he had discussed the question of the applicant going out early and coming back late and staying out and he said he had discussed his current pattern of behaviour which was quite different as he had described it to Mr Cooke. He had said that he stayed in most of the day. Mr Cooke could not verify that independently but the applicant had still been in bed at 11am when they had visited.

69. He had not read Mr Singh's witness statement. He had not been aware of the evidence set out at paragraphs 22 through to paragraph 30 on p.113 when he had prepared his report. He was aware from his knowledge of such cases of the issue of reaching a determination on age of balancing treating the person as a child and safeguarding children as a general point, though that was not an issue here. He had no reason not to think that statutory visits had taken place every six weeks. He had not seen the statutory review at page 193. He and Mr Arthur had taken notes of their meeting so there should be two sets of notes. He was asked what were the inconsistencies referred to at page 306 in his report and he said that he thought one was that the applicant had said that his father had tried to evade the Taliban and previously had said his father had had a role in the Taliban.

70. He was asked whether the interpreter's role was just to interpret and he said not necessarily. He was referred to paragraph 28 of his report where he had relied on the interpreter as a witness of fact and it was suggested that he should not really do that and he said that the pro forma for age assessments did say that interpreters could be used as other sources of evidence. It was put to him that even so it was not really appropriate. He was asked whether he had any independent knowledge of the interpreter's expertise and he said he had made no enquiries. He had met the interpreter for the first time that day. He was asked whether he had discussed with him the basis on which he gave evidence on which he could rely and he said that the interpreter was from Afghanistan, from a similar area and was familiar with that aspect of life for many young people and he had spoke the same language/dialect.



71. On re-examination Mr Cooke was referred to page 217 of the bundle in Mr Singh's report which bore out what he had said about the use that could be made of interpreters in age assessments. He was referred to the various references he made in his report to Dr Birch's evidence. He was referred to the decision in *A v London Borough of Croydon* [2009] EWHC 939 (Admin), in particular to paragraph 75 for the fact that there was a different age test then. He said that matters such as shaving and whether the voice was broken or not were not matters of expertise. He was asked whether he had been part of Manchester's response critical of Dr Birch's methods and said that they had had a number of reports from Dr Birch which contradicted their own age assessments and their legal department with others made criticisms of the statistical measurements and use of them to determine age. He was asked whether therefore she could not state the age on the basis of statistics and said yes, measuring height, weight and BMI, shoe size etc. It was the case that the courts had concluded her judgement could be no better than anyone else, especially that of social workers. Equally, as could be seen from the judgment elsewhere, her reports could not be ignored. Reference was made in this regard to paragraphs 79 to 81. It was put to him that it was because she had clung to the accuracy of her statistical method that she had been criticised, and as a consequence her observations might be unreliable. Mr Cooke said that that was as he understood the questions.

72. That concluded the evidence.

73. We had detailed and helpful submissions from both counsel, which we do not set out separately, but of which we have taken full account in our conclusions.

## **Discussion**

74. The credibility of the applicant is relevant in assessing his age. Untruths about other matters may be relevant to the age a person says he or she is. It is therefore important that we assess the credibility of the applicant as part of our overall assessment of his age.

75. The first matter is the age he said he was. In the initial assessment record at page 119 of the bundle, which we take to have been completed by Mr Brewster since he is named there as the worker undertaking the assessment, it is said that the police advised that the applicant was a 16 year old minor without parents or family in the United Kingdom. At page 120 it is recorded that the police arrested him and then he said he was 16, but when the police presented him to social services, through an interpreter he is said to have changed his statement and said he was 14 years old and that his mother had told him two months ago that he was 14. As the interview proceeded he said his mother was dead but his father had told him. It is said at page 121 that his physical appearance suggested he was an 18+ young person and that he had facial hair and a mature face with lines on his forehead and his demeanour was that of an adult. He was very calm and showed no emotions.

76. Mr Singh in the age assessment noted the discrepancy about the claimed age and the applicant's denial that he had said he was 16 and that the interpreter had got it wrong. Mr Singh noted that the applicant's physical features suggested he was a lot older than his stated age of 14, commenting on his deep, mature voice and his facial skin texture. In the notes of Mr Singh's meeting with the applicant of 4 June 2010 he records deep voice and facial hair. He also notes the discrepancy which Mr Cooke referred to, at page 125 of the bundle in the age assessment carried out by Mr Singh, as to why if the applicant's father was with the Taliban they should be threatening his family and if he was with them why they were coming to the village looking for him.

77. Mr Singh also noted that two districts, Ali Sher and Qubai which the applicant said were in the Khost province, did not appear on the list of 13 districts quoted in the details downloaded from the

internet. Mr Singh was unable to locate the district which the applicant's village was in, when he downloaded geographical information about Khost province, in that Holbesat, which was the district the applicant said he was from, was not among them. The applicant had said he was born and raised in Sabrari which was a district as well as the district centre and Holbesat was the village his family used to live in. He had, however, said that Holbesat was a district and Mr Singh was unable to find it among the list of districts in Khost province he downloaded from the internet.

78. There was also the discrepancy about the age of the applicant's sister. On 3 June and 4 June he said that she was 4 or 5 but on those dates he also said his mother died one and a half years ago giving birth to the sister and that he only had the one sister. Thereafter he said his mother died giving birth to a second daughter, and his claim was also that he had been misunderstood or misrepresented as to the age of his sister. In fact, he said, she was between a year and a half and two years old.

79. We consider that these matters give rise to concern as to the applicant's credibility. We find on the evidence that he did initially claim he was 16 and then said he was 14. We find the evidence is clear that he initially said his sister was four or five which was clearly discrepant with the claimed date of death of his mother and the fact that he had only one sister, and we are also concerned that it was not possible to locate Holbesat district on an internet search. There is also the discrepancy as to why he would be at risk from the Taliban if his father was a member of the Taliban. We note and record these matters as part of the evidence which requires to be taken into account when considering the issue of the applicant's age. We also bear in mind, though of course we are not bound by them, the adverse credibility findings of the judge, who disbelieved the core of the applicant's claim, though he accepted the claimed age, noting with apparent approval the medical and scientific procedures used by Dr Birch to assess the applicant's age, and expressing concerns about the adverse view of credibility taken by Mr Singh and Mr Brewster.

80. A further relevant issue is the question of whether or not and at what stage he was shaving. Again, this can not be determinative, but it is a relevant factor. We have noted above the comments of Mr Brewster and Mr Singh in this regard. It is also relevant to note the comment of Ms McDonagh, at page 190 of the bundle, that the applicant had an evident and well-developed shaving shadow which suggested that he had been shaving full face for a significant period of time. That remark was made on or about 21 January 2011. By contrast, Dr Birch, who saw the applicant on 1 October 2010, commented that he had soft facial hair in the moustache area and had a few soft, immature hairs on his chin. She said that he had never shaved and this was borne out by examination as he had no stubble and she said this was consistent with a 13 to 14 year old. Mr Cooke and Mr Arthur saw the applicant on 9 March 2013. They noted, at paragraph 49 of their report, that the applicant now had facial hair growth and shaved regularly. This was not thought to be inconsistent with a young male aged 17.

81. We find surprising the contrast between the evidence of, on the one hand, Mr Singh, Mr Brewster and Ms McDonagh, and that of Dr Birch on the other hand. In particular there is the contrast between Ms McDonagh's evidence and Dr Birch's. It is also relevant to note the photograph taken by the applicant at the screening interview, on 3 June 2010. We have an A4 sized colour reproduction of that. It very much bears out the assessment of Mr Singh, Mr Brewster and Ms McDonagh rather than that of Dr Birch. The applicant is shown with a clear moustache and hair on and around his chin. The assessment of this evidence as a whole is that we prefer the evidence of Mr Singh, Mr Brewster and Ms McDonagh to that of Dr Birch on the point.

82. Of further relevance is the question of the extent to which the applicant has been perceived as having an independent lifestyle. There is the report from Sally McDonagh referred to above, provided on 21 January 2011, stating that the applicant had not really developed close bonds or relationships with other young people on the unit and actively pursued independent activities and, whilst courteous with others, it was clear that he was often irritated with any extended length of time he needed to spend in the company of a group of sixteen to eighteen year olds. (The applicant denied this). She said that he regularly went out early in the morning and came back late at night, occasionally staying out overnight, and considered this to be indicative of more mature young adults of 19+. She also noted the absence of any need to prompt and negotiate to ensure independent living skills were developed. She commented that he was arrogantly resistant initially to a placement at South Birmingham College but on further discussion decided to attend. She noted that he made his own appointments such as with solicitors and health appointments and actively attended them alone and when offered assistance was clear that he wished to go alone.

83. It is relevant to bear in mind that this report was based on ten days' worth of observation by Ms McDonagh and has to be seen in that light. It is relevant also to note that in his evidence the applicant took issue with Ms McDonagh's conclusions. We note though from paragraph 26 of Mr Singh's report that when at Greenway where the appellant moved on 7 April 2011 he absented himself from accommodation for periods of time without informing staff where he was going and whom he was visiting. On 12 September 2011 he requested his own independent accommodation but Mr Singh explained he could not be moved at that time in light of his stated age. Eventually he moved into independent accommodation on 17 February 2012. It was noted at paragraph 37 of Mr Singh's report on 6 July 2012 that the applicant was not attending college and not working. He was referred to the Connexions team for assistance with accessing education, training or work but he missed his two appointments with them on 17 October and 8 November 2012. We find to be lacking in credibility the applicant's claim to have participated in the life skills course sometimes during the day and sometimes during the night. We prefer Mr Singh's evidence on the point. The applicant left his accommodation in November 2012 and this was on the occasion when he went with a friend to attend a wedding in Pakistan. He does not appear to have informed Mr Singh or anyone else in social services of his plans and they only discovered this when the applicant returned and found he could not get access to the accommodation at 52 Church Street as his accommodation there had been cancelled because he had gone missing.

84. In this regard we bear in mind the point made by Mr Bedford which was, to a limited extent, acknowledged by Mr Singh, that one might expect that the effect of having four months in adult accommodation before he was returned to young people's accommodation might have caused him to react in the way in which he did. Mr Singh, however, noted that the only real difference was that he did not have a key worker and otherwise the same levels of support would have existed. The applicant in his evidence referred to the household skills he had had to develop after the death of his mother and in his father's absence, but said he lacked confidence in such matters. Dr Birch recorded what the applicant said with regard to him struggling to look after himself but, as Mr Singh pointed out at paragraph 20 of his statement, that was contradicted by the evidence of professionals who had observed the applicant taking care of himself over a period of time.

85. Mr Singh surmised that the applicant might have been working, given what was noted by Ms McDonagh about his early leaving and late returning to the accommodation. However, that does not appear to have formed a part of his behaviour in other accommodations and as we have noted above her observations were based on only a relatively short period of time.

86. However, we do see force in Mr Singh's view that the applicant exhibited clear signs of an independent lifestyle. The comments on his behaviour that we have set out above are clearly relevant. The fact that he felt able to go to Pakistan with a friend is a further sign of independent behaviour. We understand Mr Singh's querying how he was able to do this when he had very limited funds of his own and went with a friend who it seems was also on benefits. It is entirely unclear how it was possible for this trip to be funded, but we consider it to be consistent with the number of signs of independent lifestyle which Mr Singh noted.

87. We do not see anything adverse in the fact that it appears a draft copy of the age assessment had been seen by the author of the asylum refusal letter. We accept that Mr Singh had no knowledge of how that took place, although it is possible to surmise that his colleague or someone else passed the draft on, but we do not have enough evidence to make a finding on the point and it does not, in any event, seem to us to be essentially germane to the issues before us. We also accept what Mr Singh said about the timing of the review. It is credible that, whatever was being said at the time by UKBA, there would be a need to have discussions with the legal department about the impact of the judge's decision, and he had no clear instructions at that stage.

88. Nor do we consider that Mr Singh was motivated by anything other than professionalism in carrying out the review. We found Mr Singh to be an honest and consistent witness. He did not overstate his case and we are satisfied that the review was carried out, as indeed it was required to be, as a consequence of Dr Birch's report and the findings of the Immigration Judge. We also accept that he put his concerns to the applicant and that the age assessment was Merton compliant. Mr Singh is the person who has had the most ongoing contact with the applicant since he came to the United Kingdom. He has seen him at regular intervals and has carried out the two assessments. He does not seem to us in any sense to have an axe to grind, but we consider him to be an honest and competent professional doing a difficult job to the best of his abilities. He was right to note aspects of the applicant's evidence that gave rise to doubts about his credibility. As we remarked earlier, credibility as to a person's claimed age cannot be divorced from their general credibility. We see nothing adverse in Mr Singh placing into account matters on which he only has reports, such as police reports and reports of other people who have been involved in assessing the applicant. It has been clear from the outset that he considered the applicant to be at least 18, in contrast to Mr Cooke who accepted that he could be 21. We do not see this as an illustration of inflexibility on the part of Mr Singh but rather a realistic evaluation of the age of the applicant based on the information, knowledge and observation he had of him.

89. We found Mr Cooke to be an honest witness also. Clearly he has seen the applicant only on the one occasion rather than over a period of time, unlike Mr Singh, and his evidence has to be seen in that context. However, we have some concerns regarding his views on Dr Birch's evidence. For example, in R (on the application of "R") v London Borough of Croydon [2011] EWHC 1473 (Admin), Kenneth Parker J at paragraph 52 said as follows:

"However, my concern is that Dr Birch, on the basis of the evidence that she gave to the court, has in my judgment an erroneous confidence in the accuracy and reliability of the statistical methods that she has employed. That misplaced confidence undermines the other evidence that she has given. It appears to me that that confidence leads her to rely primarily upon her statistical methods. Therefore, she is very likely to be biased in her assessment of age by reason of that misplaced confidence. Therefore, it seems to me that I must approach with very great caution the conclusions that she has reached. In short, I do not believe that Dr Birch's assessment of the age of the applicant is any more reliable than that of a social worker."

90. In R (on the application of MWA) v Secretary of State for the Home Department and Another [2011] EWHC 3488 (Admin), Beatson J stated at paragraph 70 that he did not find Dr Birch's evidence satisfactory, noting that she stated that she accepted in the light of R that until she had completed more statistical work she had to rely only on her clinical assessments and not on her statistical methodology, but maintained that her method was sound and claimed that she had been given no opportunity in R's case to explain the basis of her statistical methodology as the result of the instructions of solicitors for the applicants in those cases and that this was unfair.

91. In her addendum report for this case, Dr Birch says that in light of the disapproval of the statistical aspects of her approach by the High Court she does not currently use a statistical method in preparing age assessment reports but says that her clinical judgment has never been questioned, and that when she saw the applicant in October 2010 she employed her clinical skills in that assessment and then went on to support her medical evaluation and clinical judgment with statistical data and population norms, the approach disapproved in R. She says that she therefore did not use a statistical method in this report which was based on the clinical view she reached at the time when she saw the applicant in October 2010 without the statistical backup. This may be an attempt to deal with the comment at paragraph 71 in MWA, where Beatson J commented that though Dr Birch no longer relied on her statistical method it was of some significance that her most recent report (a) did not clearly distinguish findings in the earlier reports which did use the statistical method from findings as a result of the more recent examination and (b) did not consist of a fresh look at her assessment of the applicant in the light of the fact that the statistical material she used in the earlier reports had been criticised in this way. In her conclusions in the addendum report Dr Birch says that the assessment has taken into consideration a wide range of physical and mental parameters. She did not re-examine the applicant and therefore her assessment is based on those parts of the previous assessment which have not been found to be unsatisfactory by the higher courts. We think it would have been much more satisfactory if Dr Birch had carried out a fresh examination of the applicant rather than simply in effect retaining from the previous report those parts of it which involved the use of her statistical method. We have already commented on the divergence of views as to the facial hair of the applicant and preferred the evidence in particular of Ms McDonagh and the photographic evidence. We have as a consequence derived limited assistance only from Dr Birch's report. As regards Mr Cooke's evidence, we consider he was wrong not to accept that the subsequent criticisms of Dr Birch's statistical approach tended to undermine the Immigration Judge's conclusion on the applicant's age. Even if the criticisms were not before the judge, his acceptance of her assessment, based on a now-discredited approach, has to be seen as flawed. As a separate point concerning the judge's conclusions on the applicant's age, we consider them to be further weakened by the fact that he treated as separate the general credibility of the applicant and the issue of his age rather than treating the former as relevant to the latter, as he should have done.

92. Bringing these matters together, we see as of relevance in assessing the applicant's age the fact that his credibility is damaged in several respects. In our view the evidence does show significant examples of independent lifestyle which is indicative of him being older than he claims to be, and the evidence which we prefer of facial hair also has an element of consistency with that finding, although of course that in particular is very far from being a determinative piece of evidence. We have derived a good deal of assistance from the evidence, both written and oral, of Mr Singh, who is the person who has observed the applicant most over a significant period of time and whom we find to be an honest and objective witness. We have also found Mr Cooke to be honest and objective, though of course he has observed the applicant over a much shorter period indeed and we are not sure that he

is wise to support, to the limited extent to which he does, the views of Dr Birch. Taking these matters as a whole we conclude that the applicant's date of birth is 1 January 1992.

93. The parties may make further written submissions on the terms of any further orders sought and in particular on the issue of costs, to be received by the Tribunal no later than fourteen days after the date of promulgation of this judgment.

Signed Date

Upper Tribunal Judge Allen