Upper Tribunal
(Immigration and Asylum Chamber)

R (on the application of JK) v Nottingham City Council (AAJR)[2012] UKUT 00341(IAC)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Heard at Field House
14th and 15th August 2012

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Before

Upper Tribunal Judge Latter
Upper Tribunal Judge Coker

The Queen on the application of

JK

Claimant

- v -

NOTTINGHAM CITY COUNCIL

Defendant

Representation:

For the Claimant: Mr A Suterwalla instructed by Bhatia Best, Solicitors
For the Defendant: Mr H R Kimblin instructed by Nottingham City Council

DETERMINATION AND REASONS

Introduction

1. In these proceedings the claimant (whom we shall refer to as "JK") challenges an age assessment carried out on behalf of the defendant and served upon him dated 21st July 2011 whereby it was concluded that his date of birth was 1st December 1991. JK contends that he is younger than he has been assessed to be by the defendant, insisting that his date of birth is 1st December 1994. The month adopted by the defendant is a result of JK being recorded in an age assessment report by Kent social services dated 7th November 2008 as having said that his father told him that he was aged 13 years and four months when he travelled from Pakistan to Afghanistan which was a few days before he had left Afghanistan for the UK; he is recorded as having said it took him 10 months to travel to the UK. He arrived in the UK on 16th October 2008. He was therefore allocated a nominal day and month of birth of 1st December.

2. It is common ground and agreed between the parties that JK was a child on arrival in the United Kingdom on 16th October 2008; given the allocated day and month of birth of 1st December JK saying that he was born in 1994 and thus 13 years and 10 months old but the defendant asserting that he was then 16 years and 10 months with a year of birth of 1991.

The claimant's account

3. JK is a citizen of Afghanistan. He was born and lived in a rural village in Nangrahar Province with his parents and three siblings (2 brothers and a sister) until he was four years old. He had an older brother (the first born), Gul Hashim, who was, according to information recorded in the applicant's first witness statement dated 22nd January 2009 ("WS1"), killed before he was born because of a land/family dispute although in his witness statement dated 10th May 2011 prepared for his appeal to the First-tier Tribunal ("WS2") he states this was incorrectly recorded and that he did not know when his brother was killed or the date of the incident that led to his death. The next born, Hamayun remains in Afghanistan with his wife, child and JK's parents. Mohammed Osman, the next born, is in the UK having arrived here on 19th November 2007; he has been recognised as a refugee on the basis of the land/family dispute. The applicant's claim is based on the same facts. JK is the next born and there is a younger sister. The family fled to Pakistan as a consequence of the land/family dispute where they remained living in various refugee camps until returning to Afghanistan in the first few months of 2008.

4. JK was initially granted discretionary leave to remain until 1st June 2009; his immigration status document, issued on 5th March 2009, records his date of birth as 01 December 1991 and, for some inexplicable reason

records his place of birth as Pakistan but his nationality as Afghan. He used this document to apply for an Afghan passport, to enable him to open a bank account, which was issued in London on 29th May 2009 and also records a date of birth as 1st December 1991 (in western characters, not Pushtu) and his place of birth in both western characters and Pushtu. JK said the date and place of birth were taken from his Immigration Status Document although he had told the Afghan authorities his date of birth was 1st December 1994 and that he had been born in Afghanistan.

5. He applied to vary his leave, such application being rejected by the UKBA for reasons set out in a letter dated 29th March 2011. His appeal against that decision was successful for reasons set out in a determination of the First-tier Tribunal (FtT) promulgated on 4th July 2011. He was recognised as a refugee and issued with an Immigration Status Document which recorded his date of birth as 01 December 1994 which again gave his place of birth as Pakistan but his nationality as Afghan.

History of Proceedings

6. There have been three age assessments in respect of JK. The first age assessment was carried out on 7th November 2008 by Kent County Council ("the Kent assessment"), an earlier attempt on 29th October 2008 being abandoned because the claimant had a cold. That assessment concluded that the claimant's date of birth was 1 December 1991 in the chronology but as "a likely 16 year old with an estimated date of birth of 01/12/92" in the outcome. It seems that the actual date used, and referred to in the proceedings before us, was 1 December 1991 and throughout these proceedings we have taken that as the allocated date of birth which is the subject of this challenge.

7. The second age assessment, commissioned by the claimant's former representatives, was conducted by Dr Michie. That report, dated 13th February 2009, concluded that it was more likely than not that JK had a chronological age of 17 years; that it was possible that he was either 16 or 18 and that it was highly unlikely that he was either 15 or 19 years old.

8. The third age assessment was carried out by Nottingham City Council on 21st July 2011("the Nottingham assessment"); it concluded that he was 19 with an estimated date of birth of 1/12/91. By letter dated 27th April 2012 the defendant's solicitors stated they were "… instructed to formally withdraw the age assessment which the Council undertook on 21st July 2011". In its Amended Detailed Grounds of Resistance the defendant stated "The Nottingham Assessment is no longer relied upon" (paragraph 21). In its skeleton argument the defendant "…withdrew its own assessment" (paragraph 6). The assessment was in the bundle before us.

There were no questions asked with regard to the material recorded in that assessment.

9. Before HH Judge Davis QC, the Recorder of Birmingham, it was accepted by the Defendant that it was arguable that the assessment of the claimant's age notified to him by letter dated 2nd August 2011 was wrong. Permission was granted on 6th January 2012 and the proceedings transferred to the Upper Tribunal.

10. The matter came before us to carry out the fact finding exercise that is required. We reserved our decision which we now give with reasons.

The hearing

11. The court set up was not ideal to hear evidence from a young person but following discussion with both parties arrangements were made which were to the satisfaction of Mr Suterwalla and the claimant.

12. We heard oral evidence from the claimant and his brother through a Pushtu interpreter. We heard oral submissions from both counsel, supplemented on the part of JK's counsel with typed submissions. Witness statements of the social workers involved in either of the age assessments were not filed and none gave oral evidence. There were no contemporaneous notes taken at the time of the assessments in evidence. Dr Michie did not file a witness statement and did not give oral evidence.

13. During the course of JK's oral evidence it was drawn to our attention that the interpreter had not been interpreting the claimant's answers with strict accuracy. This arose over the Pushtu word for "ask" and "tell" being either the same or similar. Instead of explaining this or interpreting the word in the context of the response, he had used one or the other without explanation. When raised the interpreter explained that this arose because of the manner in which the claimant was speaking of his conversation with his brother which embodied matters of respect from a younger to an older person. A further matter was raised about the interpreter failing to interpret "approximately". Once clarified, the interpreter confirmed that interpretation would be accurate and exact; there were no additional difficulties raised.

The legal framework

14. Given that it is agreed and common ground between the parties that the legal framework applicable to our assessment is clear and settled, a jointly adopted position with which we agree, it is not necessary for us to carry out an extensive analysis of the authorities. In R (CJ) v Cardiff City Council [2011] EWCA Civ 1590 Pitchford LJ observed that :

2. In *R (A and M) v Croydon and Lambert Borough Councils* [2009] UKSC 8, [2009] I WLR 2557, the Supreme Court settled the question whether, in the event of a challenge to the decision of a local authority as to the claimant's age, the High Court was required either to reach its own decision as to the claimant's age or, alternatively, the challenge was by way of review of the local authority's assessment on *Wednesbury* principles alone. Baroness Hale gave the leading judgment with which the other members of the Supreme Court agreed. At paragraphs 26 and 27 Baroness Hale explained the difference in approach required for the evaluative judgment whether a child was "in need" within the mean of section 20 of the 1989 Act and the decision upon the precedent question of fact whether the individual concerned was a child. She said this:

> "26. … the 1989 Act draws a clear and sensible distinction between different kinds of question. The question whether a child is "in need" requires a number of different value judgments … but where the issue is not what order the court should make but what service should the local authority provide it is entirely reasonable to assume that Parliament intended such evaluative questions to be determined by the Public Authority, subject to the control of the courts on the ordinary principles of judicial review. Within the limits of fair process and "*Wednesbury* reasonableness" there are no clear-cut right or wrong answers.
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> 27. But the question whether a person is a "child" is a different kind of question. There is a right or a wrong answer. It may be difficult to determine what that answer is. The decision-makers may have to do their best on the basis of less than perfect or conclusive evidence but that is true of many questions of fact which regularly come before the courts. That does not prevent them from being questions for the courts rather than for other kinds of decision-makers."

Lord Hope, in his concurring judgment, said at paragraph 51:

> "51. It seems to me that the question whether or not a person is a child for the purposes of section 20 of the 1989 Act is a question of fact which must ultimately be decided by the court. There is no denying the difficulties that the social worker is likely to face in carrying out an assessment of the question whether an unaccompanied asylum seeker is or is not under the age of 18. Reliable documentary evidence is almost always lacking in such cases. So the process has to be one of assessment. This involves the application of judgment on a variety of factors, as Stanley Burnton J recognised in *R (B) v Merton London Borough Council* [2003] 4 All ER 280, para 37. But the question is not whether the person can properly be described as a child. Section 105 (1) of the Act provides: "in this Act … 'child' means, subject to paragraph 16 of Schedule 1, a person under the age of 18". The question is whether the person is, or is not, under the age of 18. However difficult it

may be to resolve the issue, it admits of only one answer. As it is a question of fact, ultimately this must be a matter for the court."

Preliminary issue

15. In opening, Mr Suterwalla invited the Tribunal to proceed on the basis that either there was no cross examination of JK or that cross examination was restricted to pre-agreed topics because:

    i. No questions could be asked about what may or may not have been said by JK during the Nottingham assessment because the defendant does not rely upon that assessment;
    ii. The defendant does not intend to call the social workers involved in the Kent assessment so there can be little utility in questions being asked;
    iii. It was not understood how there could be any questioning about JK's Taskera.

16. He relied upon R(R) v LB Croydon [2011] EWHC 1473 paragraph 56 and R (on the application of KN) v Barnet [2011] EWHC 2019 (Admin) in support of this contention. Mr Suterwalla accepted that the defendant was entitled to ask questions about the evidence but in the absence of the authors of that evidence this would be of little effect. He submitted that being unable to subject the authors to cross examination resulted in an inequality adverse to the claimant.

17. Mr Kimblin submitted that these were matters of weight to be placed upon the various pieces of evidence, the content was important and it was open to the claimant to explain why a particular assessment was fair or unfair.

18. We were not satisfied there should be a direction that Mr Kimblin not ask questions as to the Kent assessment or that his questioning should be constrained. In neither of the two authorities referred to was there any support for the proposition that there should be any constraint imposed; the passages in effect referred to the assessment of weight to be placed upon evidence before the judge. It is a basic principle that it is up to the parties to decide what evidence they wish to call and both parties are entitled to ask questions about the evidence in issue. We are not satisfied any inequality arises. It is a matter for us to decide what to make of the answers given and how those answers impact upon the documentary evidence before us. We declined to make the direction requested.

The evidence

19. The claimant, as well as raising general criticisms of the Kent age assessment and Dr Michie's assessment, relies upon:

    a. His own evidence,
    b. The evidence of his brother, Mohammed,
    c. His Taskera, and
    d. The FtT determination.

    The defendant, in support of its case that it has correctly assessed the complainant's age, relies upon the Kent age assessment, Dr Michie's assessment and the record of what the claimant said as recorded in the Nottingham assessment (although not the conclusion).

20. In the following paragraphs in addition to recording the evidence we have recorded our findings. Although the findings occur in each section, in reaching those findings we have considered all the evidence, not merely that recorded in that section. This method has been adopted for ease of reference only and does not reflect a finding based solely on the evidence recorded in that section.

The evidence of the claimant

21. JK gave lengthy oral evidence before us but, as we shall see, there are very considerable difficulties with that evidence which makes it hard to rely upon. In assessing that evidence we took full account of the fact that although his age was disputed he remains young and the giving of oral evidence can be a stressful experience which may sometimes affect the quality of evidence given. He had no responsible adult with him during the Tribunal proceedings; when raised by us with Mr Suterwalla he responded that between him, his instructing solicitor and the Tribunal he was satisfied adequate safeguards were in place and a responsible adult was not required. He commented that although the claimant's brother was not in the hearing room, he was just outside.

22. No special measures were adopted in response to this other than us moving closer to the well of the court. None were requested by Mr Suterwalla or JK or his brother during the course of the hearing and no other arrangements appeared to us to become necessary during the course of the hearing.

23. JK has set out his account of events and what he wishes to say about his likely age on a number of occasions:

a. SEF self completion dated 22nd January 2009, completed with the assistance of the Refugee Legal Centre and read back to him in a language he understands ("SEF s/c" found at tab 18)
b. A witness statement read to him in Pashtu, signed by him and dated 22nd January 2009 prepared with the assistance of Refugee Legal Centre ("WS1" found at tab 23);
c. Interview record on a Statement of Evidence form – Children – which although according to a typed insert appears to have been scheduled to take place on 9th December 2008 in fact took place (according to the date of the signatures) on 5th March 2009; the claimant had someone with him who was described both as a responsible adult and a caseworker ("SEF" found at tab 22, typed version at tab 43);
d. Comments on the UKBA's reasons for refusal of asylum letter dated 29th March 2011, read to him in a language he understands, signed by him on 10th May 2011, prepared with the assistance of Paragon Law ("WS2" found at tab 34);
e. Witness statement, signed by him on 29th November 2011, prepared with the assistance of his current solicitors, exhibiting WS1 and his brother Mohammed's witness statement signed on 10th May 2011 ("WS3" found at tab 12).
f. In oral evidence before us, on 14th August 2012.

24. JK says in his WS1 that he recalls living in Shamshatoo refugee camp. He recalls living in other places but does not recall the names of those places. His statement says he left Afghanistan when he was four years old.

25. Despite being pressed at some length when giving oral evidence before us, JK's oral evidence was notable for his lack of recall or memory about almost everything he was asked, including information that he had given in WS1 which he confirmed, in his witness statement signed on 29th November 2011 (WS3), had been read to him by a Pashto-speaking interpreter and that the contents of that statement were true and accurate. The correction made in WS2 was not referred to. There was no explanation how he was able to recall that the content of WS1 was true and correct in November 2011, some two years after he had signed WS1 but was unable to recall the information in oral evidence despite having adopted WS1 as true and accurate before us.

26. JK told us very little indeed about his life in Pakistan and nothing about his life in Afghanistan prior to moving to Pakistan although we recognise that as he claimed to have been there for only the first four years of his life there would be virtually nothing he could say. There is very little by way of a chronological framework that might provide some reference point from which to begin a search for his true age.

27. In his SEF s/c JK said he attended school in the Shamshatoo refugee camp between 2003 and 2008; this is repeated in the accompanying WS1: he attended school in Shamshatoo refugee camp from the age of 9 until he was 13. The Kent assessment records JK as saying he first became aware that he was living in Shamshatoo refugee camp when he was about 7/8 years old; that he went to Alhaj Mohammad Gul Khan School in Shamshatoo from the age of 9 and between the ages of 4 and 9 he was playing. The Kent assessment records JK as initially saying he left school age 11, then age 13 but he didn't know the year, then that it was a few days after he left school that he went to Afghanistan and that he went to Afghanistan when he was 13 and it was 3-4 months after the Pakistan New Year. In oral evidence he said both that he could not remember how old he was when he started school and that he was at school for approximately four years and had started school aged about 9, that he and Mohammed attended the same school for some time but Mohammed was a bit older and in a higher class. He could not remember what class Mohammed was in when he left Pakistan.

28. In WS1 JK says he and his family had to leave Shamshatoo refugee camp when the Pakistani authorities destroyed the camp. Although the camp was not closed, according to Dr Giustozzi (at [5] of his report found at tab 37) it was raided at the time that Jalozai camp was closed in April 2008. His departure date has been vague but the consistent element was that the family left Pakistan when the camp was closed. As a young person a raid may have seemed like closure. Arrival in Afghanistan would then have been some time in April/May 2008. Subsequent departure after a few days would have resulted in a journey time in the region of 6-7 months. The evidence as to when he left varied between February and August 2008 and the explanation he gave about leaving was vague and inconsistent but the consistent element was that he left Pakistan for Afghanistan at the time of the closure of the camp and that he left Afghanistan a few days after arriving there.

29. We have therefore taken the view, allowing for some time to travel between the camp and Nangrahar, that he left Afghanistan in April/May 2008. This would mean that he spent some 6 or so months travelling to the UK, again broadly consistent with his account of his journey, albeit that also varied each time he recounted the detail.

30. In WS1 JK states that his mother told him he was 13 ½ just before he left Afghanistan. In his SEF he says he was about 13 ½. The Kent assessment records JK as saying that his father told him he was 13 years and four months, when he was in Afghanistan and that his father had also told him he was 9 when he was attending school in Pakistan.

31. In WS1 he also states that his father told him, after they returned to Afghanistan from Pakistan after the closure of Shamshatoo refugee camp, that they had first left Afghanistan when he was aged 4 because his older brother Gul Hashim had been killed in a land/family dispute; he said Gul Hashim had been killed before he was born. In his SEF he said that his family had been in hiding in Afghanistan until he had been born and after some time the family had gone to Pakistan. This was later corrected in WS2 where he states that he did not know when Gul Hashim was killed or the date of the incident but that his father had told him he was aged four when the family left Afghanistan. JK adopted WS1 before us as true and accurate without reference to the correction. The Kent assessment records JK as saying his family left Afghanistan because they were exposed to risk because their enemy had killed his brother; it also records JK saying he didn't know why they had moved to Pakistan and also that his father decided to send him to Pakistan to safeguard him from his father's enemies. It records that he didn't know Gul Hashim "as it could be that he was very young and maybe not even born when he was killed". The Kent assessment records JK as saying that he and his family moved to Pakistan when he was four years old.

32. In his SEF (question and answer 43) he said his brother Mohammed had left Pakistan about 15/16 months earlier. It is not clear whether this is 15/16 months before he himself left for the UK or 15/16 months before the date of that statement. In the Kent assessment when asked what he would do if he was bullied he said he would tell his brother about it; he is recorded as talking fondly about his brother. The Kent assessment records JK as saying that his father told him that Mohammed was 16 when he left Afghanistan and that he then argued that his brother was 15 when he left Pakistan. In oral evidence he said that he had not given any particular age for Mohammed to Kent; he said that his parents had told him while he was in Afghanistan that Mohammed was 2 ½ to 3 years older than him.

33. In his SEF s/c JK said that Hamayan was approximately 26 years old; that Mohammed was approximately 15/16 years old and his sister approximately 6/7 years old. In the accompanying statement (WS1) he refers to Hamayun and Mohammed as older brothers and to his younger sister.

34. In oral evidence the claimant said there was no independent person with him during the course of the Kent age assessment, he never saw what was written about him and key points of alleged discrepancies were not put to him. He said he was told that his age was not accepted and that if he provided any documentation they would reconsider. When asked about the record that he had said he left school aged 11 he responded that he had initially said he did not know his age, that he had started school aged about 9, and been to school for four years and when asked again directly

said both 'yes' and 'no'. He said he had not given any particular age of his brother, contrary to the assessment which states that he initially said 16 and then amended it to 15. He said there had been some problems with the interpreter who had switched between Pashtu and Dari. He said his parents had told him that Mohammed was 2 ½ to 3 years older than him.

35. The Taskera appears to have been received in the UK in July 2009. The original was not available, the claimant's former solicitors saying it had been sent to the UKBA and the UKBA saying they had not received it. JK claims that whilst in Afghanistan for a few days his father arranged for a photo to be taken on the basis that he would need ID. Quite why this was so given he was due to leave Afghanistan very shortly was not explained. For some inexplicable reason nothing further happens about this until JK informs his brother that social services did not accept his age and wanted some documentation. His brother contacted a friend in the UK, Obeid, who manages, whilst on a trip to Afghanistan to obtain the Taskera which he then brings to Mohammed who then posts it to JK.

36. JK's Taskera does no more than state that the named person appears to be aged 14. It was dated after JK claimed to have left Afghanistan but before he arrived in the UK. We have not seen the original and the photocopy of the photo is not sufficiently distinct to be of any assistance . It appears in any event that the Taskera was obtained on the basis of a photo and someone saying that he "appears" to be 14. JK obtained an Afghan passport in May 2009, prior to receipt of the Taskera. The passport itself has peculiar entries recording the applicant as having been born in Pakistan. The Taskera was received by JK after the age assessment, albeit dated prior to it. Mohammed in his oral evidence refers to the obtaining of his own Taskera and contact with his father. This oral evidence was confused and contradictory and eventually Mohammed fell back on stock answers of 'don't know' and 'don't remember'. We have placed no weight on either the Taskera or the passport as evidence of JK's age: they have not been produced independently of other evidence and the evidence which forms the basis upon which they have been produced is itself open to question.

37. The claimant throughout his oral evidence could not recall dates or time scales. He was unable to give estimates in terms of days or weeks. He could not recall what time of year it was that he left Afghanistan. In his oral evidence he fell back repeatedly on an assertion that he had no knowledge of dates or ages or times, that he was told by his parents that they had first left Afghanistan when he was aged about four, that he started school aged about 9, that he attended school for about four years, that he left school aged 13, that he remained in Afghanistan for the second time for a few days only before leaving for the UK, that he only knew when he left Afghanistan because he heard people saying he left in the 2nd

or 3rd month, that it took him 8-10 months to travel to the UK and that he had been told that Mohammed was 2 ½ to 3 years older than him. It is astonishing that for a young person who claims not to have any realisation of dates or periods of times or seasons (despite coming from a rural area) that he retained in his memory his age having been told this once on one evening even though he was not told at that time why he was being told this and it was not until the following morning he was told he was leaving Afghanistan, that he recalled how old Hamayun was because he could remember a conversation about Hamayun getting married when he was 18. It is astonishing that despite what must have been very real hardships in a lengthy journey to the UK (whatever his age) he managed to recall his age, the age difference between himself and Mohammed, what he heard during the journey about the month he left and yet on so many other matters relating to his life he could not remember. His recall of ages correlates with his brother's recall.

38. We have placed very little weight on these claims which we consider to have been produced in order to substantiate his claim that he is a minor of a particular age rather than based upon any real recollection.

The evidence of the claimant's brother, Mohammed

39. When Mohamed gave evidence he was fasting and at the start of cross examination he complained of a headache. The hearing was adjourned for him to re-commence his evidence the following morning. None of the evidence given the previous day was significantly re-visited or changed. He relied upon a witness statement originally dated 18th December 2007 that he had given in support of his own asylum claim (his asylum statement) and his oral evidence.

40. This asylum statement (to be found at tab 13 and tab 35) was exhibited to a witness statement that was adopted before us. He had also provided a copy for JK in his asylum appeal. On each occasion his asylum statement had been re-signed with the date on which it was relied upon and there was confirmation that it had been read by him in a language he understood. This meant that he had confirmed its contents on three separate occasions. The asylum statement said:

    a. When he, Mohammed, was aged about 7, his family became involved in a dispute with another family because his older brother Gul Hashim had become involved with a girl from that family;
    b. Gul Hashim had been killed because his family had not agreed to the relinquishing of land as compensation for the refusal to marry the girl;

c. The family had then relocated to Pakistan where they lived as refugees in Kacha Gari camp, near Hayattabad until the camp was closed in April 2007;
d. He attended Hyattabad Public School until forced to leave the camp;
e. The family moved from place to place until they ended up in Shamshatoo camp;
f. His father then arranged for him to leave Pakistan;
g. He arrived in the UK in November 2007 having travelled for about four months;
h. Since arriving in the UK he had spoken to his father, such contact being facilitated through an interpreter who had a relative who worked with Peshawar police force who went to the camp and located his family. He states he has not spoken to him since then.

41. Immigration Judge Obhi who heard Mohammed's appeal against the refusal to vary his leave to remain following rejection of his asylum claim accepted the core of his claim, rejecting only that he no longer remained in contact with his family but finding that the family was moving from place to place. That latter finding was clearly made applying the usual low standard of proof.

42. In oral evidence before us Mohammed said he had not spoken to his father. He said he had spoken to someone who had spoken to the police officer in Peshawar and that was the person he had subsequently spoken to. He said he had not paid much attention to the witness statement even though he had been asked to sign it several times and had adopted it before us and even though he accepted that it was an important document and his asylum claim had been based on its contents.

43. During oral evidence he also said he had received his own Taskera through this contact and that person had told him he had spoken to his father, that he had the documents and they were sent to the social worker. Mohammed has adopted his witness statement three times. The Immigration judge disbelieved him as regards the issue of contact with his father, applying a low standard of proof. We also do not believe Mohamed's account that he has had no contact with his father.

44. With regard to JK's Taskera he confirmed that Obeid had obtained it. He said he didn't know how he had obtained it because they didn't talk about it. It is simply not credible that there would have been no discussion between Mohammed and Obeid as to how Obeid obtained the Taskera in Afghanistan.

45. In oral evidence he initially could not remember how old he was when he left Afghanistan for Pakistan because of the feud although later in

evidence he said it was a few days, maybe a week after his brother was killed.

46. Mohammed said that he had not given a definite statement that JK was 3 years younger than him but had said he was 2 ½ to 3 years younger than him. He said he had never given a specific age for JK and that the record in his asylum statement was wrong. In his asylum statement – December 2007 - he records that JK is 12 and that Gul Hashim had been killed 8 years previously. He said that he had been told his month and year of birth by his father before he left Pakistan and that he had been born in August 1992. He said that information passed to him from his mother and father was that the age difference between him and JK was 2 ½ to 3 years.

47. Mohammed said he had not attended school in Shamshatoo camp. He confirmed "absolutely" that he had only gone to one school and that school was in Katcha Gari camp; the most he went to school was four or five years. He confirmed he and his family including JK left Katcha Gari camp in April 2007. He could not remember how long he was in Shamshatoo camp, being unable to give an estimate in terms of days, weeks or months. Although confirming that JK was with him and his family he was unable to say whether JK went to school in Shamshatoo camp saying that he "didn't spend enough time with JK and so could not tell you whether he went to school there". He said that JK "absolutely" went to school in Katcha Gari camp at the same school as him.

48. Like his brother, Mohammed was unable to recall anything in detail. He was evasive in his answers and fell back repeatedly on a purported lack of knowledge and recall. For both, the areas they answered questions on related to their respective ages; virtually everything else they could not remember. We conclude that there has been collusion between them since the arrival in the UK of JK such that they have attempted to ensure their stories corroborated each other. We are satisfied that where an issue arose upon which they had not discussed their answers they responded by saying they could not remember or didn't know. We do not accept that they had such a lack of knowledge as claimed and are satisfied that they have adopted this approach in order to attempt to mislead the Tribunal as to their true ages. We take the view that this collusion commenced prior to their respective arrivals in the UK and that the respective ages they gave was arranged in advance in the knowledge that once they arrived in the UK they would, as minors, be granted some form of permission to stay.

49. Mr Kimblin sought to persuade us that Mohammed's age namely that he was born in August 1992 with a nominal date of birth of the 1st August should be displaced in the light of the poor quality oral evidence before us. In particular he relied upon the failure to answer questions, the claimed lack of recall, the purported lack of knowledge and the lack of any

investigation into his claimed age. Whilst we have concerns about Mohammed's age we are not satisfied that there has been anything approaching adequate evidence produced to sustain a finding that his age should be displaced. The fact that his oral evidence was almost totally lacking in credibility does not satisfy us that his date of birth is unreliable. This is particularly so given that he was age assessed by Nottinghamshire when he arrived in the UK in November 2007 and found to be 15, that he has been under the care of Nottingham social services since then and there has been no intervention whatsoever to re-assess him despite, it can be assumed, there having been other professionals involved with him not least teachers, social workers, support workers, accommodation workers and health professionals. Had there been any doubt that he was the age he claimed to be, given he has remained under the care of the same social services department from arrival until now, it seems inconceivable that steps would not have been taken to re-assess him. This is particularly so given the financial constraints that social services departments are working under and the cost of supporting an individual.

First-tier Tribunal determination of JK (found at tab 39).

50. Immigration Judge McDade, in a short and succinct determination, recorded that the Home Office conceded that the findings in respect of Mohammed particularly in relation to credibility meant that JK's account was also credible namely that he had left Afghanistan because of a land dispute and would be at risk of being persecuted if returned. He recorded that the Home Office continued to dispute JK's age, asserting that JK was not the age he claimed (16 at the FtT hearing) but 19. The determination then proceeded to attack the age assessment undertaken by Kent social services. He concluded that:

    a. It was inconceivable that JK was born in 1991;
    b. That having seen JK and Mohammed he had no doubt but that JK was younger than his brother;
    c. That given the credibility of Mohammed and JK had been accepted in all other respects it made no sense for Mohammed to claim he had left a younger brother in Afghanistan and for JK to claim his older brother had already left if that were not true;
    d. That the Kent social services report was shoddy and could not be relied upon.

51. Mr Suterwalla submitted that the FtT determination in JK found that the core evidence of both brothers was credible. He submitted that in assessing the weight to be placed upon this determination we should consider the reasoning and process by which the decision was reached, as referred to in R (PM) v Hertfordshire CC [2011] PTSR 269 at [83]. He

submitted that the findings as to consistency and credibility should carry significant weight and that to find that JK was born in 1991 would be perverse. Unfortunately the reasoning employed by IJ McDade was based upon the false premise that the Kent age assessment consisted of the front page only. Although we accept that there were significant deficiencies in the Kent assessment (as to which see below) we do not accept that they are such that IJ McDade's conclusions outweigh them or carry more weight, in so far as age is concerned. We do however accept IJ McDade's comment that of JK and Mohammed, JK is the younger both from his assessment of their core account and from his observations of seeing them and hearing them give evidence.

52. We do not however accept that any reliance can be placed on IJ McDade's findings as to JK's age. It may well be that the core account of the basis of the claim for asylum made by the two brothers is consistent however that cannot be said about the evidence with regard to their age. The most that can be said about their evidence with regard to their ages is that JK is younger than Mohammed.

53. We also find independent support for this conclusion namely:

    a. the comments in the Kent assessment that JK talked fondly of his brother and, rather inadvertently,
    b. during the discussion with the interpreter about interpretation, the interpreter said that JK was using respectful language when responding to questions of how he informed his brother about the outcome of his age assessment;
    c. that when asked how he would respond to bullying he said he would tell his brother;

<u>Kent</u>

Assessment report (found at Tab 14)

54. The assessment report appears to have been undertaken by Sylvia Harris who is described as duty social worker and Karen Higgins who is described as a support worker. There is no evidence, either in the report or separately, as to their experience or expertise. On the front page the box saying "child seen alone Yes/no and Date(s)" is not completed but alongside that are the words No interpreter present – Hamed Ghafari. The professionals involved with the claimant are listed as Ms Harris, Ms Higgins, Andrea Laverty (Family Support Worker) although she is not recorded as having contributed to the assessment, DASC (designated as 'Immigration' although no other explanation is given) who contributed to the assessment, Minority Community Achievement designated as Education who did not contribute to the assessment, Hamed Ghafari

(interpreter) who contributed to the assessment and Appledore Reception Centre (residential home staff) who contributed to the assessment. The box identifying whether a report from each of these is attached is not completed. The report has not been signed by any of the individuals participating in the assessment but has been signed by Janette Narramore who is noted as being a Manager and having agreed it.

55. There are quotes in the report from the Appledore staff but records made by the staff on daily interaction or issues that arose during their periods of dealing with JK are not attached.

56. There is no explanation given why the Family Support worker has not been consulted or why those involved with JK's education were not consulted. Nor is there any explanation why the record says there is no interpreter but the body of the report refers to JK making no eye contact with the interpreter or why or how that is relevant to this age assessment. There was no independent person present or responsible adult. There was no indication that the report was read to JK or that he was asked to comment on alleged discrepancies or contradictions (although the form states it is "(To include the Child's views shown in Italics)"). There is no record of the interview in a question and answer format, no contemporaneous notes and it is not possible to establish when the report was written – the signature of the manager is dated 1/12/91. JK is recorded as having arrived in the UK at Dover on 17/06/08 whereas he arrived on 16/10/08 and was referred to Kent social services on 16/10/08. Despite being informed that JK had a brother in the UK who had been recognised as a refugee and appeared on what JK was saying to be under 18 there appears to have been no attempt to speak with him or social workers involved with him in order to inform the consideration of JK's family structure.

57. The (unidentified) writer of the report says:

> "When the writer first saw J…, he had a bigger face and stronger jaw line. J…seem [sic] to have lost some weight and his face now looks slimmer, although his jaw line remained very defined and well structured."

The report refers to an abandoned assessment 9 days previously. There is no record of JK having been weighed at either assessment. There is no record of any investigation by the social worker about what appears to have been a surprising loss of weight such that it showed in his face over a period of only nine days

58. The assessment has what appears to be an attempt at coming to some sort of reasoned assessment of family ages but it is incomprehensible:

> "The writer assumes that his brother could be less than 10 years old when he was killed as the reason for the family to move to Pakistan is to escape their enemy as one of their children has been killed. J…also said he left Afghanistan for Pakistan when he as [sic] four years old. J…could not give any more information about his deceased brother and repeatedly said he was very young and does not know him. Bearing in mind that J's 2nd in line sibling (Hamayun) is 24/26 then his deceased brother (Gul Hashim) could have been about 26/27. My hypothesis to this is that as the family moved because of this incident and left nine years later it is highly likely that Gul Hasim was killed when he was 17/18 years old."

59. There are contradictory records of information provided by JK as to why the family moved to Pakistan. It is not clear whether this is because JK changed his account or whether information has been inaccurately transposed between sections; there is no record of the questions asked and no contemporaneous notes.

60. The assessment concludes, for some unstated reason:

> "…it is the view of the assessing social worker that J…is between the age of 17 to 21 and was given the benefit of doubt and assessed as a sixteen year old with an estimated date of birth of 01/12/91."

Other Kent records

61. There is reference in the First looked After Child Review held on 11th November 2008 – 4 days after the assessment – that Ms Higgins "felt he had lost weight since she last saw him". Again, and perhaps even more surprisingly, there seems to have been no further investigation or questioning given that JK appears to have lost noticeable weight over a very short period of time. This review records Ms Higgins as stating that the Duty and Assessment Team would not be facilitating JK's reunification with his brother but being told by the Independent Reviewing Officer that she would "need to ascertain the brother's details and contact the local Social Service in discussing possible reunification…"

62. A record of an Initial Key Worker meeting records that he says he "attended a good school in Nagahar Province. This was when J…was between the ages of nine and thirteen years. He studied English [two years], Pashto, Dari, maths and the Quran." The report goes on to say he has had an educational assessment and says refer to separate report. That report was not in the papers before us. No point on this apparent discrepancy in JK's evidence as to where he went to school was taken before us and we have therefore treated it as a transcription error. It is unfortunate that the educational assessment was not before us given that this could well have provided assistance in assessing JK's claimed

educational history and could have been of assistance in our assessment of his age.

63. The Kent age assessment was not conducted in accordance with recognised guidelines; although JK's oral evidence with regard to this assessment was itself confused and lacked consistency this perhaps did no more than to confirm the lack of rigour of the report. It may well be that in addition to dissembling and collusion, JK is young and thus his questioning, the record of his answers and the approach adopted should have considered that more carefully particularly give his claimed harsh journey. The lack of much expertise of the conducting social worker is indicated by the report of the Independent Reviewing Officer who had to instruct her to make enquiries about JK's brother, a matter that seems self evident given that JK had been assessed as 16 and thus a juvenile but with an older brother in the UK. Furthermore several parts of the report are unintelligible and there is no explanation whatsoever of how the assessment came to an allocated age of 16 other than a totally unexplained grant of the 'benefit of the doubt'.

64. Mr Suterwalla urged us to place no weight upon the content of the report due to the failure of the respondent to call the writer to give oral evidence and the lack of indications as to expertise. The report was written some four years ago; there were no contemporaneous notes and no tape recording of the interview. We doubt that even if the social worker had been called to give oral evidence she would have been able to say anything more than was recorded in the assessment; anything she had said would have been relying on memories four years old during which time it seems safe to assume a number of young people have passed through her care. We do however consider that the lack of witness statement, either from her or a manager, as to her expertise and training undertaken by the time she conducted the report is remiss and reduces the weight that can be placed upon the content of the report, given that we have no real idea what expertise she brought to the task. We do not consider that merely being described as the writer entitles her report to be treated as expert evidence or that the report is in some way professional. We do not however dismiss the content of the report completely but in considering the recorded information we have taken account of the inconsistencies within the report itself, the lack of explanation for those inconsistencies, the failure to put any inconsistencies to JK and the seeming lack of experience of the social worker.

65. One record that seems consistent with evidence from the other sources before us that JK went to school for four years and was aged 9 when he started school.

Nottingham

Nottingham assessment (Found at tab 15)

66. JK was not asked any questions about the Nottingham age assessment. Mr Kimblin made no submissions with regard to this report other than to request that we read it. We have noted that it was undertaken by one social worker whose claimed expertise was not before us, there was no independent adult present and none of the recorded areas of concern or contradictions were put to JK, He was not given a copy of the assessment. There was no record of the social worker seeking information about JK from other individuals who had had contact with him including through education and health and his brother. There is no indication that JK's brother was interviewed or information obtained from his (Nottingham) social services file.

Other Nottingham documents

67. 3 redacted sheets headed "Observations recorded between 04-Jan-2010 and 04-Apr-2012 set out 14 notifications between 22/06/11 and 03/04/12. These appear to be notes of incidents recorded by Nottingham social services; there is nothing of note in these records save for a summarised conclusion by Mr Liv Brown that JK is aged about 19. Our attention was not drawn to any specific issue in these sheets.

68. A form dated 5th July 2007 records that JK has been in the care of the local authority since arriving in the UK. The social services records relating to that care, whether from Kent or from Nottingham were not produced to us. Although he is recorded as studying in the UK, none of his education records were in the papers before us nor were any medical records.

69. In closing submissions Mr Kimblin stated that he wished us to read it because it contained a record of what was discussed between JK and the social worker but that the conclusion was not relied upon. He said the document was in evidence but accepted that the content had not been put to him and that would affect the weight we could place upon it.

70. The defendant's position as regards the Nottingham age assessment was rather confusing. Correspondence indicates clearly that it has been withdrawn; there is also reference to it not being relied upon yet in submissions Mr Kimblin stated that he wished us to read it for the record of what had been said between JK and the social worker. With respect to Mr Kimblin we do not accept that the report can be taken as a record of what transpired in the assessment – nothing in the report was put to JK and it was not read back to him. There is no question and answer record and none of the content was put to JK before us. There is no indication of

the expertise of the interviewing social worker. We have therefore disregarded the Nottingham age assessment. In so far as the redacted reports are concerned these add nothing to our understanding of JK's age.

Dr Michie's report (to be found at tab 16)

71. Dr Michie interviewed JK during one afternoon in February 2009. He did not consider JK's medical, education or social work records. He did not interview JK's brother. The report is general and it is not at all clear how he reaches his conclusion that JK was aged 17 in February 2009 with a possible deviation of 2 years. There was no follow up to the report.

72. Dr Michie's reports have been seriously criticised in other courts for their lack of explanation of statistical methodology and failure to retain notes of interviews and observations. We note that there were no notes or observations produced to us and Dr Michie did not give oral evidence and nor was there a witness statement from him. We find his report to be uninformative and of no assistance to us in reaching our decision. Although it records an account of JK's claim it is not possible from that account as written to establish what was said by JK, what was surmised by Dr Michie or how the information was obtained or tested. We have placed no weight upon the report.

Closing submissions

73. We do not need to set out, in detail, the helpful closing submissions advanced by Mr Suterwalla and Mr Kimblin; we have taken those into account as we have assessed the evidence and had regard to all that has been said, both in the opening submissions, skeleton arguments, typed submissions and in closing submissions, whether we have specifically referred to the points made or not.

Conclusions

74. The evidence the parties have placed before us has been most unsatisfactory, incomplete and of very little assistance.

75. Mohammed's asylum claim in the UK was initially rejected but, after a successful appeal on 19th May 2008 to the Asylum and Immigration Tribunal he was recognised as a refugee. Mohammed was initially age disputed by the UKBA but, after an age assessment by Nottingham City Council, it was accepted that he was the age he claimed and he was allocated a nominal date of birth of 1st August 1992. On his arrival in the UK Mohammed was, therefore, on his claimed and accepted date of birth, aged 15 years and 3 months, before the AIT he was 15 years and 9 months

and before us aged 20. Mohammed is now unemployed. In accordance with the Regulations and Guidance related to the Children (Leaving Care) Act 2000 it appears to us that he continues to be a former relevant child because he is 20 (s23 Children Act 1989). A copy of his age assessment and his social services file was not produced to us. Despite this and given his allocated and assessed age and social services involvement with Mohammed there has been no re-assessment .We consider Mohammed's age pursuant to submissions by both parties. This is clearly significant because both JK and Mohammed have always asserted that JK is younger than Mohammed, the age gap varying at different times to between 2 ½ and 3 years.

76. Although we have doubts as to his age, we have neither heard nor seen evidence sufficient to displace the age he has been allocated, particularly given the lack of any challenge to his age by those with care and involvement with him over a number of years.

77. We have therefore taken as our starting point Mohammed's age namely that he was born on 1st August 1992 and that JK is younger than him. As identified by Mr Suterwalla, the earliest that JK could have been born was May 1993.

78. Although there has been some variation in the length of time he spent in various countries, we are very aware that the journey for a young person would have been very harsh. There has been no substantial or significant objection to the claim that the journey would have taken several months. There is no doubt of the date he arrived in the UK. We have taken the view that he left Afghanistan in April/May 2008.

79. Although there have been divergence and contradictions in the evidence there are some matters that appear relatively consistent. This is particularly so when considered in the context of Mohamed being 15 when he arrived in the UK and JK being younger than him. Clearly memories fade and, particularly with young people facing challenges and change, issues that are not particularly relevant to their continuing day to day life seem less important and are thus less subject to recall. We are also aware that in many cases respect given to older individuals and particularly parents may result in decisions being taken for which no explanation is given or sought. That is not to minimise what we have said earlier about the apparent collusion between JK, his brother and his family but there are some core matters where the evidence before us does appear broadly compatible with and of itself:

    a. Both JK and Mohammed appear to have gone to school for four years and they attended school together.

b. The raid on Shamshatoo refugee camp can be seen as broadly compatible with the family exodus back to Afghanistan and the subsequent quick departure of JK to the UK. We do not accept that JK did not know the month he left Afghanistan when he left but we are prepared to accept that his memory of that may be vague given the harshness of the journey to the UK. The insistence during the various interviews he has had could, we appreciate have led to an attempt by him to 'come up with a month' that satisfied his questioners and tied in with that an approximate estimate of the length of his journey.
c. Mohammed was adamant that he had not gone to school in Shamshatoo and that the family had moved to Shamshatoo in April 2007. Mohammed had taken in the region of four months to travel to the UK and had arrived in November 2007; he had thus left Shamshatoo around July/August 2007. We do not accept that he would have been unaware whether JK went to school in Shamshatoo.
d. Mohammed was born on 1st August 1992.

80. We do not accept that JK was told he was 13 or 13 years 4 months or 13 and a half the day before he left Afghanistan. This is not solely because his account differed as to whether it was his mother or father or both parents told him but principally because the circumstances he described when he was told which led to him being able to recall this information are not credible. We have disregarded JK's assertion that he was aged 13 plus a few months when he left Afghanistan.

81. The evidence that he gave that he left Afghanistan for the first time when aged four, that Mohammed gave evidence that he left when he (Mohammed) was 7, that Mohammed said that Gul Hashim had died 8 years before he (Mohammed) arrived in the UK, that JK said (amongst albeit contradictory evidence) that Gul Hashim had died just before the family left Afghanistan of Pakistan and that JK is younger than Mohamed does tend towards some consistency in establishing age but for reasons we refer to below in [83] we do have disregarded the claim that JK was 4 when he initially left Afghanistan.

82. There is a significant discrepancy about schooling: Mohammed is adamant he only went to school in Katcha Gari, that he attended school for 4-5 years and that JK attended school for part of that time; and JK's evidence is that he went to school in Shamshatoo for 4 years and Mohammed was there for part of the time. It may be that JK recalls being at the same school but is mistaken as to the whereabouts of the school. It seems that Mohammed started school round about the age of 8 although on his evidence the family would only have been at Shamshatoo for a few months before he left (despite his claimed inability to give even a rough

estimate of the length of time he spent there) – not the four years claimed by JK.

83. This evidence is difficult to reconcile particularly because we take the view that both JK and his brother were deliberately dissembling and that both he and JK were able to recall more information than they were prepared to disclose. We tend towards accepting Mohammed's evidence that he was at a school in Katcha Gari for four years and thus the family and JK were in Shamshatoo for only about a year before returning to Afghanistan. The high point of JK's evidence is that he left Afghanistan when he was young, lived in various camps including Shamshatoo; that he had about four years schooling and that he left Afghanistan in April 2008. We do not accept his or Mohammed's evidence that JK initially left Afghanistan when he was four years old. This evidence is, we are satisfied, a result of collusion – JK would have no independent recollection of his age and would only have given this age as a result of what he was told; we are firmly of the belief that the information he gave was in order to bolster a claim that he was a minor.

84. Mohammed's evidence has been that he left Afghanistan age 7. Taking his date of birth as 1st August 1992 for the reasons set out above we have taken this date of departure to be at a time when Mohammed was in the middle of his seventh year; by that time he would be describing himself as 7 and not nearly 8. We have therefore concluded that the family left Afghanistan in or about February 2000 at which time Mohammed would have been 7 years old.

85. This fits with Mohammed's evidence in December 2007 that his brother Gul Hashim had been killed 8 years ago. This could however either mean that Gul Hashim died in December 1999 (8 years before he gave his statement) or February 2000 (when the family left Afghanistan). We prefer the latter because this fits more closely with what Mohammed has said about when he left Afghanistan and furthermore we consider it more likely that given his age and when he was interviewed for that statement he would not be stating time periods with a year being an exact 12 month period but reflecting his recollection of events.

86. Mohammed's evidence in December 2007 was that JK was 12; this at a time when he had left JK in Shamshatoo camp some four or so months earlier. We have great difficulty accepting this evidence. Although it was given prior to JK leaving Afghanistan and although, as Mr Suterwalla points out, it would require forethought by the family, we are of the view that this is what happened. There was a family plan for the two younger boys to leave Afghanistan/Pakistan and an account was prepared to attempt to ensure consistency in claimed ages in the light of known and

anticipated benefits of being a minor. The failure on the part of both Mohammed and JK to recollect information other than what their ages were concerned points to planning and collusion. We therefore take the view that Mohammed's statement in December 2007 (only a few months before JK left Afghanistan and during which time he was in contact with his father) cannot be relied upon at all.

87. JK's evidence was that he first left Afghanistan aged 4. Again, for the reasons referred to in [86] above, we do not accept this as a statement approaching the truth and have placed little weight upon it.

88. There remains the difficulty of schooling. At most we accept that JK undertook 4 years of schooling and commenced that schooling aged 9 at the same school as Mohammed in Katcha Gari camp. We have serious doubts that he attended school in Shamshatoo camp despite giving the name of the school. It is not credible that Mohammed would be totally unaware, as he claims, whether JK attended school in Shamshatoo camp even though Mohammed was only in the camp for a few months.; they were livng togther as a family and it seems to us inconceivable that Mohammed would not be aware whether JK was going to school during that time.

89. Mohammed and JK have said that they considered there was a 2 ½ or 3 year gap in their ages. Although we accept that JK is younger we have taken the view, for the reasons set out above, that this purported age gap has been acquired by them in order to bolster the claim. As evidence in itself therefore we have placed no weight upon it.

90. Drawing all this together and doing the best we can with the evidence the parties have chosen to put before us, we reach the following conclusions.
    a. We are entirely satisfied that JK was not told he was 13 the day before he left Afghanistan to come to the UK;
    b. Mohammed has a date of birth of 1st August 1992 which we have not displaced;
    c. JK is younger than Mohammed;
    d. The family left Afghanistan for the first time when Mohammed was aged 7 shortly after Gul Hashim was killed;
    e. Mohammed attended school for 4-5 years during which time JK started school;
    f. The family left Katcha Gari camp in April 2007;
    g. JK attended school in Katcha Gari camp for about 4 years starting when he was aged 9 and aged 13 when they left the camp;
    h. They attended the same school for some time in KatchaGari camp; JK did not attend school in Shamshatoo camp;

i. JK left Shamshatoo camp in April 2008 for Afghanistan and left Afghanistan April/May 2008 about 8/9 months after Mohammed had left for the UK;
j. Mohammed was in touch with their father after arriving in the UK;
k. Mohammed, JK and the family have colluded to put forward evidence of an age gap of 2 – 3 years.

91. Therefore despite the very great difficulties before us with regards to the evidence we have reached the only conclusion we consider viable: that JK was born during 1993. JK says he started school aged 9. We have taken that to be in the middle of his 9th year as being a reasonable assumption to make if he knew he was 9 when he started school. Had he been just 9 we consider he would have said so and if he were nearly 10 he would have said so. Four years attendance, leaving the camp in April 2007 would mean that he would have started school around April 2003. This would mean that he would have been born in September 1993. We acknowledged that this is shortly after the earliest date referred to by Mr Suterwalla that he could have been born given Mohammed's age (May 1993) but when the evidence, such as it is, is considered as a whole, we are satisfied that the short period is not such as to weigh adversely overall. We have allocated a date midway through September, the 15th. This therefore means that JK was at the hearing before us 18 years old and will be 19 on 15th September 2012. Obviously the assumption that the age given reflects the middle of the claimed age is little more than a guess but it is a guess based on a reasonable assumption that a child or young person is more likely to describe an age of which they are in the middle and if more to one end of the year will add the words 'nearly' or 'almost' or 'just'.

Decision

92. We make a declaration, therefore, that the claimant's date of birth is 15th September 1993. The parties may make further written submissions on the terms of any further orders sought and in particular on the issue of costs.

Signed

Upper Tribunal Judge Coker

18th September 2012