

IN THE UPPER TRIBUNAL

R (on the application of AH) (by this litigation friend, Francesco Jeff) v Secretary of State for the Home Department IJR [2015] UKUT 00481(IAC)

Field House
London

BEFORE

UPPER TRIBUNAL JUDGE MCGEACHY

Between

**THE QUEEN
ON THE APPLICATION OF
A H
(BY HIS LITIGATION FRIEND, FRANCESCO JEFF)**

Claimant

and

LONDON BOROUGH OF CROYDON

Defendant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Interested Party

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Mr A Suterwalla, instructed by Deighton Pierce Glynn Solicitors, appeared on behalf of the Claimant.

Mr R Hadden, instructed by the London Borough of Croydon, appeared on behalf of the Defendant.

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JUDGMENT
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JUDGE MCGEACHY:

Introduction

1. The claimant applies for judicial review of a decision made by the defendant local authority ("the defendant") on 19 June 2013 which assessed him to be an adult. Permission to apply for judicial review was granted by Sales J on 2 October 2013 and the application was transferred to the Upper Tribunal (Immigration and Asylum Chamber) by order of His Honour Judge Cooke sitting as a Deputy High Court Judge, on 24 April 2014 pursuant to Section 31A(iii) of the Senior Courts Act 1981.
2. The claimant arrived in Britain on or around 3 April 2013 and claimed asylum. He asserted that he was from Sudan and that his date of birth was 15 December 1997. That was not accepted by the Home Office, who referred him for an age assessment.
3. On 3 April 2013 he was placed in a temporary placement with a foster carer, Sajjad Abid, until the age assessment could be completed. The foster carer considered that the claimant was much older than his claimed age and the following day stated that he felt uncomfortable with the situation as there were other young people living in the placement and he did not want to accommodate the claimant any longer. The claimant was then placed in bed and breakfast accommodation pending the outcome of the age assessment.
4. On 24 April 2013 two assessing social workers, Ken Facey and Adetunji Oyeleye, assessed the claimant's age and in their decision dated 13 May they stated that:-

"With the information obtained for the purposes of this interview we have given consideration to AH's history, physical appearance, demeanour, culture, and religion and have given him the benefit of doubt to maintain his claimed age of 15 years old".
5. The defendant therefore accepted responsibility to provide the claimant with accommodation and support as an unaccompanied minor pursuant to Section 20 of the Children Act 1989. On 13 May 2013 he was placed in a foster care

placement with Mrs Tsega Weldegebriel. Mrs Weldegebriel considered, however, that the appellant was older than his claimed age and told the supervising social worker, Ms Amber Constable, on 17 May 2013 that she considered that he was considerably older.

6. On 31 May the defendant was told by the Home Office that the claimant's biometric data (fingerprints) matched those of an adult who had previously claimed asylum in Italy under the name of MIAZ, a national of Chad whose date of birth was 1 January 1994.
7. The Home Office then reconsidered the claimant's asylum claim and applied to Italy to accept responsibility under the Dublin II Regulation (Council Regulation) (EC) No 343/2003. On 27 May 2013 the Italian Interior Ministry accepted responsibility for determining the claimant's asylum claim.
8. On 5 June 2013 a looked after child review was convened to consider the claimant's welfare. Doubts about the age of the claimant were raised on that occasion following the views expressed by Mrs Weldegebriel, the allocated social worker, Susan Akingbeme and the supervising social worker Amber Constable.
9. On 19 June Mr Facey and Mr Oleleye, the claimant's age assessors met with the claimant to review his age assessment in light of the information received from the Home Office and the concerns raised by his foster carer and social workers. The age assessment was revised and it was concluded that the claimant was an adult.
10. The claimant was then moved from the foster carer's accommodation and the support of the defendant and eventually dispersed to Birmingham where he was accommodated by NASS.

The Law

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

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

12. In carrying out that exercise I must act in an inquisitorial role and decide, on the balance of probabilities, whether the

claimant was or was not a child at the material time. There is no burden of proof in these proceedings. It is not for me to apply a standard of proof of "benefit of the doubt" but it is for me to make a "sympathetic assessment of evidence" and

"in evaluating the evidence it may well be inappropriate to expect from the claimant conclusive evidence of age in circumstances in which he has arrived unattended and without original identity documents. The nature of the evaluation of evidence would depend on the particular facts of the case" (R (CJ) v Cardiff CC).

13. Over five days I heard evidence from the claimant, Mohammed Ayub, with whom he lived in NASS accommodation, II, who claimed to be of a similar age to the claimant and to have known him in Sudan, ZH, a friend of the claimant who also claimed to be from the same region of Sudan, Helen Johnson, the Operation Manager at the Children section of the Refugee Council in Croydon, Mandy Ross, who knows the claimant through the Birmingham Community Hosting Network Family Befriending Scheme - "BIRCH", which is a scheme where local families are trained to befriend young refugees living in the UK without their families, and Elizabeth Bell, who is a project worker for My-Place, a project supporting young refugees who are aged 13 - 21 years old and who live in Birmingham or Coventry: she is also a project coordinator for BIRCH. There was also in the papers a statement from TS, who had lived with the claimant in the same foster care placement. He, however, did not give evidence. Finally, there is a statement from Francesco Jeff, the claimant's litigation friend, who also did not give evidence.
14. For the defendant I heard evidence from the supervising social worker, Amber Constable, the foster carer Tsega Weldegebriel, the claimant's allocated social worker between May and June 2013, Susan Akingbeme and Mr Adetunji Oyeleye, who was one of the two social workers employed by the defendant who had undertaken the age assessment on 25 April 2013 and the review age assessment on 19 June 2013. There was also a statement from Liston Williams, who was employed by the defendant, as a looked after children's reviewing officer and child protection chair practitioner, who chaired the looked after child review.
15. There were also reports in the papers from Peter Verney, a Sudanese country expert who had met with the claimant and had interviewed him and from Dr Christopher Lukas on "mutual eligibility of Arab dialects" - his report related to the claimant's assertion that he had difficulties understanding the Iraqi interpreter who had interpreted for him at the Home Office.

16. Over the course of the hearing further information from the Italian authorities came to light regarding the information given by MIAZ which indicated that he had entered Italy by air and had been apprehended at Rome Airport.

Evidence of the Claimant

17. The claimant had provided three statements and also gave oral evidence. In the first statement, dated 7 August 2013 the claimant explained that he was then homeless and had no money to buy food but would get some food at the mosque. He stated that he did not like the accommodation at Brickstock House, to which he had been moved after leaving the foster carer accommodation, as it was for adults and he felt intimidated there. He asserted that he had given his correct details to the Italian authorities and that he was not Moussa Issakha Abdraman Zene.
18. In his third statement the claimant set out his history. He said that he came from Khutum in Darfur and had left there in November 2011 after his father, MHH, his mother, FHSD, and his eldest brother, HMHH, had been killed, as had his uncle. He said that he had a younger brother, AMHH, who he thought was still in Darfur.
19. He said that his father had owned a plot of land on which he grew vegetables among other plots. Because of his young age he had himself not worked on the land. He had attended a religious school and only went to the farm to play. He would play football and "billi" (marbles). The plot of land had been taken by the Janjaweed.
20. His brother HMHH was older than he by about four years. HMHH had helped his father on the land and would also help him with basic arithmetic. He said that he had had a friend, ZH, who came from a town called Muhagria, which was close to Khutum, whom he had recently met in Birmingham. ZH had been a friend of his older brother.
21. He referred to the religious school in Khutum where he had been taught Arabic and basic maths and where the pupils had to memorise part of the Qu'ran. He said that he had managed to memorise the Qu'ran and that the Imam had liked him.
22. With regard to how he knew his date of birth he said that while he was at the religious school the Imam, whom he called "the sheikh", had asked him what his date of birth was. He had not known and so had asked his mother, who had said that he was 12. He had also asked his father, who had told him that his date of birth was 15 December 1997 and had written this down on a piece of paper in Arabic and told him to

memorise that date. He had shown the paper to the sheikh the following day.

23. He had been at school when he had been told that his home had been attacked by the Janjaweed and his father, uncle, mother and elder brother had been killed. He and his cousin, M, had left Khutum and gone to various refugee camps in none of which they had been registered. Eventually they went to a camp in the city of Al-Fashir where they remained for about a week and were given clothes and food. He said that he was registered with his photograph, his name, his father's name, his hometown and date of birth, which he had given as 15 December 1997.
24. They later moved to Kufra in Libya where they had remained for a month.
25. They had then moved on to Tripoli in Libya where they had stayed with others from Darfur. They stayed in Tripoli for six to eight months before leaving because the Libyans would attack those with dark skins. He and M had then gone to Greece where he said they had been arrested and put in prison for two months and given notice to leave the country in ten days. He went with M to Athens and stayed in an abandoned factory. M had earned a small amount of money. The claimant had done one day's work stacking boxes but no other work. They had begged for food or scavenged food from rubbish bins.
26. He said that he had been picked up by police, taken in a car to the yard of a building where acid had been poured on his arms as had hot coals. He had been kicked and slapped and then thrown out on the street.
27. M had arranged for an agent to take them by lorry to Italy which had taken a day on a ferry, sitting on the axles. They had arrived at a port and the lorry had driven on for about four hours before, in another town, they had gone to the train station where they had taken a train to Ventimiglia. There they had slept at the train station before being taken to the police station where they were kept for about six or seven days. There was no interpreter - a Tunisian man who spoke Italian was being used as an informal interpreter but they had difficulties understanding him. He said that each of the group was fingerprinted. He had not given any name, nationality or date of birth other than his own details.
28. He then referred to his interview with the Home Office stating that he could not understand the interpreter. However, he said that he had understood the Sudanese and Lebanese women who had interpreted when he had been interviewed at Croydon for the age assessment on 25 April and 13 May 2013.

29. He referred to the interview in Croydon on 19 June. He said he was told that the foster carer had said he was an adult and was told that his name was Abdraman Zene Moussa Issakha. He said that he was given no chance to tell those who interviewed him about mistakes that the foster carer might have made and that he had not had the chance to explain himself to the social workers. He said they had already made up their mind.
30. He referred to a comment from the looked after child review where it was asserted that he had said that he would like help in tracing his family. He said that he had not asked for help in tracing his father, mother and brother as they were dead and he could not understand why the reviewing officer, Liston Williams, had said that.
31. He said he had only met Amber Constable once and there was no interpreter there and that his foster carer, Mrs Weldegebriel, had tried to interpret but her Arabic was poor. Amber Constable had asked him if he smoked or took drugs and he had said that he did not. He had asked if he could have more pocket money to cover travel expenses because he was only getting £10 a week and that was not enough. He was given an Oyster Card for 11 to 15 year olds an hour before he left the foster placement.
32. He denied the assertions made by Ms Constable that he had asked her about arranging a driving licence and had said that the fostering allowance should be paid to him directly and that he was an accomplished smoker.
33. He also denied that he had been moved by Mrs Weldegebriel to a downstairs bedroom and said that he had got on well with his foster carer's two children and the other boys being fostered there.
34. He said that Susan Akingbeme had visited twice at the placement and he had seen her once at the Council's offices and that he had told her that all his family had been killed apart from his younger brother. He denied that he could look after himself and said that his house mate did all the cooking.
35. In his oral evidence, when asked about his date of birth the claimant repeated what had been stated in his statement. He described his home and then spoke of meeting with Amber Constable and Susan Akingbeme. He said his parents and elder brother had been killed on 9 February 2010. He denied that he had said that he would like to contact his family: obviously he could not do so because they were dead. He had certainly not discussed the Red Cross tracing service.

36. It was his brother who had taught him to read as his father was illiterate. He said there was no system of birth certificates that he was aware of or any official place to register a birth in South Sudan.
37. His parents had not said that he could not be registered and when asked if the transcript of his interview was wrong he said that his parents were dead.
38. When asked about the ability of his father to read and write he replied that his brother could do so.
39. He confirmed that he had not celebrated birthdays and said that it was his brother HMHH who would have told him that he was 4 years younger than him.
40. He confirmed that his education in Sudan had been at the local mosque and said that the students had started there from age 8 or perhaps 9.
41. It was put to him that Peter Verney had said that children would start going to religious school at 5 and he said that children would start going to pray at the mosque at the age of 5 and at 8 they would start to read and memorise the Qu'ran. It was put to him that he had said that he had been told his age when he was 12 but he was now changing that to say that he had been told when he was 9. He repeated that he had been told his age was 12.
42. Asked when he had left Sudan he said he had left in the first month of 2011. When it was put to him that he had said at interview at the Home Office that he had left in 2012 he stated that the interpreter must have made a mistake.
43. Asked how long he had remained in Darfur after his parents had been killed he said that after they had been killed he had gone from Khutum to Al-Fashir and then to Nyala and another camp before ending up at Kufra in Libya - he travelled with his cousin. He thought that his cousin had been in his 20s.
44. He was then asked if he had been to the refugee camp in Nyala (which he had just mentioned) and he stated that he had not mentioned that camp when interviewed because he had not been asked. It was put to him that he was trying to add to the length of his journey and he said that that was not the case. He was then asked how long he had been in Tripoli and he said that he had been there between four and eight months, he could not recall the season when he had arrived but it was the start of the war against Gaddafi and they were unable to go out.

45. He could not remember when they had gone to Patras in Greece. He could not remember observing Ramadan either in Tripoli or Greece but said that he had arrived in Greece at the end of August 2011 or possibly in September or October that year.
46. Everyone on the boat had been detained in Greece and he thought that he had been fingerprinted there. They were in Greece for approximately one year six months or one year eight months. They had left Greece after a Sudanese man had been hit by a police car. He did not know the month they had entered Italy in 2013 but he had been there for two weeks before he came to Britain.
47. He confirmed that he had been picked up by the police in Ventimiglia where they had arrived at midnight and that he had been detained for six days or a week. It was put to him that he had told the social worker that he had stayed for three days and that he had told Dr Verney that he had been detained for four or five days. He said that he had not been asked by Susan Akingbeme about his time in Italy. He had been fingerprinted in Greece and he said that his fingerprints had been taken there.
48. It was put to him that he had not said that he had been fingerprinted in Italy until he was told that a match had been found. He replied that when he had been picked up in Italy a Tunisian man had spoken for those that were in the group.
49. He confirmed that he had not wanted to be separated from his cousin but denied that as his cousin had said he was an adult he had wanted to be treated as an adult as he had not wanted to be separated from his cousin. He said that he was given a form by the Italian authorities and left straight away.
50. When he had arrived in Britain he had met an Algerian who had taken him to the Home Office.
51. He stated that he had been put into bed and breakfast accommodation by Croydon after he had claimed asylum and denied that he had spent a night with another foster carer.
52. He confirmed that he had been taken to the Refugee Council and that he had been registered there and that they had helped him. No-one there had been surprised that he was in foster care. He said that he had never asked about a driving licence and he said that he had only met Amber Constable on one occasion. He denied that he had asked for extra money or that he had ever smoked.
53. Mr Hadden then returned to the issue of the age of his brother and put to him that at his interview with the Home

Office he had said that his brother was 21 and not 16 or 17 and also that his brother was four years or so older than he. The claimant did not accept that given that he had said that his brother had been killed in November 2010 when he had claimed to be 12 his brother would only have been 16 or possibly 17 when he had died.

54. In re-examination he was asked about his feelings when interviewed and whether or not he had been scared.
55. He said that in Sudan if you gave your age it would be your age at your next birthday. He said that he had referred to his brother as being four years older than he as if he were living. He said that he had not understood what was going on at the LAC review.
56. With regard to the first age assessment he confirmed that he had not been told by the assessors that he was not telling the truth.
57. Over the first three days of hearing information came in from the third country unit of the Home Office regarding the fingerprint match of the man who had claimed asylum in Italy. When that was put to the claimant he denied that he had ever used the name of Abdraman Zene Moussa Issakha (AZMI) or a date of birth of 1 January 1994 let alone 1984 (the date of birth first recorded for AZMI).
58. He said that he was not from Chad and that he had then gone to Greece before leaving for Italy and that he had entered Italy on a ship - he had never arrived in Rome by plane. He described again how his fingerprints were taken in Ventimiglia.

Evidence of Elizabeth Bell

59. Ms Bell's evidence was taken first, by Skype because she was due to go on holiday on the afternoon of the first day of the hearing. She confirmed her statement stating that she had known the claimant since January 2014 and that she had worked with young refugees for seven years at My-Place. She said that the average age of the young people with whom she worked was 18 and almost all were young teenagers who are or were unaccompanied minors. She described the weekly youth clubs and advice and support services which My-Place offered. She confirmed that she also was the project coordinator for BIRCH.
60. She stated that the claimant had been referred to My-Place by the refugee youth project in Croydon and that the referral form had stated that he felt scared of the men he lived with because "they are adults and do adult things, and I am not".

61. She said that she had had difficulty in engaging with the claimant first but had been told by the refugee youth project that he was having difficulty adapting to life in Birmingham. He had found it very hard to orientate to a new city.
62. She described the claimant as having a serious demeanour and being very nervous and that he had struggled to trust her. She suspected from his body language that he was someone who had suffered and was struggling to cope without the support of his family or Social Services.
63. She said she had referred him to BIRCH and then spoke of what he had told her about his past in Sudan and the violence from the Janjewed.
64. She had never had cause to question the claimant's age and she said that his appearance was very much in line with his claimed age of 16 years old (her statement was dated 19 December 2014). She said that his height, build and facial features were in line with his stated age and he had always come across as a young person who was trying his best to cope but struggling. She had found a place for him on an ESOL young learners course for 16 to 18 year olds. He had told her how much he loved that course because he was being taught with other young people. She said that she would see him at a youth club each week and that he had support from a volunteer family and other support in place which had made a difference.
65. She concluded her statement by stating:

"There was nothing at all in C's behaviour which suggests he might be older than 16. There is nothing about him which would mark him out to be very different (i.e. older) to the other 16 year old teenage boys who attend the Birmingham youth club and whom I have supported".
66. In her oral evidence she said that she would see the claimant once every one or two weeks and she had seen him the previous Thursday. The youth club sessions would be for two and a half hours and she would also see him when he came in for counselling. She described him as being wary of adults initially but had slowly been gaining the confidence to interact: he realised that she wanted the best for him. She described him as quite emotional.
67. There were a number of volunteer and paid workers and the children looked after were from an age range of between 13 to 21 or 12 to 22. BIRCH dealt with children between 16 and 25 and most were under 20.

68. Asked if she had developed any ability to assess age she said that age was very difficult but working with a group it was possible to get a sense of an individual's age by comparing body language and confidence and so on. She confirmed that she believed that the claimant was the age he said he was and that she had no reason to question it.
69. In cross-examination she confirmed that she had always wanted to work with those who were disadvantaged and she agreed with Mr Hadden that she would be highly sympathetic.
70. She said that the average age in the youth club would be under 18 and she knew that the claimant was aware that his age was disputed. She stated that there was no evidence that the claimant had ever smoked and she was surprised at that suggestion. She accepted of course that appearance could not be determinative and that the claimant could be as old as 19½ or 20 years old now.
71. It was put to her that she seemed very surprised that the age had been disputed and she was asked if she was aware that it had been questioned by two foster carers and social workers. She said that she was not surprised by what the social workers would have said but was surprised at the remarks of the foster carers and that it had been thought necessary to rearrange where he was sleeping. She had known other asylum seekers who had given false details en route to Britain.

Evidence of Helen Johnson

72. Helen Johnson is an Operations Manager at the children's section of the Refugee Council in Croydon and has worked at the Refugee Council for seventeen years. In her evidence she referred to a statement which had been drafted to answer an assertion made by Mrs Weldegebriel that when she had taken the claimant to the Refugee Council someone there had stated that the claimant had been laughing about managing to get into care when he was older than he claimed to be. She said that she found it incredible that a worker or volunteer at the Refugee Council would make a statement to a foster carer on first meeting her that a child in her care had said that he was older than he claimed to be or that he had "managed to get into care" as that would be totally unprofessional and inconsistent with the type of work that they did. If she had believed the claimant to be an adult the Refugee Council would not be supporting his claim to be a child.
73. In her oral evidence she spoke of the database kept of the volunteer and other workers at the Refugee Council and stated that if she knew exactly when Mrs Weldegebriel had taken the claimant to the Refugee Council she might be able to trace who Mrs Weldegebriel had spoken to but as it was she could

not find any record of any meeting. Normally it was a case that foster carers would merely drop off the applicant. With regard to the claimant's age she said that she supported her colleagues who thought that the claimant was a child. She stated that if it was thought that the claimant was an adult he would have been given help as an adult. If it was thought that an asylum seeker should no longer be helped the Refugee Council would not notify the local authority.

74. She stated that having seen the claimant interact with other children and engaging with them she considered that he was a child.

Evidence of Mrs Mandy Ross

75. Mrs Ross met the claimant through BIRCH. She has a 15 year old son, Joe, who is an only child. In her statement she said that the claimant was first brought to her house in March 2014 and has visited roughly once a week since then. She stated that her son and the claimant get on well together and that the claimant would come to her house on Monday evenings after college arriving between 5 and 6. They would eat together and then the claimant and Joe would play games such as jenga, dominoes and mancala "and have lots of fun". She stated that she did not believe that the claimant was able to do any cooking and that she had been teaching him and Joe to cook simple dishes. She had tried to explain to the claimant that he should not eat fast food all the time. Whenever she cooked she would give him leftovers and a bag of food to take away.
76. She said that she had taken the claimant with Joe on family trips where they had climbed trees and eaten ice-cream and played on the beach together. She said that they had organised an Eid party with a few of the BIRCH families and the children had all been around the same age. Indeed she stated that the claimant had come to her house to celebrate his 17th birthday with them the previous day (her statement was signed on 16 December 2014). She said that the claimant would play football and basketball with his friends and that his English was slowly improving and that he appeared to need to ask for advice and assurance on matters such as his weight.
77. She did not understand why Croydon Council was saying that the claimant was not 16. She had been a part of the family befriender project for over ten months and she knew the claimant quite well: there was nothing in his behaviour that suggested that he might be older than 16.
78. In her oral evidence she said that he was the second young unaccompanied minor she had dealt with - the relationship

with the first had not really worked out but the claimant and Joe got on well. It appeared they were boys together. She said that she had not been told that he might be older. She confirmed that her experience was that he had not cooked before. He received the care that she would offer as a child.

79. She said that he had spoken to her about his journey to Britain and that he had been badly treated in Greece. He had not said much about Italy. To her he seemed like a typical teenager.
80. He had spoken to her about his family and she knew that his parents and his brother were dead. He had shed tears about his younger brother who she thought was about 6 years old.

Evidence of Mohammed Ayub

81. Mohammed Ayub is the Pakistani asylum seeker with whom the claimant lived in Birmingham. He has now been granted refugee status.
82. In his statement and in his evidence he said that he had children whose age ranged from 6 to 16 - he had last seen his children two years ago.
83. When the claimant had come to live with him in Birmingham in October 2013 he had shared a three bedroom flat with him and another person. Although he thought the claimant looked quite tall when he first met him he noted that he had barely any facial hair and he did not think that he was shaving. He had never seen any shaving equipment in the communal bathroom. He stated that there were no obvious signs that the claimant looked like an older person although he realised it was very difficult to gauge the age of a person by their appearance.
84. He described the claimant as having very poor self-care skills and said that he could not cook, his room was a mess and his budgeting skills were poor. He stated that the claimant needed guidance about how to behave in the house which he was sharing with other people including being told to clean up after himself. On one occasion when he had done this the claimant had become tearful and had reacted in a way that was not very mature. When he had needed to rest after a knee operation he had asked the claimant to shop for him but the claimant seemed to often buy the wrong quantity of goods. He had never seen the claimant smoke.
85. In his oral evidence he stated that he had stopped living with the claimant in August 2014, having lived with him for approximately ten months. As neither of them had been

working they would see each other three times a day at mealtimes. They had lived together almost like a family.

86. He confirmed that he had children the oldest of which was 16. He described the claimant's behaviour as childish and said that his own children had a better understanding of domestic matters such as buying groceries, hygiene and keeping their bedrooms tidy. He said that he had told the claimant to keep his room clean and stated that the claimant could not cook although he would make tea. Although the claimant had said that he could do small things it was clear that he could not do anything difficult. He confirmed he had seen no evidence of the claimant shaving. He considered that the claimant was honest, saying that he had given him change back after he had been to the shops.
87. In cross-examination he said that he had not seen the claimant since August 2014 and he expressed surprise that Croydon considered that the claimant was an adult: it was his opinion that the claimant was a child. Mr Hadden asked him if he accepted that the claimant's appearance was someone aged 18½ and he answered that it would not be right to say that the claimant could be older. Mr Ayub Khan stated that he believed that the claimant's poor self-care skills, and his lack of ability to cook or budget indicated the claimant's younger age rather than, for example, someone who was about to go to university. He accepted that the claimant would not have had the chance to develop his skills while he had been travelling. He said that they would eat together. During the rest of the day when they were not eating the claimant would stay at home. He described showing the claimant how to use buses and to make his own way to his lawyers in London. He had given him a map and said that he would try to keep track of him on his phone.

Evidence of Zakaria Hamed

88. Zakaria Hamed relied on a statement in which he stated that he was a family friend of the claimant and was aged 21. He was born on 18 January 1993. His hometown was Mahagria in Darfur. He said that he knew his date of birth because he used to have a Sudanese birth certificate which had been issued by the Nyala Hospital immediately after his birth. He went on to say that he thought the birth certificate had recorded his date of birth according to the Islamic calendar but he could not remember what the date was as in the area he came from in Sudan birthdays were not generally celebrated as it was not part of their culture and tradition. He had left the birth certificate in Libya where he had lived between 2008 and 2010.

89. The Home Office had said that he had claimed asylum in other countries in Europe en route to Britain but in October 2013 had been granted discretionary leave to remain for five years.
90. He said that his father had owned a small plot of land in Khutum where he would work from time to time. He had met the claimant's elder brother HMHH in Khutum because his family's plot of land was in the same area as theirs. HMHH had been around the same age as he. He had not asked HMHH his age but his father had told him they were about the same age. HMHH had been a good friend of his and on two occasions he had slept in HMHH's family home where he had met the claimant but the claimant had not socialised with them because he was too young. He said that the claimant and his friends were obviously much younger than him and HMHH.
91. He said that the claimant had not worked on his father's farm because he was too young. Instead he went to the khalwa, which is a religious school where they would learn the Qu'ran and Arabic. HMHH would go to khalwa in the afternoon having helped his father in the morning. He said that he had left Sudan in 2008 and believed that most of his family members had been killed. He had learnt about a party for Sudanese people in Birmingham, had gone there and met the claimant. He was sure that the claimant was "significantly" younger than he.
92. In his oral evidence he said that he would occasionally speak to the claimant by telephone - he had not seen him for about eight months. He had not known the claimant's younger brother but only the other members of the family. He described some areas of Khutum and said that he had only spent some time there one year. When asked how old he was when he had gone to Khutum he said he could not say his age or date of birth as in Sudan attention was rarely paid to age.
93. He stated that nobody had asked how old he was when he had gone to the khalwa and he had not asked his parents. All he knew was he had gone to the khalwa when he was young and had stopped going after the problems started in 2008. He had only really known HMHH for a short time.
94. He did not know the name of the Imam at the khalwa in Khutum. It was put to him that the claimant was thought to be about his age but he asserted that the claimant was younger.

Evidence of II

95. Given the age of II Mr Hadden, Mr Suterwalla, the interpreter and I, sat around a table at the back of the courtroom with

him. I excluded everyone else. In his witness statement he said that he had been born in Khutum and had left Sudan in 2013, coming to Britain with a group of friends and claiming asylum on arrival.

96. He said that he was born in the ninth month of the Islamic calendar - the month of Ramadan - and each time Ramadan came around he knew he was one year older. He knew when he arrived in Britain that he was 15 years old and said that the Home Office were correct in assigning him the date of birth of 1 July 1997.
97. He said that he had known the claimant for a long time, since they were children as they both came from the same neighbourhood in Khutum. He had met the claimant in religious school when they were both 7 or 8 years old. He had no reason to suspect that the claimant was older than he. They would go to the religious school almost every and they were in the same class most of the time. He did not remember when he last saw the claimant in Khutum. He said that he and the claimant had met at the Refugee Council when he was in Croydon and when the claimant was in the Home Office hostel in Croydon he would visit him each day. He said that the claimant was very scared of living with adults.
98. In his oral evidence he confirmed that he had not been interviewed face to face when he had given his statement but had merely received a phone call from the claimant's solicitors. He said that he and the claimant had gone to the religious school together as they were appropriately the same age - 6 or 7. His mother had told him that he was one year older each Ramadan. He thought that he had last been told by his mother that he was 13 or 14.
99. He said that the sheikh at the religious school had asked him for his age but he did not know why and said that there was a note in a book. The claimant had left Sudan some time before him.
100. With regard to the religious school in K he said that there were twenty to 25 pupils in each of three circles which were arranged according to age. There was a group for the youngest children, a circle for those slightly older such as him and the claimant and one for the oldest pupils. He believed that the claimant was his age and certainly he was not four years older. He said that the claimant had been unhappy when he had been moved from the foster carer's house and that he had not been treated well when he had moved.
101. He was asked if he had any chance to understand what was written in the statement before he signed it and he said he had not and that he had spoken on the telephone to the

claimant's solicitor, who had then sent the statement to his home address.

102. Mr Hadden asked him if he had been troubled about giving evidence and he said that the social worker had said that the claimant's solicitors should have spoken to the social worker first before speaking directly to him. The claimant's representative had not told him that he should take advice before speaking to her. He went on to say that he believed that HMHH was four or five years older than he and the claimant. Asked why the claimant would have said that he had started at the religious school at the age of 9, he stated that he believed that they had started when they were 6 or 7 but that in Sudan age was not used that much. He said that some of the oldest children in the khalwa were in their 20s. That age range would start at 17 or 18. The middle circle he had been in when he left was for those of 8, 9 or 10. He had joined it possibly at the age of 9 or 10. It was his recollection that the claimant had gone to religious school with him every day. He said they were approximately 10 or 11 when the claimant had left and he had then been in the middle circle.
103. He went on to say that it had taken him five or six months to travel from Khutum to Britain.

Statement of Francesco Jeff

104. There was in the bundle a statement dated 21 August 2013, from Francesco Jeff, the claimant's litigation friend, who did not give evidence. He stated that the claimant was living rough and that he required emotional support. Mr Jeff had worked with age disputed minors for six years and he "strongly" believed that the claimant was a minor: he had reached that conclusion from his experience, the claimant's demeanour and his appearance.

Evidence of Mrs Tsega Weldegebriel

105. Mrs Weldegebriel was the claimant's foster carer between 13 May 2013 and 19 June 2013. In her witness statement she stated that she had been acting as a foster carer since 2007 looking after young people from a number of countries including Afghanistan, Eritrea, Sri Lanka, Sudan, Albania and Kosovo. In all she had cared for over nine young people and most of her placements had lasted on average for three years. She also would offer respite care and out of hours emergency care. She said that her first impression of the claimant was that he looked much older than the age that he claimed to be and that she had felt uncomfortable around him. When she took him to the GP, or the shopping centre, she would always get comments that he was much older and that he looked too

old to be a foster child. When she had taken him to the Refugee Council she had spoken to someone who had told her that the claimant had been coming there for the last three months and that the claimant had told him that he was older than the age he claimed to be and laughed about managing to get into care. She had been told that he was a new arrival and this was clearly not true. She went on to say that he did everything for himself and by himself and she did not have to show him very much in the house. She believed that he was more responsible and mature for his claimed age compared to other young people that she had fostered over the years and that she had not felt right having him in her home.

106. In her oral evidence she said that not only did the claimant look older than his claimed age but also that he smoked. She was sure that he smoked outside in the garden and when she came in she could smell it. She said that she believed that he smoked every day. She was referred to the document at tab 8.56 which was headed "notes from Tsega diary and mobile phone". She said that she did not have the handwritten notes from which those notes would have been taken as the folder in which they had been placed had been handed to the social worker. Asked if it was an accurate reflection of what had been in her notes she said that she thought it was.
107. She was asked about the visit at the Refugee Council and she described sitting down and seeing a woman and two men behind the screen. One of them had said that the claimant had been coming there for months but she was not sure who had said that the claimant had said that he was older. She emphasised that she was not happy having an older person in her house. It was her job to look after children rather than adults. Because of her concerns about his age she had moved the claimant to a ground floor bedroom.
108. She was asked about the statement from TS and she said that he had told her and the social worker that he had never made a statement and that his signature had been faked.
109. She was asked about the claimant asking for money and she said that the pocket money which she had given him was not enough for him but he had never said what he wanted it for. She felt that he appeared very knowledgeable for a 15 year old and was very independent.
110. She added that she believed that the claimant could cook a Sudanese dish. She was asked what age she thought the claimant was now and she replied merely that he looked older than his claimed age, indicating that she thought he might be more than 30.

111. With regard to the record of events while the claimant was with her she said that the notes had been typed up by Ms Constable and that they had worked together.
112. She was asked if Ms Constable had checked her diary and she said that Ms Constable had checked it all the time. She could not actually remember how the diary had been prepared but usually it was typed up from long-hand notes. She was not sure, however, whether or not the notes at tab 8 had been typed up by her or Ms Constable.
113. She then indicated that there were in fact two diaries, one would be for notes relating to dental and doctor's appointments and the other relating to matters which were confidential.
114. She said that she would have felt safer had she been told that the claimant was not newly arrived in the country when she took him in and that therefore she would have been less shocked when she went to the Refugee Council and found that he was known there.
115. Asked if she had seen the claimant smoking she said that she did not need to see him - it was only when he came into the house that she believed that he had been smoking outside as she could smell the smoke. She said that the smoking was nothing to do with the claimant's age but she was sure that that was what he was doing. A newly arrived child would not be as knowledgeable or confident as the claimant.
116. She confirmed that she had spoken to Ms Susan Akingbeme regarding her concerns about the claimant's age and stated that she had moved the claimant without the consent of Ms Akingbeme. She said, however, that she could not do anything without the social worker's permission.
117. She referred to a meeting with Ms Constable when she said that another boy living in the house, Mehane had interpreted.
118. Asked why Ms Constable would have said that the claimant was an accomplished smoker she said she did not know but perhaps she had been told by other children.
119. She was again asked why the notes stated that the claimant's behaviour towards other children was one of irritated tolerance and she replied that that was probably something that the social worker had been told by other children.

Evidence of Adetunji Oyeleye

120. Mr Oyeleye is an advanced social worker employed by Croydon in the children looked after, permanence service 1. In his

statement he said that he had almost ten years' UK post-qualification experience of working with children and families including five and a half years' experience in the children looked after, family support and child protection team as well as four and a half years' experience with unaccompanied asylum seeking-children. He said that he had taken part in the age assessment on 25 April 2013 as part of his duties and that he had been conducting age assessments since 15 March 2010 - on average two each month. About 40% of the assessment duties conducted were on young persons from Sudan or Somalia. He conducted the assessment with a colleague, Ken Facey. It was a full "Merton compliant" assessment in which they were guided by their own knowledge of child development and experience of working with young people of the same or a similar ethnic background. He said that at the first assessment the claimant was given the benefit of the doubt as his appearance, presentation and demeanour during interview might not have given sufficient evidence to draw a logical conclusion regarding his age. His approach had, however, been holistic and the decision was made in the absence of any material evidence. He said that he was of the view that the claimant could have suffered physical and emotional neglect following the death of his father that might have explained why his physical appearance suggested to them that he was older than his claimed age.

121. It was sometimes the case that assessments had to be reviewed when other information came to light. In this case new evidence had come from UKBA on 31 May and therefore the decision had been reviewed. On 19 June 2013 he and Mr Facey had met with the claimant at the review age assessment. He said that the claimant was given an opportunity to respond to new evidence which they had received from UKBA and during that meeting the claimant had confirmed that he had spent a brief period of time in Italy. He had considered that the evidence given by the claimant was inconsistent and that therefore there were issues regarding the claimant's credibility and that the information which they had regarding the claimant's journey to Britain undermined the veracity of the claimant's account during the age assessment interview and suggested he was not the age he claimed to be. In the statement he went on to say that before arriving at conclusions following the review he and Ken Facey had consulted with other professionals who had been involved with the claimant and took the views of the claimant's allocated social worker and had read the independent reviewing officer's report of 5 June. On 18 June 2013 he was informed by Susan Akingbeme that her impression of the claimant was that he was not a child but an adult. It was that information together with the minutes of the LAC chair review report written by Liston Williams which said that "the chair

would support another age assessment which would culminate in the claimant's transfer to the adult services as soon as possible" that had led to the review - the manager, Cynthia Winifred, had made that decision because of the new information. He said on 19 June he and Ken Facey had given the claimant the opportunity to respond to the views of his social worker and those expressed by Liston Williams in his report and that the claimant had maintained that he was 15 years old. However, they had concluded that the claimant was over 18.

122. In his oral evidence he said that an Arabic interpreter had been present at the age assessment on 19 June - the claimant had been on his own.
123. Since the review he said that he had seen the claimant on one occasion outside the NASS accommodation when he had been with another young man. Having seen the claimant the day before he did not think that he had changed physically since he had seen him two years before.
124. It was put to him that the claimant's views should have been sought on the reasons for the review and he stated that they needed to get information from the claimant promptly and that the interpreter had said that he had understood the questions being asked.
125. He emphasised that he thought that he was good at his job and described the age assessment as a complex process. He described Mr Facey as being of assistance as they were both experienced social workers and that in the original age assessment they had been trying to say that they did not consider that the claimant was 15 but they had given him the benefit of the doubt. However, they had been able, in the initial assessment, to address their concerns about his physical appearance. There were no other factors which concerned them. They had reached their conclusions feeling that their concerns regarding the claimant's physical appearance had been addressed and that therefore they had stated the age range of 15 to 17. They accepted that testing the honesty of a claimant was one of the factors they should have taken into account when dealing with the age assessment.
126. He referred to the handwritten note taken by Ron Braeger at the age assessment and accepted that neither he nor Mr Facey had asked questions about how the claimant's parents would have known his date of birth.
127. He accepted that the claimant should have been aware of the concerns regarding his age and that that had not been made clear to the claimant.

128. He could not explain why the feedback did not show that the views of Susan Akingbeme, the LAC review and Amber Constable had been taken into account and stated that information regarding the claimant's requests for money and his smoking had not been taken into account - these were not part of the review.
129. He accepted that there was no appropriate adult present at the review and stated that that might well have been a mistake but it was because the meeting was informal. He also accepted that the claimant had shown signs of being upset and shocked when told what was happening.

Evidence of Susan Akingbeme

130. In her witness statement Ms Akingbeme stated that she was a senior social worker in Croydon permanent service with a MSc. in social work. She stated that she had been employed by the defendant since 4 October 2010 and regularly conducted age assessments and had undergone regular training organised by the London Borough of Croydon's legal team.
131. She was the claimant's social worker from 14 May 2013 to 21 June 2013 and had met the claimant on two occasions. Firstly on 23 May 2013 she said she had met him for about one and a half hours during a statutory visit and on that occasion she said that the claimant had been provided with an Arabic interpreter. She had met him again on 5 June during his LAC review. During that review the interpreter had arrived late and prior to the interpreter arriving the chair had tried to explain the purpose of the meeting to the claimant but it was not clear what he understood. He had not asked any questions. She said that her views on the claimant's age had been sought during the age assessment review conducted on 19 June 2013.
132. Prior to her first visit the supervising social worker telephoned her to express concerns regarding the claimant's age and had sought her consent to move the claimant to the ground floor room so as to protect the foster carer's 12 year old daughter whose bedroom had been on the same floor as his. She had therefore gone to see the foster carer to check the position with her. When she had met the claimant she thought he appeared older than 15. She considered that there was "no youthfulness" in his appearance or demeanour.
133. She described the claimant as "not a very tall individual", estimating his height at not much more than five feet five inches but despite that she considered he looked more like an adult than a child. She also said that he was always polite, calm and pleasant when meeting with her and was observed to behave maturely. She ended her statement by stating that she

believed that when she was his allocated social worker the claimant was aged 18.

134. In her oral evidence she said that she had last seen the claimant on 5 June 2013 but having seen him at the hearing he had not grown but perhaps he had put on weight.
135. When referred to the LAC review she confirmed that age had not been discussed but said that she had noted the chair's comments and that she had raised her concerns about the claimant's age with Mr Adetunji before the age assessment review which she described as a continuing process.
136. She said that at the meeting with the claimant she had seen him in his room for about five or ten minutes. She confirmed that Mrs Weldegebriel had stated that she was managing and did not need the help of an interpreter. It was put to her that Mrs Weldegebriel had helped with some interpretation. She said that she and Mrs Weldegebriel had been passing information to and fro and had managed to understand the claimant.
137. She was referred to the case notes for 23 May where it was said that the claimant was said to be doing well and that there were "no worries, concerns, complaints during the meeting" and that the claimant was told about the basic rules and the boundaries and said he was happy with them. The claimant had said that he was managing well with the £10 pocket money he receives but had run out of money because he used part of the money to top up his Oyster Card. The carer had said that she was responsible for the Oyster Card and that an application for a free Oyster Card had been completed and it will be taken to the refugee council to get signed.
138. She emphasised that Mr Williams was independent, although he was employed by the council to check what the council was doing, he would go against a social worker if appropriate. She accepted that the claimant had been nervous during the LAC review. She referred to a further meeting with him when she had gone to the house and had passed Ms Constable, who was outside and about to drive away. On that day Mrs Weldegebriel had raised concerns.
139. She went on to say that she had not seen the age assessment of 24 April until after 23 May when she had raised concerns. When she had met the claimant on 23 May she said that she thought he was a "nice boy, respectful, not threatening and there was nothing in the meeting to show that he was dangerous". It was put to her that her view of his age was based on two things, the claimant's looks and his behaviour. She said that she had not made the age assessment but she had experience of that age group. Her experience was based in

part on the fact that she had children of her own. She was pressed on how she would assess the claimant's age but she did not consider it appropriate to comment, emphasising that her assessment was based on her experience.

140. She stated that she was not aware of where the original documents were. The issue of shaving was put to her and she said that that was not a particularly relevant factor. It was put to her that it was not until 19 June that the claimant was told that there was a decision to review his age but in fact that decision and indeed the decision that he was an adult had been made the previous day. Ms Akingbeme stated that the issue of age had been an ongoing concern raised by the reviewing officer and two foster carers. It was not a sudden decision. She was asked what the purpose of the meeting on 19 June was and she replied that that was something which should be put to Mr Oyeleye. It was put to her that the procedure was unfair and she said that this was an issue that should be improved in the future.

Evidence of Ms Amber Constable

141. Ms Amber Constable is the supervising social worker at the London Borough of Croydon. Having graduated with a diploma and a BA degree in social work from Kingston University in 1994 and 1995 she had worked in several children's homes over nine years before obtaining her qualification as a social worker. She has worked in all care teams with the exception of leaving care teams. She is an ex-foster carer caring for asylum seekers and has adult children.
142. She said that she first met the claimant on 17 May 2013 when visiting the foster carer's house. She was surprised that he was considered to be 15 and that he was placed in a household with young people much younger than he. She questioned his age with the foster carer and asked to see the documents provided by the social worker. She said that from her experience of working with young people the claimant looked much older - at least over 20. She said that the foster carer had stated that at times the young people felt uneasy around the claimant both of whom had raised concerns about the claimant and were happy when told that he was to be moving downstairs. The foster carer's own children, who were aged 12 and 10, were also uneasy. As a safeguarding arrangement the sleeping arrangements were changed so the claimant would sleep downstairs.
143. She stated that the demands made by the claimant to the foster carer were not typical of a 15 year old and that he had asked her to arrange for a driving licence because he said he could drive. When asked in cross examination why

that was not in the notes and she said that she could have been mistaken. In any event she accepted that it was not necessarily indicative of age. He also wanted his share of the fostering allowance and asked for extra money but would not say what it was for. He had said that his pocket money was that for a child and "not for someone like him" but did not say exactly what he meant. She added in her statement that he was an accomplished smoker referring to the manner in which the claimant smoked, held cigarettes and would extinguish them and she said that she had noted that his pupils appeared dilated on two of the four occasions that she saw him. She said that his Adam's apple appeared quite prominent, which could indicate physical maturity. She went on to say that the claimant found it difficult to be treated in any way as a young person of his claimed age and there did not appear to be the usual difficulties of adolescent behaviour but he behaved as an adult speaking to another adult. She stated that he did not need to appear any form of additional care which a 15 year old child would require.

144. In her oral evidence Ms Constable relied on her statement and was then asked about the notes which purportedly came from the diary and telephone of Mrs Weldegebriel. She confirmed that she had created the notes when she had been asked by Croydon's legal department for the notes relating to the claimant. The actual notes which had been kept in a folder which had been handed over to the social worker when the placement had ended in 2013 had disappeared and she therefore spoke to Mrs Weldegebriel in an attempt to reconstruct the diary. Two folders had been handed over, that relating to the appointments made with doctors, a dentist, the Refugee Council and so on and the other relating to informal notes relating to matters which would not normally be disclosed to the child in care. The first set of notes would, however, go with him when he left care as a record of, for example, illnesses down to minutiae such as when a child had a headache or was given paracetamol. She said that the carer had told her that she had given the papers to the social worker but had then been given part of the folder to give to the young person. The social worker should not have done this as it should have gone back to Social Services: the social worker should keep both parts if the young person leaves care and would hand over the second part if the child stayed in care. She had created the notes around 7 July 2014 after having asked the carer whether or not she had her appointment diary and for other notes. She accepted that on occasions she had had to prompt Mrs Weldegebriel. She was also able to look at the text messages sent to her but she had not kept these as Croydon has changed the phone which she carried. She said that she had left blanks where Mrs Weldegebriel could not recall something.

145. She was asked how often she had seen the claimant and she said that she believed that she had seen him three times while with the carer and she thought one time previously. Twice she had seen the claimant on Carolina Road - the road where the claimant had lived with Mrs Weldegebriel. On those occasions she had been visiting other carers in that road. However, prior to the placement she had seen the claimant, she believed, standing with other young men in Portland Road, South Norwood. They had blocked her way before allowing her to pass. She described the young men as towering over her and she thought that the claimant was one of them. She said that she had had to look up at them and that he might have been smoking. She said that that had not been put into her statement because she had not been asked about it. She referred to two other occasions when she had seen the claimant on the street firstly coming out of the carer's house and secondly at the corner shop with the foster carer's son and another child in care from Eritrea called Mehane.
146. She confirmed that when she had seen the claimant at the foster home he was not smoking and said that she had asked the foster carer if the claimant had smoked because she had smelled smoke. The carer had said that she thought so but had never seen him with a cigarette in his hand. Asked if she had seen him smoking on the other occasions she referred to the other occasion when he was with the three young men but then said that she could not be 100% that it was the claimant. Asked why she had said that he was an accomplished smoker she said that she knew how people who smoked regularly behaved as opposed to those who just have the odd cigarette. It was the claimant's mannerisms that made her feel that he was older. She was asked why she had said that the claimant's pupils were dilated and she said that that was what she had seen although she accepted that on that occasion she had been on the other side of the road. She confirmed she had not smelled drugs on the claimant.
147. Asked about the request he had made regarding money she said that she had learnt this from the carer when she had gone to verify what the claimant could or could not have. She was asked why she had put in her statement the quotation that the claimant had said that the amount of money he received was "not for someone like me" and she said that at that time she had had a lot going on and she thought that he looked like an adult and as he was new in the country it was surprising that he would be so clued up.
148. She confirmed that she had agreed with the carer that the claimant should be moved downstairs and she believed that that had happened. She explained the furnishings of the room into which he was to move.

149. In cross-examination she described her experience and stated that she had not known of another instance where a file had gone missing. She then went on again to describe the four times she had seen the claimant. The first in Portland Road, the second on 17 May at the carer's house, the third when she had passed him on Carolina Road and the fourth when she had seen him at the corner shop with Mehane.
150. With regard to the notes made after the placement visit she said that these had been rough notes - the redacted parts of the notes related to the other children in the carer's house.
151. She said that the witness statement had been created before the notes which purported to be a reconstruction of the carer's folder were made. She was asked whether or not it was unprofessional for her to have reconstructed the notes and she said that this was what she had been asked to do by the legal department at Croydon.
152. With regard to whether or not the claimant was confrontational she was asked whether or not he had been confrontational with her and she said that he was not although she described him as being "passive aggressive". She said that it appeared that Mehane, who was interpreting, was telling him to calm down. She said that she accepted that the foster carer could not be expected to have someone in her house who was 30 or 40 or even 20. With regard to the claimant's independence skills she said that he could take transport and had used his money to get a bus pass.

Evidence of Liston Williams

153. By the date of hearing the defendant had lost touch with Liston Williams and therefore he did not give evidence. However, there was a statement from him on file. He was the looked after children's reviewing officer and a child protection chair practitioner and he said that he had worked since 1985 "in the field of adolescence qualifying as a social worker in 1996 specialising in working with young people". He said that he was aware that assessments of age are a very complex task

"which is a holistic process and not an exact science. However, in my opinion I strongly believe that from my observations and discussion with C strongly suggest that he is significantly older than his claimed age".

154. He referred to the LAC review on 5 June 2013 saying that the claimant had interacted positively and made a good contribution and that he had said that he had wanted to resume contact with his family in Sudan and that the review had not been told that the claimant's birth family had been

killed. He said that the claimant's overall physical appearance and overall general demeanour had convinced his social worker that he would be more appropriately transferred to adult services. He said that his opinion was not based purely on appearance but involved an assessment of all the expected developmental factors associated with a minor and that he had expressed reservations regarding the safeguarding concerns of the claimant being accommodated in a foster placement and in a school environment. He had not known that UKBA provided information to the LAC team.

Discussion

155. At the beginning of this judgment I set out, in brief, the relevant chronology following the claimant's claim for asylum. I now propose to amplify that chronology and to deal in greater detail with the various reports which were relevant to the assessment of the claimant's age. When setting out the terms of the reports I have briefly commented on the weight to be placed on each. The first document is the UKBA referral to Child Welfare Services dated 3 April 2013. It gave the claimant's date of birth as 15 December 1994 but stated that that age was disputed. A letter of that date to the claimant gives that date of birth in the heading but noted that he had claimed that his date of birth was 15 December 1997. The letter stated that that claimed date of birth was not accepted. However, as his physical appearance/demeanour "does not very strongly suggest that you are significantly over 18 years of age" UKBA would treat him according to the process designed for the handling of asylum claims from children.
156. A note dated 4 April referred to the foster carer with whom the claimant had been placed, Sajjad Abid, stating that when he had collected the claimant he had told the social worker that the claimant looked much older than his claimed age and that he had said that the claimant looked about 25 years old plus. The foster carer had not wanted to accommodate the claimant but he was allowed to stay for one night. An age assessment was to be arranged.
157. Thereafter the claimant was placed in bed and breakfast accommodation for adults until the age assessment could take place. He remained there until 13 May 2013 when he was placed with Mrs Weldegebriel.
158. The age assessment took place on 25 April. It was clearly Merton compliant. The introduction states that it was conducted by two qualified social workers, Mr Facey and Mr Oyeleye, and it was noted that when the claimant was asked if he understood why he had been invited to the assessment he

stated that he did not know. The report noted that the claimant was of "small/medium build" and his height was estimated to be approximately five foot seven inches. His weight was estimated and it was stated that he had a "size 8 foot" and approximately a 24 inch waist and it was said that he had a "slightly developed" Adam's apple. He had no visible facial hair and the palms of his hands were smooth. His voice was not fully broken.

159. The claimant had told the social workers that he was 15 years old and had been born on 15 December 1997. He told the social workers that his mother had told him his age when he was 12 years old as the Imam who taught him how to read the Qu'ran had asked what his age was. He had said that there was no office or place where his birth could have been registered in the region in which he lived in Darfur. Asked about his family he had told the social workers that he had lost his mother, father, sister, a brother and uncle and that he had left Sudan because his life was in danger.

160. He gave the social workers details of his journey to Britain and in particular the experiences he had had in Greece and Italy. The social workers noted that he appeared to have been fully cooperative and used his body language to express himself. He gave details of his education but there seems to have been no answers recorded regarding his self-care skills.

161. A section deals with the analysis of the information and states:-

"In our assessment as qualified social worker (*sic*) we have extensive experience of interviewing and working with asylum-seeking young people and agree that R's physical appearance is consistent with the age range of 15 - 17 years old."

162. The analysis went on to say:-

"... We also found R to be cooperative and he worked with us to provide significant dates of his journey to the UK.

In some aspects of the interview we noticed that R was emotional when discussing how he lost his family in connection with the ongoing tribal war in Sudan. We noticed during R's short ten - fifteen minute break he was able to reflect upon his story to assist us with making our decision about his age. R presents as being softly spoken and consistent with his answers.

... We accept the emotional burden that R has experienced regarding the death of his birth family which might have (*sic*) impacted upon his physical appearance, possibly

making him look slightly older than his claimed age. In addition to his experience of living on the streets in Tripoli, Greece, Italy and France.

We also took into consideration that R has been deeply affected by being forced to leave his country of birth; family to fend for himself as he presents as being streetwise and guarded when speaking about his life experience. With the information obtained for the purpose of this interview we were have given consideration regarding R's physical appearance, demeanour culture, religion and life experience we have given him the benefit of doubt maintained his claimed age." (*sic*)

163. The claimant was then given the formal assessment of his age which stated that his date of birth was 15/December/1997 "age 15 years old". The date of assessment was noted as 25 April 2013. The date of decision is given as 13 May.
164. It is of particular note that during the age assessment a representative from the Croydon Refugee Centre, Ron Brajaer was present. Mr Brajaer recorded clearly the questions and answers asked. His detailed notes show that the examining social workers complied with the Merton criteria and that they covered all aspects of the claimant's life including his education, his health history and the history of his family. When considering the claimant's physical appearance he had been asked to lift his shirt and although clearly he was not given a full physical examination detailed notes were taken about his size, build and physical appearance. The claimant also set out the length of time he had spent travelling and said that his parents had died in November 2010. He gave his age when he had arrived in Libya as being 13 years 8 months and said that the whole journey had taken approximately two years five months.
165. The claimant had been asked where he wanted to live - whether with a foster carer, semi-independent or in NASS accommodation for those over 18 and had said that he wished to live with a "carer/family" so that there would be someone to care for him if he was not well.
166. The age assessment was thorough and gives every indication that Mr Facey and Mr Oyeleye took great care to undertake a Merton compliant assessment. The age assessment was the only time that the claimant's physique was considered and it is of note that the claimant emphasised that he wished to have a carer to look after him - he did not wish to live in a "semi-independent" accommodation.

167. I consider that the report was one on which very considerable weight should be placed given that it was undertaken by social workers employed by Croydon and who were clearly experienced in assessing the age of asylum-seeking children.
168. The claimant was placed with Mrs Weldegebriel on 13 May 2013. Mrs Weldegebriel clearly thought that the appellant was older than his claimed age but it was evident that she was somewhat thrown by the fact that she believed that the claimant had been placed with her immediately on arrival but then found that he had been known to Croydon Refugee Centre for some weeks. There appears to have been a breakdown of communication between her and Croydon Social Services at that stage.
169. Her concerns were evident in the fostering support supervision record dated 17 May 2013 when what were referred to as "safeguarding" issues were raised on the basis that the claimant seemed older than 16. It was then that arrangements were made for him to sleep downstairs. I note, however, that it was stated that the claimant had tried to fit in with the culture of the placement but that "the carer feels that at times the younger people irritate him but he has not shown any form of aggression".
170. A personal education plan was prepared on 23 May and it appears that a looked after child visit was made to the placement address on that day. Ms Akingbeme stated:
- "C was first seen alone and he informed me that he is settling gradually at his foster placement. He said he is trying to adapt to his new environment and gets on well with everyone in the household, including another looked after young person he shares the placement with. Carer reported that C has settled in well. Carer said C is well-behaved and had responds (*sic*) well to boundaries. There were no worries, concerns or complaints reported during this meeting. ... C was told the placement rules and boundaries which he said he is happy to abide with. We had discussion about the allowances that C will be getting from his carer. C said he is managing well with the £10 pocket money he receives but run out of money because he uses part of the money to top up his Oyster Card. Carer advised C that the £10 for his own use and needs to tell her if he needs to top up his Oyster. Carer reported an application for free Oyster had been completed and C will be taking it to the refugee council to get it signed".
171. On 5 June there was a looked after child meeting chaired by Liston Williams. The relevant document is headed "ICSLAC

review chair's report regarding RMH held on 5 June 2013" and noted that "the foster carer did not have any significant concerns regarding R's behaviour or emotional development. He (sic) described R's self-care and cooking skills are well-developed (sic). The foster carer will continue to support R in all aspects of his Muslim religion. The report also states that the claimant had said that the Imam in Sudan had informed him of his age but noted that

"the chair believes that R is significantly older than 20 years old and thus being placed in mainstream education would be wholly inappropriate with clear safeguarding issues to consider".

172. The report went on to say that:-

"R informed the review that his family composition consisted of father - (MH); mother (FH); brother (HH) and paternal uncle who all remain living in Sudan. ... R explained that he would like to resume contact with them in some capacity but was concerned about them being victimised by government officials. The chair has asked that the social worker or foster (sic) explained the process of the Red Cross tracing service to R."

173. It was said that the chair and the social worker believed that there are "very obvious" signs that the claimant was significantly older than his claimed age and that the chair believed that he was at least 20.

174. I am concerned about this report on two counts. Firstly that it appears to record that the claimant had said that he wished to get in touch with his family when the reality is that at the age assessment and when first interviewed on his claim for asylum he stated that his family were dead and I consider that that reflects on the thoroughness of the assessment. Secondly the reality is that Liston Williams cannot be traced by the defendant and therefore could not be cross-examined. I therefore consider that less weight should be placed on that report.

175. On 15 May 2013 the Home Office informed the claimant that his fingerprints matched those of a person who had claimed asylum in Italy and that therefore Italy would be responsible for his asylum claim under the terms of the Dublin II Regulations. The Home Office wrote to Croydon Children Services, giving the claimant's date of birth as 15 December 1997 and referring to the transfer acceptance from the Italian Interior Ministry which stated that the appellant's name was AZMI, that he was a national of Chad and his date of birth was 1 January 1994. It is of note, however, that the

Italian authorities had originally given that individual a date of birth of 1984 but that had later been amended.

176. Clearly that information was given weight when it was decided that the appellant's age should be reassessed.
177. I have considered the evidence from Italy which was not only that the Claimant was from Chad with a date of birth of 1 January 1994 but also that he had arrived at Fiumicino Airport in Rome on a flight from Algiers.
178. While I accept that there is a fingerprint match and that therefore the claimant had had his fingerprints taken in Italy as a step towards claiming asylum there it does not follow that he is AZMI or that 1 January 1994 is his date of birth.
179. On 17 June 2013 Susan Akingbeme sent an email to Ms Constable in the following terms:-

"There is a proposal to complete age report/addendum for RH on 19/06/13 upon which you will be given decision on that day. The decision is likely to make R an adult based on other supporting evidence with regard to his claimed age. I will therefore ask Tsega to bring R with his belongings to the office (Jeanette Wallace) on Wednesday for the decision after which he will be sent to NASS for support.

Therefore I call for the placement to be ended on Wednesday 19/06/13 due to this development."

180. The terms of that email make it clear that by 17 June a decision had been made that the claimant was no longer to remain in the care of the defendant.
181. The age review assessment took place on 19 June. While the report referred to the necessity of a holistic assessment of the claimant's age it referred to the further evidence which had been received from the Home Office regarding the claim made in Italy and it was considered that the claimant had been dishonest because he had given conflicting names and dates of birth. What is of concern is that the claimant appears to have been called to the review without being informed that his care arrangements were about to be changed, there was no independent adult there and there seems to have been no way in which he was given a chance to respond to the information that had been put to him. The reality appears to be that the review was the way in which the claimant was told that his care was to come to an end. Rather than a continuation of the original assessment it was, it appears, completely without the safeguards which would lead to a

Merton compliant decision - the safeguards which were clearly set out in the original form when the assessment took place on 24 April.

182. Thereafter the claimant was put into NASS accommodation for adults and at some stage in August he was on the streets before being transferred to NASS accommodation in Birmingham.
183. Before I consider the claimant's evidence which was, of course, that his date of birth was 15 December 1997 I believe that it is appropriate to consider whether it is correct that he is from Sudan and also what route he took in order to come to Britain as both those factors are cast into doubt by the Eurodac information which had been received from the Italian authorities.
184. I consider that the report of Dr Verney is persuasive and particularly taking into account the specific nature of the local words which were used by the claimant I conclude that he is from Khutum and is therefore Sudanese.
185. With regard to the claimant's travel to Britain he asserted that he had travelled from Sudan to Libya where he had spent some time in Tripoli, and had then travelled to Greece arriving in Patras. He had been detained with his cousin in Patras before being released and had travelled from there to Athens where his cousin had worked before again travelling clandestinely to Italy and thence by train to Ventimiglia where he had been picked up by the Italian authorities and fingerprinted. He denied that he had ever claimed asylum in Italy or that he had given a false name or date of birth or indeed that he had arrived in Italy at Fiumicino Airport in Rome.
186. I consider that it would have been difficult for the claimant to have got onto a plane in Algiers and then flown to Rome. Moreover, the route which the claimant gave showing his journey to Britain via Greece and Italy is a well-trodden path for asylum seekers. I note that there is no record of his being fingerprinted in Greece or of his having made a claim there, but having noted the evidence of Anastasia Papanastasiou, who is a member of the appeals committee of the asylum service in Greece regarding the somewhat chaotic procedures in Greece, the fact that there is no evidence of the claimant having been fingerprinted there as he claimed is not, I consider, significant. What is relevant, however, is that there is considerable evidence not only from Ms Papanastasiou but also from relevant case law which indicates that asylum seekers in Greece may well be mistreated and indeed mistreated in the ways which the appellant claimed. I

therefore find that the claimant had travelled through Greece as he had claimed and that he did enter Italy by boat.

187. In considering that evidence I note that the first document received from Italy gave the claimant a date of birth of 1984 rather than 1994 but that was amended. That shows a minor but not fatal mistake in the Italian authorities' recordkeeping. Chad and South Sudan share a border and indeed part of South Sudan appears to "bulge" into Chad. However, as following Peter Verney's report I have concluded that the claimant is not from Chad I consider that the information in the Italian record is wrong. I have also found that it is unlikely that the claimant entered at Italy by air. I have therefore concluded that I cannot place weight on the Eurodac evidence with regard to the claimant's name, country of origin and date of birth.
188. It is, of course, possible that the claimant would have given a false date of birth and false nationality for any number of reasons including that he did not wish to be treated as a child by the Italian authorities or he did not wish to be separated from his cousin.
189. It is the claimant's assertion that he was born on 15 December 1997 and that he knew his date of birth because that is what his parents had told him and indeed his father had written that date down on a piece of paper for the sheikh who taught him at the religious school which he had attended in Khutum. I note the evidence of the two other witnesses from Khutum that little weight was put on either dates of birth or birthdays in South Sudan and effectively that an assessment of age whether at the khuram, the religious school attached to the mosque, or for any other purposes was of little importance. Although ZH stated that he had a birth certificate it appears that his family were given the document because he was born in a hospital in Nyala. He could recall little about that document and indeed the date was written in the Muslim calendar. II's comment was that he knew his date of birth because he had been born in Ramadan and therefore each Ramadan he knew he was one year older. That did not specifically indicate that he knew his exact date of birth or indeed his exact age although it appears that his date of birth has been accepted by the Home Office and by the defendant. The claimant said that his father was illiterate although he could do simple arithmetic for business purposes but I consider that it is highly improbable that the claimant was asked by the sheikh who ran the religious school for his date of birth and that his father wrote it on a piece of paper. In all, I therefore do not accept that the claimant was correct when he stated that he knew his date of birth because it had been written down by

his father. I consider it likely, however, that the claimant had been told an approximate age by his parents.

190. I must also take into account the vagueness of the chronology relating to his journey and the length of time he took in getting to Britain. In his second statement he commented on an assertion in the grounds of defence that he had said at the screening interview that he had left Sudan on 1 January 2012. He said that that was not true as he had said that he had spent more than a year and four months travelling since leaving Sudan. He complained that an Iraqi interpreter had been used at the Home Office but that it was clear from the notes taken when he had been interviewed by the defendant that he was then claiming that had left Darfur in November 2010 after his parents had been killed.
191. However, the central issue before me is the actual assessment of his age.
192. I therefore turn to consider the evidence of the claimant's witnesses and the witnesses for the defendant. I note that the claimant's supporting witnesses have all been able to observe him over fairly long periods of time and have been able to observe him with other children and have had time to build up relationships with him.
193. I do, however, place weight on the first age assessment which was conducted by Mr Ken Facey and Mr Adetunji Oyeleye. It is Merton compliant and it is clear from the form that the relevant self-directions were before the two assessors. Despite possible misgivings they concluded that the claimant was a child and indeed accepted that he was the age which he had claimed. They reached their conclusion having specifically directed themselves to the task in hand. That, indeed, was the only physical assessment of the claimant.
194. I note the evidence of Ms Johnson, who considered that the claimant was the age he claimed to be. She had observed him with other young asylum seekers. She has many years of experience of dealing with and observing such young individuals and I consider that her evidence was persuasive, particularly as I consider that she was clearly not a woman who would either be likely to be fooled by a young man claiming to be younger than he was nor that she would tolerate anyone attempting to pull the wool over her eyes.
195. I also place weight on the evidence of Ms Bell, who again has seen the claimant in a number of situations over a fairly long period of time. She again considered that the claimant was of the age he claimed to be. The fact that she had seen the claimant interact with other children leads me to accept her evidence.

196. Mrs Ross had also seen the claimant more or less on a weekly basis over a number of months. She was clearly a kind and maternal person who very much had the claimant's best interests at heart. While I consider that she would not have had the experience of Ms Bell or Ms Johnson in dispassionately assessing a young person the reality is that she has seen the claimant and Joe play together both at home and at the seaside and while I consider that she has maternal instincts towards the claimant I believe that her strongest maternal instincts would be towards her own child and that she would be absolutely focused on his welfare and would not allow a situation to develop where her son was placed in close proximity with an adult or someone whose age made him an inappropriate companion.
197. The claimant's remaining witnesses were both of assistance. ZH gave clear evidence that while he had been the claimant's older brother's companion the claimant was very much younger than he - ZH is now aged 21. Similarly II gave some detail of knowing the claimant in Khutum and attending the religious school with him. I note that his own age is accepted and I consider that his evidence would place the claimant within two to three years of his own age given the way in which the "circles" in the religious school were set out.
198. I consider that Mr Ayub Khan was an honest witness and it is clear that when the claimant was living with him he took on a paternal role towards the claimant. He considered that the claimant was around the age he claimed and he was able to comment on the fact that the claimant did not smoke, was not shaving and had poor domestic skills for tidiness and cooking and indeed that he had had to give the claimant instructions as to how to travel around Birmingham and to London.
199. Turning to the evidence for the defendant it is relevant that, with the exception of Mrs Weldegebriel the defendant's witnesses had never had time to get to know him. While I respect the initial assessments of Ms Constable, Ms Akingbeme, the Home Office official and the first foster carer the reality is that none of them have spent any time observing the claimant interacting with other children or young men or have been able to build up any relationship with him.
200. I would emphasise that I consider that the defendant is very strongly hampered by the lack of contemporaneous notes setting out the concerns of the social workers and the foster carer. I consider that the reconstruction of the foster carer's notes is really of very little use as the reconstruction was made a year after the relevant events and there is nothing in the contemporaneous documentation which

backs up the detail of the reconstructed notes. Indeed, the details set out in the statements of Ms Constable and Mrs Weldegebriel were prepared for the hearing and were not necessarily an accurate reflection of their feelings at the time.

201. Ms Constable emphasised in her statement that the claimant was irritable around young people. That is in the notes which she prepared. However, it is not reflected in the assessment made when the claimant was visited at the carer's house where it was said that he appeared to get on well with the other children in the house. Similarly her claim that the claimant was an "accomplished smoker" really did not stand up in cross-examination. On the first of the four occasions on which she saw him and she thought he might be smoking she was not certain that it was he and indeed not certain that he was smoking. She also stated that he had towered over her which taking into account her own height of five foot six and the height of the claimant at about five foot eight according to the age assessment and the fact that Ms Akingbeme described him as about five foot five, that would not have been the case. Although she stated that she had seen him with his eyes dilated that appeared to be when she had seen him across the road and cannot possibly be correct. The reality is that there was nothing on which she could base the assertion in her statement that he was an accomplished smoker and indeed Mrs Weldegebriel had said that she had not seen the claimant smoke although she had smelled smoke on him - something that no other witnesses apart from Ms Constable and Ms Akingbeme had said. The reality is that I consider Ms Constable was alert to the concerns of Mrs Weldegebriel regarding moving the claimant downstairs and made arrangements for that but that her notes of the meeting at the carer's home give absolutely no indication that the claimant had the behaviour patterns of an adult.

202. Similarly while I accept that Mrs Weldegebriel felt that the claimant was much older than he claimed to be I consider that the notes which claimed to be a reconstruction of her folder were not in fact such a reconstruction. It was clear from her evidence that she was uneasy at the various matters being put to her regarding the claimant's domestic skills and confidence outside the house. I prefer the evidence of Mrs Ross regarding the immaturity of the claimant but the strongest evidence is that of Mr Khan who actually lived with the claimant for some time and considered that his domestic skills were undeveloped even for someone of his claimed age. I also note that it was asserted that the claimant had stated that the carer's allowance should be paid to him but there is no contemporaneous note to back up that assertion and from the contemporaneous notes it is clear that the only monetary

issue related to the Oyster card and the payment for it - the claimant had had to pay for travel when that was not part of the money which was for his personal use.

203. While I have noted the statement of Mr Liston Williams he did not give evidence before me and I consider that I can place little weight thereon. Again it was a statement prepared long after the events which had taken place and does not reflect what was in his LAC report. There is in particular the statement in the report that the claimant had asked that his family be traced through the Red Cross whereas the reality is that the claimant has always said that his parents and family were killed. That statement does not fit in with the notes prepared by Ron Braeger of the Refugee Council who was present.
204. In all, when I consider the various factors on which to assess the claimant's age I conclude that the claimant was not at the time of the assessment an adult. I have not accepted the Eurodac evidence as being accurate in anything but the fact that the Claimant was fingerprinted in Italy. For the reasons given I place greater weight on the evidence of Mrs Ross who considers that the claimant is a suitable companion for her 15 year old son, Ms Johnson and Ms Bell as well as Mr Ayub Khan - the people who have seen him over long periods of time and seen him interact with other children of his age rather than the defendant's witnesses. I also place weight on the evidence of the two young men who had known the claimant in Khutum. In particular I note ZH's assessment that he was the same age as HMHH, the claimant's brother.
205. I would add that I did not consider that the evidence put forward by the defendant was persuasive partially because the statements and the reconstruction of the social work folder which Mrs Weldegebriel handed over was made some considerable time after the event but also because I consider that there was a certain amount of prompting between the legal department in Croydon and Ms Constable when her statement was prepared and when the notes were then "reconstructed".
206. I place particular weight on the age assessment of 24 April 2013 which was the only proper "Merton compliant" age assessment undertaken and which was made by experienced social workers.
207. In all I consider that the date of birth which the claimant gave of 15 December 1997, which was accepted at the first age assessment, is an appropriate date of birth for him.
208. I would add that I am concerned about the procedures at Croydon which led to the reassessment. It seems to me that the reality was that a decision had been made to reassess the

claimant as an adult before the reassessment took place and the claimant was given no opportunity to refute the reasons for the reassessment. I do not consider that it was appropriate that the reassessment should have been taking place without a suitable adult present to support the claimant. Indeed I note that the letter from the local authority of 15 January 2014 to the claimant's solicitors stated:-

"We have experience of providing social workers to assist young persons in their dealings with the local authority, for example providing personal advisers to those in post-18 after care service. Your client's social worker or key worker can therefore observe your client's age assessment interview if your client wishes. Alternative persons your client may wish to consider are a friend/family member, a representative from the refugee council, a representative from Voice, the official solicitor or your client's litigation friend.

If your client cannot arrange an adult observer's attendance, but wishes to have one in attendance, LB Croydon are willing to arrange for an appropriate observer on your client's behalf if your client wishes".

209. The reality is that had such a reassessment taken place and indeed, if as proposed at that stage a dental examination had been considered as indeed was requested in the week before the hearing these proceedings could have been avoided or at least shortened.
210. I would also add that I am concerned about the way in which the various statements in this case were prepared. In particular the statements which were prepared for the two minor witnesses for the claimant who were approached direct and not through an appropriate adult, were apparently asked questions over the phone and then presented with a document to sign which was in English and which was not translated for them and which they not given any opportunity to question. I would add also that it is apparent from the file that the defendant wished to reconsider the assessment and I consider that the claimant's representatives were wrong to reject the further assessment which was proposed by the defendant in January 2014. However, the reality is that the reassessment of 19 June 2013 was, I consider, flawed because the claimant had no-one with him when he was reassessed.

Decision

On the basis of my assessment, I make a declaration that the claimant was born on 15 December 1997.

Direction

Subject to any submissions from either party, I propose to make an order that the defendant pay the a claimant's costs in a sum to be agreed or, in default of agreement, to be determined by the Tribunal on the basis of written submissions not to exceed 4 pages from each party.



A.L.McGeachy

Judge of the Upper Tribunal