

Case No: CO/3153/2014

Neutral Citation Number: [2015] EWHC 1942 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/07/2015

Before :

THE HONOURABLE MR JUSTICE PICKEN

Between :

MVN

Claimant

- and -

LONDON BOROUGH OF GREENWICH

Defendant

Shu Shin Luh (instructed by **Scott-Moncrieff & Associates**) for the **Claimant**
Genevieve Screeche-Powell (instructed by the legal department of the **London Borough of Greenwich**) for the **Defendant**

Hearing dates: 23, 24, 26 and 29 June 2015

Judgment

The Honourable Mr Justice Picken:

Introduction

1. My task in this case is to determine the age of the claimant (“MVN”), in the context of MVN’s challenge to the decision of the London Borough of Greenwich (“Greenwich”) made on 11 February 2014 assessing him to be an adult who was born on 8 July 1990. It is MVN’s position that this assessment is wrong and that his actual birth date is almost seven years later, namely 13 May 1997. Therefore, whereas Greenwich has assessed MVN as being almost 25 years of age, MVN insists that he has only just, in May, turned 18.
2. It will be immediately appreciated that, given this wide disparity in the parties’ positions concerning MVN’s age, this is a somewhat unusual case. I acknowledge that there have been other cases in which the dispute over the age of a claimant has been not inconsiderable. So, for example, in *R(Y) v LB of Hillingdon* [2011] EWHC 1477 (Admin), the claimant was assessed as having been born in 1990 and so over 19, when her case was that she was 15½ years old; and in a case earlier this year, *R(A) v LB of Croydon* JR/3436/2014, the claimant was claiming that she was born in 1997, yet the local authority assessed her date of birth to have been eleven years before that. MVN’s case is not, therefore, exceptional despite being unusual.
3. The case, however, is notable for another reason also. This is because of the account given by MVN as to how he came to the United Kingdom. I stress that this is MVN’s account, and that I shall come on later to deal with its credibility. That said, it is an account which is largely accepted by Greenwich, although not completely and certainly not inasmuch as it involves MVN’s insistence that, in travelling to the United Kingdom, he did so as a minor rather than as an adult.
4. MVN grew up in the northern part of Vietnam in a village called Lan To in the commune of Thanh Cong in Thanh Nguyen Province. His parents farmed the land and raised livestock, and MVN attended the local primary school from the age of six, later moving to the secondary school, which shared the name Thanh Cong with the primary school which he had previously attended. MVN says that he left before completing year 7, and that this was in 2009 when he was 12 years old. MVN goes on to explain that his family was very poor, and that his father developed a drinking and gambling problem, which led him to become violent towards MVN’s mother. It was because of this, MVN explains, that his mother left the family home suddenly and without saying goodbye. MVN understands that his mother, who left in 2008, went to live in England with a friend. However, MVN does not know whether this is in fact the case, having had no contact with his mother since 2009.
5. After MVN’s mother left the family home, MVN states that he and his father struggled to cope, and that he left school (in 2009) in order to help look after the livestock and the house. MVN’s father subsequently fell ill with liver cancer, and died, on MVN’s account, when MVN was 13. This was in February 2010, and led to MVN going to live with one of his father’s friends, a Mr Du, for a few months. According to MVN, it became clear that he could not stay in Vietnam because his father owed a criminal gang money and it was not safe for MVN to remain. Mr Du, therefore, arranged for an agent to take MVN out of Vietnam, in order that MVN could ultimately come to the United Kingdom to look for his mother. The agent was

paid, MVN explains, with money (approximately US\$4,000) which MVN had inherited from his father after his father had sold some land in the lead-up to his death.

6. MVN travelled initially by plane to Russia on a fake passport. He stayed in Russia for one or two days, before being taken in a lorry to Hungary. There, he was arrested by police along with the agent accompanying him, a Mr Hung, as the two of them were looking for food. Although Mr Hung was released, MVN was taken to an adult prison, MVN having given the police a date of birth in 1990 which meant that he was treated as an adult. There he remained for several months (strictly speaking, he served time in two separate prisons). He was then released from prison and taken to a detention centre which he was able to enter and leave at will, MVN having by this stage applied for asylum in Hungary. This was a claim which, however, was to fail. That failure led MVN to abscond and to go to the Czech Republic in the company of a Vietnamese man who was an associate of Mr Hung, who by this stage was himself in detention.
7. MVN stayed in the Czech Republic for about two months in the company of Vietnamese factory workers. He was subsequently taken by car from the Czech Republic to France in January 2011. In the car with him were two agents and two other Vietnamese people. After arriving in France, the agent who was driving the car left the group on the side of a motorway, and the other agent then took MVN and the other two Vietnamese people to a place in a forest known as the “*jungle*”.
8. MVN stayed there for about ten days before concealing himself in a lorry which took him to the United Kingdom later the same month. MVN explains that there were six people in the lorry, and that all of them were Vietnamese. Half an hour or so after arriving in the United Kingdom, the lorry was stopped by the police and all its occupants were arrested and taken to a police station. It was at this stage that MVN gave his real name and true date of birth, something which he was insistent in evidence he had not previously done, in particular, in Hungary when in detention. MVN explained that he gave his real name and true date of birth because he was anxious to find his mother. MVN’s position throughout his time in this country is that his date of birth is 13 May 1997.
9. After being held in a room at the police station for the best part of a day, MVN was collected by a social worker and taken into foster care. MVN stayed with his foster carer for two or three days, on the last day being taken out by the foster carer with another foster child in order to go to a local bank. After leaving the bank, his foster carer left him and the other child to walk around town, and the two of them went into a games shop. MVN left that shop in order to buy a drink when he was approached by two Vietnamese people who spoke to him. He asked them whether there were any Vietnamese grocery shops nearby and they said that they would take him to such shops as well as to a Vietnamese restaurant, promising to bring him back afterwards.
10. MVN went with these two people in their car on a journey which lasted one or two hours and during which MVN became frightened, saying that he wanted to go back and starting to cry. MVN states that his two companions threatened to kill him if he did not listen to them, and that they then took him to a house where he was forced to work in a cannabis factory. He was required, in particular, to water cannabis plants once a day and sometimes once every two days. He was in the house alone, with the

two Vietnamese people taking turns to keep an eye on him. He was also beaten on one occasion and threatened with a gun, being told not to try to escape.

11. MVN remained in the house for just over two years, until 5 March 2013 when he was able to escape, the kidnappers having left the front door unlocked which they were generally careful not to do. MVN ran out of the house and, after about two hours, was able to flag down a car and ask the driver to call the police. The police arrived and MVN explained what had happened to him. The next day, he was interviewed by an immigration officer and then placed into foster care, where he remained until Greenwich assessed his age as being that of an adult rather than a child.
12. As I have indicated, there are aspects of this account which are not accepted by Greenwich, specifically MVN's insistence that at all times he was a minor, not an adult. I shall, therefore, have to return to these matters later, in addressing the central issue in this case, namely MVN's credibility and specifically his credibility in relation to the evidence he gave concerning his age and history. First, however, having given a flavour of the underlying factual background, I should say something about the legal principles applicable in an age assessment case such as this.

The law

13. There was essentially common ground between Miss Luh, MVN's counsel, and Miss Screeche-Powell, Greenwich's counsel, as to the relevant legal principles. What follows, therefore, draws on the various submissions made by both counsel. As will be seen, there is, however, one matter about which there is not agreement.

Significance of age assessment

14. I start by making it clear that the fact that, even on his case, MVN has recently become an adult does not make these proceedings academic. This is because, as Miss Screeche-Powell explained in her opening skeleton argument, local authorities owe duties under the Children Act 1989 to children in need in their area, duties which include a duty to provide accommodation and a duty to maintain, and those duties do not end when the child attains the age of 18 since he or she becomes a 'care leaver', and as such entitled to support up to his or her twenty-fifth birthday as well as potentially entitled to benefits under legislation such as the Housing Act 1996 by virtue of the Homelessness (Priority Need for Accommodation) Order 2002 SI No 2015.
15. The importance of an accurate and fair assessment of age was highlighted by the Supreme Court in ***R(A) v LB of Croydon*** [2009] UKSC 8 [2009] 1 WLR 2557 by Lady Hale at [4] and [5]:

*"4. The importance comes from two directions. If a young person is a child, and otherwise meets the qualifying criteria, he must be provided with accommodation and maintenance under sections 20(1) and 23(1) of the 1989 Act. This brings with it a wider range of services than other forms of housing and benefit provision. These include the services for young people who leave social services accommodation which were described in *R(M) v Hammersmith and Fulham London Borough Council* [2008] UKHL 14, [2008] 1 WLR 535, paras 20-24. While once upon a time young people may have resisted the quasi-parental*

services provided for children in need, many now recognise that they bring distinct advantages over the housing and welfare benefits available to 'home' claimants (as in R(M) v Hammersmith and Fulham London Borough Council, above, and R(G) v Lambeth London Borough Council [2009] UKHL 26, [2009] 1 WLR 1299) and the National Asylum Support Service ('NASS') support available to asylum seekers, as in the cases before us.

5. *The Home Secretary also adopts different policies in relation to asylum seekers who are under eighteen. Legally, these may not be relevant to the issue which we have to determine, and in practice they are much more susceptible to change than is primary legislation such as the 1989 Act. But they are an important part of the factual background. Not only are unaccompanied asylum seeking children looked after by the local children's services authorities rather than by NASS while their claims are decided. Currently, if a claim is rejected when the child is under the age of seventeen and a half, the Home Secretary will not remove him for three years or until he reaches seventeen and a half, whichever is the earlier, unless there are adequate arrangements to look after him in his country of origin. Also, such children will not be detained under the Home Secretary's immigration powers, save in exceptional circumstances and then normally only overnight."*
16. As Aikens LJ put it in **R(AE) v LB of Croydon** [2012] EWCA Civ 547 at [3], citing **R(A) v LB of Croydon**, "*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*". Those powers, as I say, include powers in relation to people who have ceased to be minors and are 'care leavers', as explained by Keith J in **R(Y) v LB of Hillingdon** at [2].
17. Similarly, the following observations made by Collins J in **R(A) v LB of Croydon** [2009] EWHC 939 (Admin), at [1], are instructive:

"... the advantages of persuading the authorities that they are under 18 are well-known. Those advantages include the automatic grant of leave to remain until the age of 18 coupled with the inability to return to Member States of the European Union if the individual would otherwise be returnable in accordance with the Dublin Regulations. In addition, as children they will usually be entitled to the care and accommodation which a local authority is obliged to provide to children in need."

Merton guidelines

18. There is no issue that the task of assessing a young person's age to establish whether duties are owed falls on local authorities, hence the fact that Greenwich carried out the age assessment in respect of MVN and is the Defendant in these proceedings. Importantly, as both Miss Luh and Miss Screeche-Powell pointed out, there are well-established guidelines on how local authority age assessments ought to be carried out. These principles are set out in the judgment of Stanley Burnton J (as he then was) in **R(B) v LB of Merton** [2003] EWHC 1689 (Admin).
19. The guidelines have been considered in many subsequent authorities, including in **R(FZ) v LB of Croydon** [2011] EWCA Civ 59 where Sir Anthony May P said this at [2] and [3]:

- “2. ... Some young people may be obviously and uncontroversially children. Others may accept that they are adult. It is for those whose age may objectively be borderline, between perhaps 16 and 20, that an appropriate and fair process of age determination may be necessary. A process has developed whereby an assessment is undertaken by two or more social workers, trained for that purpose, who conduct a formal interview with the young person at which he is asked questions whose answers may help them make the assessment. It is often necessary for there to be an interpreter. The young person may or may not be able to establish or indicate his age by producing documents, which themselves may require translation.
3. *In R (B) v Merton London Borough Council ... Stanley Burnton J gave guidance in judicial review proceedings on appropriate processes to be adopted when a local authority is assessing a young person’s age in borderline cases. The assessment does not require anything approaching a trial and judicialisation of the process is to be avoided. The matter can be determined informally provided that there are minimum standards of inquiry and fairness. Except in clear cases, age cannot be determined solely from appearance. The decision-maker should explain to the young person the purpose of the interview. Questions should elicit background, family and educational circumstances and history, and ethnic and cultural matters may be relevant. The decision-maker may have to assess the applicant's credibility. Questions of the burden of proof do not apply. The local authority should make its own decision and not simply adopt a decision made, for instance, by the Home Office, if there has been a referral. It is not necessary to obtain a medical report, although paediatric expert evidence is sometimes provided in these cases, and there is some difference of view as to its persuasiveness in borderline cases. If the decision-maker forms a view that the young person may be lying, he should be given the opportunity to address the matters that may lead to that view. Adverse provisional conclusions should be put to him, so that he may have the opportunity to deal with them and rectify misunderstandings. The local authority is obliged to give reasons for its decision, although these need not be long or elaborate. This decision and its guidance have led to the development of what is sometimes referred to as a 'Merton compliant' interview or process.”*
20. Other recent cases in which the guidelines have been addressed include a decision of mine (sitting as a Deputy High Court Judge), namely *VS v The Home Office* [2014] EWHC 2483 (QB), as well as the recent decision of Haddon-Cave J in *R(IG) v London Borough of Croydon* [2015] EWHC 649 (Admin).
21. The *Merton* guidelines have also been reflected in the ‘Practice Guidelines on Assessing Age’ as developed for local authorities by the London Boroughs of Hillingdon and Croydon. That document sets out the relevant principles, as helpfully summarised by Miss Luh in her opening skeleton argument, without objection from Miss Screeche-Powell, as follows:
- (1) The assessment must be a holistic one and must start with an open mind, with no imposition on the child to prove his age to the assessing social workers.
 - (2) Physical appearance and demeanour are notoriously unreliable factors not determinative of age.

- (3) Cultural, ethnic and racial context of the young person being assessed must be considered as these may reflect in their presentation as well as their descriptions of their lives.
- (4) General credibility is not to be determinative of age. It is more likely that a young person who tells a consistent account of his life which supports his claimed age will be the age he claims to be. Conversely, young people may lie for reasons unrelated to age but related to their claims for protection or the reasons they had to leave their country of origin.
- (5) The child should be afforded the benefit of the doubt where evidence can tip one way or the other.

22. Miss Luh highlighted a number of points concerning the *Merton* principles (without demur from Miss Screeche-Powell, whose opening skeleton argument made essentially similar points). These included the point that in *R(CJ) v Cardiff* [2011] EWCA Civ 1590, at [21], Pitchford LJ explained the position in relation to burden of proof as follows:

“It seems to me that once the court is invited to make a decision upon jurisdictional fact it can do no more than apply the balance of probability to the issue without resorting to the concept of discharge of a burden of proof.”

He went on in the same paragraph to state this:

“In my view, a distinction needs to be made between a legal burden of proof, on the one hand, and the sympathetic assessment of evidence on the other. I accept that in evaluating the evidence it may well be inappropriate to expect from the claimant conclusive evidence of age in circumstances in which he has arrived unattended and without original identity documents. The nature of the evaluation of evidence will depend upon the particular facts of the case.”

Pitchford LJ continued at [22]:

“... Neither party is required to prove the precedent fact. The court, in its inquisitorial role, must ask whether the precedent fact existed on a balance of probability.”

He then stated this at [23]:

“In the present case there was a range of powers and duties exercisable by public authorities dependent upon the single issue of age. Where the issue is whether the claimant is a child for the purposes of the Children Act it seems to me that the application of a legal burden is not the correct approach. There is no hurdle which the claimant must overcome. The court will decide whether, on a balance of probability, the claimant was or was not at the material time a child. The court will not ask whether the local authority has established on a balance of probabilities that the claimant was an adult; nor will it ask whether the claimant has established on a balance of probabilities that he is a child.”

23. Miss Luh also highlighted the point that the purpose of an age assessment is to establish, so far as possible, a person's *chronological* age. This must naturally start with listening to the child and seeing what the child has to say about his or her age and history, as made clear by Stanley Burnton J in the *Merton* case at [37]:

“... the decision maker cannot determine age solely on the basis of the appearance of the applicant. In general the decision maker must seek to elicit the general background of the applicant, including his family circumstances and history, his educational background, and his activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the applicant's statement as to his age, the decision maker will have to make an assessment of his credibility, and he will have to ask questions designed to test his credibility.”

24. Miss Luh went on to submit that, if the chronological information provided by the child is credible, believable and plausible, then no observation about the child's apparent physical appearance or demeanour is likely to tip the balance against the age stated by the child and derived from his oral history. She relied in this context on certain dicta in *R(AM) v LB of Croydon* [2011] EWHC 3308 (Admin) at [44] (per HHJ McKenna), as well as on the following observations made by Sir Anthony May P in *R(FZ) v LB of Croydon* at [29]:

“ ... The appellant is recorded as giving a reasonably consistent factual account, and the initial apparent inconsistency between his claimed age and his claimed date of birth was capable of being explained. There were no glaring inconsistencies in his account, nor clear analytical reasons why his account was unbelievable. ... We take account of the fact that the social workers will have been able to judge his general appearance and demeanour, and to make a general credibility judgment from the manner in which he answered their questions. It does not follow that the court would be bound to make the same judgments; nor is general credibility, judged by others, alone sufficient for the court to refuse permission for a factual hearing before the court, when it is for the court to determine in a disputed case the fact of the young person's age.”

25. Miss Luh additionally referred to this statement by Aikens LJ in *R(AE) v LB of Croydon* at [44]:

“We accept that, in the absence of any documentary evidence of AE's age nor any reliable dental or medical evidence, the starting point for the deputy judge's task of assessing the age of AE was the credibility of his own evidence.”

Miss Luh and Miss Screeche-Powell were agreed that in a case like the present the credibility of the person whose age is being determined is critical or, as Miss Screeche-Powell put it in her closing skeleton argument, “*crucial*”.

26. Miss Screeche-Powell, however, submitted that MVN's credibility generally, rather than the credibility of what he had to say concerning his age, needs to be taken into account. Miss Luh did not entirely agree, stressing the importance of distinguishing between evidence concerned with credibility generally and evidence concerned with credibility relating to a person's age. Miss Luh relied in this respect on Aikens LJ's observations in *R(AE) v LB of Croydon* as follows:

- “46. Given the deputy judge’s conclusion on AE’s age, the inevitable inference is that she did not accept his evidence about the birth certificate. But she gave no reason for not doing so. The inference must be that the deputy judge decided that because of the inconsistencies in his evidence about his arrival at the Home Office and because she did not find that part of AE’s evidence credible, that enabled her to conclude that his evidence about the birth certificate was not reliable and could not be accepted.
47. There is an illogical jump from a finding that one specific part of AE’s evidence is not credible to a further, implicit, unreasoned finding that his evidence on another topic cannot be accepted, particularly when the deputy judge held that she found his account of the incident of his early life in Iran and his journey ‘mostly credible’. In my view the deputy judge erred by failing to confront the fact that AE had given evidence about his birth certificate which was not challenged in cross-examination as either being a lie or that he was mistaken about his recollection of the date he saw on it. The deputy judge should either have accepted that evidence or she should have explained why it was not to be accepted. The only possible basis for not accepting it was her conclusion that AE’s evidence about his arrival at Croydon and the Home Office was inconsistent and not credible. So it is necessary next to examine the evidence on that issue.”
27. It would, therefore, appear that the primary focus is on the credibility of the person’s evidence concerning his or her age, but that it is permissible to have regard to credibility more generally provided that, in looking at credibility more generally, the primary focus to which I have referred is not forgotten. In short, the difference between Miss Luh and Miss Screeche-Powell is not as acute as it might at one stage have appeared. This was effectively acknowledged by Miss Luh in her closing skeleton argument, where she prayed in aid various authorities which have dealt with the correct approach to be applied in relation to credibility assessments when asylum claims are made. Miss Luh explained that she accepted that general credibility needs to be factored into the evaluation of the claimant made by the Court, but maintained (rightly, in my view) that there needs nevertheless to be care taken so as to ensure that particular importance is afforded to the credibility of evidence in relation to age.
28. Miss Luh identified the following principles drawn from the asylum authorities, which on reflection Miss Screeche-Powell was inclined to recognise are useful also in the context of an age assessment case such as the present:
- (1) Decision makers considering asylum claims should take everything material into account. Their sources of information will frequently go well beyond the testimony of the applicant and include in-country reports and expert testimony: **Karanakaran v Secretary of State of the Home Department** [2000] EWCA Civ 11 per Sedley LJ in his judgment at [2].
 - (2) It is an error of law for a decision maker to seek to assess the credibility of a claim in isolation without considering other relevant evidence such as reports regarding a country that corroborate a person’s claims: **R v Immigration Appeal Tribunal ex p Ahmed** [1999] INLR 473.

- (3) It is also an error of law to fail to take account of relevant expert evidence when assessing credibility: *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367.
- (4) Further, in assessing credibility in the context of trafficking, this must be done “in the round”: *R (AA (Iraq)) v Secretary of State for the Home Department* [2012] EWCA Civ 23 at [67] per Sir David Keene.
- (5) Allowances should be given to the fact that asylum seekers (and similarly victims of trafficking) may have problems giving coherent accounts of their history: *R (N) v Secretary of State for the Home Department* [2008] EWHC 1952 (Admin) at [25] per Blake J (“most people who have experience of obtaining a narrative from asylum seekers from a different language or different culture recognise that time, confidence in the interviewer and the interview process and some patience and some specific direction to pertinent questions is needed to adduce a comprehensive and adequate account”).

It seems to me that these principles do, indeed, represent useful guidance in the context of an age assessment case.

29. Miss Luh went on in her closing skeleton to make the point, which again seems to me to be correct, that, in evaluating evidence, caution must be paid to distinguishing between internal inconsistencies in a person’s account giving rise to concerns about credibility and a decision maker’s own assumptions of how a person ought to have behaved. In this regard, Miss Luh relied on another asylum case, *HK v Secretary of State for the Home Department* [2006] EWCA Civ 1037, in which Neuberger LJ (as he then was) stated at [29]:

“Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar.”

30. Miss Luh also cited *Y v Secretary of the State for the Home Department* [2006] EWCA Civ 1223, where Keene LJ explained the position as follows at [25]:

“There seems to me to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as an immigration judge, should adopt towards issues of credibility. The fundamental one is that [the immigration judge] should be cautious before finding an account to be inherently incredible because there is a considerable risk that he will be overinfluenced by his own views on what is or is not plausible, and those views will have inevitably influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant’s account of events, as Mr. Singh rightly argues, in the context of conditions in the country from which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham, as he then was, in 1985 in a passage quoted by the

IAT in Kasolo v SSHD 13190, the passage being taken from an article in Current Legal Problems. Sir Thomas Bingham said this:

‘An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situations which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships’ engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibl[y] assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even – which may be quite – different – in accordance with his concept of what a reasonable man would have done.’”

31. Miss Luh also stressed the need to appreciate that age assessment interviews with social workers can involve artificiality. In this regard, she pointed out that in **R(AE) v LB of Croydon**, at [56] to [60], Aikens LJ placed considerable reliance on the evidence given by a teacher, and that in **R(KN) v LB of Barnet** [2011] EWHC 2019 (Admin) HHJ Pearl found most compelling the evidence given by somebody who had spent more than 60 hours speaking to the person whose age the judge was having to assess (see [60] to [65]). Miss Luh also cited **AM v Solihull MBC (AAJR)** [2012] UKUT 00118 (IAC), where the Vice-President of the Upper Tribunal, Mr CMG Ockelton, sitting with Upper Tribunal Judge Peter Lane, stated as follows at [20]:

“A person such as a teacher or even a family member, who can point to consistent attitudes, and a number of supporting instances over a considerable period of time is likely to carry weight that observations made in the artificial surroundings of an interview cannot carry.”

At [22], as Miss Luh pointed out, the Upper Tribunal went on to explain that the assistance which can be given by a social worker based on asserted expertise must be determined carefully by what is said and the basis for saying it.

32. Similarly, again as pointed out by Miss Luh, in **ISA** [2012] ScotCS CSOH 134, a decision of the Outer House, Court of Session in Scotland, Lord Stewart stated as follows at [142]:

“What about the evidence of experienced social workers who claim to be skilled in age assessment? Mr Smith QC, for the respondents, submits that there is no such thing as expertise in this field or, to be precise, that there is no such thing as expertise which can reliably instruct the Court in the precise determination of chronological age. Mr. Smith acknowledges that in a sense the independent social-worker assessors acting for the petitioners, Kenneth Ambat and Rose Palmer (non-witness), are experts: but he argues that their expertise in this context lies in implementing the Merton guidelines; and that the Merton guidelines are not a scientific methodology but a framework for procedural fairness [R on the application of B v London Borough of Merton [2003] EWHC1969 (Admin) (14 July 2003)]. The independent social workers would possibly claim expertise, as well, in eliciting information by skilled interviewing and in writing cogent reports. However, I have come to be persuaded that essentially Mr Smith's submission is correct. There may be situations in which social workers bring expertise to the assessment of age, for example specialist

knowledge of coming-of-age rituals or familiarity with identity documentation in particular countries. Otherwise, and particularly as regards evidence of impressions formed during interviews intended to assess age, I am not convinced that social-worker age assessors can aspire to be called expert witnesses in the full legal sense.”

33. Lastly, Miss Luh highlighted the need for those carrying out an age assessment to draw to the attention of the person whose age is being assessed matters which fairness demands that that person should be given the opportunity to address. Sir Anthony May P made this point in **R(FZ) v LB of Croydon**, saying at [21]:

“In our judgment, it is axiomatic that an applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him.”

He explained that obviously such points would include “inconsistencies, or a provisional conclusion” that the person “is not telling the truth with summary reasons for that provisional view”. Sir Anthony May P then continued at [22] by saying this:

“In our judgment, the procedure adopted in the present case did not achieve this element of the Merton requirements. Mr Hadden was constrained to accept that he was unable to show on the material available to him that it did. The deputy judge considered that it was sufficient that the assessors' conclusions were put to the appellant in writing and that he signed that he understood them. Although the interviewing social workers withdrew to consider their decision, when they returned, they presented him with their conclusions without first giving him the opportunity to deal with the adverse points. ... ”

34. I observe, really only in passing, that the same point was made by Coulson J in **Durani v Secretary of State for the Home Department** [2013] EWHC 284 (Admin) at [84], when he stated as follows:

“Elementary fairness requires that the crucial points which are thought to be decisive against an applicant should be identified, in case the applicant has an explanation for them.”

The ‘benefit of the doubt’/presumption

35. I should add that Miss Luh and Miss Screeche-Powell were agreed that, in the circumstances, since the role of the Court in this context is akin to that of a local authority assessor, the **Merton** guidelines should essentially be followed. I also agree. The decision, therefore, needs to be based on particular facts concerning the particular person. Miss Luh nonetheless submitted that, as she put it, “*this does not negate the doctrine of the ‘benefit of the doubt’*”. Her position was that, in order to have reached a substantive fact-finding stage, the young person must already have satisfied the Court at the permission stage that there is a realistic prospect that he is younger than assessed by the local authority, applying the correct test for permission set out in **R (F) v LB of Lewisham** [2009] EWHC 3542 (Admin).
36. Miss Luh went on to submit that this is “*all the more reinforced*” in a case like the present claim by the operating presumption in law in favour of the Claimant’s stated age under Article 13(2) of the EU Anti-Trafficking Directive (2011/36/EU) (the ‘EU

Directive’) and under Article 10(3) of the Council of Europe Convention on Action against Trafficking in Human Beings (‘ECAT’) as incorporated into the ‘Care of Unaccompanied and Trafficked Children Statutory Guidance’ (July 2014). The former provides as follows:

“Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.”

The latter states at paragraph 22:

“... Where the age of the victim is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child”

37. Miss Luh submitted that, in MVN’s case, a presumption arises on account of MVN being a beneficiary of a ‘Positive Reasonable Grounds’ letter from the Home Office dated 12 May 2014, which stated that the Home Office (as the Competent Authority) had *“carefully considered the circumstances”* of MVN’s case *“and concluded that there are reasonable grounds to believe that”* MVN has *“been trafficked”*. This, in circumstances where the letter stated on the first page that MVN’s date of birth was in 1997, and so acknowledged that he was a child as far as the Home Office was concerned in writing the letter.
38. As Miss Luh pointed out, this is a decision made by the Home Office as the Competent Authority designated by the United Kingdom Government to identify victims of trafficking in the United Kingdom and to offer protection and assistance to those identified. It was not written pursuant to any immigration function. Moreover, as Miss Luh went on to point out, this was a letter which was sent after the Home Office had carried out a substantive asylum interview with MVN on 2 May 2014, and so at a time when it was already known that MVN’s age was disputed and with full knowledge that MVN had claimed asylum in Hungary under two different dates of birth which would have made him an adult.
39. However, as Miss Screeche-Powell stressed, the Home Office was not itself engaged in an age assessment process when reaching its decision that ‘Positive Reasonable Grounds’ existed. Accordingly, although material, the fact that the Home Office took the position which it did cannot be regarded as conclusive of the issue which I must now determine. Indeed, in fairness to Miss Luh, in her oral closing submissions, she made it clear that her submission was not that the ‘Positive Reasonable Grounds’ letter should be viewed as binding on the Court or as necessarily creating a formal presumption, but that it should be regarded as at least highly material. In this context, Miss Luh referred me to ***R(A) v LB of Croydon*** involving in which Upper Tribunal Judge Peter Lane observed at [28] that *“a ‘conclusive grounds’ decision on the issue of A’s trafficking is not binding on me ..., it is at the very least highly material, so far as it proceeds on the same or a similar evidential basis as that in the present proceedings”*.
40. I broadly agree with this approach, whilst preferring not to grade the materiality of the letter in the present case as necessarily *“highly”* material as opposed to (merely) material. This is because, as I observed in closing during Miss Screeche-Powell’s oral

submissions, apparently anticipating a submission which she was about to make, the Home Office went on in the ‘Positive Reasonable Grounds’ letter to refer, on the second page, to its making “a ‘conclusive’ decision as to whether you are a victim of trafficking” at the end of a 45-day “reflection period”. Accordingly, unlike the ‘conclusive grounds’ decision in *R(A) v LB of Croydon*, the decision was not “conclusive”, and it appears that the Home Office has still, as matters currently stand, not made a “conclusive” decision pending the challenge which MVN has made to Greenwich’s age assessment. The same distinction applies to the decision which was under consideration by the Court of Appeal in *R v L and Ors* [2013] EWCA Crim 991, a criminal case in which Lord Judge LCJ stated as follows at [28]:

“Whether the concluded decision of the competent authority is favourable or adverse to the individual it will have been made by an authority vested with the responsibility for investigating these issues, and although the court is not bound by the decision, unless there is evidence to contradict it, or significant evidence that was not considered, it is likely that the criminal courts will abide by it.”

It seems to me that the distinction which I have highlighted needs to be borne in mind when considering the ‘Positive Reasonable Grounds’ letter. It is material but not, in my view, as highly material as it would have been if it were a final decision.

41. I consider that the same applies to the Home Office’s letter dated 11 November 2013, in which reference was made to the fact that MVN had told the authorities in Hungary that he was an adult and had gone on to claim asylum in that country, only for the Home Office to say this:

“Nevertheless, the UK have accepted your client as a minor. Your client’s asylum claim now falls for substantive consideration in the UK. ...”

Miss Luh submitted that this letter entailed the Home Office making an explicit decision to accept that MVN was a child, a decision which required the Home Office to put its own mind to the relevant available objective evidence it had about journeys of unaccompanied asylum-seeking children crossing Europe from Vietnam to the United Kingdom. As Miss Luh stressed in this regard, the Home Office’s own published ‘Assessing Age’ policy makes it clear that claims by a person that he or she is a child should be considered on a case by case basis with inquiries made of the child and an assessment made as to his or her credibility in order that a decision on age can be made.

42. It seems to me nevertheless that this letter, although material to the decision I must make, ought not to be treated as creating any particular presumption. I consider this to be the position notwithstanding Miss Luh’s related submission that normally, when the Home Office uncovers an asylum applicant having claimed to be an adult elsewhere in an EU member state, it seeks to transfer responsibility for examining that person’s asylum claim to that member state under the Dublin II Regulations, and so the Home Office’s decision in the case of MVN is to be regarded as especially significant. In my judgment, as I have indicated, the Home Office’s two letters are material and should be factored into my deliberations but it would be wrong to treat them as having any greater significance than that.

43. In the circumstances, I need not take up too much time on a point made by Miss Screeche-Powell in relation to the ‘Positive Reasonable Grounds’ letter in particular, namely that that letter cannot, as a matter of law, inform these proceedings because the presumption referred to in Article 13(2) of the EU Anti-Trafficking Directive is confined to the purpose of access to the assistance, support and protection prescribed by Article 14 (physical and social recovery) and Article 15 (protection during criminal investigations and proceedings). It is not, she submitted, the ‘gateway’ to access services under the Children Act 1989. The gateway is, instead, Section 105 of that Act and the factual determination of whether a person is below the age of 18. That, Miss Screeche-Powell emphasised, is a matter, initially, for social services assessment, followed by the Court’s adjudication in the event of dispute, with neither the claimant nor the defendant bearing the burden of proving age in line with *R(CJ) v Cardiff CC*. Miss Screeche-Powell submitted that there is no room, in these circumstances, for any presumption of the type suggested by Miss Luh. I agree with Miss Screeche-Powell about this. I am clear that that must be right as a matter of law.
44. Similarly, I do not, in these circumstances, need to express any concluded view in relation to Miss Screeche-Powell’s further submission that, if Miss Luh were right in her submissions, this would have the effect of rendering Greenwich’s assessment a nullity. In this regard, Miss Screeche-Powell cited *R(AM) v Solihull Metropolitan Borough Council*, where the Upper Tribunal stated as follows at [10]:

“An assessment that is challenged must surely stand until the challenge succeeds, otherwise there would be no basis upon which any provision for the claimant could be made.”

In the same case, as Miss Screeche-Powell pointed out, the Upper Tribunal also rejected the claimant’s argument that, if the bringing of a judicial review claim itself is not sufficient to displace the local authority’s decision, the grant of permission should do so because it acts as a filter, leaving the claimant’s age undetermined until the Tribunal rules on it. The Upper Tribunal stated this at [11]:

“... That cannot be right in principle, because it would mean nobody could adopt any view of the claimant’s age between the grant of permission and final judgment. But, in any event, the grant of permission is too readily obtainable in cases of this nature. ...”

45. As I have indicated, I prefer not to express a concluded view in relation to this further submission made by Miss Screeche-Powell. However, I am doubtful that it can be right because Miss Luh’s submission is not that the ‘Positive Reasonable Grounds’ letter displaces Greenwich’s age assessment, but that the letter is material (even highly material) when the Court is determining age and so deciding, practically speaking, whether it agrees with the results of the age assessment performed by Greenwich. Miss Luh’s submission does not, in short, require Greenwich’s age assessment to be treated as though it were a nullity. Accordingly, it seems to me that Miss Screeche-Powell’s own submission is inapposite.

Role of the court when age assessment disputed

46. As Miss Screeche-Powell explained in her opening skeleton argument, traditionally challenges to age assessments were by way of conventional judicial review, limited to

a review as to the lawfulness of an authority's age assessment. However, this changed with the decision of the Supreme Court in *R(A) v LB of Croydon*. As Lady Hale put it in that case at [27] and [33]:

“27. But the question whether a person is a ‘child’ is a different kind of question. There is a right or a wrong answer. It may be difficult to determine what that answer is. The decision-makers may have to do their best on the basis of less than perfect or conclusive evidence. But that is true of many questions of fact which regularly come before the courts. That does not prevent them from being questions for the courts rather than for other kinds of decision makers.

...

33. ... the children's services or the UK Border Agency, has to make its own determination in the first instance and it is only if this remains disputed that the court may have to intervene. But the better quality of the initial decision making, the less likely it is that the court will come to any different decision upon the evidence.”

Accordingly, it is for the Court to inquire and, on the available evidence, to make a decision on a balance of probabilities.

47. Although the Court (or Tribunal) is asked at the substantive stage to inquire as to a precedent fact, conventional judicial review principles continue to play a relevant and important role in deciding the weight to be afforded to the local authority's assessment of a person's age. As Miss Luh put it in her opening skeleton argument, whilst stand-alone conventional judicial review grounds are subsumed in the assessment process of the Court at a substantive stage, it remains relevant to consider whether the local authority's assessment survives a challenge on conventional judicial review grounds of procedural fairness and rationality in order to determine what weight to attach to the local authority's conclusion.
48. This was essentially the point which was recently made by Ms Alexandra Marks (sitting as a Deputy High Court Judge) in *R(GE) v Bedford County Council* [2015] EWHC 1406 (Admin) at [82] to [84]. It was also, as Miss Luh pointed out, the approach which was adopted by the Court of Appeal in *R(FZ) v LB of Croydon* since in that case the unfairness of the procedure by which the age assessment and subsequent review were carried out by the local authority and the failure to afford the child an opportunity to have an independent adult in the age assessment were two of the reasons why permission to bring judicial review proceedings was granted (see [19] to [25]), the other reason being that to which I have already referred, namely that the child's account was reasonably consistent and apparent inconsistencies were capable of being explained (see [29]).

The parties' respective positions

49. It is convenient at this juncture to set out, in relatively summary form, the submissions which were made by each of the parties. These are submissions which I come on, later, to examine in more detail when dealing with the central issue of MVN's credibility and what may be described as 'MVN's story'.

MVN's position (in summary)

50. On behalf of MVN, Miss Luh submitted that MVN has given a cogent chronology of his life, and that his account is internally consistent with what he told different professionals in the United Kingdom, including the Home Office immigration officers, various social work professionals as well as the assessing social workers over a 2 year period. The chronology of his life given by MVN, Miss Luh submitted, supports his having just turned 18 on 13 May 2015 and his having been a child at all material times whilst in Greenwich's care.
51. Miss Luh additionally submitted that Greenwich's age assessment performed by Ms Yvonne Reid and Ms Carol Bilham was flawed, so that little weight can be placed on the conclusion reached for various reasons, but primarily because it was conducted in an unfair manner: in particular, Miss Luh highlighted the fact that MVN was not given a proper opportunity to comment on matters which Ms Reid and Ms Bilham considered supported an adverse decision.
52. Miss Luh also highlighted what she characterised as Greenwich's "*selectivity*" in the witness evidence it put forward at trial, suggesting that this "*speaks for itself*" in that Greenwich's only witnesses were the people who carried out the age assessment, Ms Reid and Ms Bilham, in what was inevitably an artificial context. Miss Luh pointed out that neither of MVN's two allocated social workers, John Bottomley initially and then Caroline Marley, was called as witnesses by Greenwich, commenting that these were people who had raised no concerns about MVN's claimed age.
53. In contrast, Miss Luh submitted, Ms Pauline Dyer, the foster carer who looked after MVN when he was taken into foster care for a second time, in March 2013, until Greenwich age assessed him as an adult the following year, had willingly provided witness evidence supporting MVN in these proceedings and had given evidence which was "*clear, genuine and cogent*" that, as far as she was concerned, MVN was the child that he claimed to be when he lived with her.

Greenwich's position (in summary)

54. Greenwich's position can be shortly stated. It is that MVN's evidence concerning his age is not to be believed. In this respect, Miss Screeche-Powell highlighted a number of what she described as inconsistencies in the accounts given by MVN over the course of a range of different interviews and, in particular, in what MVN told the Hungarian authorities when he was detained and put into prison. Miss Screeche-Powell also questioned how MVN could be so exact in his knowledge of his date of birth when it was clear that MVN and his family did not celebrate birthdays. Most fundamentally, however, Greenwich does not accept that a boy of 13 could have gone through the experiences which, on MVN's account, he went through in travelling from Vietnam via Russia, Hungary, the Czech Republic and France. The more so, Miss Screeche-Powell submitted, given that the journey described by MVN entailed a stay of some 5 months in Hungarian prisons without anybody apparently realising that MVN was a minor and not the adult which at that stage he was claiming he was.
55. Miss Screeche-Powell further submitted that the age assessment carried out by Ms Dyer and Ms Bilham was *Merton*-compliant, and the conclusion reached (that MVN was 23 years of age) was a conclusion which was fully justified. Moreover, it was a

conclusion which was arrived at by social workers with vast experience of dealing with children and whose objectivity was plain. In contrast, Miss Screeche-Powell submitted, Ms Dyer, whose experience of children she accepted was considerable, lacked objectivity, having formed a close relationship with MVN through the fact he had lived in her home for over a year.

The witnesses other than MVN himself

56. There were four witnesses who gave evidence at trial: MVN himself and Ms Dyer; and for Greenwich Ms Yvonne Reid and Ms Carol Bilham.
57. I leave to one side, for the moment, MVN since it will be obvious that it is his credibility, in particular the evidence which he gave concerning his age, which is at the heart of the present dispute. I focus instead at this juncture on the evidence which was given by Ms Dyer, Ms Reid and Ms Bilham. I am satisfied that in their evidence before the Court each of these witnesses was giving honest evidence. It is clear to me that Ms Dyer, Ms Reid and Ms Bilham all did their best to assist the Court. I should also record the fact that, having listened to both Ms Reid and Ms Bilham, I am in no doubt that, like Ms Dyer, they at all times acted in what they regarded as MVN's best interests. It was very evident to me, in particular, when Ms Reid and Ms Bilham were giving their evidence that they are social workers who are dedicated professionals, and that they would only ever aim to act in a way which is entirely appropriate and which is in the best interests of the children for whom they have responsibility. Ms Reid ended her evidence by making this very point, and I accept it completely.
58. Although, as I shall come on to explain, it is clear to me that the age assessment which Ms Reid and Ms Bilham carried out was not *Merton*-compliant, I am quite satisfied that this was not the result of any conscious decision by Ms Reid or Ms Bilham to depart from the *Merton* guidelines and thereby cause MVN any prejudice. Why it should be that Ms Reid and Ms Bilham were responsible for an age assessment which was not *Merton*-compliant is, in a sense, not relevant. All that matters is whether it was compliant or not. However, since I must take account of the age assessment report which Ms Reid and Ms Bilham produced, as well as their evidence at trial, in order to evaluate what weight to afford to the report and to their evidence, it is worthwhile bearing in mind that the evidence before me was that neither Ms Reid nor Ms Bilham had particularly large experience of themselves actually performing an age assessment. Indeed, in the case of Ms Bilham, MVN's age assessment was the first that she had ever carried out.
59. Miss Screeche-Powell rightly made the point in her closing skeleton argument that both Ms Reid and Ms Bilham had received professional training in relation to age assessments and, further, that they kept their training up to date with regular continued training. The fact remains, however, that even Ms Reid, the more experienced of the two social workers, with more than 30 years of social work experience (albeit for the past 23 years working as a team manager rather than with her own direct caseload), had only conducted two previous age assessments before MVN's case. Miss Screeche-Powell highlighted how both Ms Reid and Ms Bilham would also have experience of making assessments which were not of the age assessment variety. I accept this. However, the lack of practical experience in conducting age assessments does seem to me in the present case to have acted as an

impediment to the age assessment process which Ms Reid and Ms Bilham (I stress, no doubt, with the very best of intentions) undertook in relation to MVN.

60. Whether or not it was because she was conscious of the fact that her experience of age assessment was not as substantial as it might have been, I detected in the case of Ms Reid, on occasion, a certain reluctance to accept deficiencies in the age assessment process which she and Ms Bilham carried out in relation to MVN. I do not consider, however, that Ms Reid was trying to be difficult. I consider that she was simply displaying, at times, a defensiveness which, to some extent, was perhaps understandable. I found that Ms Bilham was less prone to defensiveness and more willing to accept points which Miss Luh put to her. However, like Ms Reid (and, indeed, Ms Dyer), Ms Bilham was reluctant to be shifted from her ultimate view that MVN is not the age which he claims to be.

MVN's credibility

Significance of MVN's credibility in this case

61. I need now to examine in some detail the evidence which MVN gave concerning the circumstances in which he came to the United Kingdom and, critically, MVN's evidence concerning his age. The reason why this is critical is because both parties agree that in a case like this, where there is no documentary evidence or dental or medical evidence, the evidence of the person whose age is being determined is most important. Aside from MVN's own evidence, not only given at trial but in the form of various records of what MVN has told others (whether that be the Home Office or social workers), the only other evidence consists essentially of opinion evidence, again given at trial and in the form of various written records of observations made by MVN's social workers (John Bottomley and then Caroline Marley), Ms Reid and Ms Bilham (the age assessors), Ms Dyer and the Independent Reviewing Officer involved with MVN, Ms Nikki Muller.
62. As I have previously explained, Greenwich is not in a position to dispute much of what MVN has to say about the circumstances in which MVN came to arrive in this country, specifically that he travelled from Vietnam to Russia, from Russia to Hungary, where he was detained, and then from Hungary to France via the Czech Republic, and finally to the United Kingdom. Indeed, to a considerable extent, Greenwich itself relies on those circumstances in order to support its position that MVN is not the age which he claims to be. This is because, consistent with the position adopted by Ms Reid and Ms Bilham in their evidence, it is Greenwich's position that MVN could not have gone through what he says he went through, in particular when he spent time in prison in Hungary, if he had been a child as he claims he was, as opposed to an adult.
63. This, then, is the context in which MVN's evidence needs to be examined. Essentially, were I to conclude that it is more likely than not that a minor could have made the journey which MVN says that he did, including in my reference to 'the journey' all aspects of what MVN describes, then it is likely to follow that I would arrive at a determination that MVN is the age which he claims to be. This is unless I were also to conclude that MVN's evidence concerning his life in Vietnam is not credible, specifically his evidence that each year he was told by his parents what his age was. In that event, regardless of whether a child could have undertaken the

journey which MVN took, it would be open to me to decide, on a balance of probability, that MVN's evidence concerning his age was not true, and so to determine that he was not a minor when he set out on his journey from Vietnam.

Trafficking guidance

64. In assessing MVN's credibility, Miss Luh was keen that I should have in mind various guidance applicable to trafficking, in particular but not limited to child trafficking. This, she submitted, needs to be considered in any event, but all the more so in view of the Home Office's 'Positive Reasonable Grounds' letter dated 12 May 2014. I did not understand Miss Screeche-Powell to take issue with Miss Luh about this. I make it clear, in these circumstances, that what follows is based on paragraphs 33 to 49 of Miss Luh's closing skeleton argument. Although I confirm that I have myself studied the underlying material, and indeed have made certain corrections to what is stated in Miss Luh's document, Miss Luh's summary of the relevant position is helpful.

65. The starting point is that "*Trafficking in human beings*" is a term which is defined in Article 4(a) of ECAT as follows:

"...the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

Article 2.1 of the EU Directive contains similar wording to Article 4(a), and Article 2.2 explains that "*a position of vulnerability*" means "*a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved*".

66. In paragraph 78 of ECAT's 'Explanatory Report' (the 'Explanatory Report'), it is made clear that "*recruitment, transportation, transfer, harbouring or receipt of persons*" encompasses "*the whole sequence of actions that leads to exploitation of the victim*", and that this covers transnational and national trafficking (paragraph 79). Paragraph 83 goes on to state as follows:

"By abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce."

67. Importantly, as pointed out by Miss Luh, a child victim enjoys a special protective status under both the ECAT and the EU Directive. In particular, Recital (8) to the EU Directive states as follows:

“Children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings. In the application of this Directive, the child’s best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child.”

This is followed by Recitals (22) and (23) which state:

- “(22) In addition to measures available to all victims of trafficking in human beings, Member States should ensure that specific assistance, support and protective measures are available to child victims. Those measures should be provided in the best interests of the child and in accordance with the 1989 United Nations Convention on the Rights of the Child. Where the age of a person subject to trafficking is uncertain, and there are reasons to believe it is less than 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection. Assistance and support measures for child victims should focus on their physical and psycho-social recovery and on a durable solution for the person in question. Access to education would help children to be reintegrated into society. Given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews forming part of criminal investigations and proceedings.*
- (23) Particular attention should be paid to unaccompanied child victims of trafficking in human beings, as they need specific assistance and support due to their situation of particular vulnerability. From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed in order to safeguard the minor’s best interests. A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection status or granting of other status in accordance with national law of the Member States.”*

68. Miss Luh additionally relied on the London Safeguarding Children Board’s ‘London Safeguarding Trafficked Children Guidance’ (February 2011), specifically paragraph 4.1, which states:

“Most children are trafficked for financial gain. This can include payment from or to the child’s parents, and can involve the child in debt-bondage to the traffickers. In most cases, the trafficker also receives payment from those wanting to exploit the

child once in the UK. Some trafficking is carried out by organised gangs. In other cases, individual adults or agents traffic children to the UK for their own personal gain³. The exploitation of trafficked children may be progressive. Children trafficked for domestic work may also be vulnerable to sexual exploitation or children initially trafficked for sexual exploitation may be resold.”

This is followed by paragraph 4.2, in which the example is given of children being used for “*Enforced criminality e.g. – cannabis cultivation*”.

69. Miss Luh went on to point out that the London Safeguarding Board Trafficked Children Toolkit (the ‘Toolkit’) accompanying the February 2011 Guidance lists, in a section entitled “*Why is trafficking possible?*”, various factors including poverty, lack of education, discrimination, cultural attitudes, grooming, dysfunctional families, political conflict and economic transition, and inadequate local laws and regulations. Miss Luh, therefore, highlighted how the reasons are wide-ranging and that there is no one single facet of trafficking or type of trafficking. This was a point which Miss Luh suggested is underlined by page 4 of the Toolkit (“*The assessment framework for trafficked children*”) where various indicators are identified. These include, under “*Child development*”:

“ ...

- *Claims to have been exploited through sexual exploitation, criminality, labour exploitation, domestic servitude, drug dealing by another person.*

...

- *Withdrawn and refuses to talk/appears afraid to talk to a person in authority.*

...

- *Exhibits self assurance, maturity and self confidence not expected in a child of such age.*

...”.

Then, under “*Family/environment*”:

“ ...

- *Located/recovered from a place of exploitation (brothel, cannabis farm, involved in criminality etc).*

...

- *Unable or reluctant to give accommodation or other personal details.*

...

- *No passport or other means of identity.*

...

- *False documentation or genuine documentation that has been altered or fraudulently obtained; or the child claims that their details (name, DOB) on the documentation are incorrect.*

...”.

70. I was also taken by Miss Luh to paragraph 127 of the Explanatory Note relating to ECAT, which states:

“To protect and assist trafficking victims it is of paramount importance to identify them correctly. Article 10 seeks to allow such identification so that victims can be given the benefit of the measures provided for in Chapter III. Identification of victims is crucial, is often tricky and necessitates detailed enquiries. Failure to identify a trafficking victim correctly will probably mean that victim’s continuing to be denied his or her fundamental rights and the prosecution to be denied the necessary witness in criminal proceedings to gain a conviction of the perpetrator for trafficking in human beings. Through the identification process, competent authorities seek and evaluate different circumstances, according to which they can consider a person to be a victim of trafficking.”

As Miss Luh pointed out, this applies to trafficking victims generally; it is not confined to child victims.

71. Lastly, Miss Luh showed me two Home Office documents described, respectively, as ‘Victims of human trafficking: guidance for frontline staff’ (the ‘Frontline Guidance’) and ‘Victims of human trafficking – competent authority guidance’ (the ‘Competent Authority Guidance’). The first has a ‘valid from’ date of 21 January 2013 and runs for 54 pages, whereas the second has a ‘valid from’ date of 24 October 2013 and is longer at 115 pages. Miss Luh highlighted, in particular, that on page 30 of the Frontline Guidance, under a heading of “*Indicators of trafficking*”, the following appears:

“Potential victims of trafficking (particularly children) are often reluctant to give information and may tell their stories with obvious errors. Such errors, or a lack of credibility, may be a sign their stories were made up by their trafficker.”

Miss Luh also highlighted in the Competent Authority Guidance the following, again at page 30 and under an “*Indicators of trafficking*” heading:

“Potential victims of trafficking may:

- *be reluctant to come forward with information*
- *not recognise themselves as having been trafficked, or*
- *may tell their stories with obvious errors.*

It is not uncommon for traffickers to provide stories for victims to tell if approached by the authorities and the errors or lack of reality may be because their initial stories are composed by others and learnt.

Victims' early accounts may also be affected by the impact of trauma. In particular, victims may experience post traumatic stress disorder, which can result in symptoms of:

- *hostility*
- *aggression*
- *difficulty in recalling details or entire episodes, and*
- *difficulty concentrating.*

Child victims may find it additionally hard to disclose as the traffickers may have given them inaccurate information about the role of authorities, they may have had bad experiences with corrupt authorities in their home country or during their journey.”

72. Miss Luh then helpfully sought to draw together what she characterised as the core principles derived from the Competent Authority Guidance on which credibility can be assessed as follows (with some addition from me - again I confirm that the various references to the Competent Authority Guidance given by Miss Luh and repeated by me below are accurate):
- (1) Due to the trauma of trafficking, there may be valid reasons why a potential victim's account is inconsistent or lacks sufficient detail (pages 30 and 55).
 - (2) Many victims do not recognise themselves as such but rather as migrants who happen to be in a difficult situation. Thus, identification must not rely solely on a person self-identifying (pages 28 and 65). This applies in particular to child victims who cannot consent to their own exploitation and may have added vulnerabilities and barriers to accessing support; may not be familiar with the word 'trafficking' or there may not be an equivalent word in their language (page 32).
 - (3) Coercion and compulsion may be hard to determine and the guidance sets out a (non-exhaustive) list of questions that the Competent Authority may wish to consider (pages 15 and 16).
 - (4) Case workers “*must not view a delay in disclosing of facts as necessarily manipulative or untrue*” (page 55).
 - (5) There must be recognition that “*victims in some cases might not be able to recall concrete dates, facts and in some case their initial account might contradict their later statement. This is often connected to their traumatic experience*” (page 56).
 - (6) Credibility findings must relate to “*material facts about the past and present events (material facts being those which are serious and significant in nature) which may indicate that a person is a victim of trafficking*” (page 51).

- (7) *“It is generally unnecessary, and sometimes, counter-productive for the decision maker to focus upon minor or peripheral facts that are not material to the claim”* (page 51).
- (8) *“You should assess the material facts based on the following:*
- *Are they coherent and consistent with any past written or verbal statements?*
 - *How well does the evidence submitted fit together and does it contradict itself? Are they consistent with claims made by witnesses and with any documentary evidence submitted in support of the claim or gathered during the course of your investigations?”* (pages 51 and 52).
- (9) The level of detail with which a potential victim presents their claim *“is a factor when you assess credibility. It is reasonable to assume that a victim giving an account of their trafficking experience will be more expressive and more likely to include sensory details (for example what they saw, heard, felt or thought about an event) than someone who has not had this experience”* (page 53).
- (10) As to the relevance of consistency in account, *“it is also reasonable to assume that a potential victim who has experienced an event will be able to recount the central elements in a broadly consistent manner”* (page 54).
- (11) As for the relevance of gender and culture, the guidance cautions that it has to be an *individual* evaluation based on personal circumstances because *“men and women from the same country of origin may have different experience due to their cultural, ethnic, gender and sexual identity”* (page 52).
- (12) Assessing a claim’s credibility inevitably involves *“an element of subjectivity on [the decision maker’s] part. The danger is that an overly subjective interpretation can lead to unfounded assumptions based on [the decision maker’s] own experiences and beliefs rather than on objective information. This undermines the balance and fairness of an assessment. To make sure the decision is impartial, a second caseworker, who is at least a grade above and has the appropriate experience in human trafficking work, must review the National Referral Mechanism decision”* (page 52).
73. Miss Luh submitted that the Court should have these guidelines in mind when assessing MVN’s age. Miss Screeche-Powell did not appear to disagree with this, and in the circumstances it seems to me that I should, indeed, have them in mind in performing my present task.
74. I ask myself, in particular, in line with the guidance set out in sub-paragraph (8) above, whether: (i) MVN’s evidence as to the material facts are *“coherent and consistent with any past written or verbal statements”*; and (ii) how well MVN’s evidence fits together or whether it contradicts itself, in particular having regard to evidence given by other witnesses and the documentary evidence. This was how Miss Luh approached matters in her closing skeleton argument and, in truth, although without the same express reference to the Competent Authority Guidance, it is also how Miss Screeche-Powell addressed the evidence in her closing skeleton argument.

MVN's story

75. It is against this background, and with the approach described above in mind, that I turn now to consider whether MVN's evidence is credible, generally as well as by reference specifically to the evidence he gave before me in respect of his age. I shall deal with Miss Luh's and Miss Screeche-Powell's submissions as I progress through my examination of MVN's story.
76. Although conscious that I should adopt something of an holistic approach, it seems to me that the obvious place to start is the beginning of MVN's story. As Upper Tribunal Judge Peter Lane put it in *R(A) v LB of Croydon*, at [20], I have to start somewhere. This concerns his experiences in Vietnam in the lead-up to his departure for Russia and, ultimately, for the United Kingdom.

Vietnam: knowledge of age

77. It was MVN's evidence that he recalls being with his parents at social gatherings when their friends would ask them how old he was and his parents would tell them with him listening to what they said. This was evidence which was contained in his first witness statement in these proceedings made in July 2014 and which he repeated in his oral evidence when being cross-examined. In her closing skeleton argument, Miss Luh placed particular reliance on the latter, suggesting that MVN "*spontaneously*" made mention of this recollection "*without being taken to his witness statement*". Miss Luh suggested that this supports MVN's credibility. I do not agree. It is hardly surprising that MVN should give evidence orally which was consistent with the evidence he had given in his witness statement. In the circumstances, I do not agree with Miss Luh that MVN's consistency in this respect is to be regarded as enhancing MVN's credibility.
78. The same applies to the evidence given by MVN, again both in his witness statement and in cross-examination, that he was about 4 or 5 years old when these conversations between his parents and their friends took place. Miss Luh suggested in her closing skeleton argument that MVN gave evidence about this "*spontaneously and without reference to his witness statement, which incidentally recorded the same*". It does not seem to me that the fact that MVN's witness statement contained evidence which MVN then also gave orally at trial can sensibly be described merely as being incidental. It is one thing for it to be pointed out in closing argument that a witness has given evidence orally which is inconsistent with evidence contained in a witness statement and for it to be submitted that, accordingly, the evidence of the witness should be regarded with caution. It is quite another for a submission to be made that the fact that a witness has said the same thing both in writing and orally somehow bolsters the credibility of the witness. In my judgment, the latter submission is somewhat less compelling than the former.
79. Be that as it may, my task is to evaluate the likelihood that MVN's evidence about his parents' friends asking his parents how old he was is true. I consider that it is. It seems to me that what MVN had to say on this topic is entirely credible. I do not regard it as implausible that such conversations should have taken place, nor that MVN should have heard what was being asked and what his parents said about his age in answer to the friends' questions. Miss Screeche-Powell suggested that it is odd that MVN should have such a clear recollection of these conversations, inviting me to

conclude that he cannot actually remember them at all and that what he had to say about them was made up in order to support his claim that he is currently 18. I reject that suggestion. I am satisfied that MVN's evidence was genuine. It seems to me that, like most people, MVN would have been interested in knowing how old he was as a young boy, and that it is entirely understandable that he should recall when he first learned that information.

80. The same applies, in my assessment, to certain evidence which MVN gave under cross-examination, namely that his parents would tell him that he was a year older each year during the Vietnamese TET (or TAT) holiday, a period of festivity in Vietnam which broadly equates to the New Year celebrations which take place in this country and others around the world. This was not evidence which appeared in MVN's witness statements. Miss Screeche-Powell submitted in her closing skeleton argument that the information concerning the TET/TAT holiday ought to have featured sooner, given that MVN knew very well that there was an issue concerning his claimed age and birth date. She, therefore, suggested that MVN's evidence concerning the TET/TAT holiday was an embellishment and not true. I reject that submission, however, because MVN told Ms Reid and Ms Bilham in his first interview as part of the age assessment process, an interview which took place on 28 January 2014, that he knew his age because his parents told him what it was, and that is what he repeated in his first witness statement. Accordingly, although the detail concerning when his parents told him his age only emerged during MVN's oral evidence, in my view, this does not impinge on the veracity of what MVN had to say. Indeed, it is worth noting that MVN was never specifically asked by Ms Reid and Ms Bilham when his parents told him about his age, including when they asked him during his third age assessment interview on 11 February 2014 whether his mother ever talked to him about his "*birth and childhood*".
81. Miss Screeche-Powell made a related submission, which was that, in circumstances where it was MVN's evidence (both in his first age assessment interview and in cross-examination) that his family did not celebrate birthdays when he was growing up, it is legitimate to question why MVN's birth date should, as she put it, be "*so firmly etched*" on his mind. However, it seems to me that the answer to this submission is that there is a difference between celebrating a birthday, on the one hand, and not knowing what one's birthday is, on the other. As MVN put it when Miss Screeche-Powell asked him about the lack of birthday celebration, "*everyone has his own age and so it is very important for someone to know his own age*". MVN made the same point later on, after Miss Screeche-Powell pressed him further, saying that his date of birth was "*very important because that's my identity*". A birthday can, in short, be known but not celebrated. Furthermore, as MVN went on to explain when giving his answer the second time that Miss Screeche-Powell put the point to him about lack of birthday celebration, it was because his family were very poor that birthdays were not celebrated: they could not afford to celebrate them. If this was the reason, and I see no reason not to accept MVN's evidence in this regard, that seems to me further to underline the distinction which I have sought to draw.
82. All in all, I am clear that the fact that birthdays were not celebrated within MVN's family is not a reason to conclude that MVN and his family were essentially oblivious to birthdays, and MVN's birthday in particular. This is sufficient to justify my acceptance of MVN's evidence that he learned about his age from his parents.

83. I need not, in the circumstances, take up time addressing certain other evidence given by MVN at trial, during cross-examination, that he also, on occasion, specifically when he was about 9 or 10 years old, looked at his parents' identity cards as they were left lying around the house whilst his parents were at work. Miss Screeche-Powell suggested to MVN that, since the family did not celebrate birthdays, it was implausible that he would have been interested in seeing what the identity cards gave as his parents' dates of birth. MVN's answer was that, as his parents were very close to him, he was "curious" to know when they were born, and I accept that evidence. Nor, I might add, am I deterred from the conclusions which I have reached in relation to this aspect of MVN's evidence by the fact that it emerged during cross-examination that MVN had never seen his birth certificate, despite it being recorded in the notes of the age assessment interview on 28 January 2014 that he had told Ms Reid and Ms Bilham that he had seen his birth certificate. MVN was adamant, when this inconsistency was put to him by Miss Screeche-Powell, that the notes were wrong and that he had not stated that he had seen his birth certificate, and again I see no good reason not to accept that evidence. I can well understand how the notes could have been mistaken on this point of detail, an observation which I make, I stress, without any criticism of either Ms Reid or Ms Bilham, the note-taker.

Vietnam: knowledge of birth place

84. The next issue which I need to address concerns MVN's place of birth, a matter about which some doubt was raised in the age assessment report prepared by Ms Reid and Ms Bilham, and about which Ms Bilham spoke in her witness statement for the trial. As to the latter, Ms Bilham stated as follows in paragraph 6:

"In order to understand the environment the Claimant claimed he was from I referred to the Home Office Country of Origin Report. The Claimant appeared to be confused about the name of the town and the province in which he grew up. He stated that the name of the Town was THAI NGUYEN and the Province was PHO YEN District. As far as I am concerned this raises issues about his credibility. A young person even of the age claimed by the Claimant can reasonably be expected to recall the Town and Province where they grew up. Neither the Town nor the Province showed up on the Google Map search that I carried out."

85. In the event, this was not a matter which was pursued with MVN in cross-examination. Nor was it a matter to which any reference was made by Miss Screeche-Powell in her closing skeleton argument. It is doubtful whether, in the circumstances, this is a point which is still pursued by Greenwich. It is, however, a matter which was taken into account in the age assessment, notwithstanding that it was not a point which (other than in the meeting when the age assessment report was read out to MVN) was put to MVN for him to comment on. It is right, therefore, that I address it.
86. As Miss Luh highlighted in her closing skeleton argument, it was not until February 2014 that MVN was asked for his full address in Vietnam, having consistently told Greenwich that he was simply from Thanh Cong. This was consistent also with what MVN had told the Home Office: that he is from Thon Lang To village, Xa Thanh Cong ward, Huyen Pho Yen, Tinh Thai Nguyen in Vietnam ('Huyen' apparently meaning 'District' in Vietnamese, and 'Tinh' meaning 'Province'). Miss Luh made this submission good by referring to a number of documents, which I need for present purposes only to list: a screening interview with the Home Office carried out on 6

March 2013 (question 6.1); a further screening interview with the Home Office carried out on 4 July 2013 (questions 1.11 and 1.14); MVN's asylum witness statement dated 29 April 2014 (paragraph 2); the Home Office Bio-Data Information Form dated 2 May 2014, and the Self-Declaration Form of Bio-Data for Vietnam completed for the Home Office on the same date; and the substantive asylum interview also on 2 May 2014 (questions 10 and 12).

87. I am quite clear, in the circumstances, that MVN would have told Ms Reid and Ms Bilham the same information during the age assessment process. There would have been no reason for him not to have done so. I agree also with Miss Luh when she submitted that, given that MVN's English was not very good when he was being interviewed (indeed, throughout his three interviews, as at trial, he was attended by a Vietnamese language interpreter), the probability is that MVN gave the details of where he lived in Vietnam in his own language rather than in English. Accordingly, the probability is that the interview notes are in error in recording the information in the way which was done, and not that MVN gave details which were wrong.
88. When I asked Ms Bilham whether it is possible that she and Ms Reid misunderstood what MVN was telling them, she very fairly acknowledged that this is possible. In my judgment, that is, indeed, the explanation for the discrepancies. It follows, as Ms Bilham equally fairly accepted, that the point made by her in her witness statement is a point which would not have played a part in her conclusion that MVN lacked credibility. It follows also that, in determining MVN's age in these proceedings, I should take no account of the inconsistencies identified by Ms Reid and Ms Bilham in their age assessment report, and that there is, accordingly, no reason for me to doubt MVN's credibility on this issue.

Vietnam: various

89. I come on shortly to deal with an issue concerning Mr Du, MVN's father's friend. I need, first, however, to consider various other matters which were addressed by MVN in his evidence and which Miss Screeche-Powell sought to characterise as inconsistencies, implausibilities or worse in her closing skeleton argument. I do so only quite briefly since, as I shall explain, I do not consider that the matters are of much moment.
90. The first of these matters concerns certain evidence given by MVN as to the year in which he left school. Miss Screeche-Powell highlighted how in the age assessment interview with Mr Bottomley on 19 March 2013 MVN had stated that he left school after his father died in 2010, and that this broadly correlates with what he told Ms Reid and Ms Bilham during his first interview with them on 28 January 2014, yet in his Home Office interview on 2 May 2014 MVN stated that he left school in 2009, something he repeated during cross-examination. I do not consider that this is a justified criticism. Not only was MVN's answer in cross-examination consistent with what he stated in his first witness statement in these proceedings, namely that he attended school for two years (2008 and 2009), but I do not agree with Miss Screeche-Powell that in his interview on 28 January 2014 MVN gave an answer which was consistent with having left school after his father died (in 2010) rather than with having left school before his father died after his mother had left (in 2009). What the notes to that interview state is that MVN told Ms Reid and Ms Bilham that he went to secondary school for two years, years 6 and 7. It is right to acknowledge that, later on,

when asked what he did after his father died, MVN stated that he did not go to school, and that this could be taken as his saying that before his father died he did go to school. However, in view of his previous answer that he only attended for two years, I do not see how this changes things. In short, there is no inconsistency here.

91. The second issue raised by Miss Screeche-Powell was that MVN gave evidence in cross-examination which, she submitted, contradicted what the notes of the interview with Ms Reid and Ms Bilham on 28 January 2014 record him as having said, namely that his maternal grandmother died when he was 7 years old. Miss Screeche-Powell contrasted this version of events with MVN's oral evidence that his maternal grandmother moved into his family's house when he was around 4 or 5 years old, and that she died 4 or 5 years after that. I do not consider this a criticism which is well made, however, because what MVN actually said, when he was first asked in cross-examination, was that he could not remember exactly when his maternal grandmother died but that he thought that he was 6 or 7 years old. It was only after Miss Screeche-Powell had pressed MVN, asking him how many years elapsed between his maternal grandmother dying and his mother's departure from the family home, that MVN answered, first, by saying "*several years*" and then, when pressed to be specific, by saying "*I think 4 or 5 years*". Since MVN's mother left in 2008, when MVN says that he would have been 11 given that in 2010 he says that he was 13, it follows that his maternal grandmother must have come to stay in the family home in either 2003 or 2004, when MVN was aged 6 or 7 on his version of events. This is consistent with what MVN told Ms Reid and Ms Bilham, namely that his maternal grandmother died when he was 7 years old. Accordingly, Miss Screeche-Powell's criticism is without any validity.
92. The last matter to which Miss Screeche-Powell referred concerns an alleged inconsistency between MVN's claim to have been in fear of his life of the loan sharks in Vietnam and so to have gone out only rarely (something which he stated in answer to question 120 in his Home Office interview on 2 May 2014) and his description during the age assessment interview on 28 January 2014 of wandering about after the death of his father. I do not regard this as an inconsistency. An ability to wander around is not inconsistent with being fearful.
93. It follows that I am not impressed by these suggested inconsistencies in MVN's evidence.

Vietnam: Mr Du

94. A more substantial matter concerns what MVN did after his father died and before he left Vietnam initially for Russia and ultimately for the United Kingdom via Hungary, the Czech Republic and France. The relevant period starts with February 2010, when MVN says that his father died, and ends with May 2010, when MVN left Vietnam.
95. Miss Screeche-Powell submitted in her closing skeleton argument that MVN's account that he went to live with Mr Du, his father's friend, is at odds with what he said previously he did after his father died. She suggested that MVN had changed his story only after doubt had been raised in the age assessment report prepared by Ms Reid and Ms Bilham and read out to him at a meeting on 12 May 2014. In that report, Ms Reid and Ms Bilham observed that "*it is difficult to understand how he would have been able to cope with little to no support*" if he had been the age he claimed to

be at that time, namely 13. Miss Screeche-Powell submitted that this was the reason why in the asylum interview which MVN had with the Home Office MVN referred, she suggested for the first time, that he went to live with Mr Du where he stayed for roughly 3 months (answers to questions 111 and 122). Miss Screeche-Powell added that MVN's explanation, in cross-examination, as to why he did not mention living with Mr Du previously, namely that he did not want to get Mr Du into trouble, "*does not make sense*" because MVN had already disclosed Mr Du's role in helping him obtain a passport to leave Vietnam.

96. I am not persuaded by these submissions. I agree with Miss Luh that, on analysis, there is nothing in them. I outline those reasons in what follows, but they are essentially the reasons which Miss Luh gave in her closing skeleton argument, including crucially the fact that, contrary to the submission made by Miss Screeche-Powell, MVN had referred to the fact that he went to live with Mr Du before the age assessment report was read to him. It seems to me that, in view of this, there is really very little force in Miss Screeche-Powell's submission on this issue.

97. In his first age assessment, a rather more informal age assessment than that performed by Ms Reid and Ms Bilham, MVN made no reference to Mr Du, suggesting that he himself approached an agent, Mr Hung, to help him arrange his departure from Vietnam after the death of his father. This was in an interview with Mr Bottomley on 19 March 2013. However, in the age assessment interviews carried out by Ms Reid and Ms Bilham the following year MVN made it clear that he left Vietnam in May 2010 with the assistance of his father's friend, Mr Du. This is apparent from the following passage in the notes relating to the interview which took place on 28 January 2014:

"Leaving Vietnam

When did you leave Vietnam? May 2010

How did you know it was May 2010? I remember it was May 2010.

...

How did you leave Vietnam? Dad had a friend, Du, he came to see me, I said I want to look for Mum. Du said he will try to help me to go to the UK.

...

... Du made a fake passport."

98. Mr Du's existence was, therefore, not kept from Ms Reid and Ms Bilham. It is right that Mr Du had not been mentioned by name until the interview on 28 January 2014. However, MVN had told the Home Office in the screening interview which took place on 4 July 2013 that his "*father's friend helped us*". He was not asked at that time who that friend was, nor where he lived after his father had died. It is not, therefore, correct for Miss Screeche-Powell to say that Mr Du had not been identified previously, if that is what she meant to submit. What is nevertheless certainly right, and as acknowledged by Miss Luh in her closing skeleton argument, is that MVN did not explain in his 28 January 2014 interview, nor indeed in any of the three interviews with Ms Reid and Ms Bilham, that he went to live with Mr Du after his father died.

99. I have to decide whether this impacts on MVN's credibility. I do not consider that it does. I say this for three main reasons. First, it is to be noted that Ms Reid and Ms Bilham did not actually ask MVN where he lived after his father died in February

2010, at least not in very explicit terms. In the first interview notes the following appears:

*“Who were you left with when your father died? [MVN] replied: ‘Nobody’.
Did anyone come round to see you? [MVN] replied: ‘Yes occasionally some people from the village would pop round’.
How long were you on your own for when dad died? [MVN] replied: From February to May 2010.
What did you do when/at the time and after your father died? Nothing, I did not go to school, I wondered [sic] about, slept at the house alone.”*

I fully accept that these questions might well have led MVN to answer by saying that he went to live with Mr Du after his father died. However, I can also understand that MVN might have regarded the questions as focusing on a different issue, namely the support he received generally from people living in the village. That seems to me to be the case in relation to all but the last question in the series set out above. That question, I acknowledge, ought probably to have elicited the response that MVN went to live with Mr Du. However, I consider that MVN would have been justified in taking it that the question was focusing on the period immediately after his father’s death, and that MVN might not have understood that the intention behind the question was to find out where he lived throughout the three month period between his father’s death and his departure for Russia. The same applies to the reference further down the same page of the note to it being confirmed that MVN *“looked after himself”* and *“Paid his own bills”*. In short, in my judgment, MVN was not actively seeking to conceal the fact that he went to live with Mr Du.

100. I agree with Miss Luh in this context that it needs also to be borne in mind that, neither at the interview on 28 January 2014 nor in the two subsequent interviews, was MVN asked anything further about Mr Du. This is not remotely a criticism of Ms Reid and Ms Bilham; it is simply a fact that MVN was not pressed on what, if anything, else Mr Du did for him after the death of his father. As a result, MVN was not required to say anything further about Mr Du, in particular that he went to live with him. The fact that Ms Reid and Ms Bilham did not ask MVN more about how he coped is also understandable in circumstances where, notwithstanding the concerns which were later expressed in the age assessment report about how a 13 year old boy could have fended for himself after the death of his father, Ms Reid and Ms Bilham had earlier asked during the 28 January 2014 interview questions as follows:

“Who was with dad at the time of his death? [MVN] stated that some people in the village helped.

Who were the people? [MVN] stated because I was so young, people helped. He then stated, yes I do know the names of the people who helped.

....

About the house he lived in:

...

Who was cooking and shopping? When my parents were around they taught me how to do all this.

...

Did you have school friends who came to the house? Yes, they did come occasionally.

Did your friends have parents? Yes

Did you eat there at friends’ house? Yes, sometimes.

What were the names of the people who helped when Dad was sick? Hung – male; Du – male; An – Female.”

As Miss Luh pointed out, no questions were asked about the names of people who helped *after* MVN’s father died. That, however, is understandable, in view of these exchanges.

101. As for MVN’s explanation as to why he did not want to reveal the extent of Mr Du’s involvement in his life, which was that he was fearful that this might get Mr Du into trouble, Miss Luh went to some lengths in her closing skeleton argument to make good the related point that MVN was fearful that he would be deported back to Hungary or to Vietnam. She did so by reference to contemporaneous social services records made at the time, in particular the record relating to a statutory home visit made Caroline Marley on 11 July 2013, in which there is a reference to MVN being “*in genuine fear for his life*” because he fears “*he would be badly hurt or killed*”, followed by a reference to MVN being “*very worried and ... visibly upset*”. Miss Luh submitted that, in view of MVN’s fears of having to return to Vietnam, it is hardly surprising that at the first age assessment interview he would be worried and anxious about revealing too much information which may trigger his deportation or may get Mr Du into trouble.
102. Nevertheless, I agree that there is force in Miss Screeche-Powell’s submission that this makes little sense in circumstances where MVN did name Mr Du specifically in answer to Ms Reid’s and Ms Bilham’s questions on 24 January 2014. I agree with her that, in view of this, it is difficult to see why MVN should have felt under any inhibition to name Mr Du as the person with whom he went to live after his father died. Therefore, I struggle with this as an explanation, yet it is the explanation which MVN gave in his first witness statement specifically as to why he did not want to mention Mr Du at the age assessment interviews. Furthermore, whilst I am sure that the same explanation applies in relation to MVN not naming Mr Du when being interviewed by the Home Office the previous year, the fact is that it is the explanation which MVN has proffered specifically in relation to the age assessment interviews.
103. In the circumstances, I am doubtful that MVN’s explanation really can be right. I consider it more likely that MVN considered that, whilst he should not avoid answering direct questions which would mean that he should mention Mr Du by name, nevertheless he would avoid mentioning Mr Du in answer to other questions which, in his assessment, did not require Mr Du to be identified. This would explain, given the analysis of the questions which he was asked which I have set out previously, why Mr Du was mentioned in answer to one set of questions but not another. This conclusion means that I must partially reject MVN’s explanation.
104. However, matters do not stop there because, in truth, Miss Screeche-Powell’s attack on MVN’s credibility has as its real focus not a demolition of the explanation given by MVN as to why he did not say that he had gone to live with Mr Du, but her submission that it was only after MVN had appreciated from the age assessment report prepared by Ms Reid and Ms Bilham that they were sceptical that he could have lived alone as a 13 year old child, that he then came up with the story that he had, in fact, lived with Mr Du. Unless Miss Screeche-Powell can make good this point, then her case in this respect faces quite a degree of difficulty.

105. As I have already indicated, Miss Screeche-Powell's point on timing is not a good one. This is quite clear from the documents and from MVN's evidence which is supported by those documents, namely that he later "*felt guilty*" about not explaining Mr Du's full involvement with him after his father had died, and that he spoke to friends who encouraged him not to hold back this information. I am satisfied that this is, indeed, what happened because it explains why in the asylum witness statement which he prepared for the Home Office on 29 April 2014, and again on 2 May 2014 during the Home Office asylum interview which he underwent (an interview to which Miss Screeche-Powell referred although oddly in support of her submission), he specifically mentioned that he had gone to live with Mr Du after the death of his father. Strictly, in the case of the interview Mr Du was not named but this interview followed the witness statement where he was named and the questions were clearly based on what was stated in that witness statement. As Miss Luh submitted, what is crucial to appreciate here is that in each case MVN was telling the Home Office that he lived with Mr Du *before* he knew of the outcome of the age assessment or that this would be an issue because he only found out about that at a meeting with Ms Reid and Ms Bilham on 12 May 2014, almost two weeks after the interview.
106. Accordingly, I reject Miss Screeche-Powell's submission that MVN lacks credibility in relation to this matter. I agree with Miss Luh when she submitted in her closing skeleton argument that, whilst it is unfortunate that MVN did not explain in full Mr Du's role in his life after his father died, it does not follow that his account as to what happened after his father's death and his associated evidence that he was a child at the time should be regarded with suspicion and disbelieved. On the contrary, I accept MVN's evidence in these respects.

Russia

107. I need now to address MVN's journey to, and arrival in, Russia, the country to which he travelled from Vietnam. Miss Luh submitted that MVN's evidence about entering Russia with an agent and other people has been consistent throughout. She pointed in this context to a number of instances where this is what MVN has stated: part 2 of the asylum screening interview which took place on 4 July 2013 (question 2.1); MVN's asylum statement (paragraph 11); the substantive asylum interview on 2 May 2014 (question 146); the first age assessment interview on 28 January 2014; and the second age assessment interview on 4 February 2014.
108. Miss Screeche-Powell questioned, however, MVN's account, making three essential points. First, although strictly this is a point which is concerned with MVN's time still in Vietnam rather than in transit to Russia, she referred to how MVN had described in cross-examination how, when he last saw his friends before leaving Vietnam, he just wandered around with them and played games. She referred also to how he stated, in answer to a question from her, that he just had a "*normal conversation like everybody else*", asking "*How can I remember?*", submitting that it was unlikely that he would not recall what would turn out to be his last conversation with his friends, and submitting also that the answer demonstrated a level of confidence and assertiveness which "*does not square with his claimed age*". Speaking for myself, I am not persuaded that there is anything in these points. I am not at all surprised that MVN was unable to recall the details of any conversation he had with his friends, and I regard his answers to Miss Screeche-Powell's questions as responses which an 18 year old would be more than capable of giving.

109. Secondly, Miss Screeche-Powell queried how a 13 year old would be able to pass himself off as a man in his twenties in Russia. This is another point which I do not find very compelling, however, since, as acknowledged by both Ms Reid and Ms Bilham during their cross-examinations by Miss Luh, people (in particular, children) can come in “*different shapes and sizes*” and having broad shoulders or a small frame are not indicators of adulthood.
110. Thirdly and perhaps more substantively, although not a point which features in Miss Screeche-Powell’s closing skeleton argument, an issue which was explored in MVN’s cross-examination was that he did not tell Ms Reid and Ms Bilham during the age assessment interviews that the agent who took him to Russia was named “*Hung*”. This, however, is a bad point because, as the notes relating to the interview on 28 January 2014 show, when MVN was explaining to Ms Reid and Ms Bilham that “*Two people took me from Vietnam*” and “*The people had the paper work*”, referring then to “*a person*” in the singular having shown the passport, neither Ms Reid nor Ms Bilham then asked him to identify who those people were or that person was. In fact, as MVN explained in cross-examination, it was a Mr Hung, an agent and not the same Mr Hung who had helped MVN’s father when he was ill, who had MVN’s fake passport in his possession as the group which included MVN passed through Russian passport control. In contrast, as Miss Luh highlighted, when MVN was being asked about Hungary, in his second interview on 4 February 2014, he was asked with whom he travelled, and his answer was “*Kien*”. I agree with Miss Luh that, in the circumstances, any omission to mention Mr Hung’s name is not a reason to doubt the credibility of what MVN was telling Ms Reid and Ms Bilham, and that when MVN was asked questions about agents’ identities, he answered them.
111. I also agree with Miss Luh that MVN’s account of his entry into Russia is consistent with what is known to be commonplace. I have in mind in this context the joint ‘CEOP-British Embassy, Hanoi Report on the trafficking of women and children from Vietnam’ (2011), the ‘CEOP Strategic Threat Assessment Child Trafficking in the UK Report’ (2010), the ‘ECPAT UK’s Understanding Child Trafficking, Safeguarding children trafficked to the UK to work in cannabis factories report’ (2011), and the Home Office’s ‘Country of origin information report’ on Vietnam, all of which I have looked at and which are, as Miss Luh submitted, broadly consistent with what MVN described as his experience in entering Russia with an agent as an undetected child.
112. Reference to the first of these various reports will suffice by way of example, specifically the following passage at pages 25-26:

“6 Victims trafficked to the UK

6.1 Labour contracts and travel visas

Although 80,000 legal work visas are issued every year, this does not meet the demand from Vietnamese people for overseas labour contracts. This is therefore another push factor for illegal migration. Most of the 58 children identified as being trafficked to the UK in the 2010 CEOP STA entered clandestinely (although some may have been issued a visa for Russia).

The 2010 CEOP STA highlighted that the first leg of the trafficking route for many children trafficked into the UK was to fly from Vietnam into Russia. According to information supplied by the Russian Embassy, Russia issues approximately 50,000 visas to Vietnamese citizens every year. There are no

Russian immigration staff based in Vietnam, and Foreign Service officers issue visas, for the most part without referral and with few, if any, checks.

There appear to be few barriers to trafficking networks moving victims into and through Russia. Some will complete the remainder of the journey in the UK clandestinely and soon after arriving in Russia. Return tickets on Aeroflot for flights to Moscow from Hanoi cost approximately £300 and can be readily absorbed in the debt bond.”

Like Miss Luh in her closing skeleton argument, I emphasise the references in the last two paragraphs to Russian visas being issued “*without referral and with few, if any, checks*” and to there appearing “*to be few barriers to trafficking networks moving victims into and through Russia*”. It needs also to be remembered that, as reflected in the Toolkit to which I have previously referred, specifically page 4 (“*The assessment framework for trafficked children*”) where various indicators are identified, child victims of trafficking are often given false documents with different names and date of births which make them older for travelling across Europe.

113. Indeed, Ms Reid and Ms Bilham themselves appreciated this. They nevertheless were doubtful that MVN could have been a 13 year old when he entered Russia, saying this in their age assessment report:

“According to his stated age, MVN left Vietnam at the age of 13 using a passport that would indicate he was a man in his twenties. From our experience of working with Vietnamese young people, they do tend to look younger than their stated age when compared with children in the UK. Taking this into account, it sounds implausible that MVN would have been able to pass through customs as a mature man in his twenties without being challenged. If he was in fact aged 13 he would have looked younger but it is evident that he looked (to the Border Agencies who are trained in looking and assessing individual) as if he was the age on his passport.”

The approach adopted by Ms Reid and Ms Bilham to this and other matters is something to which I shall return later. However, I agree with Miss Luh’s submission in her closing skeleton argument that caution needs to be exercised in judging the plausibility of such journeys against a social worker’s own subjective perceptions of how border control works in this country. In view of the independent evidence contained in the various reports to which I have referred, it seems to me that MVN’s story of how he travelled to Russia, and in particular how he was able to enter that country without it being appreciated by the authorities that he was a 13 year old and not the adult which his (fake) passport suggested, is entirely believable.

Hungary: detention and asylum claim

114. There is no issue that, after arriving in Russia, MVN then travelled by lorry to Hungary. Nor is there any issue that there, in the company of Mr Hung, the agent who had accompanied MVN’s group as it travelled from Vietnam to Russia and who was joined in Russia by another agent, Mr Kein, MVN was arrested about three days after arriving and as Mr Hung were looking for food.
115. Similarly, it is common ground that, when he was arrested and with Mr Hung translating for him, MVN told the police that his name was Hoang Van Nguyen and that he had been born in 1990, the name and year of birth which Mr Hung told him

had been used in the fake passport. In fact, and again this is not disputed as I understand it, MVN gave two different years for when he was born, not just 1990 (specifically 8 July 1990) but also 1987 (specifically 8 July 1987). This was because, so MVN explained in cross-examination, Mr Hung told him to give another year of birth in order to cause confusion and lead to delay in the Hungarian authorities taking steps to remove him from the country, with Mr Hung explaining that after 6 months he would not be able to be sent back to Vietnam. MVN stated in evidence that he gave 1987 as the year of his birth when he was in detention, by which he meant, as I understood him, in prison rather than in subsequent immigration detention.

116. I would observe in this respect that, as Miss Luh pointed out in her closing skeleton argument, being told by an agent to give two different dates of birth and names so as to defer deportation is apparently a common practice. Thus, the CEOP Strategic Threat Assessment Child Trafficking in the UK (2010) states on page 19 as follows:

“It should be noted that ... coaching victims to provide a vague story is a measure of control as the agent wants to ensure that the victim is not immediately deported. The victim will comply by recounting a fabricated story believing they are in the process of being facilitated, whilst the trafficker hopes to stall authorities long enough to get the victim out of their control and into exploitation.”

Accordingly, I do not consider that Miss Screeche-Powell’s reliance on the fact that MVN provided misleading information to the Hungarian authorities warrants a conclusion that the evidence which he gave before me, whether generally or specifically as regards his age, is to be regarded as lacking in credibility.

117. I also bear in mind that, as mentioned previously, this is a case in which the Home Office has considered the fact that MVN claimed asylum in Hungary as an adult. I refer here to the Home Office’s letter dated 11 November 2013, which stated:

“Nevertheless, the UK have accepted your client as a minor. Your client’s asylum claim now falls for substantive consideration in the UK. ...”

Although I have previously explained that I do not regard this as giving rise to any particular presumption in MVN’s favour, specifically that he is of the age which he claims to be, nevertheless it is a material consideration, again as I have explained, that the Home Office has taken the view which it has, considering that paragraph 6.3 of the Home Office’s ‘Assessing Age’ policy requires it to assess the credibility of claims by a person that he or she is a child. I consider that the Home Office’s position, a position which it has maintained with the ‘Positive Reasonable Grounds’ letter to which I have also previously referred, lends additional support to my view that the fact that MVN provided misleading information to the Hungarian authorities does not justify a conclusion that the evidence which he gave before me ought not to be accepted.

118. It is accepted by Greenwich that MVN was taken to an adult prison, and that he stayed there and in another adult prison for some five months, before being taken to a detention centre which he was able to enter and leave at will, where he stayed for a further two months or so. Indeed, Greenwich positively relies on the fact that MVN was in custody for these periods of time, specifically that throughout this time he was being treated as an adult without anybody apparently raising questions about his age,

in support of its case that MVN cannot have been the 13 year old boy which he maintains he was during the time he spent in Hungary. As Miss Screeche-Powell put it in her closing skeleton argument, when referring to the age assessment report prepared in May 2014 by Ms Reid and Ms Bilham, "*the resilience demonstrated during [MVN's] journey to the UK*", including his ability to mix comfortably with adults, both in the group which travelled from Vietnam to Russia and then on to Hungary and adults in prison and in the detention centre, points towards MVN not being a 13 year old but instead an adult. She also relied heavily, as did Ms Reid and Ms Bilham in their report, on the fact that MVN "*had the foresight of mind and maturity of thought to claim asylum in Hungary and then abscond*".

119. I am not persuaded that there is really anything in the first of Miss Screeche-Powell's points. It seems to me that the fact that the Hungarian authorities do not appear to have questioned MVN's claimed age is not something which assists Greenwich. I have already referred to the acceptance by Ms Reid and Ms Bilham that children of the same age can come in "*different shapes and sizes*". Furthermore, as Miss Luh was able to demonstrate during her oral closing submissions, by reference to a UNHCR report entitled 'Hungary as a country of asylum' (April 2012), age assessments are apparently only undertaken in Hungary when somebody appears to be older than claimed. The relevant passage in the report is at paragraph 60, as follows:

"Age assessment is apparently only applied when the age-disputed person appears to be older than claimed. ..."

Accordingly, it would not appear that age assessments are carried out where a person appears to be *younger* than claimed. If that is right, it might explain why in MVN's case no age assessment was undertaken because he was, of course, telling the Hungarian authorities not that he was a child but that he was an adult.

120. As to Miss Screeche-Powell's second point, I recognise that MVN has, indeed, shown considerable resilience in navigating his journey to the United Kingdom. It needs to be appreciated, however, that this is a journey which would appear to be well-trodden, judging from the various reports to which I have referred. Moreover, it is a journey which adults and children alike have undertaken and are continuing to undertake. The fact of the journey on its own is not, therefore, sufficient to demonstrate that MVN was an adult rather than a child. Nor, in my assessment, is it sufficient for Miss Screeche-Powell to point, as she did in her closing skeleton argument, to MVN seemingly having knowledge of which borders between countries are open and which are closed (a reference to the Czech Republic having an open border with Hungary), since the evidence is that MVN was at all times escorted by agents whose knowledge of such matters was, no doubt, what led him on the particular route which he took.
121. There has, in short, to be something more. I acknowledge that in MVN's case not only did he undertake a journey but that, during the course of that journey, he spent a substantial period of time in custody. I certainly see, therefore, that if MVN was the 13 year old which he claims to have been, then he must have been a 13 year old with a particularly strong character. In my judgment, however, this does not mean that I should reject his evidence that this was how old he was at the time that he was making his way to this country. I must consider that MVN is not a 13 year old person who has been brought up in the United Kingdom. He is, rather, somebody who was brought up in an impoverished home in Vietnam. He is also somebody who has had to live

through an abusive relationship between his father and his mother, fuelled by his father's drink and gambling problems. He is somebody whose mother deserted him without notice and whose father died relatively shortly after that. He is, moreover, somebody who has had very little contact with his mother in recent years, and who has maintained consistently since coming to the attention of the authorities in this country that he dearly wishes to find her. He is, therefore, somebody who has desperately wanted to come to the United Kingdom not only because, as he put it in his oral evidence, he knew that "*England is much better*" than Hungary, but because he wants to find his mother. He is also, lastly, somebody who insists that he could not stay in his home country because he was fearful for his safety. Once these matters are all factored in, and I confirm that I do, indeed, accept MVN's evidence in relation to each of them, then it more than amply explains how, as a 13 year old boy, MVN was able to do what he did before arriving in the United Kingdom. In short, I am not able to accept Miss Screeche-Powell's submission, and Ms Reid's and Ms Bilham's view, that it is not possible that MVN, as a 13 year old, could have gone through the experiences which he describes. I consider it not only possible but that it is what actually happened in MVN's case.

122. I would add, as regards a particular submission which was made by Miss Screeche-Powell, that, in my judgment, there is nothing surprising in the fact that MVN was apparently able to recall the telephone number of the agent (as I understand it, Mr Hung) in the period when he was in prison, and as such able to make contact by telephone after he had been re-united with his mobile telephone on release from prison and, before that, whilst he was in prison, using a telephone "*scratch card*", as he described it in cross-examination, which other prisoners allowed him to use from time to time. I say this because it does not seem to me that a 13 year old would be any less able to remember a telephone number than an adult, Miss Screeche-Powell's point being that whereas an adult might be able to remember a child would not. In addition, although Miss Screeche-Powell sought to suggest that the telephone number would not have been used by MVN for several months, MVN's evidence that he used fellow detainees' cards in order to make telephone calls to Mr Hung establishes that he was hardly having to plumb the depths of his memory every time he made such contact with Mr Hung.
123. This brings me to Miss Screeche-Powell's third and related point concerning MVN's claim for asylum in Hungary, and how that is a claim which MVN did not initially reveal to the authorities in this country. There can be no doubt that, as Miss Screeche-Powell pointed out, MVN did not tell the authorities in this country that he had made an asylum claim in Hungary, nor that he had been fingerprinted in that country, until somewhat later in the day than should have been the case.
124. Specifically, as Miss Luh accepted, it was not until MVN's Third Country Case Travel History interview with the Home Office on 4 July 2013 that he was candid about being in Hungary, remaining there for several months and claiming asylum there as an adult on the basis of two different dates of births which he provided to the Hungarian authorities. Miss Screeche-Powell is entirely right, therefore, to highlight how MVN made no mention of these matters in March 2013: in his first screening interview with the Home Office on 5 March 2013; and in the age assessment interview with Mr Bottomley in March 2013. I do not consider, however, that Miss Screeche-Powell's reliance also on MVN's failure to mention these matters in his

second screening interview with the Home Office on 4 July 2013 really takes matters very far, in view of the fact that later that same day, in his Third Country Case Travel History interview, MVN did tell the Home Office about his experience in Hungary.

125. I have to consider whether, as Miss Screeche-Powell submitted in her closing skeleton argument, MVN's failure until July 2013 to mention what happened in Hungary reveals "*a pattern of concealment and evasion*", and so cause me to doubt his evidence concerning his age and, indeed, lead me to conclude that, in his dealings with the Home Office and with Greenwich during 2013 and afterwards, MVN was engaged, as Miss Screeche-Powell put it and as also reflected in the age assessment report prepared by Ms Reid and Ms Bilham, in "*a mature adult-like thought process as to the choices made about what to reveal and what to conceal*".
126. I do not consider that this is the position at all. I agree with Miss Luh when she submitted in her closing skeleton argument that there is little to justify such a conclusion in this case, MVN having chosen, in effect, as Miss Luh put it, to 'come clean' about his time in Hungary just a few months after first coming to the attention of the Home Office and Greenwich in the wake of his escape from the cannabis farm where he had been kept for two years. MVN explained in his evidence that he had been afraid that, if he told the Home Office about having spent time in Hungary and having claimed asylum there, he would be sent back to Hungary and deported to Vietnam. That is the explanation which he gave more or less contemporaneously during a visit by Caroline Marley, his social worker, on 11 July 2013. The note of that visit prepared by Caroline Marley refers to MVN being "*very worried*" and "*visibly upset*" because of the Home Office having learned about his asylum claim in Hungary having not been told about it by him, and then states as follows:

"[MVN] said he just wanted to stay in the UK. [MVN] said that if they send him back to Hungary and then Hungary say they are going to deport him; [MVN] says he will kill himself. [MVN] said he was too scared to go back to the Home Office in case they take him there and then and deport him. ..."

127. This is entirely consistent with the explanation given by MVN at trial. It is clear, therefore, that the explanation is not a recent invention. I am quite satisfied that not only is it not a recent invention but that it is, in fact, an explanation which is true. I agree with Miss Luh that, in this regard, it is worth having in mind the following observation made by Stanley Burnton J in the Merton case at [28]:

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

It seems to me that this sums up rather well MVN's thinking in the present case.

Czech Republic, France and United Kingdom

128. I have previously described how, having failed with his asylum claim in Hungary, MVN absconded from the detention centre to which he had gone after his release from prison, and travelled to the Czech Republic by car as part of a group which included two agents. Once in the Czech Republic, having crossed the open border with Hungary, MVN stayed for about two months, living with Vietnamese factory

workers. After this, he was taken by car to France with two agents and two other Vietnamese people. This was in January 2011.

129. In France, MVN and the other two Vietnamese people went to a place in a forest known as the “*jungle*”, which is where MVN stayed for ten days or so. He then travelled in a lorry to the United Kingdom along with six other Vietnamese people. Soon after arriving in this country, the lorry having been stopped by the police, MVN and his travelling companions were arrested and taken to a police station. There, for the first time during his journey, on his account, MVN gave his real name and true date of birth. Later that day, MVN was taken into foster care. However, only a few days later, after being apprehended by two Vietnamese men, he found himself in a house where he was forced to work in a cannabis factory. This he did for just over two years, when, on 5 March 2013, MVN managed to escape. Thereafter, he was placed into foster care a second time, on this occasion with Ms Dyer, with whom he was to remain until the middle of May 2014 when he was age-assessed as an adult by Ms Reid and Ms Bilham.
130. There is no issue about any of this. Greenwich accepts that there is no reason to doubt MVN’s story. Indeed, in their age assessment report conclusions, Ms Reid and Ms Bilham quite properly state as follows:

“Health:

MVN has been diagnosed with a Vitamin D Deficiency. The health issues noted would correspond with his claim to have been locked in a house watering plants for two years.”

Greenwich nevertheless does not accept that, in travelling to the Czech Republic and from the Czech Republic through France to the United Kingdom, MVN was aged 13.

Conclusions

131. Having explored MVN’s account in detail and, in doing so, having explored also the criticisms made by Miss Screeche-Powell as to MVN’s credibility, both generally and in particular in relation to the evidence given by him on the question of his age, I am now in a position to draw together the threads. This entails me in having regard to the Competent Authority Guidance to which I have previously referred, specifically considering whether: (i) MVN’s evidence as to the material facts are “*coherent and consistent with any past written or verbal statements*”; and (ii) how well MVN’s evidence fits together or whether it contradicts itself, in particular having regard to evidence given by other witnesses and the documentary evidence.
132. I am satisfied, essentially for the reasons which I have given in this part of the judgment, that MVN’s evidence is coherent. I consider also that, notwithstanding Miss Screeche-Powell’s submissions, MVN’s account of his experiences is truthful. This includes his claim to have been 13 years old when he travelled from Vietnam first to Russia and then to Hungary, the Czech Republic and France. I acknowledge completely that, as Miss Screeche-Powell pointed out, there are inconsistencies in some respects and that MVN can hardly be regarded as a witness who is neutral.

133. I recognise also that, as Miss Screeche-Powell reminded me, there is a need for caution in a case such as the present where there are clear and well-understood advantages in a person arriving in the United Kingdom as a minor rather than as an adult. As Stanley Burnton J put it in the *Merton* case at [29], just “*as it would be naïve to assume that the applicant is unaware of the advantages of being thought to be a child*”, so too is it “*important to be mindful of the coaching that the asylum-seeker may have had prior to arrival, in how to behave and what to say*”. However, on analysis, I do not accept that Miss Screeche-Powell is right in her submission, in her closing skeleton argument, that when “*all the evidence is assessed as a whole, it all points to one thing*”, namely that MVN’s “*evidence as to his age lacks credibility*”. Looking at the various respects in which Miss Screeche-Powell has suggested there are inconsistencies, my conclusion is that the inconsistencies are somewhat fewer than suggested and that, where there are inconsistencies, they are either capable of being explained or not so significant as to make a conclusion that MVN lacks credibility either inevitable or even appropriate.
134. I consider also that MVN’s evidence fits together and is not self-contradictory. It has, as Miss Luh put it in her closing skeleton argument, “*a ring of truth*” about it. It is also supported by the evidence which was given by Ms Dyer, and that is evidence which I found compelling.
135. Miss Screeche-Powell stressed in her closing skeleton argument that Ms Dyer has not been professionally trained in age assessments, adding that the very fact that she was so adamant in her evidence that MVN is the age which he claims is an indication that her evidence should be approached cautiously. I am not impressed by these submissions, however. I accept that Ms Dyer has no age assessment experience. She did not claim that she did. What she does have, though, is vast experience as a foster parent over the course of some 19 years, as well as substantial experience as both a mother to two sons and a grandmother to grandchildren, including a 17 year old. What Ms Dyer also has is direct experience of MVN over the course of the year, in fact more than a year, during which MVN lived with her as her foster child. This experience involved her seeing MVN on a daily basis, and that inevitably placed her in a position where she was very able to observe MVN, including how he interacted with the other two foster children who were living with her at the relevant time, both of whom were teenagers.
136. Although I do not doubt Ms Reid’s and Ms Bilham’s similarly large experience of children, as well as their superior knowledge of the age assessment process, the fact is that Ms Reid and Ms Bilham only met MVN on five occasions, first to inform him in mid-January 2014 that he was going to be the subject of an age assessment, then in the three interviews which took place on 28 January, 4 February and 11 February 2014, and lastly on 12 May 2014 when the age assessment report was read out to MVN. This interaction with MVN was much less than the interaction between Ms Dyer and MVN. I cannot, in these circumstances, accept that Ms Dyer’s evidence should, when compared with the evidence given by Ms Reid and Ms Bilham, be discounted quite as easily as Miss Screeche-Powell would have it. On the contrary, in my judgment, Ms Dyer’s evidence ought to be afforded very considerable weight. The more so, I am bound to say, because, as I shall come on to explain later, it does seem to me that the age assessment carried out by Ms Reid and Ms Bilham is not an age assessment in which I feel able to place a great deal of store, even though I stress

again that I am absolutely clear that Ms Reid and Ms Bilham only ever acted with the very best of intentions in relation to their dealings with MVN.

137. I regarded as compelling Ms Dyer's evidence that, as MVN was approaching 16 years of age when he was placed with her in March 2013, her objective as his foster mother was to prepare him for semi-independent living. This, she explained, entailed his being asked to do chores such as hoovering, washing his own clothes, cooking his own food, and cleaning his room. It also involved her teaching him about safety and getting him a library card to encourage him to study. Miss Screeche-Powell challenged her about one of these aspects, namely the ability of a child to cook. As Miss Luh reminded me in her closing skeleton argument, Ms Dyer replied as follows:

"I've got a god-daughter who is 8 years old. She cooked me rice. She stood on a stool. It was the best rice I had ever had. What you've been exposed to in life; some children are exposed to much earlier. It is sometimes a game of survival."

I agree with Miss Luh that this answer, based on years of experience as a foster mother, illustrates why caution needs to be exercised when assuming that children all present in the same way, regardless of background and their particular life experience. I agree with Miss Luh that, in these circumstances, I can be confident that Ms Dyer understood very well the need not to make assumptions concerning different children's abilities. As Ms Dyer put it immediately after giving the evidence quoted above, children's behaviour *"depends on what they have been exposed to – it is a game of survival"*. In other words, in Ms Dyer's experience, a child can sometimes do things which other children cannot do, given that particular child's life experience.

138. I would add that I am singularly unimpressed by Miss Screeche-Powell's suggestion that Ms Dyer's objectivity and neutrality have been affected by her close relationship with MVN and a desire to help MVN win this case. I am clear that that is not the position at all. Ms Dyer explained in evidence, both in her witness statement and orally, that she has provided foster care to several unaccompanied children who have sought asylum. It was quite clear to me that, in doing so, Ms Dyer treated everybody in the same caring and supportive way. She explained in her evidence, and I do not doubt it at all, that she *"takes fostering very seriously"*, and that she *"would not jeopardise the other children"* in her care *"to say that somebody is younger if I knew that that person was older"*. As she explained in her witness statement, as she fosters more than one child at a time, if an adult were pretending to be a child, it would trigger child protection issues, and she would not, indeed could not, allow herself to ignore such issues. She explained also that she has not always believed a child's claimed age, and that she had on occasion raised a concern with the child's social worker.

139. I am confident that what Ms Dyer had to say about this is evidence which I should accept without reservation. Ms Dyer very clearly had child protection obligations which she owed not only to MVN but also the other children in her care. I find it inconceivable that, in such circumstances, Ms Dyer would have had any doubt at all concerning MVN's age. Indeed, I bear in mind that it was not only Ms Dyer who owed such obligations. The same applies to MVN's social workers (initially Mr Bottomley and then Caroline Marley), yet they raised no concerns about MVN's claimed age being wrong; on the contrary, in his age assessment in March 2013, Mr Bottomley referred specifically to there appearing *"to be no evidence to disprove his*

claim that he is of the age he says he is". The same also applies to MVN's Independent Reviewing Officer (Nicki Muller), who also raised no concern about age at all, not even when it emerged that MVN had sought asylum in Hungary and, in doing so, claimed to be an adult. This is a matter which was specifically raised at a so-called LAC review on 21 November 2013, and yet there is no mention anywhere in the record relating to that review that anybody expressed concern.

140. I was left in no doubt, in the light of everything which Ms Dyer had to say on this topic, that there is nothing in Miss Screeche-Powell's suggestion that Ms Dyer attended to give evidence merely so as to support MVN.
141. Nor do I accept that there is any justification in Miss Screeche-Powell's related submission, made in her closing skeleton argument, that Ms Dyer had closed her mind to other probable explanations as to why, as Miss Screeche-Powell put it, "*someone of MVN's claimed age should exhibit none of the behavioural characteristics typically associated with a child who has endured trauma*". I am not at all persuaded that Ms Dyer closed her mind in the way suggested by Miss Screeche-Powell. It seemed to me, having listened to Ms Dyer give evidence, that, on the contrary, she was entirely alive to the probable explanations for MVN's behaviour, specifically why it was that he did not behave badly or show his trauma in an outward way. Miss Screeche-Powell pressed Ms Dyer about this, and her answers were not only clear but also, in my view, demonstrated a deep understanding of how different children can behave in different ways.
142. Ms Dyer explained, in one answer, how "*99% of children come from abroad*" and suffer "*some kind of trauma ... some children will express trauma and others will be silent*". Ms Dyer went on again to explain, in a subsequent answer, that "*it's not all children who exhibit trauma*". It was obvious that Ms Dyer regarded MVN as falling into that category. It was equally obvious that, as to be expected of a foster carer as experienced as she is, Ms Dyer had not closed her mind in the manner suggested by Miss Screeche-Powell.
143. In contrast, I agree with Miss Luh that Ms Reid and Ms Bilham seem to have assumed, at least in the age assessment report which they produced, that if MVN was a child as he claimed, then the fact that he was not exhibiting "*challenging behaviour*" (as Ms Dyer described it in her oral evidence) or other behavioural difficulties such as not being able to sleep meant that he could not have been a child and must, instead, have been an adult. That said, as pointed out by Miss Luh in her closing skeleton argument, both Ms Reid and Ms Bilham accepted in cross-examination that some children are more resilient than others because of their life experiences, that some children will present as more mature than their claimed age and others will present as more withdrawn and quiet, and that some children are more talkative and outwardly more open about their lives than others. In essence, therefore, Ms Reid and Ms Bilham appear to agree with Ms Dyer. This, accordingly, somewhat undermines Miss Screeche-Powell's criticism of Ms Dyer.
144. In any event, it is not correct for Miss Screeche-Powell to suggest that MVN showed no sign of trauma. It is certainly correct that relatively quickly he settled down, with the LAC review report for 10 June 2013 describing him as appearing "*to be coping well*". However, it is worth bearing in mind that a few months earlier, after he had

escaped from the cannabis farm, Mr Bottomley stated as follows in the age assessment dated 19 March 2013:

“[MVN] presents as suffering some trauma from his experiences and will need time to acclimatise to his situation. ... [MVN] presented as quite shocked and worried about his situation and clearly needs time to adjust emotionally to being in care.”

Mr Bottomley’s ‘Risk Analysis’ four days later furthermore states as follows:

“[MVN] has been traumatised by his experience over the last couple of years. Firstly his mother leaving when he was 10 years old, then his father dying when he was 12 years old and being left alone. Later being smuggled into the UK and subsequently abducted. [MVN] needs some time to settle.”

Similarly, the Core Assessment in respect of MVN dated March 2013 states:

“[MVN] presents as quite nervous and anxious after his experiences since leaving Vietnam and is probably experiencing some emotional trauma due to these experiences. However, he does not present with any emotional or behavioural problems.”

145. Miss Luh also highlighted how MVN demonstrated emotion later on, when he was told that he would be age assessed on 15 January 2014, and before that, on 11 July 2013, when he learned that the Home Office had found out about his Hungary asylum claim. She also pointed to Ms Dyer’s evidence that MVN was upset during the age assessment process.
146. In the circumstances, I reject Miss Screeche-Powell’s submission that Ms Dyer’s evidence in support of MVN’s case should, in effect, be disregarded. In my judgment, that would be quite wrong. My clear view is that it was impressive evidence, on which substantial reliance ought to be placed. It is evidence which, in my judgment, deserves to be afforded considerable weight, and which causes me to be confident that my assessment that MVN’s evidence is credible is the right assessment. For reasons which I shall now come on to address, I am not persuaded that the age assessment exercise carried out by Ms Reid and Ms Bilham, and the evidence which these two highly experienced social workers gave before me, are sufficient to change the assessment which I have made.

Greenwich’s age assessment

147. Consistent with the authorities to which I have previously referred, it is not the purpose of these proceedings to determine whether there are flaws in the age assessment which was carried out in respect of MVN by Ms Reid and Ms Bilham. However, as Upper Tribunal Judge Peter Lane put it in *R(A) v LB of Croydon* at [68]:

“Nevertheless, any problems identified in the respondent’s assessment process, may prove instructive to a Tribunal tasked with establishing a person’s true age.”
148. This is because it is relevant to ascertain what weight to attach to the conclusion in the age assessments and it also assists in gaining an understanding of the evidence which

was given by Ms Reid and Ms Bilham concerning their opinions as to MVN's age. Accordingly, it is appropriate that I address the age assessment issue.

149. The chronology of the age assessment process undertaken by Ms Reid and Ms Dyer has already been touched upon. Essentially, however, the process involved five meetings between MVN and Ms Reid and Ms Bilham, each of those meeting also being attended by Ms Dyer (as MVN's appropriate adult) and by an interpreter to enable MVN to be asked questions, and give answers, in Vietnamese. The first of these meetings took place on 15 January 2014, when it was explained to MVN by Ms Reid and Ms Bilham that it had been decided that he would be the subject of an age assessment process. This meeting was followed by interviews on 28 January 2014, 4 February 2014 and 11 February 2014. The fifth and final meeting took place on 12 May 2014. This involved Ms Reid and Ms Bilham telling MVN at the start that it had been determined that his date of birth was not that claimed by him but 8 July 1990, and so that he was 23 years old. Ms Bilham explained that this was because MVN was anxious to know the result without having to wait to listen to the report being read out to him. Ms Bilham explained that, after telling MVN the outcome of the process, the report was then read to him section by section.
150. This last matter is something to which I shall return. First, however, I set out below, in full, what was stated in section 9 of the age assessment report under the heading "Analysis of information gained Conclusion of the assessment":

Physical appearance and demeanour:

[MVN]’s physical appearance and presentation as described would indicate that he [is] a mature adult man. He was confident, evasive and selective in the information he shared. He showed no anxiety or distress even when discussing the death of his father and his mother leaving. Being arrested in Hungary and UK also did not bring out the typical emotions of a young child such as distress and visible sadness. Travelling through various countries with complete strangers also did not bring out any anxieties.

Interaction during the assessment:

As mentioned above, [MVN] was confident with suggested authority. He showed no signs of distress. His answers in some instances were matter of fact and selective in the information he provided. As an example, he was able to give the names of the countries he went to, how long he stayed there, but was not able to give the name of the town or province that he grew up in.

Social history and family compositions

From his description, [MVN]’s family appears to have lived in a nuclear family lifestyle. He described living in a small village with only the basics. There were numerous contradictions in his description of his family life. There were no other family members around and nobody providing any support to him after his father died apart from Du occasionally popping in. It should be noted that at the point of his father’s death, according to his stated age, he would have been a young child of 13 years, fending for himself in a rural community.

[MVN]’s account of what happened after the death of his father is not being disputed however we have to consider the likelihood of a child the age [MVN] claims he was at the time, having such maturity and life experience to have done all these things. This

is particularly so as considering prior to his father's death, he had all his needs met by his parents. This would indicate that he was not "streetwise" and would not have had the insight and knowledge base to have executed such an exit from his country as a 13 year old.

Stated age:

[MVN]'s view of how he knows his stated age is that his parents told him. He claims to have seen his birth certificate which he left in Vietnam. The country of origin report confirms that in order to access health care and education, birth registration is required.

When he arrived in Russia and Hungary as a young 13 year old child, the authorities accepted the age he claimed to be an adult man. This is difficult to comprehend that as a 13 year old child, of very small stature, he would be able to pass as a mature adult man of 26/23 years old without question.

Regarding the dates of birth he provided while in Hungary i.e. 08/07/1987 and 08/07/1990, he states were the dates of birth in a passport provided by him via a friend of his father's, Du. It should be noted that these are two dates of birth which indicate that at the time of travelling, he was a mature man in his twenties.

Development consideration and independent skills:

[MVN] displays the level of maturity that does not correspond with that of a young person of his stated age. Taking into account all that he states he has been through in terms of his upbringing, father's death, fending for himself thereafter, and his journey to the UK as a 13 year old, it seems implausible that a young child of 13 years would possess the level of maturity, the insight and knowledge to organise such complex arrangements for his departure from Vietnam through various countries, claim asylum and take it through judicial review and then abscond from that country (Hungary).

In terms of his father's death: As a 13 year, his account is unclear as to how he coped alone in Vietnamese society with its emphasis on family albeit in a rural isolated setting. We queried how difficult it might have been – it took a number of attempts before he mentioned that he had help when his father was ill.

He spoke in a matter-of-fact way when speaking of his father's death.

In light of him having experienced such a traumatic event of being left as an orphan, either he has a high level of resilience or the events are not as he describes.

Education:

[MVN] attended school up to the age of 12 in Vietnam. There were no gaps in his recollection of his education in Vietnam. From his stated age, he would have missed three vital years of education. His attainment demonstrates his resilience. He mentions not knowing what a computer is yet his foster carer reports him to be very skilled in his use of the computer and helps others in the household to understand it.

Health:

[MVN] has been diagnosed with a Vitamin D Deficiency. The health issues noted would correspond with his claim to have been locked in a house watering plants for two years.

Documentation:

Home Office letter dated 11.11.2013 is the main source of information which indicates a discrepancy between his stated age in the UK and his stated ages in Hungary.

Other sources of information which is his account and what was gleaned from the Country of Origin report either supports his account of his life in Vietnam or contradict this and Hunt, PC (2002) {found at: <http://cirrie.buffalo.edu/culture/monographs/vietnam/>}. For examples please see sections 3, 5 and 8.

In conclusion, taking all of the above into consideration, [MVN]'s account of his life, his journey, his deliberate efforts to conceal information, his interactions and demeanour, would strongly suggest that he is an adult man. We would therefore err on the side of caution and conclude that he is younger of the two stated ages he provided in Hungary i.e. 23 years old."

151. This, then, along with the rest of the report (in total, a dozen pages or so), was what was read to MVN on 12 May 2014. At the same time, MVN was handed a single page document headed "*Age Assessment Form*", which stated that MVN had been age-assessed as over 18 and which contained, in part, the following under "*Conclusions and Reasons for this*":

"[MVN]'s account of his life, his journey, his deliberate efforts to conceal information, his interactions and demeanour, would strongly suggest that he is an adult man."

The form then ended with this rubric at the foot of the page:

"It was explained to you at the end of your interview that you have the right to disagree with the outcome of the assessment, and to challenge your decision; you may do so by contacting a manager ..."

152. Although a number of criticisms were made by Miss Luh concerning Ms Reid's and Ms Bilham's age assessment report, one of her main criticisms concerns what Miss Luh described as Ms Reid's and Ms Bilham's failure to afford MVN the opportunity, in the words used by Sir Anthony May P in ***R(FZ) v LB of Croydon***, "*at a stage when a possible adverse decision is no more than provisional, to deal with important adverse points to his age case which may weight against him*".
153. In my judgment, this is a criticism which is legitimate in the present case. I am clear that the need to give a person the opportunity described by Sir Anthony May P is very important. I disagree, therefore, with Miss Screeche-Powell's submission in her closing skeleton argument that any omission on the part of Ms Reid and Ms Bilham "*did not affect the outcome*" and, in her final paragraph, that "*there was so much right with this Assessment*" that, "*considered as a whole, ... the assessment is lawful*".
154. I agree with Miss Luh that it is abundantly clear, as demonstrated by an email sent by Caroline Marley to the Home Office on 8 May 2014, in which she informed the Home Office that the age assessment had concluded that MVN was an adult, that Ms Reid and Ms Bilham had by that stage made their decision that this was the case. This is a decision which both Ms Reid and Ms Bilham confirmed in their evidence was not

made until after the third of the interviews held with MVN, namely the interview which took place on 11 February 2014. They were insistent, however, that as at 8 May 2014, when Caroline Marley sent her email to the Home Office, no final decision had been made, and that by that stage they had still only made a provisional decision and that that was the occasion when they were affording MVN the opportunity to deal with adverse points. I do not agree. I do not see how that can have been the case at all. First, the fact that, as pointed out by Miss Screeche-Powell in her closing skeleton argument, Caroline Marley was not the social worker charged with conducting MVN's age assessment seems to be neither here nor there. Caroline Marley was MVN's social worker at the time and she was the person who was writing to the Home Office to report on the outcome of the age assessment carried out by Ms Reid and Ms Bilham. She must have been told by Ms Reid and Ms Bilham that they had arrived at the decision which she was telling the Home Office about. It cannot have been something which she was making up. Nor, in my judgment, can it have been a case of Caroline Marley learning about a provisional decision and wrongly assuming that it was not a provisional decision but was the final decision. I say this because, however she came to hear about the decision, whether from seeing the age assessment report itself or whether from speaking to Ms Reid and Ms Bilham, there is nothing to indicate that she was made aware that the decision which had at that stage been made was merely provisional.

155. Secondly, I did not find very plausible Ms Reid's and Ms Bilham's evidence that at the 12 May 2014 meeting, as Ms Reid put it in cross-examination, "*if something had come out of the interview to change our decision we would have done it*". This was a meeting which started with Ms Reid and Ms Bilham telling MVN that they had decided that he was over 18. The fact that, as Ms Bilham explained, the reason why the meeting began with MVN being told the outcome of the age assessment was that MVN wanted to know that outcome right away seems to me not much to matter. What matters is that Ms Reid and Ms Bilham were able to tell MVN the outcome. For Ms Reid and Ms Bilham to be able to do that had to mean that they had already made a final decision since otherwise there would be no outcome which could have been reported to MVN. Put another way, if Ms Reid and Ms Bilham had still to make their final decision, then they would have had to have told MVN that they could not tell him the outcome at the start of the meeting, however anxious he was to know it, because as matters stood the outcome was only provisionally known.
156. The fact that this was not what was said to MVN by Ms Reid and Ms Bilham demonstrates, conclusively to my mind, that a final decision had been made, and that this was not a meeting at which Ms Reid and Ms Bilham were intending to give MVN an opportunity to deal with adverse points at a time when only a provisional view had been informed by them. I do not doubt that Ms Reid and Ms Bilham would have listened to what MVN had to say, as they read out the contents of the report to him, had he wanted to say anything, but that is not the same thing as giving MVN the opportunity to deal with adverse points in order that a provisional view can then be reconsidered and a final decision made. I am clear that in MVN's case a final decision had been made by the time that the meeting started and that that is why the outcome was able to be told to MVN at the outset. I am also clear, in the circumstances, that it was not explained to MVN by Ms Reid and Ms Bilham that they had made a merely provisional decision and that this was his opportunity to deal with adverse points. I accept MVN's evidence that that was the position. It seems to me that, in view of this,

MVN was justified in thinking that his only option was to make a complaint in accordance with the rubric contained at the foot of the form which was handed to him at the meeting. That, however, is, of course, not the same thing as being given an opportunity to deal with adverse points at a time when a provisional decision is all that has so far been made.

157. As a result of MVN not being given an opportunity to deal with adverse points, MVN was not able to deal with various matters. These include what Ms Reid and Ms Bilham identified in the age assessment report as a contradiction between, on the one hand, MVN's description of his father as a drunk and violent and, on the other hand, his description of his father and mother as being "*protective*", as well as his later description of his "*parents' relationship as loving*", as set out in the following passages:

"Relationship with parents:

His first description of his relationship with his father was one of contention and family violence which he states he experienced at the hands of his father. His relationship with his mother, he initially did not describe except to say that she left for the UK in 2008 as a result of the domestic violence. He remembers his mother leaving in 2008 without telling him. In the second interview, when asked about his relationship with his mother he stated they had a close relationship but would not elaborate further.

In a later interview, he then described his father and mother as being protective. He stated they took it in turns to take him to school, look after him, teach him to cook, etc. In discussing further the violence he experienced from his father, he said he was beaten regularly and his mother would try to intervene. He also mentioned that his mother was subjected to domestic violence regularly when his father was drunk. He consistently described his father as a chronic alcoholic and later said his father also gambled.

...

Developmental Considerations

...

A visual timeline was drawn in order to assist [MVN]'s memory of his childhood. [MVN] was not able to recall any activity or describe his life from birth to 5 to 6 years. His recollection starts from 6 years old where talked about playing and studying. He also described his parents' relationship as loving, contradictory to what he initially described. In this exercise, he recalled the domestic violence as starting from when he was 11 years old. This also contradicts his initial statements as his mother would have left by this point."

158. Had MVN been told that Ms Reid and Ms Bilham considered that there was the contradiction to which these passages referred, MVN would have been able to explain why, in his view, there was not the contradiction. Ms Reid and Ms Bilham would not have been obliged to have accepted MVN's explanation, but he should have been given the opportunity to give it so that they could consider it. As Miss Luh pointed out in her closing skeleton argument, the passages do not entirely accurately reflect what MVN told Ms Reid and Ms Bilham during his first interview on 28 January 2014, specifically the following exchange:

"What was his [MVN's] relationship like with dad? When he was not drunk dad was quite calm, normal, no shouting."

MVN should have been given the opportunity to remind Ms Reid and Ms Bilham that this is what he had previously told them, and anyway to make the point a second time even if he did not recall saying it previously. It is the fact that he was not given that opportunity which, in my judgment, is objectionable.

159. Another aspect which MVN was given no opportunity to address was what was stated in the passage from the age assessment report (again under the heading “*Developmental Considerations*”) set out below concerning his computer skills:

“He described his life in Vietnam as poor and humble. He states that he did not have access to a computer and when asked about a computer he stated that he does not know what a computer is. However, both his foster carer and social worker note his advanced computer skills i.e. he can do the following on a computer: download files, making his own music on the computer.”

160. This was followed by the part of the conclusion to which I have previously referred, as follows:

“Education:

[MVN] attended school up to the age of 12 in Vietnam. There were no gaps in his recollection of his education in Vietnam. From his stated age, he would have missed three vital years of education. His attainment demonstrates his resilience. He mentions not knowing what a computer is yet his foster carer reports him to be very skilled in his use of the computer and helps others in the household to understand it.”

161. This was not a matter which was put to MVN by Ms Reid and Ms Bilham. Had it been, then MVN would have had the opportunity to remind Ms Reid and Ms Bilham that, in his third interview, on 11 February 2014, there was this exchange, and to explain that, therefore, he had laptop experience from when he was in Vietnam:

“Did you ever have a computer? No.

Did you get a chance to use a computer? I don’t know what is a computer.

A laptop? (No answer).

When was the first time you used a computer? 11 or 12 years.

Where was that? I used a friend’s, or go to the shop and play computer games.”

162. As Miss Luh also pointed out in her closing skeleton argument, the reference in the age assessment report to MVN’s foster carer, Ms Dyer, noting his “*advanced computer skills*” was not an entirely faithful reflection of what Ms Dyer is recorded as having told Ms Reid and Ms Bilham when she was herself interviewed on 28 January 2014, since the note records as follows:

“What does [MVN] do when he is in the house? [MVN] goes on the internet as he has a laptop. He listens to music. He interacts with other children in the house. He is well liked. [MVN] plays the guitar – he is learning the guitar at the Refugee Council – he makes his own music – he downloads music and dances and sings.”

If MVN had been given the opportunity to address the point made concerning his computer knowhow, he could have clarified the position. Ms Dyer could have done likewise.

163. In any event, I agree with Miss Luh's submission that reliance by Ms Reid and Ms Bilham on MVN's abilities with a computer is not a very sound basis on which to have concluded, albeit in the round and based on other evidence, that MVN was 23 years old rather than the age which he claimed to be. I agree, in particular, that Ms Reid and Ms Bilham appear to have assumed that somebody with MVN's background, both in Vietnam and then with two years in captivity in a cannabis farm (and so with disrupted schooling), would be unlikely to have the abilities which he was understood to have. This is an assumption which takes no account of MVN's evidence concerning his usage of a laptop and his enjoyment of computer games when he was in Vietnam, and it also ignores the fact that by the time that MVN was being age-assessed in early 2014 he had spent almost a year living in Ms Dyer's home and had purchased a laptop of his own. In these circumstances, MVN's computer-related abilities seem to me to do nothing to assist an assessment of his age.
164. These are two specific examples of matters which MVN was not given the opportunity to deal with. I consider, however, that he should have been given the opportunity to deal with matters more generally. In particular, as the conclusion of the age assessment report makes clear, Ms Reid and Ms Bilham were clearly sceptical that a boy aged 13 could have made the journey which MVN described, including the periods of detention in Hungary, without displaying signs of trauma. Ms Reid's and Ms Bilham's thinking about this topic is evident from the following passage also, taken from earlier in the report:

"Development in light of his journey from Vietnam

...

According to his stated age, [MVN] left Vietnam at the age of 13 using a passport that would indicate he was a man in his twenties. From our experience of working with Vietnamese young people, they do tend to look younger than their stated age when compared with children in the UK. Taking this into account, it sounds implausible that [MVN] would have been able to pass through customs as a mature man in his twenties without being challenged. If he was in fact aged 13 he would have looked younger but it is evident that he looked (to the Border Agencies who are trained in looking and assessing individual) as if he was the age on his passport.

Throughout his journey, he expressed no fear or anxiety yet he was the only young child travelling in the various modes of transport, various countries, with complete strangers. Even taking into account the fact that he had to fend for himself after his father died, it is questionable that a young child of 13 years old, would possess the level of maturity, the insight and knowledge to organise such complex arrangements for his departure from Vietnam through various countries, claim asylum and take it through judicial review and then abscond from that country (Hungary). At no point prior to his arrival in the UK did he claim that he was a minor.

He travelled as an independent person, unaccompanied, and had a knowledge of complex information for example the open borders across Europe. He also was able to maintain contact with the agent by phone over several months."

165. In my view, this is another, important, matter which should have been raised with MVN in such a way as to enable him to comment and at a time when Ms Reid and Ms Bilham had yet to reach their final decision. The fact that MVN was not given this opportunity seems to me to be a significant omission. Miss Screeche-Powell submitted in her closing skeleton argument that it is not necessary, in order for an age

assessment to be *Merton*-compliant, that “*each and every matter is ‘put’*” as that would entail “*judicialisation of the process*”, something which Stanley Burnton J in the *Merton* case made clear is not appropriate. I agree. That is, no doubt, why Sir Anthony May P in *R(FZ) v LB of Croydon* referred to the need to give the opportunity to a person to deal with “*important adverse points*”. The matters to which I have referred in MVN’s case were, however, all, in my judgment, “*important adverse points*”. Accordingly, Miss Screeche-Powell’s over-judicialisation objection seems to me to be inapposite in the present context.

166. I might just add that I agree also with Miss Luh when she submitted in her closing skeleton argument that the view reached by Ms Reid and Ms Bilham concerning the ability of a 13 year old to endure the journey which MVN did is a view which Ms Reid and Ms Bilham appear to have reached despite knowing very little about how Vietnamese children typically will travel to this country by first travelling from Vietnam to Russia. Ms Reid herself did not research the topic. Furthermore, although Ms Bilham did read those parts of the Home Office’s ‘Country of origin information report’ on Vietnam which refer to the joint ‘CEOP-British Embassy, Hanoi Report on the trafficking of women and children from Vietnam’ (2011), she accepted in her evidence that she did not look at that report and so did not inform herself of matters which, very fairly, she conceded would have been highly relevant. I acknowledge completely that, as Miss Screeche-Powell submitted in her closing skeleton argument, what matters in any age assessment process is not (or at least not exclusively) what may be described as ‘background’ material, because that is no substitute for consideration of the actual evidence of the age of the individual in question. As Miss Screeche-Powell submitted by reference to the “*The assessment framework for trafficked children*” on page 4 of the Toolkit, the toolkit for recognising a trafficked child is not the toolkit for assessing whether somebody is actually a child. As she put it in her closing skeleton argument: “*An adult could exhibit all of those criteria. It is not a substitute for professional judgement as to age*”. Miss Screeche-Powell also relied on the following passage in the ‘Practice Guidelines on Assessing Age’

“The task of the assessing worker is to assess from a holistic perspective, and in the light of the available information, to be able to make an informed judgement that the person is probably within a certain age parameter. It is a process of professional judgement”.

I accept that it is, of course, a matter for the professional judgment of the social workers carrying out the age assessment. However, it is necessary for relevant ‘background’ material to be taken into account in exercising that professional judgment. In MVN’s case, it is not clear to me that Ms Reid and Ms Bilham did this to the necessary degree.

167. It follows from the view which I have reached that the age assessment carried out by Ms Reid and Ms Bilham was not *Merton*-compliant. In my judgment, this was not what Miss Screeche-Powell would describe as a minor non-compliance. It is, on the contrary, a matter which is significant because it seems to me that fairness demands that a person in MVN’s position is given a proper opportunity to deal with adverse points, and that it is quite wrong for a person to be confronted with a decision which has already been made which is based on reasons that the person has not been able to address.

168. I have, therefore, concluded that the age assessment in MVN's case was unlawful, not that this is critical to the issue which I have to decide in these proceedings. This conclusion does, however, mean that I feel unable to attach any substantial weight to the conclusion which Ms Reid and Ms Bilham reached in the age assessment process which they undertook. This is not to say that I have disregarded the contents of their report or the evidence which they gave at trial since that would clearly be unwise in view of the substantial social work experience which both Ms Reid and Ms Bilham clearly have, both individually and jointly. As I have previously indicated, I do not doubt the breadth and depth of Ms Reid's and Ms Bilham's expertise. Nor do I doubt that they tried hard to treat MVN fairly and that they acted at all times in what they considered to be in his best interests. However, in evaluating the evidence and considering the weight which I should attach to their evidence alongside that of MVN and Ms Dyer, I have reached the clear conclusion that it is the evidence of MVN and Ms Dyer which is to be preferred.

Conclusion and disposition

169. It follows from the conclusions which I have set out in this judgment that I accept MVN's evidence concerning his age, and so determine that he is the age which he claims to be, namely 18. On the central question in this case, therefore, I accept what MVN has to say about his age. Specifically, I find that MVN's date of birth is 13 May 1997, not 8 July 1990 (the date which Ms Reid and Ms Bilham found him to be in the age assessment which they performed on behalf of Greenwich).