



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

R (on the application of RK) v Birmingham City Council AAJR [2013] UKUT 00307 (IAC)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

**Heard at Field House
On 18-21 February 2013**

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Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE QUEEN ON THE APPLICATION OF

RK

Claimant

and

BIRMINGHAM CITY COUNCIL

Defendant

Representation:

For the Claimant: Mr R De Mello, instructed by Bhatia Best Solicitors
For the Defendant: Ms P Etiebet, instructed by Birmingham City Council

JUDGMENT

1. The claimant, to whom I shall refer as “RK” throughout this judgment, claims to be a citizen of Iran. By a claim form issued at the Administrative Court, Birmingham on 17 June 2010, RK sought a declaration that the then defendant (the Secretary of State for the Home Department) “abide by a determination of Immigration Judge Khan promulgated on 4 March 2010 which concluded that the claimant’s date of birth is 15 May 1994.” RK also sought a declaration that the Secretary of State should treat him as a minor and grant him discretionary leave to remain in the United Kingdom. It is unnecessary here to set out in detail the history of the litigation given that the only issue now before the Upper Tribunal (the determination of RK’s chronological age) is removed from the original subject matter of the claim. The defendant in the proceedings is no longer the Secretary of State for the Home Department, but Birmingham City Council which, on 13 August 2009 and on 23 November 2010, produced age assessment reports in respect of RK with which he does not agree. The proceedings against the Secretary of State were withdrawn on 13 July 2010 following the acceptance by the Secretary of State that RK was a minor; the Secretary of State subsequently granted RK discretionary leave to remain in the United Kingdom until 15 November 2011. I understand that his leave to remain has not been extended beyond that date.
2. As noted above, the First-tier Tribunal (Judge Khan) had dismissed an appeal by RK against the decision of the Secretary of State dated 12 August 2009 refusing RK’s claim for asylum and making directions for his removal from the United Kingdom by way of directions under paragraphs 8-10 of schedule 2 of the Immigration Act 1971. In the course of his determination dismissing the appeal (and which has not been appealed to the Upper Tribunal), Judge Khan made a finding that RK was born on 15 May 1994 (that is, RK’s claimed date of birth) but Birmingham City Council (which had assumed responsibility for RK’s care under the Children Act 1989) refused to treat RK as a minor. During subsequent proceedings in the Administrative Court and the Court of Appeal, Birmingham City Council continued to assert that RK’s date of birth is 25 January 1990. The judicial review proceedings were transferred to the Upper Tribunal by an order of Mr Justice Hickinbottom on 3 June 2011. At the fact-finding hearing on 18-21 February 2013, Mr R De Mello of Counsel appeared for the claimant and Ms Etiebet of Counsel appeared for the defendant.
3. Neither party to these proceedings carries any burden of proof. It is for the court to determine whether the applicant was a child at the material time with reference to all relevant evidence and by applying the standard of proof of the balance of probabilities (see R (CJ) v Cardiff County Council [2011] EWCA Civ 1590). The Court of Appeal in R (CJ) observed:

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

"26. ... the 1989 Act draws a clear and sensible distinction between different kinds of question. The question whether a child is "in need" requires a number of different value judgments ... but where the issue is not what order the court should make but what service should the local authority provide it is entirely reasonable to assume that Parliament intended such evaluative questions to be determined by the Public Authority, subject to the control of the courts on the ordinary principles of judicial review. Within the limits of fair process and "*Wednesbury* reasonableness" there are no clear-cut right or wrong answers.

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

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

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

4. I had a consolidated bundle of documents in two separate folders together with skeleton arguments and a number of additional papers which were handed to me by both parties during the course of the hearing. I heard the oral evidence of witnesses for both RK and the defendant and the oral submissions of Mr De Mello and Ms Etiebet. The method by which I have sought to consider and analyse the evidence

and to determine RK's age is as follows. I have had regard to the oral and documentary evidence as a totality. It is only after a thorough consideration of all the evidence that I have reached any findings of fact. However, for the purposes of structuring my judgment only and in order to make it as concise as possible, I have summarised the evidence of each witness, have made my findings of fact in respect of that evidence and then have considered the extent to which those findings may support the case of RK or that of the defendant. I have then sought to bring together the various findings and observations by way of concluding paragraphs. I stress that, although I have in this judgment weighed the evidence of each witness immediately after recording their evidence, my findings have only been reached after a thorough consideration of all the evidence. Further, although for practical reasons the witnesses did not appear in the usual order, I have considered their evidence in this judgment in the order in which they appeared at the hearing.

5. The first witness to give evidence for the claimant was Mr Paul Levy. Mr Levy is an independent social worker and he has prepared a report which is dated 17 December 2010. In that report, he sets out his qualifications and gives details of the documents which had been sent to him in preparation for his meeting with RK. I note that he had before him Judge Khan's determination, a report of Dr Birch and "information from [RK] Home Office interview and the Birmingham City Council social worker's age assessment dated 23 November 2010..." He refers to two age assessment which had been completed by Oxford County Council social workers and to which I will refer later. He notes that Oxford initially assessed RK in June 2008 as a child but had later (8 August 2008) assessed him as an adult "after receiving information from an unnamed dentist." RK had been in the care of Oxfordshire County Council after he had arrived in the United Kingdom on 15 June 2008.
6. Mr Levy's report that RK attended the interview with Ms Lizzy Bell, a Project Worker from the Children's Society and Mr James Whitehouse from the Refugee Council's Children Panel. At first, the interview was conducted in English but the services of an interpreter (Kurdish Sorani) were required because Mr Levy considered that RK's English did not enable him to "totally engage in the interview." Mr Levy recorded that RK was "of slim build and visually appears to be approximately 5 ft 3 inches/ 5 ft 3 inches." He noted that previous documents indicated a similar height for RK but he appeared to attach little weight to the apparent lack of growth as this would "need to be provided by a qualified paediatrician and cannot be answered within this assessment." Mr Levy asked RK about his shaving habits. Ms Bell also joined in a discussion regarding RK's pastimes and interests. RK told Mr Levy he was not fully aware of why he was being "age assessed again." Mr Levy explained that "dental information" indicated that "people's wisdom teeth usually become fully developed between the ages of 17 to 21 rather than 14 years old." The parties are agreed that the claimant's four wisdom teeth had erupted by at least November 2008. Mr Levy explained to RK that the dental assessment had led to his age being re-assessed.
7. Mr Levy asked RK about his family in Iran and recorded RK's answers in detail. He concluded his report by making a further reference to the eruption of RK's wisdom

teeth and noted that “both the unknown dentist and Dr Birch [who gave evidence for the claimant – see below]” agreed that, in European young people, eruption of wisdom teeth take place between the ages of 17-21 years. He records that, “the British Dental Health Foundation’s opinion would be that it is ‘unusual but not impossible’ for a 14 year old to have wisdom teeth. This leaves a reason of doubt to [RK] being a child due to the development of his wisdom teeth (*sic*).” Mr Levy went on to note that “RK’s lack of growth since appearing in the UK appears to suggest that he has reached his mature height and the reason for his height development not following an expected growth pattern is outside of my professional remit.” He considered that RK’s story about his brother's death and the imprisonment of his father, mother and sister in Iran “lacked substance.” In the penultimate paragraph of his report, Mr Levy recorded his observations of RK’s interaction with Ms Bell. He noted that Ms Bell herself is “a young adult” and that “RK’s demeanour did not appear as an adult to adult with Ms Bell but rather a young person to an adult allowing her to express a nurturing approach to him when she asked why he was not wearing a warm jacket on a cold day.” Mr Levy concluded that, “this interaction was one that indicated that RK is functioning as a young person between the age of sixteen and eighteen.” Mr Levy considered that, “RK’s lack of physical growth in nearly two years and his teeth development leads me to believe he is closer to 18 years of age than 16.”

8. Cross-examined by Ms Etiebet, Mr Levy said that he could not remember whether he had actually measured RK during the interview. He agreed that his assessment that RK was about 5 ft 3 inches tall indicated a metric equivalent of 160 centimetres. It was put to Mr Levy that the answers RK had given regarding his shaving habits (RK told Mr Levy that he had last shaved “three days ago” a response challenged by Mr Levy who told RK that he did not accept the answer) indicated that RK was trying to persuade Mr Levy that he was younger than he looked. Mr Levy replied that, “I accept that he was lying [regarding his shaving].”
9. Ms Etiebet asked Mr Levy about a screening interview between RK and officers of UKBA which had taken place on 3 July 2008. The interview concludes with the following exchange:

Question	Answer
On 03.06.08, you told the officers that you are Ali Ahmad, d.o.b. 25.1.90. Why?	I was afraid of being deported to my country.
You knew that you were in France before coming to the United Kingdom?	Yes I was told by the officers who fingerprinted me.
Have you understood all the questions?	Yes
Is there anything you would wish to say or add?	I am an Iranian.

10. Mr Levy said that he believed that RK had lied to the officers who had taken his fingerprints in France and that his motive for doing so may have been to avoid being deported from that country. Mr Levy was also asked about the discrepancy in his interview with RK where RK had stated that his date of birth was 21.3.1373 [in the Iranian calendar] whereas it had been recorded by Dr Birch and Judge Khan as 25.2.1373. Mr Levy agreed that it was “unusual” to forget one’s date of birth especially given the fact that, despite his limited education, RK had been shown to have good ability in arithmetic.
11. It was put to Mr Levy by Ms Etiebet that the interaction he had observed between RK and Ms Bell was an unreliable indicator of RK’s age or maturity given that RK may have been “playacting.” Mr Levy did not agree.
12. I have considered the extent to which Mr Levy’s evidence may support the respective cases of the parties. I found Mr Levy to be a helpful witness who was quick to acknowledge the limitations of his own expertise and the difficulties facing all professionals in this field in establishing a young person’s chronological age. I attach little weight to the observations which he made as to RK’s height because it seems likely that he did not measure RK but simply estimated his height by looking at him. I note, however, that his observation that RK had not “grown since his arrival in the UK in 2008” is to some extent consistent with evidence led by the defendant. It was also clear that RK had lied to Mr Levy regarding the fact that he had been fingerprinted in France and Mr Levy acknowledged this. Prudently, in the light of that untruth and the fact that he did not believe what RK had said about his shaving habits, Mr Levy had approached the remainder of what RK told him with some caution.
13. What is striking about Mr Levy’s report is that the only part of it which strongly supports the claimant’s claimed date of birth arises from Mr Levy’s observations of RK’s interaction with Ms Bell. To have attached such significance to this observation goes rather against the generally cautious approach otherwise adopted. Mr Levy has concluded that the appellant was on a scale between 16-18 years primarily (perhaps even solely) because of his demeanour and interaction with Ms Bell. Expert witnesses, like decision makers, should exercise considerable caution in attaching excessive weight to the demeanour and appearance as an indicator of chronological age. I find that Mr Levy’s conclusion relies too heavily upon his brief observation of RK’s interaction with Ms Bell. Such observations may be useful (see AM v Solihull Metropolitan Borough Council [2012] UKUT 00118 (IAC), in particular at [19]) but, as the Tribunal noted in that case, the most useful observations are likely to be those which are conducted over a long period of time of the subject “going about his ordinary life.”[19] In the present case, Mr Levy (i) made his observation briefly during the course of a single interview and (ii) he does not appear to have been alive to the possibility that RK had been “playing up” in the presence of a sympathetic older person (Ms Bell). As a consequence, I do not consider that this part of the report offers strong support for RK’s case. On the other hand, Mr Levy’s unequivocal record of the claimant having lied at their interview together with what he says about the dental records supports the defendant.

14. I next heard evidence from one of the defendant's witness, Ms Sally McDonagh. She adopted her written statement [tab 35] as her evidence-in-chief. Ms McDonagh works for SLC Group and is Locations Manager assisting in providing accommodation for young people for Birmingham City Council. At [tab 21] and exhibited to the age re-assessment report prepared by the defendant in respect of RK is exhibited an earlier statement made Ms McDonagh and upon which she also relies. At the time that she wrote that statement, Ms McDonagh had been working as Operations Manager for Urgency Housing Organisation Limited. That work had brought her into close contact with RK when he came to live in the Birmingham area. RK had been placed at the Broadway semi-supported accommodation project in September 2010. Ms McDonagh explained that at about that time and in common with several other young unaccompanied asylum seekers in the care of the Council, RK had applied for Educational Maintenance Allowance (EMA) whilst he was a student at Bourneville College. RK had told Ms McDonagh that a teacher at the college had told him to complete the form indicating that he was a British citizen who had lived in the United Kingdom for more than three years. However, as Ms McDonagh's first statement notes, "project staff [spoke] to RK to explain that this could be construed as a fraudulent claim due to his actual status. [RK] was able to discuss this confidently declaring that as a child he had only done what his teacher had told him to do." Ms McDonagh considered that RK had continued to use "well-developed manipulative strategies to obtain what he believes to be his right." RK's demands had been "extreme", expecting staff to shop, cook and clean for him.
15. Cross-examined by Mr De Mello, Ms McDonagh said that she had believed that RK had been over 18 years of age when she first had contact with him. She said that she was aware that a number of young unaccompanied asylum seekers who had applied for EMA had incorrectly claimed that they were refugees; RK, on the other hand, had gone as far as to claim in his EMA application that he is a British citizen.
16. I found Ms McDonagh to be a helpful witness and found her evidence to be truthful and consistent. The EMA application form completed by RK has been produced in the smaller bundle of documents prepared by the defendant. The application form appears to have been supported by a letter sent by Urgency Housing Organisation Limited which simply confirmed that RK was a resident at Broadway. On the form itself (at A8), box A has been ticked indicating that the applicant is "a British citizen and I have lived in the UK for at least three years prior to the start of my learning programme." The form concludes with a declaration by the claimant which, *inter alia*, confirms that the information given is correct and complete to the best of the applicant's knowledge and belief. The form carries a warning that, if false or incomplete information is provided, the applicant may be prosecuted. In addition, there was in the papers a note on a Birmingham City Council file written by a Margaret Jenkins which reads, "I have checked our records and can confirm that RK applied for the education and maintenance allowance (EMA) year 10/11. The total payments he received for this academic year was £630."
17. I accept that Ms McDonagh became aware that RK had completed the EMA form inaccurately. I find that she had a conversation with RK during which he told her

that he had been given help in completing the form by a teacher at Bourneville College. I shall deal further with the EMA application below. I attach limited weight to Ms McDonagh's observations that she believed RK was over 18 when she first met him; her opinion was based upon RK's demeanour and her conversations with him although I do note that, unlike Mr Levy, she had the opportunity in her work to observe RK mixing with young men of a similar age over a period of time.

18. The defendant's witness, Margarita Kostadinova, adopted her witness statement [tab 36]. Ms Kostadinova is a Project Co-Ordinator for Urgency Housing and it was in that role that she had encountered RK. In her statement, Ms Kostadinova refers, in turn, to RK's written statement [46] in which he had said that, "I can confirm that I have not lied on my EMA form, this form was completed for me by Zainab, she is a friend of mine and is in my class, Margarita Kostadinova, who is the manager of the home, checked the form and told me to post the form. I am surprised at the allegations are being made that I lied on the form, if this was the case then Margarita should have corrected the form or told me that the form was completed incorrectly." In her statement, Ms Kostadinova said that she "clearly told RK that his disclosure was incorrect." She repeatedly denied in cross examination that she had any part whatever in completing or checking the accuracy of the form. In response to a question which I put to her, Ms Kostadinova said that, in her experience, the most common problem amongst young, unaccompanied asylum seekers who applied for EMA was that they claimed that they were refugees when they were, in fact, only asylum seekers.
19. I found Ms Kostadinova to be a truthful witness. There is clearly a conflict with what she says regarding the EMA application form and what RK has said. As noted above in the discussion of Mr Levy's evidence, I find that RK has lied to Mr Levy regarding the fingerprinting in France. Considering the evidence of Ms Kostadinova (which was clear, consistent and betrays no motive whatever for being other than truthful) against that of RK (who I find below has a propensity to lie when he believes that doing so would gain him a material advantage) I prefer the evidence of Ms Kostadinova. I accept that Ms Kostadinova was aware of previous problems with EMA applications (ie. where applicants had wrongly stated that they were refugees) and this is likely to have led her to be careful to check such details had she had sight of RK's application form. I find that she did not check RK's form at all. I find that this is example of RK telling a lie and then seeking to blame others when that lie was exposed. It is a trait in RK's conduct to which several witnesses drew attention.
20. The next witness to give evidence was RK himself. He has provided two written statements. [tabs 29 and 33]. In his first statement dated 28 June 2010, RK explains how he was "happy" when the Immigration Judge had accepted that he was a child. He had been upset when he was removed from Oxford to Birmingham. He claimed at that time to be receiving treatment for asthma and insomnia. He claimed to have been "coughing up blood and passing blood" [7]. In his second statement, dated 12 January 2011, RK discusses the age assessment prepared by Birmingham City Council. He claimed that he was not given any prior notice of a visit to his home on 5 November 2010 by social services. He complained that he was not ready for an age

assessment but it had been conducted in any event. At [7] he discusses the application for EMA and says, "I did not say that I was British because I am not British. I told [social workers from Birmingham City Council] that the [Bourneville] College helped me complete the form together with Margarita, who works at the home. I confirm I would not have made a claim for EMA, if I was informed that I was not eligible for this payment." The statement goes on to discuss RK's relationship with Swaran Singh who, RK claims, had never "spoken to me nicely" [11]. RK elaborated upon his poor relationship with Mr Singh in answer to questions put to him by Mr De Mello in-chief.

21. RK was cross examined by Ms Etiebet regarding the screening interview conducted by officers at the Home Office [defendant's smaller bundle, tab 4]. Asked to identify his own signature, RK said, "it looks like my signature. I can't recall." Asked whether he remembered saying that he had left Iran on 1 June 2008 [5.1] RK replied, "I think it must be true. I can't remember now. I could remember then." In the screening interview, RK had said, "I left Iran on 1.6.08 by car to Turkey where I arrived three days later. I stayed in Turkey for five nights. I left Turkey by lorry and travelled to the UK. It took five days to arrive in the UK. I changed the lorry once, after I left Turkey. I arrived in the UK on 15.6.2008." Ms Etiebet asked RK why he had not indicated in that account of his journey that he had passed through France and been fingerprinted there. RK could not remember. It was put to RK that the French authorities had fingerprinted him on 3 June 2008, that is at a time when RK himself claimed that he had been *en route* from Iran to Turkey. RK could not recall. He said repeatedly that he could not remember whether he had been fingerprinted anywhere else other than in the United Kingdom. He could not remember telling the Immigration Judge at the First-tier Tribunal hearing that he had never been in France and had not been fingerprinted outside the United Kingdom. He was asked why he had failed to deny that his date of birth was 25 January 1990 and that his name was Ali Ahmad [as he had informed the French authorities]; when asked to comment, he had only asserted that he was an Iranian citizen. RK said that he could not remember making those statements to the Home Office officials.
22. Ms Etiebet asked RK about the second Oxfordshire County Council age assessment of 8 August 2008. This assessment had concluded that RK had been born on 15 May 1990. RK said that he was completely unaware of the assessment as he had never been told about it.
23. Ms Etiebet asked RK in what circumstances he had come to know the dates of birth of his parents. RK could not remember. Ms Etiebet referred RK to the first Oxfordshire County Council assessment of 19 June 2008 where the record of a conversation between the social worker and RK records that, "when asked how he knew years of birth, albeit approximate, but was not able to confirm the ages of his family members, RK states he was told by his parents approximately one year ago of their years of birth. He was not aware of their reasoning, if any, of giving him this information." In the same paragraph, it is recorded that RK's father and mother had been born in 1966. Ms Etiebet asked RK why he had given a different answer to that which he had provided to Oxfordshire County Council. RK could not recall why he

should have done so. RK said that he knew when he himself had been born because his mother had told him "fifty times or more." His mother had his birth certificate, but, being illiterate, he had been unable to read it. He had been unable to obtain the certificate from Iran because he was not in contact with his family there. Ms Etiebet referred RK to the "*Child in Care/Young Persons Review*" prepared by Sally McDonagh dated 29 December 2010 [tab 38] under the heading "Update review of contact arrangements". The report records, "according to RK he would like to trace his family in Iran. In the report for Broadway, Margarita states that RK does not want to be referred to the Red Cross to try and trace his family. This was following a discussion with Margarita who had explained what the Red Cross do." RK said that, if anyone could help him to contact his family in Iran, he would be very happy. He denied, however, ever having discussed this with Margarita at Urgency Housing. He said it was another example of Mr Singh and his colleagues "writing down whatever they like." However, RK acknowledged that Ms McDonagh, the author of the review, would have had no reason to record RK's statements incorrectly. Ms Etiebet referred RK to the Birmingham age assessment of 13 August 2009. This records RK having told the social workers that his brother had been killed in 2005. The report notes that RK's brother was born in 1985 and died at the age of 20. RK denied that he had ever said that his brother was killed in any year other than 2006. He was referred to a statement supplied by Ms Lizzie Bell [tab 32]. This statement contains details of a project supported by the Children's Society involving young asylum seekers and to which RK had contributed. Under the heading "*Case Study*" it is stated that RK was born on 15 May 1994. It then continues, "RK's story began when he was just 10 years old. 'I have an older brother (1985) and sister (1988). My father was involved with the Iranian government. I am not sure what he did but when I was 10 my brother was shot (killed). I wasn't told much about this but I had lost my brother this made me sad.'" Ms Etiebet asked RK why he claimed his brother had been shot in 2006 when, if his brother had died when RK was 10 years old, this would mean he had died in 2004. RK denied that he had ever said that his brother had died in 2004 or even suggested this. He said, "the Children's Society got it wrong." He also said that it was a mistake for the Children's Society to have said that his father had been "involved with the Iranian government." That had never been the case.

24. RK said that Margarita Kostadinova had helped him complete the EMA application. He said that the part of the form which recorded that he was a British citizen had been completed by Margarita. He said that she was not telling the truth when she denied that she had completed the form. He said, "it has all been planned against me." He denied that the form was filled in, in his own handwriting. Ms Etiebet referred RK to Ms McDonagh's statement [11] where she noted that, "it was reported to me that [RK] has stated that he had "filled the form in as his teacher had told him to." RK denied that he had had any part in completing the form himself.
25. Ms Etiebet referred RK to an e-mail [tab 21] written to Swaran Singh by Donna Blyth, a tutor at Bourneville College. Referring to RK's EMA application, Ms Blyth had said that, "the letter he changed for EMA (*sic*) was from the place he lives confirming that he does indeed live there. I only saw this because he showed it to me. I do not have

copies of any paperwork as this is between EMA and the learner. We would never tell a learner to lie on the EMA forms as obviously that is fraud.” RK said that Donna Blyth was a liar and that she had completed the form. I note that Donna Blyth’s e-mail had been sent in response to an e-mail from Swaran Singh asking her to comment on RK’s claim that, in applying for EMA, he had “acted on the advice of college teaching staff to state on the form that he was a British citizen and had been in the UK for at least three years.” RK said, “this is all a plan against me. They knew it was wrong so why did they let it go through?” He was asked who exactly had a “plan” against him. RK said that he had been plotted against by Swaran Singh. He did not believe that the teachers at Bourneville College had sought to harm or deceive him. He then said, “I do not accuse [Donna Blyth] of lying. But I have not done that. She knew that I did not have a good relationship with Swaran Singh.” He suggested that Sally McDonagh had been part of a plot against him with Swaran Singh.

26. RK claimed that he did not understand the difference between a refugee and an asylum seeker. He denied that he had lied about his citizenship on the EMA form so as to avoid telling Bourneville College that he was an asylum seeker. He denied ever telling Bourneville College that he was an orphan from Oxford. Ms Etiebet referred RK again to the e-mail from Donna Blyth in which she says, “...the enrolling tutor thinks that [RK] was alone. He told her that he had moved to Birmingham from Oxford when his parents died. He has told me they died when he was 10.” RK denied that he had ever said that. Ms Etiebet went on to show RK the manuscript document annexed to the Birmingham age assessment dated 9 September 2010. RK acknowledged that he had written this document himself. The letter begins as follows:

“Dear Teacher,

My name is [RK]. I am 16 years old and I came from Iran. I don’t have a father or mother. I was 10 years old when my father and mother died. I don’t have any brothers or sisters.”

27. RK said that he remembered the day when he had written this. He said that all of the students in his class had told the teacher that they could not write down their real life stories because they were too personal and upsetting so Donna Blyth had told them to “just come up with a story.” Ms Etiebet referred RK to the exchange of e-mails between Robert Smith of Bourneville College and Robina Shah, formerly of the Immigration Advisory Service (IAS) who had acted as RK’s lawyer. Ms Shah’s e-mail asks Mr Smith whether “Donna [Blyth] is able to comment on whether there was a discussion in the classroom which students had reservations about writing about their lives.” The reply from Mr Smith reads, “Donna [Blyth] is clear that no reservations were expressed when students were asked to complete the piece of written work to test their literacy. Donna also explained that all students are told that they should not write anything in this ‘test work’ that they would not want others to be able to read. The content of the work is a matter of personal choice.” RK said, “I am sure that every single student there said that they could not write the

truth about their lives.” He denied that Donna Blyth had lied in her response to Mr Smith but believed there had been “a different interpretation.”

28. The claimant gave his evidence through a Kurdish Sorani interpreter but occasionally he spoke in English. When discussing his family in Iran, the claimant occasionally became upset and I halted the proceedings until he recovered. Several times, the claimant asked for questions to be repeated. I was satisfied that the claimant understood the questions which were put to him. I am aware that, whatever his true date of birth, RK is a young man and I have no doubt that he found a lengthy cross examination a trying experience. I find that RK is not a witness of truth. I find that this Tribunal may not rely upon any part of his evidence. I make that finding for the following reasons. I have set out in some detail the responses which RK gave to questions put to him in cross-examination. In my analysis of the evidence of the previous witnesses, I have recorded that RK had lied to Mr Levy when asked about having been fingerprinted in France. During cross-examination on the same issue, RK was at first evasive (“I cannot recall”, “it may be my signature I don’t know.”). Given that RK does not claim to suffer from any cognitive impairment and that he is an apparently healthy young man, it was bizarre that he should not have been able to remember being fingerprinted in France. He grudgingly acknowledged that the screening interview contained an accurate record of his encounter with Home Office officials when he had made his claim for asylum. He appeared at that time to have had no problem in remembering that he had been fingerprinted. I find that he was evasive in cross-examination because he was well aware that the screening interview contained particulars which were wholly at odds with evidence which he had given at other times. Indeed, RK’s evidence in the screening interview itself is not internally consistent. The interview opens with an account of how RK left Iran on 1 June 2008 and then stayed in Turkey for eight days. However, RK subsequently acknowledged that he had been fingerprinted on 3 June 2008. The Immigration Judge who heard RK’s asylum appeal rejected entirely RK’s denial that he had been fingerprinted in France. It is plain from what RK has told this Tribunal that the Immigration Judge was right to do so. It is extraordinary that RK should continue to claim that he could not remember having been fingerprinted when the evidence (including his own) overwhelmingly indicated that he had been. Indeed, I find that his pretended failure of memory is part of a pattern of conduct reflected elsewhere in the evidence. It seems that RK has calculated that he can say or do whatever he wants because he is confident that, if anything goes wrong, he can blame others, in particular those who have been working to help and support him.
29. It is also worth remembering that the first Oxfordshire age assessment of June 2008 had concluded that RK was only 14 years old. It was in the following month (July 2008) that RK had attended his screening interview. By that time, RK was being treated by Oxfordshire as a 14 year old minor. I find that this factual context is likely to explain, at least in part, RK’s conduct at the screening interview. I find that RK was candid with the Home Office officials who interviewed him because he considered that his status as a minor was by then secure; it did not appear to have occurred to him that the date of birth (25 January 1990) he had given in France might return to haunt him. Significantly, RK has become much more defensive regarding

the fingerprinting since the age assessment of Oxfordshire was reversed and the new age subsequently adopted by Birmingham City Council. When inconsistencies in RK's evidence or between his evidence and that of others are put to him, he will either (i) blame others for the discrepancy or (ii) blatantly deny previous statements which he has made and which have been recorded or (iii) claim that he cannot remember. It is perhaps an indication of RK's intellectual immaturity (rather than his chronological age) that that he should ignore or refuse to acknowledge that different agencies (even those operating across national borders) may share evidence about him.

30. In the light of my findings regarding his lack of credibility, wherever RK's evidence conflicts with that of other witnesses, I find that the evidence of those other witnesses is to be preferred in every instance. RK claimed that he was given no warning of the social workers coming to his home to carry out the age assessment. Mr Singh, the lead social worker from Birmingham City Council, together with Ms McDonagh and Ms Kostadinova, Emergency Housing, did not support that evidence and I find that their version of events is to be preferred. Likewise, I do not believe the claimant when he says that he was unaware that Oxfordshire County Council had revised its age assessment. During cross-examination over the course of only three successive questions, RK was compelled to change his testimony about the way in which he had come to discover the dates of birth of his parents. Again, I do not believe RK when he told me that he remains very eager to contact his family in Iran but that he has never been offered help by appropriate agencies. I find that RK was told about these services by the Red Cross but that he has chosen not to avail himself of those services. I consider it likely that his reason for doing so arises, at least in part, from a fear that (i) if his family is contacted by social services or the immigration authorities, they may reveal his true date of birth; (ii) that he will have no excuse for failing to obtain his birth certificate which he claims is in the possession of his mother. Looking at RK's evidence as a whole, I find that these reasons constitute a strong motive for RK persistently lying about his family and his failure to contact them.
31. Several witnesses for both parties have noted that, whilst RK is not well-educated, he is intelligent and numerate. However, under cross-examination RK quickly got into difficulties when items of previous evidence which he has provided were shown to give differing dates not only for his date of birth but also for his brother's alleged death. First, RK could not remember the month in which his brother had been killed, something which I find very surprising in itself given the significance of that event in his own life. He then struggled to reconcile the different dates of his brother's death which emerged from the various accounts he has given and which place his death at some time between 2004 and 2006. RK told me that he had always claimed that his brother had died in 2006 but that claim is not supported by the evidence. When challenged in cross examination, RK either claimed that he could not remember what he had said or denied having made the disputed statement at all. It is telling that the greatest discrepancy concerning his brother's death was with the details RK had given to the officers of the Children's Society involved in the young asylum seeker project (see paragraph 22 above). I consider that to be an example of RK dropping

his guard in circumstances when he did not believe that what he said would ever come to the attention of those who might consider re-assessing his age.

32. Perhaps the most blatant example of RK's tendency to deceive concerns his application for EMA. RK displayed considerable audacity when he chose not merely to copy what was apparently a common deceit amongst young asylum seekers in describing himself as a refugee (in fact, quite a subtle deceit and, in some cases, no doubt a genuine error) but rather to go one step further than that and claim to be a British citizen. That was a claim that could not be explained away by pleading ignorance of the difference between asylum seekers and refugees. RK clearly had a motive to obtain EMA; Ms McDonagh noted that he had very limited financial resources and complained to her several times. I find that RK knew that he was lying when he told the EMA authorities that he was a British citizen. I find that he has lied again to the Tribunal when he had sought to cast the blame for the error on to his teachers and Ms Kostadinova. I have no doubt that Ms Kostadinova did not see the EMA application form before it was submitted nor was she ever asked by RK to check it. Likewise, I accept Donna Blyth's evidence (in the form of the e-mail) that she had no involvement in the completion of the form. I have to say that I am also surprised, given that the EMA application led to RK receiving £630 to which he was not entitled, he has not faced investigation by the police; it is disturbing that RK's assumption that his deception would not (at least in the short term) be detected by the EMA authorities appears to have been an accurate one.
33. The appellant's credibility was further undermined by what he said about the essay which he had written at Bourneville College. On the one hand, I have RK's evidence that every member of the class had told the teacher that they would have to make up their accounts because they were unwilling to tell the truth about what had happened to them. On the other hand, I have the unequivocal evidence of Donna Blyth that none of the students registered any complaint and that they were expressly told not to give fictional accounts. I prefer the evidence of Donna Blyth and find also that the contents of RK's own essay simply add to the internal inconsistencies to be found throughout his evidence.
34. I heard evidence from Mr James Whitehouse who is a Children's Advisor working for the Refugee Council, Birmingham. Mr Whitehouse worked with RK for about 2 years, having first met him on 13 August 2008. He has provided RK with advice and support. His written statement of 10 August 2010 deals primarily with difficulties that RK was experiencing at that time with NASS accommodation. Questioned by Mr De Mello, Mr Whitehouse said that he had been shocked when he had first seen RK because he "looked so slight". Cross-examined by Ms Etiebet, Mr Whitehouse confirmed that he had written a letter to the First-tier Tribunal in February 2010 requesting an adjournment of the asylum proceedings. That application is considered in the Immigration Judge's determination at [8] *et seq.* The Immigration Judge refused the application. At [8] the Immigration Judge noted that "[the letter from Mr Whitehouse] said that the appellant's state of mind meant the lack of capacity to proceed with the hearing on 23 February." Mr Whitehouse did not recall using the word "capacity". He had been aware that RK had threatened suicide in

August 2009. At [14] the Immigration Judge had noted that, “there was no evidence in the form of an expert report to substantiate his claim [that the appellant lacked the mental capacity to proceed with the hearing]. I decided that it would not be in the interests of justice to yet again adjourn the hearing of the appeal for the vague possibility that the appellant might at some time in the future be able to obtain legal representation.” It was put to Mr Whitehouse that he had “overegged the pudding” when he indicated that RK lacked mental capacity. On the contrary, Mr Whitehouse believed that he had “not egged the pudding enough”; there had been no adjournment, notwithstanding his letter. He said, “I felt he could not get through the hearing but he did. I thought he was a child.”

35. Ms Etiebet asked Mr Whitehouse whether he was aware that the Immigration Judge had found that RK was not a truthful witness. Mr Whitehouse replied, “I am aware that he rejected the claim but found him to be a child.” Asked about RK’s credibility, Mr Whitehouse said that he was “not in a position to judge. I cannot make that value judgment. I never thought whether he was credible or not. I would not go into his credibility. I considered only that he was a child.” Mr Whitehouse said that he did not “go around trying to find reasons why RK was not a child.”
36. I am sure that Mr Whitehouse came to the Tribunal with the intention of assisting it. However, he adopted a defensive attitude under cross-examination. I have no doubt that Mr Whitehouse was seeking to assist RK when he sought an adjournment of the First-tier Tribunal hearing. However, in the absence of any medical evidence indicating that RK lacked mental capacity, it was not surprising that the Immigration Judge refused to adjourn the hearing. Since Mr Whitehouse did not have any medical evidence to assist him, I find that he did exaggerate RK’s difficulties although I accept that he did so in order to assist RK by putting off the appeal hearing until RK might secure legal representation. I find that Mr Whitehouse has accepted uncritically and at face value RK’s claim that he was a child and he has chosen to ignore any evidence which might suggest that he was not or that he was both willing and able to deceive those in authority. I intend no criticism of Mr Whitehouse because I am aware that adopting a “non-oppressive” and non-judgmental approach to the young people with whom he deals may be a necessary part of gaining their trust. However, it is an approach which makes it difficult for Mr Whitehouse to offer an objective opinion especially in proceedings where a young person’s credibility may be highly relevant. I find that his evidence was given truthfully but has to be evaluated in the context of his role as RK’s unquestioning supporter.
37. Ms Lizzie Bell adopted her written statement [tab 32]. Ms Bell is described in her statement as a “*Strong Voices, Strong Lives Project Worker*” for the Children’s Society (this is the project referred to at paragraph 22 above). Her statement is dated 21 December 2010. She noted that RK was “generally full of energy and enjoys a lot of adult attention.” He was “very keen to help staff and volunteers and would always help us carry boxes and bags into the centre or to arrive early to decorate the rooms at parties etc.” She noted that RK could “kick up a fuss and show real teen-like behaviour.” She noted that he would “try to make staff members feel guilty about

not being able to attend appointments with him.” She noted that RK was “keen to access his entitlements.” On this latter point, Ms Bell said in answer to cross-examination by Ms Etiebet that she did not consider RK to be “manipulative.” She also said that she was “prepared to accept that RK was the age he said he was.”

38. Ms Bell had witnessed RK being measured by Dr Birch in the IAS offices. She could not remember whether he had been wearing shoes at the time. Asked to examine conflicting statements made by RK regarding the role of his father in Iran (the statements indicated variously that RK’s father had been opposed to and worked for the Iranian government) Ms Bell said, “for the purpose of the Children’s Society marketing, accurate detail of an asylum seeker’s story does not matter.” She said that six colleagues had agreed that RK was a child and it was “not my job” to assess the credibility of RK’s statements. Asked whether she thought individuals such as Ms McDonagh were in a better position to comment on RK’s age, Ms Bell disagreed. She said that Birmingham City Council had “a poor record” of dealing with child asylum seekers. She asserted that the Children’s Society officers were “in a unique position” to judge the age of the young men with whom they worked because they were able to observe them interacting with their peers. She believed that her assessment of RK’s age should be given value for that reason. Pressed on the question of RK’s deceptive conduct, Ms Bell said “yes, I suppose he could be manipulative but that does not mean he is an adult.” She said that the average age of the young people attending regular events at the Children’s Society was about 17 years.
39. I acknowledge that Ms Bell has had a close working relationship with RK who appears to trust her. She is herself a young adult and it is perhaps not surprising that she is well placed to understand RK’s view of the world as a consequence. She has also had the opportunity of seeing RK interacting with other individuals of a similar age. Her observation that other young men at the Children’s Society Project had not complained to her that RK is not the age he claims to be should be given weight. However, as with Mr Whitehouse, the value of Ms Bell’s evidence is diminished by her refusal to engage with negative aspects of RK’s behaviour. Ms Bell was right to point out that it was for others, not her, to assess RK’s chronological age. However, whilst a non-judgmental position may be necessary to enable those working with young people to win their trust, problems arise in the context of legal proceedings such as these when that position is extended to defending, without question, the young person against what is perceived as harmful criticism by third parties. I find that her evidence needs to be approached with caution given her role as uncritical advocate for RK who has accepted that he had been born in 1990 simply because he told her that he had been.
40. I heard evidence from Tracey Anne Webb who is a Higher Scientific Officer working for the Home Office (Immigration and Nationality Directorate). On 12 August 2009, Ms Webb compared a set of fingerprints in the name of RK (d.o.b. 5 April 1994) taken on 3 July 2008 at the Asylum Screening Unit, Croydon against a set of prints in the name Ali Ahmad (d.o.b. 25 January 1990) taken on 3 June 2008 at Coquelles, France. She found that “such a number of ridge characteristics [are] in agreement to leave me

in no doubt they were both made by the same person.” Her witness statement/report appears at tab 6 of the bundle. Mr De Mello, for RK, did not challenge the evidence of Ms Webb. RK now accepts that he had been interviewed at Coquelles on 3 June 2008 when he had given the name of Ali Ahmad and a date of birth of 25 January 1990.

41. Dr Diana Birch has prepared two age assessment reports dated 19 November 2008 and 16 December 2010 respectively [tabs 23/24]. In the first report of 19 November 2008, she records RK’s height as 158.5 centimetres. She said she always used the same technique for measuring the height of the clients. The subject is asked to stand with his or her back to a wall in bare feet, Dr Birch ensuring that the head was at the same angle on each occasion. The same metal ruler had been used to carry out the measurements. By the time she prepared her second report on 16 December 2010, RK’s height had (as measured by the same technique described above) increased to 163 centimetres. This represented an increase of 4.5 centimetres over the period of two years.
42. In her first report, Dr Birch concluded that the appellant was aged 14-16 years. She reached a similar conclusion in her second report, concluding that RK “is, in fact, about 17 years of age.”
43. She was cross-examined by Ms Etiebet regarding the emergence of RK’s molar teeth. She acknowledged that the emergence of the third molar occurred between 17-21 years but she considered that emergence was “very variable” depending on racial origin. Ms Etiebet also asked Dr Birch to consider the health assessment review carried out by RK’s GP, Dr Agarwal, on behalf of Birmingham City Council and which is dated 16 June 2011. This recorded RK’s height as 161 centimetres. She was also asked about the estimates of RK’s height of 160 centimetres (see above). Dr Birch said that she was confident that her own means of measurement had produced accurate results on both occasions.
44. Although Dr Birch has produced two lengthy reports, the claimant relies upon her evidence for her measurements of his height only. Although she was cross examined on other matters (see paragraph 42 above), RK himself does not seek to rely upon the findings regarding his chronological age contained in her reports.
45. As is apparent from my analysis of the evidence so far, a number of different measurements of RK’s height have been recorded. A GP in October 2010 recorded RK’s height at 160 centimetres, Mr Levy at around 5 feet 3 inches and Dr Simaroo (or his nurse) at around 161 centimetres. I have considered what weight should be given to Dr Birch’s measurements. I accept that Dr Birch has measured RK on two separate occasions using the same metal ruler and that the same method (see paragraph 40 above) was used on both occasions. I do not have any evidence at all regarding the method by which the measurements by the GP and Dr Simaroo have been carried out although Mr Singh and Ms Bell on different occasions saw measuring apparatus being used. I consider that mere approximations of RK’s height (e.g. Mr Levy’s, which he described as a “guess”) should be given less weight

than measurements carried out by clinicians, whilst measurements for which I have specific details of the method employed and which have been tested by cross examination (Dr Birch) should be given yet more weight. Mr Levy described his own assessment as a “guess”. However, the Tribunal should approach with caution the use of evidence of growth as tool in age assessment. In A v London Borough of Croydon [2009] EWHC 939 (Admin) at [25] Collins J noted, with approval, the evidence of a paediatrician, Dr Stern:

Dr Stern is a most distinguished paediatrician. He is consultant paediatrician emeritus to the Guy's and St Thomas' Hospitals Trust. Measurements of height and weight are in his view not completely reliable unless carried out by a properly trained paediatric auxologist. In any event, assessments of growth and maturity are in his view unacceptably unreliable. Height is particularly difficult to use as a reliable indication since much will depend on the height of each parent. There is in his view no reliable scientific basis for the estimation of age. That is a view which is entirely in accordance with the guidance given by the RCPCH. A contrary view has no scientific support. Further, as Dr Stern says, and again this accords with the general medical opinion, all the factors relied on to assess age in reality can only assess maturity and maturity and chronological age are two different things. He makes what seems to me to be a cogent point when he says this in paragraph 10.4 of his report:-

"The large majority ... are asylum seekers from developing countries. Many of them have been subjected to deprivation and some to severe psychological stresses. I would expect these adverse events to have significant effects upon development, tending to delay it. Such effects would be particularly marked with respect to psychological maturity. The consequence of this would be that those clients would have both younger psychological profiles and/or earlier measures of physical maturity than their true chronological age."

It is Dr Stern's view that a paediatrician is unlikely to be able to reach a conclusion which is superior to that reached by an experienced social worker, provided, of course, that the social worker is properly trained and experienced and conducted the necessary interview in an appropriate fashion.

46. Although Dr Birch has an impressive *curriculum vitae* relating to her work with children, she is not a paediatric auxologist nor does she claim to possess the expertise of such a specialist. Her measurements of height should be given weight for the reasons I have stated above and they are, perhaps, more reliable than any other measurement we have for RK but they still fall short of the “gold standard” provided by clinical auxology. Moreover, even if we had measurements of RK taken by an auxologist, then, as the judgment in A indicates, the *rate* of his growth would still not provide a reliable indicator of his chronological age. As with the eruption of molar teeth (see below), perhaps the most that can be said of an individual's growth in height as an indicator of chronological age is that proof of the *cessation* of growth tends to indicate the achievement of a physical maturity generally associated with adulthood. However, even so it is clear that some individuals continue to grow after they have reached the age of 18 whilst others have stopped growing before they

achieve legal majority. Further, the rate of growth (in height and weight) of young asylum seekers may be distorted by their having access to, for example, a better diet in the United Kingdom. In the case of RK, the fact that he continued to grow between the two measurements taken by Dr Birch offers some support for his claimed age but that the value of that support is severely limited by the caveats I have indicated. Those same caveats apply equally to what Mr Singh (see paragraph 48 *et seq* below) says in his age assessment as they do to the evidence of Dr Birch.

47. As regards the eruption of RK's fourth molar teeth, it is common ground between the parties that these teeth had completed eruption by November 2008 (for the claimant, it had been Dr Birch who had recorded that fact in her report of November 2008). The report of the unknown dentist in Oxfordshire indicates that the eruption had been completed by August 2008; it had been this report or comment which had led Oxfordshire to re-assess RK's age. By his own account, RK had been 14 years and 6 months old in November 2008. Documentary evidence regarding African subjects prepared by a Dr Pearsall and adduced by the defendant indicates that all four wisdom molar teeth had erupted in 50% of those studied by the age of 18.5 years; it would be "unusual but not impossible" for a 14 year old to have a complete set of wisdom teeth.
48. As with weight and height, evidence of the eruption of molar teeth should be assessed with caution; variations do occur between individuals (as with height, possibly influenced by environmental factors) and we do not have study data specific to the population of which RK is a member. However, in the light of the evidence before me, I consider that it possible to conclude that the fact RK's molar teeth had completed the process of eruption by November 2008 indicates that he was more likely to be close to adulthood by that date rather than as much as 3.5 years from the age of 18 years as he himself claims. Further, this evidence should, in my view, be given greater weight than that of Dr Birch relating to RK's height because it concerns a process which had reached completion (see paragraph 46 above).
49. I heard evidence from Swaran Singh, a social worker employed by the defendant. Mr Singh prepared the age assessment reports of 30 August 2009 and 23 November 2010 which are the subject of these proceedings. He has also prepared a statement (tab 38) dated 1 March 2011 which he adopted as his evidence-in-chief.
50. Cross-examined by Mr De Mello, Mr Singh said that he was not present at Dr Simaroo's review health assessment of RK on 16 June 2011. Mr Singh said that Dr Simaroo had not been asked to estimate RK's chronological age at that assessment. As far as Mr Singh was aware, RK had been accompanied by his legal representative. At the conclusion of his report of November 2010, Mr Singh wrote, "[RK's] lack of any significant growth in height over two years; this is more consistent with RK being an adult as opposed to being a child. It is my opinion that he has reached his full height growth and would indicate he has reached maturity." Mr Singh said that he had based that conclusion on the GP/nurse measurements which he had had available to him at the time of writing the report.

51. Mr Singh was asked about his relationship with RK. He said that he had done everything to help RK who had been a demanding client. He had felt no need to “step aside” from involvement with RK although he was aware that the relationship was difficult; the council’s social work team was too small for social workers to be transferred from problem cases. Mr Singh was asked about paragraph 62 of his report of November 2010 (“It is concluded that RK is an adult and his date of birth is, most probably the one he initially gave in France, that is 25.01.1990 which would make RK 20 years old.”) Mr Singh said he thought that the date of birth given by RK in France was “the best informed.”
52. I heard evidence from Diane Bayona Bazarro, a social worker employed by Birmingham City Council who, together with Mr Singh, had written the age assessment reports. She adopted her statement [tab 37]. She said that, should she disagree with her co-reporter, she would refuse to sign a report. Asked by Ms Etiebet about the date of birth given by RK during his interview in France, Ms Bazarro said, “rather than make one up ourselves, we look for anything which he had said before which was consistent with our own assessment within the age range.” Ms Bazarro said she had carried out about 40 - 50 age assessments, the “great majority” having led to an assessment of under 18 years of age.
53. Cross-examined by Mr De Mello, Ms Bazarro acknowledged that there were difficulties in the relationship between RK and Mr Singh. She said that the issues which had arisen between them were not “unusual.” Ms Bazarro said that she could “not remember saying that RK had told the truth when in France.” Pressed by Mr De Mello, she said, concerning the date of birth of 25 January 1990, that “yes, it is probably true.”
54. Since the task of the Tribunal is to determine RK’s chronological age, I am less concerned with upholding or rejecting the age assessment reports than with considering their contents, together with all the other relevant evidence, in order to reach my age assessment. I find that Mr Singh and Ms Bazarro are well aware of the pitfalls involved in assessing chronological age. However, the assessments are based largely upon RK’s demeanour and physical indicators. I have already highlighted the probative limitations of physical indicators and demeanour.
55. The oral evidence of Mr Singh and Ms Bazarro was also to some extent influenced by the same non-judgmental approach which characterised the evidence of Ms Bell and Mr Whitehouse. This may originate from their training as social workers and, as with the other witnesses from a similar background, a tension in their work is only created when they are required to step out of their supportive roles and give an opinion, informed by objective analysis of evidence, a fact with which the young person in their care may not agree. Ms Bazarro, in particular, was reluctant to agree with Ms Etiebet that RK had lied to her and others even when shown proof of his deceit. Likewise, whilst Mr Singh had stated in his report of November 2010 that “[RK’s] date of birth is probably the one he first gave in France”, he retreated from this statement under cross examination, saying that 25 January 1990 was the “best informed” date of birth available for RK; he denied that he had chosen that particular

date because he believed that it is RK's actual date of birth, saying only that it he had adopted it only because it was consistent with the other evidence. In my view, 25 January 1990 is either RK's date of birth or it is not. To choose that date rather than any other because it appears consistent with other evidence may lead one to ignore other possible dates which may be more consistent with the evidence. However, as I explain below, I find that Mr Singh and Ms Bazurto have chosen the correct date of RK's birth albeit for not entirely cogent reasons.

56. The last witness to give evidence was Robina Shah who adopted her three statements of 22 June 2010, 14 January 2011 and 10 March 2011 as her evidence-in-chief. Ms Shah is a solicitor who was formerly the RK's case worker at the Immigration Advisory Service (IAS). She had acted for RK in the early stages of this judicial review. She still sees RK occasionally but he is no longer her client.
57. Ms Shah spoke about the essay which RK had written for his teachers [tab 21] and her e-mail correspondence with Donna Blyth (see above). Ms Shah said she believed that RK had not wished others to know that he was an asylum seeker. She said, "he doesn't want anyone to know his private business." For example, RK had been approached by the BBC to take part in a documentary but he had told her, "I do not want to be known as a refugee."
58. Ms Shah was asked about RK's application for EMA. She said, "I don't say that he made the application fraudulently. He really believed he was entitled to it. It took me a long time to explain to him that he was not. As soon as he found out that he was not entitled, it stopped." Cross examined by Ms Etiebet, Ms Shah agreed that RK must have known at the time of his application that he was not a British citizen.
59. Ms Shah has formed a good relationship with RK whilst acting as his solicitor. However, because her first concern is to protect RK's welfare and also in the light of her earlier involvement in these proceedings, her views on RK's age, no doubt genuinely held, should be approached with caution. Under cross-examination, she acknowledged that RK had been fully aware that he is not a British citizen when he made his application for EMA but I was unable to detect that her awareness of RK's lack of truthfulness in any way informed her opinion of his age.
60. I have analysed the evidence of each witness in turn but now seek to draw together my findings and observations. First, RK is not a truthful witness. He has given untrue particulars about himself (sometimes, for example, as with his claim that he is a British citizen, outrageously false) when he has believed doing so might bring him some benefit. On those occasions when his deceit has been exposed, he has sought to cast the blame on to others.
61. RK's credibility is so poor, therefore, that his age cannot be determined solely on the basis of his evidence. Consequently, the Tribunal has had to look to other evidence to inform its assessment. I have already explained the problem of attaching too much weight to physical indicators. The evidence of those who work to support RK in his daily life may be also limited in value for the reasons I have given (see, in

particular, paragraphs 35-38). In any event, the evidence of those witnesses and that of Mr Levy amounts to little more than opinions drawn largely from RK's demeanour and what he has told them. As for Immigration Judge Khan's conclusion that RK had been born in 1994, I agree with Ms Etiebet's submission that his age assessment also is nothing more than an opinion, derived from the conclusions of Dr Birch upon which even RK himself no longer relies. I also note the comments of His Honour Judge Owen R (on the application of K) v Birmingham City Council [2011] EWHC 1559, in which both RK and Birmingham City Council were parties:

It is well recognised, and certainly by both sides in this case before me, as I understood Mr De Mello's submissions, that the claimant's credibility is highly material, if not fundamental, to the fair and proper assessment of his age. Yet that clear question mark does not appear, arguably at the very least, to have been given any appropriate weight by the immigration judge who appears to have approached the issue of age as being a separate and unrelated (to questions concerning credibility or reliability) issue.

62. At [40] of his determination, Immigration Judge Khan had written:

"I find that the appellant's untruthfulness when questioned in France and his subsequent denial that he was fingerprinted there affects the credibility of his claim under Section 8 of the 2004 Act. Indeed, when he was interviewed initially, he said in his screening interview that he had been fingerprinted in France and he gave a false name because he was afraid of being deported to his own country. The fact that the appellant has been untruthful on more than one occasion caused me to believe that he cannot be accepted as a witness of truth, looking at the whole of the evidence in the round."

63. Earlier, at [32] Judge Khan had written:

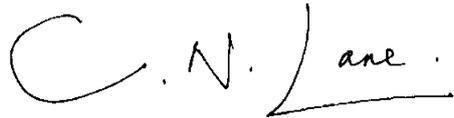
"I therefore accept as a finding of fact that the appellant lied when he denied in his substantive asylum interview that he had not been fingerprinted and I also find that he lied to me during the appeal hearing when he denied the same. What I do find is that he gave a false name in France when detected by an Immigration Officer and he also gave a false date of birth. The point is that although he was clearly the same person and there is the fingerprint match, I am not satisfied that the appellant gave his true date of birth to the Immigration Officer in France."

64. Other than noting that RK was afraid that he would be deported if he told the truth, Judge Khan gives no reasons for coming to the conclusion that RK had not only lied whilst in the United Kingdom but that he had also lied when fingerprinted in France. As Ms Etiebet pointed out, RK has adduced no evidence to support his assertion that he feared that he would be deported from France if he gave his true name and date of birth. Indeed, it is difficult to see why RK would lie to the officers in France that he was an adult when he is well aware here in the United Kingdom of the benefits to be gained by being treated as an asylum-seeking child; it is not clear why he appears to have believed that a neighbouring European Union country would treat him so differently.

65. It is also not apparent why RK should have offered the officers in France a completely different name from that he has used during his time in the United Kingdom. RK was not arrested or detained by the authorities in France nor has he adduced any evidence which would indicate that he had reason to believe that he would be. I have found that he has a propensity to tell lies when it might bring him advantage, but he had no motive for lying to the officers in France. As far as the fingerprinting encounter might affect his ambitions to enter the United Kingdom and seek support here, it was entirely neutral. Indeed, the question of motive goes further than that. Given that I find that nothing that RK has said about his age or identity whilst he has been in the United Kingdom is reliable, I cannot see that RK had any motive to go to the trouble of inventing yet another false account solely for the benefit of strangers with whom he was probably in contact for no more than a few minutes and whom he had no reason to fear. Certainly those officers made a record of the details he provided but RK does not seem to have considered that those details would ever come to light after he had entered the United Kingdom. If he was afraid that the officers would arrest, detain and deport him from France, then again nothing was to be gained by going to the trouble of inventing another false name and date of birth. Likewise, if he believed (correctly as it turned out) that, having fingerprinted him, the officers would leave him alone, then again there was no reason to give false answers. With those observations in mind, one is drawn towards the conclusion that, if he did not lie, then RK gave the officers accurate particulars of his identity and date of birth.
66. During submissions, I suggested to Mr De Mello that there may be some significance in the reply that RK gave to the final question put to him at the screening interview ("is there anything you wish to say or add?"). RK had replied only "I am an Iranian." RK had been given every opportunity in the interview to correct the name and date of birth he had given in France but he chose not to do so; he only sought to put the record straight as regards his nationality. This may seem odd given that neither the screening interview (see paragraph 9 above) nor the witness statement of Ms Webb make any reference to the nationality of "Ali Ahmed." However, RK was also asked about the fingerprinting in France in his substantive asylum interview (Questions 75 *et seq*) and it is clear from that record that the French record (we have only Ms Webb's quotation from that record and have not seen the record itself) is likely to have indicated that RK was not Iranian, but Iraqi. It was put to RK at Question 77 that he had claimed in France that he was of Iraqi nationality; his response was to deny that he had been fingerprinted at all and that the screening interview record was a fiction concocted by the interpreter.
67. Mr De Mello acknowledged that RK's answers at the screening interview were "a problem". I find that RK did not seek to correct his name or date of birth because the particulars which he had given in France were accurate. That is a finding which is not inconsistent with any of the evidence in this appeal, save for the unreliable evidence of RK himself and the opinion evidence of several of RK's witnesses, the value of which is limited. It is also not inconsistent with Dr Birch's two measurements of RK's height. It is a finding that is wholly consistent with the evidence of the emergence of his molar teeth. It follows, therefore, that Mr Singh and

Ms Bzurto could have gone further and found that RK had been born on 25 January 1990 because, on the only occasion on which I find that he told the whole truth about himself, that had been the date he provided.

68. I find that RK was born on 25 January 1990 and I make a declaration to that effect accordingly. The parties should make representations in writing to me regarding costs within fourteen days of receiving my judgment.

A handwritten signature in black ink that reads "C. N. Lane". The signature is written in a cursive style with a large initial "C" and a long horizontal stroke at the end.

Upper Tribunal Judge Clive Lane

20 April 2013