



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

R (on the application of RJ) v London Borough of Ealing (AAJR)  
[2012] UKUT 00305 (IAC)

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**Heard at Field House  
on 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> June 2012  
and 6<sup>th</sup> July 2012**

**Before**

**Upper Tribunal Judge Southern  
Upper Tribunal Judge Coker**

**The Queen on the application of**

**RJ**

**(by his litigation friend HJ)**

Claimant

**- v -**

**THE LONDON BOROUGH OF EALING**

Defendant

**Representation:**

For the Claimant: Mr A. Gask, instructed by Harter and  
Loveless, Solicitors

For the Defendant: Mr H. Harrop-Griffiths, instructed by London  
Borough of Ealing

## DETERMINATION AND REASONS

### **Introduction**

1. In these proceedings the claimant (to whom we shall refer as "RJ") challenges an age assessment carried out on behalf of the defendant and served upon him on 28<sup>th</sup> February 2011 whereby it was concluded that RJ's date of birth was 30<sup>th</sup> May 1992. RJ contends that he is younger than he has been assessed to be by the defendant, insisting that his date of birth is 21<sup>st</sup> August 1995. The precise date and month adopted by the defendant is a result of RJ having said initially that he was born on 30<sup>th</sup> May 1995, explaining subsequently that he had said that because of an error in converting his date of birth from the Afghan calendar. He says that his position, all along, has been that his date of birth is 30 Asad 1374 which is 21<sup>st</sup> August 1995, that being the date disclosed to him by his mother shortly before he commenced his journey to the United Kingdom.
2. Put another way, the difference between the positions taken by the parties is this: As at the date of the hearing before us the defendant asserts that RJ is an adult aged 20 years old with a date of birth of 30<sup>th</sup> May 1992 whereas RJ insists that he is 16 years old with a date of birth of 21<sup>st</sup> August 1995 and so still a minor entitled to the level of services provided by the defendant that flows from him being a minor.
3. Thus, it is common ground and agreed between the parties that RJ was a child on arrival in the United Kingdom at the end of July 2009; RJ saying that he was born on 30<sup>th</sup> May 1995 and thus 13 years old (albeit subsequently changed by RJ to an assertion that he was born on 21<sup>st</sup> August 1995 and thus aged 12 when he arrived) but the defendant asserting that he was then 17 years old with a date of birth of 30<sup>th</sup> May 1992.

### **The claimant's account of his life in Afghanistan**

4. RJ is a citizen of Afghanistan. He was born and lived in a rural village in Nangarhar Province with his mother and siblings. His father died when he was three years old, and he has no memory of him. He has three brothers. The eldest, JJ, had left home some time before the claimant travelled to the United Kingdom. RJ says that it was the involvement of that brother with the activities of Hezb-i-Islami that attracted to his family the adverse attention of the authorities that led him to leave Afghanistan and seek asylum in the United Kingdom.

5. Of the three siblings who remained living at home with their mother the claimant was the middle brother. His elder brother HJ left home and travelled to the United Kingdom in June 2007 in order to claim asylum, his journey and unlawful entry being arranged by an agent. His asylum claim was dismissed but, after an age assessment by the defendant, he was accepted to be 16 years old, as he claimed to be, and was granted discretionary leave to remain. As we shall see, there was a subsequent reassessment of HJ's age. HJ has now married a British citizen and they have recently had a child. Although his immigration status is presently unresolved, as he awaits an answer to his application for further leave to remain, he is now effectively settled in the United Kingdom.
6. RJ says he had no education in Afghanistan other than attending at a mosque in his village to pray and read the Koran under the supervision of the local Mullah and he had no plans for nor any prospect of work. He passed his time "hanging out with friends" and rarely strayed far from his village.
7. Despite being pressed at some length when giving oral evidence before us, RJ has given scant information of his life in Afghanistan. He says he never went to school nor engaged in any other activity that might provide some form of reference point for seeking to ascertain his likely age.
8. RJ's account of the circumstances that led to his departure from Afghanistan is that the police came on several occasions to his home asking after his elder brother JJ because of his involvement with Hezb-i-Islami. In short, he says that the level of interest was escalating and he was at risk of ill treatment at the hands of police because he and his mother would not disclose JJ's whereabouts. (This was, incidentally, effectively the same account as was given by HJ when he made his unsuccessful asylum claim two years earlier.) Because of this, JJ arranged for an agent to facilitate RJ's journey to a safe country so that he could claim asylum. No explanation is offered as to why, if JJ was the focus of adverse attention from the authorities so that he would also be at risk, he did not arrange for his own departure from Afghanistan as well. RJ says that at no time during the 8 month long journey did he know that his destination was the United Kingdom, nor that his brother HJ would be there to meet him.
9. RJ was reunited with HJ on the day of his arrival because, by a happy coincidence, a relative of one of the other boys he was travelling with, who had met them after they left the lorry in which they had made their clandestine entry into the United

Kingdom arrived in London, happened to know HJ from playing football with him in a park in Southall. That person telephoned HJ so that he could come and collect the claimant and HJ assisted the claimant to register with Ealing Social Services as a child in need of support and to claim asylum the following day.

10. That claim was refused because UKBA did not believe any part of RJ's account of his difficulties in Afghanistan to be true. With the assistance of experienced immigration lawyers, Howe & Co, he appealed against that decision but he did not attend his appeal hearing after which the immigration judge promulgated a determination dismissing the appeal.
11. RJ was granted discretionary leave to remain until a date upon which he would be 17 ½ years old, if his date of birth were in fact 30<sup>th</sup> May 1992 as he had initially asserted.

#### History of Proceedings

12. There have, in fact, been three age assessments in respect of RJ. The first and third were carried out on behalf of the defendant, the second being commissioned by the solicitors previously acting for RJ in his asylum appeal. Each is examined in detail below.
13. It will be necessary also to examine an age assessment carried out on behalf of the defendant in respect of RJ's brother, HJ. That is because, although it had initially been accepted by the defendant and by the UKBA following assessment by the defendant, that HJ was 16 years old on arrival in June 2007, about a year later the social worker newly assigned to HJ was instructed to carry out a further age assessment after which he concluded that HJ was three years older than hitherto he had been accepted to be. Plainly, that is significant. It has always been asserted by RJ and by HJ that there is a four year age gap between them and so if the 2008 age assessment of HJ is sound, that is evidence that undermines RJ's case but if it is not then the evidence relating to HJ's age provides cogent support for RJ's case, especially as one social worker, Mr Dean, was involved with the age assessment of both brothers.
14. The first of RJ's age assessments was carried out on 13<sup>th</sup> August 2009, shortly after his arrival in the United Kingdom. That assessment was that the claimant's date of birth was 30<sup>th</sup> May 1992, adopting the day and month first given by the claimant but disputing the year of birth he

claimed. Thus, RJs claimed age was rejected by the defendant who concluded that he was then 17 years old.

15. The second age assessment, commissioned by the claimant's former solicitors, reached the same conclusion. The defendant's first assessment, that the claimant's date of birth was 30<sup>th</sup> May 1992, was challenged by the claimant's present solicitors. That challenge was supported, *inter alia* by a report of Dr Diana Birch, although no reliance is now placed upon that evidence and we have not been asked to consider it. In response to that challenge, the defendant agreed to withdraw the first age assessment and to make it afresh. That was done, as we have mentioned above, in December 2010, although the two social workers carrying out that assessment reached the same conclusion, which was that the claimant's date of birth was 30<sup>th</sup> May 1992.

16. Permission to seek a judicial review was refused on the papers by Silber J but granted on oral renewal by Stephen Males QC, sitting as a deputy judge of the High Court. Subsequently, the claim was transferred to the Upper Tribunal.

17. And thus the matter now comes before us to carry out the fact finding exercise that is required. We heard evidence over three days from 13<sup>th</sup> June and then, after a joint request to do so, we adjourned until 6<sup>th</sup> July so that final submissions could be advanced after the result of a DNA test were available. That DNA test was inconclusive in that, although it established that RJ and HJ were related, it could not with certainty be said what the nature of that relationship is. We accept, however, that whatever the precise nature of their relationship, they have been brought up as brothers and have always believed themselves to be so.

### The legal framework

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

2. In R (A and M) v Croydon and Lambert Borough Councils [2009] UKSC 8, [2009] 1 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."

### The evidence

19. There is a good deal of evidence before us. The claimant, as well as raising general criticisms of the age assessments carried out, relies upon:

- a. His own evidence;
- b. The evidence of his elder brother, HJ;
- c. The evidence of a former tutor, Ms Therese Lorphevre who, as an experienced teacher, offers her view upon the claimant's likely age.

The respondent, in support of its case that it has correctly assessed the complainant's age, relies upon the three age assessments mentioned above and the evidence of the following witnesses:

- a. Georgette McKenzie Parchment, one of the two assessors responsible for the second age assessment;
- b. Dennis Dean, one of the two assessors responsible for the age assessment under challenge in these proceedings;

20. We propose to approach our assessment of the evidence in the order suggested by Mr Gask. We will consider first the weight to be placed upon RJ's own evidence and that of his brother and the tutor before considering the weight to be given to the professional witnesses, which requires a detailed analysis of the age assessments themselves.

#### The evidence of the claimant

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

- a. A witness statement dated 9<sup>th</sup> September 2009 prepared with the assistance of Duncan Lewis, the solicitors he first instructed to assist him with his asylum claim. ("Asylum statement" found at E41);
- b. The first of two witness statements prepared for judicial review proceedings, dated 21<sup>st</sup> June 2011 ("first statement" at B1);
- c. The second statement prepared for these proceedings, dated 10<sup>th</sup> November 2011 ("second statement" at B12)
- d. In oral evidence before us, on 13<sup>th</sup> June 2012.

22. RJ gave lengthy oral evidence before us but, as we shall see, there are very considerable difficulties with that evidence which make it hard to rely upon. In assessing that evidence we took full account of the fact that although his age was disputed he remains young; the giving of oral evidence can be a stressful experience which may sometimes affect the quality of evidence given. No special measures were adopted in response to this and none were requested by Mr Gask. RJ or

HJ during the course of the hearing or at any preparatory case management hearing and because none appeared to us to be necessary,

23. Although it may sometimes be helpful to assess the credibility of the claimant in order to weigh the evidential value of what he has to say about matters that illuminate the search for his age, here that is not so. The fact is that the claimant himself does not know his date of birth and nor can he say how old he is. In evidence he was asked, directly, whether he knew how old he was when he arrived in the United Kingdom and he answered, in our view truthfully, that he did not.
24. And, as we have mentioned above, RJ has told us very little indeed about his life in Afghanistan so that there is very little by way of a chronological framework that might provide some reference point from which to begin a search for his true age.
25. The village in which RJ lived was a small one. He has said that there were something in the region of 40 houses surrounded by fields. He said that there were no shops or official buildings other than the one to which he referred as the mosque. RJ knew of no school in the area (although that is difficult to reconcile with the evidence we heard from his brother which was that there was a school that he had attended for about a year before leaving to support his family) and the nearest police station was an hour's walk away.
26. It is not in dispute that neither RJ nor anyone in his family took any notice or had any regard to issues of age or birthdays. That was simply of no interest to anyone. It is also plain that the claimant himself had no idea of his age or date of birth and that there is no documentary evidence of any kind whatsoever to establish it.
27. The high point of RJ's own evidence offered in support of his claimed age is that his mother told him his date of birth shortly before his departure from Afghanistan.
28. RJ says that about two months before he left Afghanistan he was at home with his mother and younger brother when the latter, for no apparent reason, asked his mother how old he was. According to RJ, his mother told his younger brother that he was nine years old. At this, RJ says that he asked his mother how old he himself was, for no reason other than that, as his brother had asked, he thought he would do also. RJ says that his mother told him not how



many years old he was but that his birthday was on the 30th day of Asad in the year 1374.

29. There are a number of difficulties with this account of RJ. First, despite having been asked on a number of occasions and, indeed, pressed on the question at the hearing in his oral evidence, he has been unable to offer any explanation at all as to why, it having previously being of no account whatsoever, either he or his younger brother suddenly became interested to discover their age. It is not claimed that this had anything to do with a proposed journey to the United Kingdom because, on RJ's account, the events that generated a need for his journey were yet to occur.
30. In oral evidence RJ confirmed that at the time his mother told him his date of birth he did not know what the then current year was in the Afghan calendar. This meant that although he says he had been provided with a date of birth he was unable to work out from this how old he was. He was asked why, if his purpose in asking his mother was to discover his age, and if the information she provided was insufficient to enable him to calculate this, he did not simply ask his mother to provide him with the same information as had been provided to his younger brother immediately before, that being his age in years. Despite being pressed upon this RJ was unable to offer any explanation at all.
31. What he did say is that after this conversation he went out and spoke to his friends to see if they could help him work out his age from the date of birth that he now had been provided with. However, none of his friends were able to do this and so when he left Afghanistan and arrived in London he still did not know how old he was.
32. We do not accept that RJ has given a truthful account of any of this. First, it is impossible to understand, if any such conversation had taken place in Afghanistan between RJ, his younger brother and their mother, why she should have chosen to answer the question relating to the age so far as the younger brother was concerned by expressing the answer in years, telling him he was nine years old while answering RJ's question by telling him his date of birth which, of course, did not deliver an answer to the question asked: how old am I?. Even if she had provided not his age in years but his date of birth in the Afghan calendar, it is impossible to understand why, if that had happened, RJ would not have asked the obvious question to enable him, with his mother's assistance, to calculate his age. Further still, RJ's evidence indicates that he was intent on establishing his age from the

date of birth given because he says he asked his friends about it but they were unable to help. There is no reason at all why, if that were the case, he would then not have returned to his mother to seek help in calculating his age.

33. Therefore, we are satisfied that RJ had no idea how old he was nor what was his date of birth when he entered the United Kingdom. Nor do we have any doubt that the date of birth he was to provide was one selected by HJ and provided to RJ for the purpose of establishing that he was a minor. HJ said in oral evidence that he told RJ what to say about his age, immediately before he took RJ to make his asylum claim.

34. RJ's account is that, having met his brother and, having first registered with Ealing social services as a minor, his brother arranged with him to go to make an asylum claim the following day. His brother told him that he would need to supply his age and date of birth. RJ says that he told his brother what his mother had told him and his brother calculated, wrongly as it turned out, that his date of birth should be expressed as 30<sup>th</sup> May 1995. In fact, as is common ground and agreed between the parties, the correct calculation would have produced a birth date of 21<sup>st</sup> August 1995.

35. In his oral evidence to us, the claimant's brother HJ said that he could not remember being told by RJ, after his arrival here, that his mother had given him a date of birth that needed to be converted to a date that those who would be interviewing him would be able to understand. Instead, HJ told us that he had told RJ that he should say that he was 12 or 13 years old.

36. For these reasons we are entirely satisfied that this part of RJ's evidence is simply untrue. We find as a fact that neither he nor his mother knew his date of birth, that the conversation referred to between RJ, his mother and his younger brother never took place and that the date of birth offered at the asylum interview of 30<sup>th</sup> May 1995 was one agreed between RJ and his brother after he arrived in the United Kingdom.

37. It follows that nothing whatsoever turns upon the asserted error by the brother in thinking that that the 30<sup>th</sup> day of Asad 1374 was 30<sup>th</sup> May 1995 when in fact it was 21<sup>st</sup> August 1995. Neither of those dates is based upon anything other than an arbitrary selection of a date agreed upon between RJ and his older brother.

38. We consider next the evidence offered by RJ about his life in Afghanistan. Unfortunately, the evidence of RJ has disclosed very little indeed about his life in Afghanistan. We have little doubt that RJ has been told to disclose as little information as possible and to a very large extent his response to questions about his life in Afghanistan has been that he cannot remember.
39. Therefore, all we know from RJ about his life in Afghanistan is that he lived his whole life at the same family home, that his father died when he was very young and he has no recollection of him, that he had no formal education, and that he spent most of his time playing with friends with no expectation of entering into employment or become involved in farming the family's land.
40. We consider next the claimant's account of his journey to United Kingdom.
41. We are not satisfied that RJ has given a truthful account of his journey to United Kingdom. He said that when he embarked on this journey, which was arranged with the assistance of an agent paid for by his eldest brother, he had no idea of his ultimate or intended destination. That plainly is untrue because he is recorded to have said elsewhere, during the age assessment process, that he knew that he was coming to United Kingdom to join his brother and that was one reason why he did not seek to claim asylum in the countries where he was arrested and fingerprinted. Another reason for not doing so was that no one asked him to.
42. In any event, his account of how he came to be reacquainted with his brother in United Kingdom stretches the bounds of coincidence to its limits. RJ said that the lorry in which he and five others had been concealed by the agents brought them to the United Kingdom and then to London where they all got out. The others phoned relatives who came to collect them. One of those relatives, who had previously been unknown to the claimant, asked him whether he had any relative in United Kingdom. RJ said that he did not although he did have an older brother who had left home two years earlier and had been "lost" and he did not know where he had gone. He was asked the brother's name and one of the strangers said that he knew someone of a similar (but not identical) name from playing football with him in Southall. This person then phoned the claimant's brother who spoke to him on the phone and established that the claimant was indeed his

brother. The strangers took RJ to Victoria Station where he waited until his brother came to collect him.

43. We have no doubt that the truth of the matter is that RJ knew very well that HJ was safely established in London and was being provided for by the local authority. It can be seen that the social workers responsible for HJ had established that he was in contact with his mother in Afghanistan, having spoken to her on the telephone, and they actively encouraged him to maintain that contact. At F128 a social worker recorded:

“(HJ) has phone contact with his mother and siblings”

In his oral evidence HJ said that when he spoke to his mother on the telephone he told her that he was in this country. It is impossible to understand why the claimant's mother would have kept that information from RJ as he set off to make the same journey, for the same purpose, to the same destination.

44. Further reason to conclude that RJ has not given a frank or truthful account of his journey is found in his evidence about the final stage of that journey. RJ had spent some two months or so living in “the jungle” at Calais waiting for an opportunity for the agents to put him in a vehicle that would take him to the United Kingdom. His evidence was that despite this and despite having lived with many others in a similar situation in “the jungle” he did not know what his ultimate destination was to be until he decamped from the lorry in London and someone told him where he had arrived.

45. We have no doubt at all that RJ's evidence about this part of his journey is untrue. We are satisfied that both he and his brother knew that he was travelling to the United Kingdom and that his brother was expecting his arrival.

46. It emerged from RJ's oral evidence that there were in fact three occasions during his journey from Afghanistan upon which he encountered the police who recorded his name, date of birth and, on at least one occasion, took his fingerprints. On each occasion RJ gave a false name and a date of birth which would have made him over 18. Mr Harrop-Griffiths submits that this evidence should be relied upon as indicating RJ's true age. We do not accept that argument. RJ explained that the agent had instructed him and those with whom he was travelling that they should give false details of identity which would be such as to indicate they were adults because otherwise they may be detained as children. That seems to us to be an explanation that has the ring of truth about it and we accept it.

47. Drawing together this part of the evidence, and taking full account of the fact that the claimant a young person, whether he is a minor or not, we reach the following conclusions and make the following findings of fact. We are satisfied that HJ remained in contact with his mother after he arrived in United Kingdom and that he was expecting RJ to join him in this country. We are entirely satisfied that neither RJ nor his elder brother knew the claimant's age or date of birth and that the date advanced was one chosen by them arbitrarily in order to establish that RJ was a minor. Therefore, as there is nothing to be drawn from the evidence RJ has chosen to make available to us about his life in Afghanistan upon which to base a judgement as to age there is nothing of assistance to be drawn from RJ's evidence other than what can properly be drawn from our assessment of him as he gave oral evidence for us over a number of hours on 13<sup>th</sup> June.

The evidence of the claimant's brother, HJ

48. HJ arrived in the United Kingdom on 6<sup>th</sup> June 2007 and claimed asylum the following day. The basis for his claim was similar to that which was to be put forward subsequently by the claimant, involving an account of adverse attention from the authorities because of the involvement of his elder brother, JJ, with Hezb-i-Islami. That claim was rejected by UKBA, who did not believe to be true the account put forward. There was no appeal against that decision, possibly because, in view of his age, the period of discretionary leave granted was less than that required to generate a right of appeal under section 83 of the Nationality, Immigration and Asylum Act 2002. .

49. When making his asylum claim HJ had said that he was 16 years old. This was not accepted initially by UKBA who referred him to the defendant for an age assessment. The outcome of that assessment was that HJ was the age he claimed and he was allocated a notional date of birth of 1<sup>st</sup> January 1991. This was accepted by UKBA and he was granted a period of discretionary leave to remain.

50. Having just set out an asylum claim to UKBA that he had come to the United Kingdom to escape from persecution at home, he went on to explain to the social workers what, in the light of the subsequent rejection of his asylum claim, might be thought to be his real motivation, or that of his family, in him travelling to the United Kingdom. The initial report from Ealing dated 13<sup>th</sup> June 2007, a few days after HJ's arrival, says this, after having recorded that HJ had

managed only a year of schooling in Afghanistan, having had to end his education in order to support his family:

“(HJ) is a very ambitious young man who has many future plans; he hopes to pursue a career as a Doctor, Engineer or teacher; he has requested assistance to enrol at a school in order to learn English and develop his skills.”

51. He went on to say to the social workers carrying out that initial assessment, and this is important evidence, that the family he had left behind in Afghanistan consisted of his mother and two younger brothers, one of whom he identified as “(RJ) (12)”, Therefore, it can be seen that he identified RJ by name and said he was then 12 years old.

52. This, in our view, is the high water mark of the claimant’s case. The fact is that the defendant and UKBA initially accepted from HJ that he was 16 years on arrival on June 2007 and allocated him a notional date of birth of 1<sup>st</sup> January 1991. He was granted discretionary leave until 1<sup>st</sup> July 2008 when he would, by that reckoning, have been 17 ½ years old. That assessment and that age was accepted by the London Borough of Ealing, the fact being recorded repeatedly in review reports compiled by social workers with responsibility for HJ’s care. It was not until May 2008 that any doubt was expressed about his age. An age assessment was carried out by the social worker, Mr Dean, but for the reasons we set out below we have found that assessment to be flawed.

53. Therefore, the one piece of evidence before us that survives analysis is the acceptance of HJ’s age on his arrival in 2007. As we have pointed out, he said when asked that RJ was then 12. The question that arises is whether reliance can be placed upon that assertion.

54. That in turn raises the question of how HJ knew how old he was on arrival in the United Kingdom and how he knew how old RJ was or on what basis he thought RJ was four years younger than him.

55. It transpires that the explanation put forward by HJ is remarkably similar to that advanced by RJ for knowing his age. In oral evidence HJ told us that he had asked his mother how old he was not long before the events that were to give rise to a need for him to leave Afghanistan had occurred. She had told him he was then 15 so that, given the length of the journey to the United Kingdom, he estimated that he would be 16 on arrival.

56. But, as was the case with his brother, he could not explain why, after having previously been entirely uninterested in knowing his age, he should suddenly have felt driven to enquire. Nor can he say why his mother should have any reason to be in a position to provide this information. We find this evidence no more credible than we did the evidence from the claimant.

57. Therefore, we are satisfied that when HJ gave his age as being 16 years old on arrival in June 2007 he did so on the basis of his best estimate. Similarly, when he said that RJ was 12 years old, that was because he estimated that RJ must be about four years younger than he was and not because he knew that RJ was that age. That may or may not have been a correct estimate his own age, but it was accepted as so by both UKBA and the professional staff of London Borough of Ealing, at least for nearly a year, until Mr Dean, became involved.

58. We heard evidence from HJ also about the circumstances in which he revised his asserted date of birth from the notional, allocated, date of 1<sup>st</sup> January to the claimed actual date of 6<sup>th</sup> June. He described how he was with friends in a park when he met someone who had been a neighbour at home in Afghanistan. This was particularly significant because it had been known by all that these two young men, living with their families in adjacent houses, had been born on the same day. HJ asked him how "his case was going" and told him that he, HJ "had an issue with" his date of birth. HJ, knowing that they shared the same date of birth, asked this friend what date he had given and this was the date subsequently adopted by HJ of 6<sup>th</sup> June 1991.

59. We do not accept that evidence. First, there was no more reason for this friend to know his date of birth than there was for HJ. No explanation is offered as to why that friend should know his true date of birth when HJ did not know his. There is no reason at all to suppose that the date selected by this friend to offer to those with whom he was dealing in seeking to secure leave to remain was any less arbitrarily selected than was the case with HJ or RJ. Further, if it were true that an immediate neighbour in the village in Afghanistan had a known particular date of birth and it was, as claimed by HJ, a regular topic of observation that the two boys had been born on the same day, it is hard to see why HJ's mother should not have shared that information with him before he left to travel here. HJ said he did not know this date of birth in the Afghan calendar. It is also odd that HJ did not secure from him

contact details with the result that he did not see him again after this chance meeting in the park.

#### Evidence of Therese Lorphevre

60. This witness teaches English as a second language and was RJ's tutor at Harrow College for the academic year commencing in September 2010. In our view Ms Lorphevre is well placed to express an informed opinion about RJ's likely age. She has a great deal of experience of teaching adolescents of RJ's age range. Significantly, many are not age disputed and so their age is established. She has taught for the last 20 years and at Harrow College since 1996 where she has a tutor group of 25 students aged between 15 and 18. In each group there are now usually between 8 and 12 students from Afghanistan. In this capacity, between September 2010 and June 2011, she had up to 12 hours contact per week with RJ, 11 hours of which were teaching and one hour pastoral care looking after his academic progress, welfare, housing, social service problems and emotional issues.

61. She adopted a witness statement she made in May 2011 in which she said of RJ:

"In my opinion his behaviour in class is not that of an adult learner (18 plus). He shows little maturity in his interaction with others in class. He tends to play games and he laughs a lot. In my experience this is usually an indication that someone is of a younger age.

I understand that the London Borough of Ealing Social Services have assessed (RJ's) age to be 18 turning 19 years of age on May 2011. I do not think it at all likely that he is this old.

(RJ) says that he is turning 16 years of age on 30 May 2011. In my opinion this is more likely than the view that he will be turning 19 years on that date."

62. She said she had considerable contact with the person (whose name she could not recall) who looked after him in his accommodation because he didn't do his homework and because of his lack of progress at college.

63. When asked where she would place him in age during the time she taught him she replied 17. She did not agree with the suggestion that he was 20.

64. In oral evidence she said that RJ showed immature behaviour and approach to learning. She said that as a person becomes older they engage with learning more and explained that this was one reason why the age group is 15 to 18.



65. She disputed the reference in the age assessment report by Ms McKenzie Parchment and Ms Hennig, which is considered below, that RJ may have learning difficulties. She said if there had been concerns to that effect he would have been sent for assessment and that was never done.
66. Ms Lorphevre could not recall having a conversation with social workers when she is recorded as saying that RJ is *"...doing very well; is very good and supportive towards his classmates. [His] English is improving and he appears to be integrating into the wider society."* She said that if this conversation took place it would have been one week into teaching; he had just joined her tutor group at that time and thereafter he went downhill. He had not passed his first year exams because his childish behaviour had interfered with his performance, he would not do the mock exams; he failed to turn up and he refused to engage. Although he started out well that has to be seen in the context of young learners in respect of whom managing to keep them in class and sitting down is an achievement in itself.
67. When asked why, if 18 year olds misbehave she thought RJ was 17, she replied that all she could say was that his behaviour like the behaviour of most of her students was immature. She said that of the 25 students in her tutor group that year 23 out of the 25 had passed. RJ was one who did not.
68. We found Ms Lorphevre to be an impressive witness whose opinion carries a good deal of weight. Her assessment of RJ's age was based on contact with him for significant periods of time over an academic year in the context of 25 other students aged between 15 and 18, an age group she has considerable experience of teaching over many years including Afghan young people. Although some are age disputed the majority of the tutor group are not, including many other Afghan adolescents.
69. As Mr Gask has reminded us in his closing submissions, maturity and demeanour are recognised to be qualities that are notoriously difficult to assess in the absence of certainty of the subject's true age. In R (AM) v Solihull Metropolitan BC [2012] UKUT 00118 (IAC) at para 20 the Vice President said this:

"The asserted expertise of a social worker conducting an interview is not in our judgement sufficient to counteract those difficulties. 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."

70. In September 2010 RJ asserted he was aged 15 and the defendant asserted he was 18. By both accounts he would have been within an appropriate age range to be in Ms Lorphevre's tutor group. She considered him, during the year that she taught him, to be aged 17, i.e. at the upper range of the group.

### The Age Assessment reports

71. As we have said, there are before us three age assessments in respect of RJ. Two were carried out on behalf of the defendant but the other, commissioned by RJ's then solicitors, which was the second chronologically, was carried out by a social worker who had previously been employed by the defendant and who had worked with Mr Dean, the social worker who had carried out the first age assessment.
72. The role played by Mr Dean takes on additional significance when it is recognised that it was he who had carried out an age assessment upon HJ, immediately he had taken responsibility for him from the social worker previously allocated who had not, it seems expressed any doubts about the age previously asserted by HJ, assessed by the defendant and accepted by all concerned.
73. Therefore, we will examine first the age assessment carried out by Mr Dean, together with another social worker from whom we did not hear evidence, in respect of HJ.

### Age assessment report – HJ

74. Mr Dean is a qualified social worker with 10 years post qualification experience and, according to oral evidence, in total 22 years experience. He is now referred to as a senior social worker. He states he has:

"significant experience not only in assessing the needs of unaccompanied minors but also in undertaking age assessment of which [he] would estimate he [has] conducted not less than 20 including approximately 20 Afghan males".

He has attended internal training courses provided by the London Borough of Ealing and others provided by the London Asylum Seekers Consortium.

75. Mr Dean became HJ's social worker and had his first contact with him on 8<sup>th</sup> May 2008 when he commenced an age assessment. As we have said, until then all concerned had accepted the age asserted and assessed and that HJ was still a minor. In early 2008 Mr Dean's manager determined that HJ should be re-assessed because, according to Mr Dean, HJ was:

"confident, very independent and not easily intimidated by being in a new country where he had difficulties expressing himself in English. He was adept at speaking up for himself. He was physically big and had a mature bearing. He had got into a fight in college."

The age assessment process was started on 8<sup>th</sup> May 2008 and completed on 11<sup>th</sup> August 2008. HJ was also examined by John Graham Ritchie a registered dental surgeon. There were no notes kept of either age assessment interview.

76. Mr Dean, in an analysis summarising his findings in assessing the age of HJ gave the following reasons for rejecting his claimed age and finding him to be over 18 and not 16 (nearly 17) as claimed:

- a. "His mannerisms, body language, his interaction with other adults, leads me to the conclusion that (HJ) is older than his stated age and is over 18";
- b. HJ's muscular physique "cannot be achieved by a child, whose physic (sic) is still developing";
- c. HJ had been observed spending time with people older than his stated age group;
- d. HJ had to be spoken to about his behaviour and having been expelled from college because of fighting and such behaviour "is more accustom [sic] in males in their late teens/early twenties";
- e. HJ "is very adept at advocating for himself on matters concerning his wellbeing"

77. The reasons given by Mr Dean for concluding that HJ was older than he claimed to be, and had been until then treated as being do not, in our judgement, stand up to scrutiny.

78. With regards to HJ's muscular physique, Mr Dean accepted that he was aware that HJ had been training with weights and was unable to say why that would not explain the physique noted. He was shown photographs of a 15 year old athlete which portrayed a younger person with a very well developed physique.

79. Mr Dean accepted that getting into a fight, as referred to in the age assessment, was not an indication of maturity.

The report refers to having been involved in several confrontations resulting in street fights/scuffles as being *"more accustomed (sic) in males in their late teens/early twenties"*; when asked his evidence for that assertion Mr Dean said it was having worked with young people over the years. When asked whether getting into fights at school was equally consistent with being 16/17 as being in late teens/early twenties he accepted this was a possibility.

80. The report refers to HJ spending time with older people and being adept at advocating for himself. Mr Dean accepted that this was not a sufficient basis upon which to assess age but reiterated that this was one of many factors they had taken into account.

81. Mr Dean had obtained a report from a dentist who had been asked to state an expert view of HJ's likely age based on dental x-rays taken by him. But that dentist concluded from the X -Rays that the absence of the lower left wisdom tooth rendered analysis of age by reference to the other wisdom teeth unreliable and therefore he was unable to assess age from HJ's teeth. Despite that, he did feel able to go on to offer a view about HJ's likely age, that view not obviously based upon his expert opinion as a dentist but, upon the presence of sideboards and shaving habits which are not obviously matters for a dentist to comment upon. He said that the three other people assessed by him that day were 90% likely to be older than 18 and that HJ:

"...gave every appearance of being the oldest in the group. In addition HJ showed slight gum recession and bone loss in front of one lower front tooth, he had an established shaving habit and his side boards were of trimmed facial hair not down combings of head hair. None of these latter features is age specific but they do point to an older rather a younger age (sic)".

82. HJ's age assessment report makes no reference to the dental examination, although in oral evidence Mr Dean said that regard had been had to the report in reaching that decision. In the letter to HJ informing him that Ealing considered him to be over 18 specific reference was made to the outcome of the dental assessment. In oral evidence Mr Dean acknowledged that:

"with hindsight he (the dentist) should not have concluded what he did. We made our decision not only on what he (the dentist) said but also on events."

83. That Mr Dean did place undue reliance upon the dental report is clear from a comment in the subsequent age

assessment report he prepared in respect of RJ in which he said:

“We have taken into account the fact that (RJ))’s brother (HJ) had a dental age assessment in 2008... the outcome of which concluded that (HJ) was over 18....)”

84. The age assessment disclosed in the papers before us gives a claimed date of birth of 06/06/91. We have described above how this date came into play. There are no recorded questions or explanation given why this differs from the date of birth initially allocated to HJ or why that date of birth is different to the date of birth referred to in the subsequent records of meetings with HJ – which remains his initially allocated date of birth. Mr Dean stated that he would have asked about claimed date of birth as part of the interview and could give no explanation why no reasons for the changed claimed date of birth were recorded.

85. Mr Dean was asked about the fact that, at some stage, he had become aware that HJ was asserting that the notional date of birth allocated as 1<sup>st</sup> January was wrong because he had discovered that his actual date of birth was 6<sup>th</sup> June. Having said in evidence that in such circumstances, while the year of birth established by the process of age assessment would be maintained, he would accept the particular day and date of birth asserted. That it did not happen here was an oversight.

86. But that does disclose the readiness with which Mr Dean would have been happy to accept a 6 month change in the assessed date of birth.

87. We later heard oral evidence from another social worker, Ms McKenzie-Parchment, that the particular day and month of birth would be accepted anywhere in the range from 1<sup>st</sup> January to 31<sup>st</sup> December. That admits a whole year of variance, once the year of birth has been accepted, dependant upon nothing more than the birth date details asserted by the person whose claimed age is not accepted. That does, perhaps, illustrate how inexact is the process of assessing age that is adopted.

88. Mr Dean denied that the second age assessment of HJ had been undertaken with a view to saving the defendant money. He said that HJ had continued to receive financial and emotional support after his age had been re-assessed.

89. Considering all this in the round we fail to see how the reasons given in the assessment report can possibly

be sufficient to displace the position previously accepted in respect of HJ's age.

The first age assessment of RJ – by Mr Dean and Ms Aderinola

90. The first age assessment of RJ was carried out by Mr Dean and another social worker from whom we did not hear evidence. This commenced on 13<sup>th</sup> August 2009, shortly after HJ arrived in the United Kingdom claiming to be 14 years old with a date of birth, as then asserted, of 30<sup>th</sup> May 1995.

91. It must be recognised that Mr Dean had previously declined to accept the age asserted by HJ, whom he knew to be HJ's brother, and he knew that there was a four year age gap claimed to exist between them. It is, in our view, unrealistic to accept, as Mr Dean says, that he was able to leave that entirely out of account in carrying out the assessment of RJ's age.

92. In our view it is hard to identify any reliable line of reasoning in this report to support its conclusion. In the first section, under a heading "Physical Appearance and demeanour", the following points are noted. There was evidence of acne and spots and a "lightly thin moustache" but "this is not indication that of someone older than 18". RJ was said to be "a relaxed confident young person, mostly because of his brother's presence". He was said to maintain little eye contact except when communicating. Otherwise "he held his head down and interlocked his fingers".

93. There is nothing there upon which to found doubt that this was a 14 year old. Mr Dean accepted in evidence that the description of RG sitting with his head down did not sit easily with the observation elsewhere in the assessment of his "open manner".

94. Perhaps not sitting comfortably within a section dealing with physical appearance and demeanour, the report adds that RJ was vague about his journey to the United Kingdom, describing having travelled by lorries and a ship "but had no indication of time frames". Yet the very next sentence says:

"He said that he travelled with other young people and the whole journey took 8/9 months."

Finally, it is noted that RJ was unable to say which countries he had travelled through and he confirmed he had been fingerprinted in two separate countries but could not say which, and that his intention was to claim asylum here, having

joined his brother in the United Kingdom, which is why he made no asylum claim elsewhere on the journey.

95. Although we have also noted in RJ's evidence a reluctance to provide detail when asked to, given that Mr Dean was aware that the journey had been organised by agents, it is not immediately apparent what other information might reasonably have been expected to be offered. He also accepted, in his oral evidence, that it was not unreasonable to find that a young person undertaking such a journey was unaware of the places he had travelled through.

96. The second section of the assessment form is headed "Interaction of person during assessment" and largely reiterates what was said in the first. Although RJ answered most questions "quickly and efficiently in a calm, relaxed manner" and was "confident and clear when speaking about his journey" as the journey took 8 or 9 months it was considered that RJ was "very vague and reluctant to give any more details".

97. The difficulty with that is that there is no indication of what more was expected of RJ and it is not suggested that he failed to answer any question that was put to him.

98. Finally, in this section, it is said that RJ appeared comfortable with the process and:

"It was as though he knew what to expect and the questions to be asked."

But, as Mr Dean confirmed in oral evidence it was not put to RJ that he had been "coached" which is the clear implication in what is said, and so RJ had no opportunity to respond to that suspicion, as he should have had. Nor is there any indication of what it was that generated a suspicion that RJ had been coached. All that is said is that he answered the questions he was asked in a calm efficient manner. Given that he was in the reassuring presence of his elder brother and the absence of evidence of "coached answers" it is hard to see how that concern could be justified.

99. The third, fourth and fifth sections of the assessment form disclose nothing of consequence other than providing confirmation that RJ was unaware of the age of family members; of his account, which we have rejected, of having been provided with his date of birth by his mother before leaving Afghanistan and having been vague and evasive about

questions concerning his life in Afghanistan, something we also have noted and commented on above.

100. The sixth section of the form is of some significance. The point made here, which is a point taken against RJ, is that he was able:

“to be self sufficient in travelling across various countries unaided and supported. This behaviour demonstrates that Zenulah (sic) has the maturity older than someone older than (sic) 14 years old,... His ability to engage in an activity of great risk and danger to travel to the UK leads me to belief that (RJ) is older than 14 years old.”

But of course it was never RJ's case that he had made this journey unaided and unsupported. In fact the contrary was the case. Money had been paid to an agent to organise the journey to the United Kingdom and RJ was never left to make any decision about the journey himself, being under the supervision of an agent throughout. That was not unexpected. Mr Dean told us that in his experience 95% of unaccompanied minors arriving in the United Kingdom have been assisted by agents. He said also that he had known claimants younger than RJ's claimed age to have made such a journey.

101. Nothing of consequence is added by the remaining sections of the form which brings us to section 9, “Analysis of information gained” which Mr Dean told us was where he set out the factors that were material to his conclusion.
102. Although those conclusions conclude the observation that RJ “has an appearance of a young person” as he was noted to be “confident in his body language and communication skills” and “evasive when talking about his journey to the UK”, given that he would have been just 13 ½ years of age, on his account that led Mr Deans and his colleague with whom the assessment was carried out to conclude that RJ must be older. This was reinforced by the observation that “his mannerism, level of maturity, his interaction with adults, lead us to the conclusion that (RJ) is older than 14 years old.” The conclusion was that “On the balance of probability we are of the opinion that (RJ) is aged 17+ years old”.
103. We find the reasoning and the analysis wholly unpersuasive. Put another way, it is not easy to see why all of the issues identified might not be reconciled equally with a young person of 14 years as a person three years older. When one adds to this the fact that RJ was given no opportunity to respond to some key issues which were being held against him we are unable to accept this assessment report as a sound basis to establish the claimant's likely age. We find that this report



provides very little assistance to the task before us of reaching a decision as to RJ's age. We place no weight upon its conclusions but do have regard to the document as a record of what the two social workers saw and heard.

The 2<sup>nd</sup> age assessment of RJ – by Ms McKenzie Parchment and Ms Hennig

104. This assessment was not carried out by the defendant but it is relied upon because it reached a similar conclusion as did those carried out by the defendant. This assessment was commissioned by the solicitors acting for RJ in his asylum appeal. We heard oral evidence from Ms McKenzie-Parchment who, we accept, was suitably qualified to carry out this task. Her conclusion was that RG's allocated date of birth of 30<sup>th</sup> May 1992 was correct, rejecting his claim to be three years younger.
105. Ms McKenzie-Parchment acknowledged that there was probably no responsible adult present during her interview with RJ. She said that the position is now clear that there should be. I
106. When this witness was questioned in detail about the reasons set out in the report offered to support its conclusions a number of difficulties emerged.
  - a. There is reference to RJ's height but Ms McKensie-Parchmant accepted this was not a relevant indicator of age and to an absence of grey or white hair which simply meant there was no reason to enquire further on that account;
  - b. It was noted that RJ's face showed signs of acne, marks and blemishes but it was accepted that a person younger than 15 might exhibit such physical manifestations of acne;
  - c. It is said that "the facial skin appeared to be shaved regularly" but in evidence it was accepted that it could not properly be deduced from a visual inspection on a single visit how frequently shaving occurred and the witness thought she may have been told by RJ that he shaved once a week although that is not recorded in this report drawn up nearly two years ago;
  - d. Ms McKenzie-Parchmant and her colleague noted in the report that "RJ's voice did sound as if it had broken a while ago" but in evidence she accepted that it was not in fact possible to gauge from the conversation that had taken place how long before then the voice had broken;

- e. She wrote in the report that the clothes RJ had selected himself to wear were “more suited to someone in their very late teens and older”. Asked about this she explained that this was a reference to his choice of a short black trench coat to wear over jeans and a T shirt. It was her view that such a coat was not “popular attire for someone aged 15” but nothing further was offered in support of that. She acknowledged that, in view of the first age assessment made by the defendant, RJ had been treated as a 17 year old and that young people did tend, in any event, to seek to dress in line with their peers;
  - f. Ms McKenzie-Parchmant said that when conducting the age assessment account would “not necessarily” be taken of the fact that RJ had been treated as a 17 year old in terms of housing and schooling.
  - g. The witness said that if he were the age he claimed to be RJ would not have maintained eye contact to the extent he did. But no account appears to have been taken of the fact that in the year or so RJ had been in the United Kingdom he had been required to undergo a significant number of interviews with persons in authority;
  - h. Similarly, the report noted that RJ was able to avoid fidgeting throughout a 2 hour long interview, drawing from that reinforcement of the view that he was older than claimed. No account has been taken of the experience of the claimant during a 8 month long journey during which he had to spend long periods of time concealed in lorries, on occasion without knowing if his presence was known to the driver;
107. Looking at all the reasons given, not just the examples set out above, we can find nothing of cogency that supports the conclusion reached as to RJ’s age that should be preferred to the age asserted by him. Thus, what is left is the unsubstantiated professional opinion of a trained social worker as to RJ’s age, based upon a two hour long interview. In our judgement this is not, considered alone, such as to prove much in the way of assistance to the defendant’s case.

The 3<sup>rd</sup> age assessment (the 2<sup>nd</sup> involving Mr Dean)

108. This age assessment, the result of a process that commenced on 14<sup>th</sup> December 2010 and ended on 28<sup>th</sup> January 2011 when it was served upon the claimant, is the decision under challenge in these proceedings although, plainly, that which went before is the backdrop against which the picture is painted. Mr Dean insisted that this was a re-assessment,

rather than a review of his earlier decision. With respect to Mr Dean we have difficulty in accepting that assertion. The earlier assessment would have been in his mind because the defendant had agreed to set it aside and consider the matter afresh. As we know, he had also been involved with the age assessment of HJ and was aware that the two brothers had always claimed an age difference between them of about four years. There is an unavoidable air of artificiality about any pretence that this was an assessment of RJ's age carried out afresh, uninformed by anything that had previously happened. Indeed, Mr Dean would, quite properly, draw upon his experience of dealing with both RJ and HJ in a professional capacity.

109. Indeed, in the second age assessment are reproduced extracts from the first. Mr Dean confirmed in his oral evidence that reasons for reaching the decision arrived at in this age assessment are those set out in section 9 of the report.

110. The first of those reasons is that account had been taken of:

“the fact that (HJ) had a dental age assessment in 2008 based on an x-ray examination, the outcome of which concluded that (HJ) was over 18 years of age at the date of the assessment.”

But, as we have seen, that was not a view expressed on the basis of evidence provided by an x-ray examination because that revealed that nothing could be drawn from the x-ray. That means that the report from the dentist has not been assessed for what it actually was and was regarded to be authoritative for reasons that were incorrect.

111. The second reason given is that RJ failed to disclose to UKBA or to those conducting age assessments that he had been arrested in Calais and that his fingerprints were taken. That assertion is simply wrong. RJ provided this information to UKBA when interviewed on 3<sup>rd</sup> November 2009 and to Mr Dean himself on 13<sup>th</sup> August 2009 at the time of the first age assessment. When asked about this Mr Dean confirmed that it was inaccurate to say that RJ had failed to disclose this information. But he added that what RJ had failed to do was to say that he had provided a different date of birth than that now claimed. But it is not apparent that anyone asked him about that. And we have addressed above the reason offered by RJ for having given the authorities a false date of birth and have accepted that he had good reason to do so.

112. There follows in this section of the age assessment report a section concerning the approach taken to the report prepared by Dr Birch. As we have not been asked to look at that report it is not necessary to engage with what is said other than to say that, even though that was a key reason for the defendant agreeing to revisit the issue of the assessment of RJ's age, nothing turns on that now and it is not a factor that informed the age assessment reached by Mr Dean and his colleague because they rejected it.

113. That leaves a simply articulated conclusion:

"Having re-assessed the evidence and interviewed (RJ) we are of the opinion that on the balance of probability that (RJ) is 18 years of age."

After which is endorsed a comment from RJ:

"My age is not 18 as you state, but I am 15 years of age."

and

"The medical report [Dr Birch's] accepted me as 15 years 6 months, why are you (social care) not agreeing with that?"

114. Drawing together this part of the evidence we conclude that the age assessment report produced is flawed and its conclusions are based upon reasoning that is either simply wrong or insufficient to support the outcome. In reality, in our judgement Mr Dean and his colleague have done no more than look to see if there was any reason to depart from the conclusion of the first assessment and found none.

#### Closing submissions

115. We do not need to set out, in detail, the helpful closing submissions advanced by Mr Gask and Mr Harrop-Griffiths because we have taken those into account as we have assessed the evidence and had regard to all that has been said, both in the skeleton arguments and in oral submissions, whether we have specifically referred to the points made or not.

116. Mr Gask did stress, however, that in advancing his submissions reliance was placed upon two principles drawn from B v London Borough of Merton [2003] EWHC 1689 (Admin). First, that where a decision maker has formed a provisional view that a claimant has lied as to his age, the claimant must be given an opportunity to address the matters that led to that view, so that he can explain himself, if he can.

We are not satisfied that has happened here. While the claimant has had an opportunity to indicate his disagreement as to the outcome of each of the three age assessments, we cannot see that there has been, in any of them, a moment where he has been provided with an opportunity to respond while those concerns were provisional. Information as to the process of challenging the decision is a very different thing from an opportunity to address concerns before a concluded view is reached.

117. The second principle relied upon by Mr Gask is that the fact that a claimant gives an untruthful account of matters, although relevant, is not necessarily indicative that he is being untruthful about his age.

### Conclusions

118. Drawing all this together and doing the best we can with the evidence the parties have chosen to put before us, we reach the following conclusions. We are entirely satisfied that neither HJ nor RJ, nor their families had any idea at all as to the dates of birth of any family member. Nor do we accept that the position would have been any different for the friend of HJ's with whom he said he shared the same date of birth and who he says he met in the park in Shepherds Bush and provided him with the date he had put forward as his date of birth. It follows from this that we have rejected both of their accounts of being provided with a date of birth or age by their mother so that when they were asked how old they were on arrival in the United Kingdom the response was based upon an estimate of their own age, that estimate no doubt informed by a knowledge of the advantages to be secured by asserting as young an age as possible.
119. We have accepted that HJ and RJ were brought up as brothers and no one has challenged their claim of there being an age gap of about four years between them.
120. The first considered assessment of the issue of age occurred in late June 2007 when HJ arrived and claimed to be 16 years old. That was accepted by the defendant after assessment and by UKBA, who assigned a notional date of birth of 1<sup>st</sup> January 1991. HJ was treated as a 16 year old.
121. There is documentary evidence before us in the form of regular social work reviews of HJ, which demonstrate clearly that the acceptance of his age based on that date of birth was repeatedly reaffirmed by being reproduced in those reports by

social workers and other professionals tasked with meeting the responsibilities due to a child in his circumstances.

122. For reasons that have not been shown to be sufficient, doubt was expressed as to HJ's age and Mr Dean carried out a re-assessment which concluded that HJ was three years older than claimed. But, for the reasons we have given, that assessment was flawed and so it falls away. The consequence of that is that the previously unchallenged acceptance of HJ's age prevails in our assessment of the facts, there being no reason to set it aside.
123. On that basis, HJ was correct to estimate RJ's age as being 12 years old when describing his family composition when interviewed by UKBA in June 2007, if he was correct also in estimating the age difference between them as being four years.
124. When RJ arrived he sought to assert his age as being 14. He did this by offering a date of birth, and subsequently a corrected one, both of which we are satisfied were selected at random, connected only in that both sought to offer a date in the Western calendar equivalent to 30 Assad 1374. He was age assessed as being 16 years old but that was based upon an age assessment that was deeply flawed for the reasons we have set out above and, in any event, was informed by the earlier flawed assessment carried out in respect of HJ. The second and third attempts to assess RJ's age by formal process were equally unsatisfactory and unreliable.
125. This means that we are left with just one reliable assessment of age that survives scrutiny, that being the initial acceptance of HJ's age as asserted on arrival, and drawn from that, the fact that RJ would have been 12 years old on 6<sup>th</sup> June 2007 when HJ said his brother was 12 years old, assuming that HJ was correct to estimate the age difference as being one of four years. It is important to remember that he did not *know* how old RJ was.
126. The next piece of evidence that we find of assistance is provided by Ms Terese Lorphevre, who was RJ's tutor for the academic year ending in June 2011. Her evidence might, on a superficial analysis, be considered to be contradictory because she has given differing views about RJ's age. But, properly considered, there is no contradiction in her evidence. She was asked first to express a view as to which of two dates was most likely to be correct and she chose between them. This was her written evidence. She was then asked a quite different question in oral evidence which was what she

thought was RJs age and she said that she thought he was 17 when she taught him. We take that as his age at the end of the period of tuition, so that she regarded him as being 17 years old in June 2011.

127. That raises a possible tension with the evidence previously considered which is that HJ had said that RJ was 12 in June 2007 which, if correct, would mean that he would have been 16 years old in June 2007 and not 17 as Ms Lorphevre thought.
128. Given what we have said above, both views are expressions of an estimate of age, based in HJ and RJ's case upon their idea of how many years separated them and their own assessment of their likely age and in Ms Lorphevre's case upon two decades of experience of dealing with young people, in respect of only some of whom age was disputed. Taking account the incentive for HJ to understate his age, to which RJ is locked in because of the need to maintain the age gap asserted, balanced against the acceptance of HJ's asserted age on arrival, we find this to be an assessment that is not altogether straightforward.
129. The probability is that either *could be* correct but we have to make a judgement based upon our assessment of the evidence as whole. We find that Ms Lorphevre is best placed to make this assessment of age, given her professional experience and the length of time she had close dealings with RJ. Therefore we find as a fact that in June 2011 RJ was 17 years old.
130. That of course does not provide a date of birth. There is no reason to think that any day or month of birth asserted by either HJ or RJ is based upon the reality of their actual birthdates. Therefore, it seems to us that, once we have concluded that RJ was 17 years old when he finished college in June 2011, we should take 1<sup>st</sup> February 2011 as RJ's 17<sup>th</sup> birthday, that being a date about halfway through the academic year.
131. To test that finding we can apply it to other "measures" that have arisen in this case. That does not in fact grate with what we have said above about the acceptance by UKBA and by the defendant of HJ's age on arrival in 2007. That is because the age difference between HJ and RJ is based upon their estimate uninformed by any knowledge of their actual ages. Thus, dependant upon whether one were born at the beginning of the year and the other at the end of it, nothing of real merit in

terms of reasoning turns on the fact that RJ may have been 13 years old in June 2007 when HJ thought he was 12.

132. We have also, of course, had the opportunity of seeing for ourselves RJ and noting how he conducted himself throughout what was a lengthy hearing. He also spent most of a day giving oral evidence. We also had before us two photographs of RJ, one of which was taken when he was first assessed and one more recently. We approach with considerable caution any assessment of our own based upon the appellant's appearance and demeanour. But we do observe that nothing we have seen is difficult to reconcile with our conclusions as to his age, which we have reached upon the other evidence.

### Decision

133. We make a declaration, therefore, that the claimant's date of birth is 1<sup>st</sup> February 1994. This means that he is now 18 years old and no longer a minor. The parties may make further written submissions on the terms of any further orders sought and in particular on the issue of costs.

Signed

Upper Tribunal Judge Southern

10<sup>th</sup> August 2012