

## The age assessment process

A significant number of young asylum seekers arrive in the UK without documentation to prove their ages, or with documentation that does not belong to them or has been obtained fraudulently. Many have their age questioned by either the Home Office, or the local authority to which they have turned for support. In 2015, 789 children were recorded as having had their ages disputed, although this does not represent the total number in the UK as it only reflects Home Office disputes. This fact sheet provides an overview of the age assessment process.

### Why is age important?

The question of age is extremely important, as it will not only affect how an individual is supported, and their access to education, but it will also affect how their asylum application is processed.

Adult asylum seekers and families are entitled to support, including accommodation and essential living needs, from the Home Office. For children seeking asylum, however, support should be provided by the local authority in which they are physically present. Section 17 of the Children Act 1989 imposes a general duty upon a local authority to safeguard and promote the welfare of children within their area who are in need, and section 20 of the same Act states that every local authority shall provide accommodation for any child in need within the area who requires accommodation as a result of there being no person who has parental responsibility for him/her (for more information, see the MCP [fact sheets on local authority support for children](http://bit.ly/1CB8MYj) at <http://bit.ly/1CB8MYj>). In addition, a local authority must ensure a child receives appropriate education. As well as it being important to determine whether they are a child or an adult, the exact age of a child has significant implications for the level and type of care and education they receive.

The process of determining an individual's asylum claim is different depending on whether a person is a child or an adult. Historically there have been different, more favourable policies in relation to child asylum-seekers. In addition, section 55 of the

Borders, Citizen and Immigration Act 2009 places a duty on the Home Office to safeguard and promote the welfare of children. There are more procedural safeguards (such as interviewing in the presence of an appropriate adult) in place when determining children's claims and their maturity is taken into account when assessing credibility. Furthermore, the Secretary of State should not detain a child under her administrative immigration powers, save in exceptional circumstances and then only overnight. However a significant proportion of age-disputed young people have been detained and then subsequently found to be children. In 2013, the Refugee Council worked with 44 age dispute individuals who had been detained as adults, of which 36 were subsequently released as children. [1]

### Why is it difficult to establish the age of many children and young people?

Age determination is an inexact science, and the margin of error can sometimes be as much as five years either side, especially around the time of puberty. The Royal College of Paediatrics and Child Health has stated:

*There is no single reliable method for making precise estimates. The most appropriate approach is to use a holistic evaluation, incorporating narrative accounts, physical assessment of puberty and growth, and cognitive, behavioural and emotional assessments. [2]*

A number of factors make age assessments difficult, including:

- Young people may look and act older than they are because of their experience in their country of origin, and their long and difficult journey to the UK.
- Young people may have given different ages to different professionals/authorities, particularly on their journey to the UK, where to be identified as a child may have been

perceived as placing them in greater danger.

- Boys in some parts of the world grow facial hair earlier than boys in Europe. For example, in some parts of Afghanistan it is common to grow a beard at the age of 13 or 14.
- Within ethnic and national groups there are wide variations in young people's growth, ages of puberty and so on – just as in the UK.
- A young person may not know their date of birth. In some places date of birth is not important and birthdays are not celebrated. In some places calendars are rarely used.
- Different calendars are used in different countries. Converting from one calendar to the other can be difficult – mistakes can be made and the wrong date of birth provided.
- The expectations brought by children and adults to the age assessment process – for example, children may believe that they should claim certainty about their age when they do not know how old they are. Also, social workers may feel that children must be a certain age because they have made their journey alone.
- Some children will be traumatised and/or illiterate and this may have an impact on their ability to communicate and provide information in a coherent manner.

### Home Office decisions on age

Age disputes most frequently arise when an asylum seeker first applies for asylum, usually at a port of entry or at the Asylum Screening Unit. If an asylum-seeker's claim to be a child is doubted by Home Office, and 'there is little or no documentary evidence to prove their age', the Home Office will conduct an initial 'assessment' of the individual based solely on appearance and demeanour, even though this has been shown to be a flawed method of deciding age.

[3] Home Office policy is as follows:

a) If the claimant's physical appearance/ demeanour "very strongly suggests that they are significantly over 18 years of age" they should be treated as adults.

b) All other applicants should be afforded the benefit of the doubt and treated as children, until a careful assessment of their age has been completed. This does not indicate the Home Office's final acceptance of the applicant's claimed age, which will be considered in the round when all relevant evidence has been considered, including the view of the local authority to whom the child should be referred.

In both category a) and category b) cases, the individual should also be given an IS.97M form stating that their age is disputed. [4]

### Age assessments by a local authority

Arrangements for referring age-disputed young people will vary across local authority areas. Some young people will already have been assessed prior to claiming asylum whilst others will be referred according to where they stated they lived at the time of the asylum application.

Even if the Home Office is treating someone as an adult, if a referral is made to children's services (either self-referral or by an agency supporting the young person), the local authority must make their own decision as to the young person's age, as a 'gateway decision' for the purposes of deciding whether they then might be a child in need under part 3 of the Children Act 1989. The child should be supported as a child whilst the assessment is being undertaken.

However, age assessments should not be carried out as a matter of course but should be used to ensure that appropriate services (including education) are offered. Disputing the age of a child or young person can affect the way they engage with their social worker, and the repeated questioning of their credibility and identity can leave children and young people feeling angry and confused. Therefore, it is important that age assessments are not undertaken

unless absolutely necessary. Statutory guidance on the care of unaccompanied children states that:

*Age assessments should only be carried out where there is significant reason to doubt that the claimant is a child. Age assessments should not be a routine part of a local authority's assessment of unaccompanied or trafficked children. [5]*

A social worker should be clear what the 'significant reason' is to doubt the age, and this should be conveyed to the young person. In some circumstances, the child or young person will be able to produce clear information about their age, for example, from documents or from reference to education.

The Modern Slavery Act 2015 also makes clear that where there is uncertainty over the age of a suspected victim of trafficking, there should be a presumption that the victim is under 18 under a local authority assessment has taken place or the person's age is otherwise determined. [6]

There may be occasions where a local authority feels that an age assessment is necessary but where the Home Office requests an assessment before it will treat the young person as a child in the immigration process. In these circumstances the local authority may need to negotiate with the Home Office to explain why the young person should be treated as a child without further assessment.

### **Which local authority is responsible for carrying out an age assessment?**

Local authority responsibility is tied to geographical boundaries. It is therefore possible that a separated child who has moved across these boundaries may seek age assessments from more than one local authority. In some cases assessments may not agree.

If a child has entered the National Transfer scheme and will be moved from one local authority to another, then the local authority with responsibility for assessing the child's age, if it is in dispute, should be the receiving (second) local authority. [7]

A local authority approached for an age assessment should check whether any previous assessment has been carried out by another local authority. If an assessment has previously been completed, it must be established whether this was conducted lawfully (usually shown by completion of the information sharing proforma – see below). If a lawful assessment has not been carried out then one must be undertaken. The 'old' local authority and 'new' local authority must collaborate and promptly agree which will take responsibility for conducting the age assessment.

In the event that new information is being brought forward, if the individual has moved location and local authority, this should also be referred to the local authority which conducted the previous age assessment and agreement reached, depending on the circumstances, as to which local authority will reassess the age of the individual, taking full account of all sources of information.

In the event that no new information is brought forward that was not considered as part of the original assessment, the individual should be informed that they can make a formal complaint to the local authority responsible for the age assessment to dispute the age assessment findings, and/or look to legally challenge the age assessment and be referred to independent advice. [8]

### **How should a local authority carry out an age assessment?**

There can be a lack of awareness as to what is required to conduct a lawful and fair assessment and what weight to give to different, sometimes conflicting, indicators of age/maturity. Many social workers have reported feeling that they do not have the specialist skills required, sometimes due to having to learn 'on the job' from fellow professionals.

A local authority's assessment must be as full and comprehensive as possible, and conducted in a clear, transparent and fair manner. Before 2015, there was no guidance provided to local authorities on how to conduct an age assessment. Instead the approach taken evolved through practice by local authorities and legal challenges to the process. In October 2015,

though, best practice guidance for social workers on conducting age assessments was published by the Association of Directors of Children's Services. It is hoped that this guidance, co-written by experienced social workers, practitioners and legal experts, will help social workers undertake this difficult task, with the input of others working or caring for these children, such as foster carers and advocates. This comprehensive guidance can be found at <http://adcs.org.uk/safeguarding/article/age-assessment-information-sharing-for-unaccompanied-asylum-seeking-childre>

### **After an age assessment**

If a local authority has assessed the child or young person to be their claimed age, then their care and support under Section 20 of the Children Act 1989 should continue. If they have assessed them to be a child but of an age different to that claimed, then their support should continue, but work will be needed to explain to the child why this decision was reached.

For those assessed to be adults the local authority should arrange their safe transition to adult support, usually through Home Office Asylum Support.

If the Home Office has disputed the child or young person's age, then they will need to know the local authority's decision promptly. This should be shared through the agreed 'Model Information Sharing Pro Forma – Outcome of Age Assessment'. The Home Office should not be provided with the complete assessment, as per the Association of Directors of Children's Services (ADCS) / Home Office Joint Working Guidance. [9] In most circumstances the Home Office will accept a local authority's decision on age but it will still come to its own decision as to whether said assessment was conducted properly. If it appears that the findings are unclear, or do not seem to be supported by the evidence, or that the assessment has not been carried out in accordance with the principles set out in case law, then case owners must discuss the matter with the assessing social workers.

### **Determination of age by the First Tier Tribunal**

There have been cases where the First Tier Tribunal (Immigration and Asylum Chamber) has made its own findings about a young person's age as part of an asylum appeal judgment. The Immigration Judge should only be making a finding on age in so far as it is necessary to establish risk under the Refugee Convention.

In these cases, it has been held that a local authority cannot simply accept the tribunal's finding and deny or withdraw services. Neither the Tribunal's decision nor the evidential basis on which it was reached have any weight outside those proceedings. The local authority must instead make its own decision based on all the available facts including its own age assessment and 'give due respect to the basis and reasoning of the tribunal's finding, whilst taking into account of the fact that they may have difference evidence available to them'. [10] However, the Home Office should accept the determination and treat the appellant as a child, if that is the finding of the Judge. In certain circumstances, it will be appropriate to request an adjournment of an appeal hearing on the basis that there is an ongoing judicial review challenging a dispute over age.

### **Challenging an age assessment**

Age assessments can be challenged by way of judicial review. Judicial review is carried out by the Administrative Court, although claims for judicial review in these cases are now referred to the Upper Tribunal (Immigration and Asylum Chamber). In the past, judicial review challenges were based on the argument that the assessment had not been conducted properly and that the correct procedure had not been followed – if this was found to be the case, the local authority was obliged to re-assess.

This is now not the only test – if evidence can be put forward that contests the age assessed by local authority then there is no need to challenge the process. Furthermore, the Supreme Court in *R(A) v Croydon, R(M) v Lambeth* held that, although age assessment remained the responsibility of local authorities, where there is a dispute between the young person and the local authority following an age assessment, the person's age falls to be determined by the High Court. [11] The Court is not restricted to choosing between the child's claimed age or the local authority's assessed age, but that it can come to its own conclusion. [12]

The following guidance has been given on how full age assessment hearings should be conducted:

- The question is not just whether the person is a child, but how old he is. Therefore, a challenge can still be brought against a decision that a person is a child who is older than he claims
- The case will go ahead if there is a realistic prospect that, at a fact finding hearing, the court will conclude that the person is younger than assessed by the local authority.
- If paediatric evidence is adduced in an age dispute fact finding hearing, it may be tested by cross examination – meaning that social workers or doctors may be cross examined.
- Whether the claimant should be subject to cross examination and whether any special measures (such as evidence by video link) should be put in place should be left to the trial judge. [13]

There have now been a number of substantive judicial review hearings of age assessments, which have involved detailed live evidence from a number of witnesses and lengthy cross-examination. In the majority of cases, the claimant will be expected to give live evidence, although there may be cases when this is inappropriate and the young person's legal representative should assess this.

### **Age assessments in other contexts**

There are also situations where queries on age arise where the Home Office is not directly involved, for example where a school believes a child is younger or older than claimed where a family have already been granted leave to remain in the UK, or where court or probation services are charged with accommodating a young person who is undocumented but claiming an age they cannot prove. If the matter does not involve an assessment as to whether there is a child in need, children's services are not obliged to assess age. If the matter becomes important it may be necessary to employ the services of independent social workers/age assessors or other doctors or professionals to assist departments in providing appropriate services.

Age disputes can also arise in the criminal justice system - for more information see the MCP fact sheet on [age disputes and the criminal justice system](http://bit.ly/1J6nOSP) at <http://bit.ly/1J6nOSP>.

### **NOTES**

- [1] Refugee Council, 'Age Dispute Project 2013: End of Year Report', at [http://www.refugeecouncil.org.uk/assets/0003/3077/Age\\_Dispute\\_End\\_of\\_Year\\_Report\\_2013.pdf](http://www.refugeecouncil.org.uk/assets/0003/3077/Age_Dispute_End_of_Year_Report_2013.pdf)
- [2] The Royal College of Paediatrics and Child Health, Policy statement on the assessment of the age of refugee children, 2007.
- [3] Coram Children's Legal Centre, 'Happy Birthday? Disputing the age of children in the immigration system', 2013, at [http://www.childrenslegalcentre.com/index.php?page=happy\\_birthday?](http://www.childrenslegalcentre.com/index.php?page=happy_birthday?)
- [4] Home Office Asylum Instruction, 'Assessing age', section 2.1 at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257462/assessing-age.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257462/assessing-age.pdf)
- [5] Department for Education, 'Care of Unaccompanied and Trafficked Children', 2014, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf)
- [6] Section 51, Modern Slavery Act 2015
- [7] Interim National Transfer Protocol for Unaccompanied Asylum Seeking Children 2016-17, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/534258/Interim\\_National\\_UASC\\_transfer\\_protocol.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534258/Interim_National_UASC_transfer_protocol.pdf)
- [8] Association of Directors of Children's Services Age Assessment Guidance/Home Office, Joint Working Guidance, 2015 at

<http://adcs.org.uk/safeguarding/article/age-assessment-information-sharing-for-unaccompanied-asylum-seeking-children>

[9] At <http://adcs.org.uk/safeguarding/article/age-assessment-information-sharing-for-unaccompanied-asylum-seeking-children>

[10] *PM v Hertfordshire County Council* [2010] EWHC 2056 (Admin)

[11] *R(A) v Croydon, R(M) v Lambeth* [2009] 1 WLR 2557

[12] *MC v Liverpool City Council* [2010] EWHC 2211 (Admin)

[13] *R (F and Ors) v Lewisham and Ors* [2010] 1 FLR 146

**For further assistance contact our advice line. Call 0207 636 8505 or email [mcp@coramclc.org.uk](mailto:mcp@coramclc.org.uk).**