

ILPA research report

# When is a child not a child?

## Asylum, age disputes and the process of age assessment

Heaven Crawley

With a foreword by Professor Sir Al Aynsley-Green,  
Children's Commissioner for England

Project directed by Susan Rowlands

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Immigration Law Practitioners' Association

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## Foreword

As Children's Commissioner for England I take an especially close interest in the treatment of children who arrive in the UK as asylum seekers. This particularly vulnerable group deserve and require our support. It should be recognised, first and foremost, that they are *children* and their rights as children should be at the heart of Government policy, law and practice.

When I talk to young asylum seekers, the issue of having their age 'disputed' by officials is an all too frequent theme. I have been moved and angered by how children describe the disbelief they often face and how they fear the practical consequences of being treated inappropriately as an adult. The stories they tell me are powerfully substantiated and reinforced in this rigorous and high quality research report from the Immigration Law Practitioners' Association (ILPA), and I endorse the urgent need for a radical rethink of current and proposed practices.

We are now facing a period where both the asylum processes and the arrangements for caring for asylum seeking children who are separated from their parents or primary carers are in flux. This offers important opportunities but also dangers. The Home Office consultation paper '*Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children*' seeks the views of interested parties and suggests a number of significant changes to current practices. In addition the 'New Asylum Model' has started to handle claims from children in a different and potentially better way.

The Home Office consultation proposes changes to the way that 'age disputes' are handled. I am pleased that there is an acceptance that '*we need to make significant changes to age assessment procedures*' and that '*assessing age solely on physical appearance is unsatisfactory*'. This recognition has been long overdue.

However, while I and the other UK Commissioners share common ground with the Home Office on this starting point, the tone and language of the consultation paper on this issue causes considerable concern. We do not, for example, accept that the high numbers of age disputed cases are illustrative of '*serious levels of abuse of the system*'. The evidence provided in this report suggests otherwise.

I have mentioned the powerful evidence from children reflected in this research but I should add that one of the strengths of this report is the care and attention it has given to eliciting the views of *all* those involved in age determination. The views of social workers, their managers, and immigration officials have all been carefully recorded. One of the striking findings is that the nub of the problem is that the official policy of giving the 'benefit of the doubt' to those claiming to be children is frequently not applied in practice by staff on the ground. There are a number of reasons for this and the research is very helpful in locating the belief systems and the underlying pressures that foster 'the culture of disbelief' that widens the gap between policy and practice.

Subject to a proper application of the benefit of the doubt, I appreciate the need for speedy resolution where there is a real concern over an asylum applicant's age. Where the authorities need to question a person's age this must be done with the utmost caution and sensitivity. The proposal in the Home Office's consultation paper for social work teams to be co-located alongside immigration officials at screening units and ports may appear superficially attractive. However, ILPA's research illustrates a range of serious problems with such proposals and I urge the new Border and Immigration Agency not to roll out such a programme until the findings of this report have been fully debated and understood.

Of serious concern to me is the Home Office's proposal that the assessment of skeletal maturity by x-rays of the teeth or skeleton be used routinely to determine 'age'. I base my condemnation of this proposal on the fact that for 30 years I have been a full-time paediatric endocrinologist, that is, a specialist in the role of hormones in the mechanisms of growth and sexual maturation in children and young people. There is substantial normal variation in the speed with which young people attain sexual and skeletal maturity.



The proposed x-rays demand specialist interpretation, and it is naive to argue that they can determine the child's chronological 'age' – all x-rays can do is indicate the degree of skeletal maturity that has taken place. Furthermore, there are serious ethical concerns over subjecting children to an investigation that is of no therapeutic benefit to them, particularly when the validity of consent is doubtful when obtained from extremely vulnerable and traumatized children most of whom speak or understand little English. Finally, it is deceitful and duplicitous to argue that such an x-ray would provide the opportunity to assess dental health. For all these reasons, I have expressed and will continue to express criticism and serious challenge over the flawed intellectual underpinning of this proposal.

We often hear the term 'evidence based policy making'. The quality of the research that has gone into the production of this report really does provide a sound basis for moving forward – for young people, for those charged with caring for them, and for officials involved in processing their asylum claims. The approach set out in chapter 8 provides an excellent starting point for a properly informed discussion about the way forward on principles that I believe to be correct – a proper application of the benefit of the doubt, the separation of the age assessment process from subsequent responsibility for care of the child, and a holistic age assessment process where deemed necessary.

I hope the Border and Immigration Agency will seize the initiative and begin a meaningful discussion to take this crucial issue forward, and I call on all parties with specialist knowledge to be forthcoming and offer their comments. A nation deserves to be judged to be civilised on the way it manages and protects its most vulnerable children and young people. Who are more vulnerable than those seeking asylum?



Professor Sir Al Aynsley-Green,  
Children's Commissioner for England  
May 2007

## About the author

**Dr Heaven Crawley** is a Senior Lecturer at Swansea University and Director of the Centre for Migration Policy Research. Heaven has undertaken research and analysis on a various aspects of UK asylum policy and practice over the past 15 years including gender issues in the asylum process, access to legal representation, the conduct of asylum interviews at ports, the detention of asylum seeking children and the factors that influence public attitudes towards asylum and asylum seekers.

Heaven was previously head of asylum research at the Home Office, Associate Director at the Institute for Public Policy Research and Director of AMRE Consulting.

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## About the project director

**Dr Susan Rowlands** is the General Secretary of ILPA. She has directed ILPA research projects in the general area of immigration and asylum law and has co-ordinated publications to promote best practice by immigration practitioners. This is the third publication that The Nuffield Foundation has funded on children subject to immigration control on which she and Heaven Crawley have collaborated. *Working with children and young people subject to immigration control: Guidelines for best practice* and *Child first, migrant second: ensuring that every child matters* are both available from ILPA.

Susan's current projects include the ILPA best practice guide to detained fast track asylum procedures and UKLGIG/ILPA sexual and gender identity guidelines for the determination of asylum claims in the UK.

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Dr Jean Bowyer FRCPCH,  
Royal College of Paediatrics and Child Health

Jane Coker, solicitor

Kathryn Cronin, Garden Court Chambers

Nadine Finch, Garden Court Chambers

Karen Goodman, Kent County Council,  
formerly at Refugee Arrivals Project

Katherine Henderson, Browell and Co Solicitors

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Professor Sir Al Aynsley-Green,  
Children's Commissioner for England  
Lorraine Ayensu, Bristol City Council  
Dr Ann Barker, Chair, IND Complaints Audit Committee  
Mr Justice Hodge, President, AIT  
Brian Kinney, UASC Reform Programme, IND  
Paula Neil, London Borough of Hillingdon  
Jeremy Oppenheim, IND Children's Champion, Home Office  
Claire Phillips, Office of the Children's Commissioner  
Richard Ross, Solihull Metropolitan Borough Council  
and Nicholas Blake QC for chairing it.

ILPA is grateful to Sharon Witherspoon and The Nuffield Foundation for supporting and funding this project and for hosting the roundtable discussion.

We would like to thank all ILPA staff members – Kit Eaves, Steve Symonds, Elizabeth White and Helen Williams – for their work in supporting this project and finalising the report. Our thanks also go to Pat Kahn for her design of the report.

Last, but by no means least, particular thanks are due to all the children and young people who were willing to take part in this research. Although they cannot be named we hope this report has given voice to their experiences – and that those voices will be heard.

Susan Rowlands

Heaven Crawley

## List of acronyms

|       |   |
|-------|---|
| AIT   | Asylum and Immigration Tribunal<br>(previously known as the IAA)                            |
| ARC   | Asylum Registration Card  |
| ASU   | Asylum Screening Unit   |
| BIA   | Border and Immigration Agency<br>(previously known as the IND)                              |
| CIO   | Chief Immigration Officer   |
| CRC   | (UN) Convention on the Rights of the Child  |
| DL    | Discretionary leave   |
| DRC   | Democratic Republic of the Congo  |
| IAA   | Immigration Appellate Authority<br>(now known as the AIT)                                   |
| IO    | Immigration Officer   |
| IND   | Immigration and Nationality Directorate<br>(now known as the Border and Immigration Agency) |
| IRC   | Immigration Removal Centre  |
| JCHR  | Joint Committee on Human Rights   |
| LSC   | Legal Services Commission   |
| NAM   | New Asylum Model  |
| NASS  | National Asylum Support Service   |
| RCPCH | Royal College of Paediatrics and Child Health   |
| SEF   | Statement of evidence form  |
| SSD   | Social service department   |
| UASC  | Unaccompanied asylum seeking children   |

# Introduction

## 1.1 Background and context of the research

The issues facing separated children who are seeking asylum and whose age is disputed by the Immigration and Nationality Directorate (IND)<sup>1</sup> of the Home Office is of increasing concern among practitioners and stakeholders working with asylum seekers in the UK context.<sup>2</sup> Although statistical and other information about the extent of the problem is limited because these individuals are treated *as if they are adults* and recorded accordingly, those working with this group of children have noted a significant increase in the number of children who state that they are under 18 years of age when they come into contact with the immigration authorities but are not accepted as such.<sup>3</sup>

In 2004 the Home Office issued annual statistics on the number of age disputed applicants applying for asylum. The decision to publish these statistics is to be welcomed, but the figures themselves give cause for concern. In 2004, there were 2,990 asylum applications

- <sup>1</sup> On 2 April 2007 the Immigration and Nationality Directorate became the Border and Immigration Agency (BIA). This research was undertaken before the IND was replaced by the BIA. The term IND is used throughout this report.
- <sup>2</sup> The focus on the issue of age dispute in the asylum context, rather than on all children, reflects the fact that it is unusual for the age of non-asylum seeking children to be disputed.
- <sup>3</sup> This problem is not limited to separated children. Children who arrive with family members may also be age disputed, with implications for the credibility of the family's application and for the support and welfare that is made available to them. Because these children do not draw directly on social service resources they may never have their age formally assessed. Although this is clearly of concern, given the limitations of budget and time our research has focused on separated children i.e. those who arrive without a parent or carer. These children are arguably the most vulnerable and are at risk of the most serious consequences if the stated age is disputed.

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from separated children who were accepted as children at the point of application. In addition there were 2,345 applications from applicants claiming to be children whose age the Home Office disputed.<sup>4</sup>

The 2005 statistics reveal a similar picture: 2,965 applications were received from asylum seekers accepted at the point of application as separated children. In addition, there were 2,425 age disputed applications. This is a 4% rise on the number of age disputed applications from 2004 despite a small drop in the number of applicants accepted as separated children.

This means that in 2005 nearly half (45%) of all applications made by those presenting as separated asylum seeking children were age disputed and treated as adults.<sup>5</sup> Many of these disputes remain unresolved with implications for the Home Office, for social service departments (SSDs), for legal representatives, for voluntary sector practitioners and, most importantly, for separated children and young people themselves.

These figures are reflected in the experiences of statutory and voluntary organisations providing services and support to separated asylum seeking children. According to the Refugee Council Children's Panel ('the Children's Panel') to whom all separated asylum seeking children are supposed to be referred, at least half of the just under 4,000 children that passed through their offices during 2004 were age disputed by the Home Office and/or a SSD. Among those who are referred directly to the Children's Panel by IND's Asylum Screening Unit (ASU) in Croydon, the proportion is considerably higher.

This research was undertaken because of growing evidence that the reason for the increase in the number of age disputes is that separated asylum seeking children are not being given the benefit of the doubt about their age as Home Office policy states they should be. For example, Refugee Council statistics on the number of age disputed cases brought into the Oakington Reception Centre and the 'outcomes' in those cases suggest that significant numbers of children may be incorrectly treated as adults with all the implications that this has for the asylum claim, welfare and

<sup>4</sup> Home Office 2005a.

<sup>5</sup> Home Office 2006a.



support and child protection. In 2005 over 60% of those detained at Oakington who were assessed by the local authority were found to be children following a formal age assessment. For three months of that year this rose to more than 80% of cases.

The Refugee Council also collects statistics on the outcome of age disputed cases being dealt with by local authorities in the London area. For the 15 month period between March 2005 and May 2006, the Children's Panel was in contact with a total of 164 age disputed cases. Of these half (49%) went on to be assessed by a local authority as being children and supported by them.

There is also evidence that SSDs are struggling to assess the age and needs of those whose age is disputed. Some of their difficulties arise from the numbers of cases that are disputed by IND at ports and screening units; others from the fact that there is no statutory guidance on the process of age assessment. Policies and procedures for the assessment of age have developed in an ad hoc manner in response to the increased number of age disputes and in a growing number of legal challenges to the way in which age assessments are conducted and the nature of the evidence that is, or is not, taken into account.

Not only does the number of asylum seeking children whose stated age is disputed appear to have increased, so too does the political significance and salience of this issue. Even during the period in which this research has been undertaken, age disputes and the process of age assessment has risen rapidly up the policy agenda, in many ways becoming a 'touchstone' issue for a wide range of other concerns about the Government's approach to asylum seekers in general, and to separated asylum seeking children in particular.

This is partly a reflection of increasing litigation which has challenged current policy and practice, particularly in relation to unlawful detention. But it also reflects increasing concern among a wide range of interest groups and organisations about the Government's approach to this issue and the implications for children.

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The Children's Commissioner for England, Professor Sir Al Aynsley-Green, has also recently expressed his concern about age disputes and the lack of appropriate procedures for ensuring that children are properly and fairly age assessed and are not simply treated as adults:

'Although Home Office policy is for the immigration officer to apply the 'benefit of the doubt' in favour of the applicant in borderline cases, the evidence suggests that in practice this is frequently not adhered to. The result is that a substantial number of asylum seekers who are in fact unaccompanied children are excluded from the protection of the domestic care regime which incorporates the "best interests" principle guaranteed by the CRC.'<sup>6</sup>

It is also important to acknowledge that this report has been written at a time of considerable reorganisation and change within the Home Office and in processes for the determination of asylum claims and the provision of welfare support. In February 2005, the UK Government published a five year strategy for immigration and asylum.<sup>7</sup> The strategy announced the development of the New Asylum Model (NAM). The aim of the new approach is to introduce a faster, more tightly managed asylum process with an emphasis on rapid decision making, integration or removal. The Home Office is seeking to achieve this through segmentation, faster processing and case ownership.<sup>8</sup>

The Home Office began implementing the NAM in May 2005 and aims to process all new asylum seekers within the new model from 5 March 2007. Certain aspects of the NAM – in particular the introduction of a single case owner and the use of re-trained and accredited decision makers – are acknowledged as having the potential to have a positive impact on the quality of decision making. There are nonetheless concerns about the timescales and lack of

<sup>6</sup> Written evidence to the Joint Committee on Human Rights inquiry into the Treatment of Asylum Seekers (March 2007, Ev 319) available at [www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81ii.pdf](http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81ii.pdf) [accessed 1 March 2007].

<sup>7</sup> Home Office 2005b.

<sup>8</sup> See Refugee Council Briefing on the New Asylum Model (March 2007), available at [www.refugeecouncil.org.uk/policy/briefings/2007/nam.htm](http://www.refugeecouncil.org.uk/policy/briefings/2007/nam.htm) [accessed 1 March 2007] and ILPA Information Sheet on the New Asylum Model, available at <http://www.ilpa.org.uk/>

flexibility for submitting applications and additional supporting evidence, and a process of segmentation that potentially prejudices the outcome of asylum claims before the case has been considered.

There are also concerns about the implications of the NAM for vulnerable asylum seekers including separated and other children making their own claim for asylum. The idea behind segmentation is that cases can be sorted at the screening stage according to their basic characteristics. Whether or not a child is accepted as being a child or is age disputed and treated as an adult will therefore have significant implications for the way in which the claim for asylum is then processed.

The Home Office has also been looking to reform existing arrangements for the support of separated asylum seeking children. This process has become known as the UASC Reform Programme.<sup>9</sup> The Home Office's proposals were published on 1 March 2007 as a consultation paper entitled *Planning better outcomes and support for unaccompanied asylum seeking children*.<sup>10</sup>

The UASC Reform Programme is significant because of its systematic and wide-ranging scope and its attempt to subordinate welfare services provided to separated children to the objectives of immigration control. An explicit objective of the programme is to realign immigration and child care systems and to ensure that care systems acquire an immigration focus.

The proposed reforms could create major challenges for social workers providing services to separated children and many voluntary sector groups are concerned that the proposals will further undermine the safety and welfare of one of the most vulnerable groups in society.<sup>11</sup>

It is also clear from the consultation paper that the Home Office wants to resolve the problem of age disputes although the kinds of resolutions or solutions that are proposed reflect a particular understanding of the reasons why this problem exists.

<sup>9</sup> The Home Office uses the term Unaccompanied Asylum Seeking Children (UASC) when referring to separated children seeking asylum in the UK.

<sup>10</sup> Home Office 2007.

<sup>11</sup> An overview of these concerns is provided by the Joint Committee on Human Rights 2007.

## 1.2 Specific aims and objectives

The aim of this research is to provide a detailed, evidence-based analysis of current policy and practice in relation to age disputes which will lead to reductions in the number of disputes, improvements in the assessment process, and the establishment of appropriate mechanisms for reviewing the assessment process without recourse to the courts.

We hope that the findings of this research will lead to better and more consistent practice, reduce conflicts between the Home Office, local authorities and legal representatives and, ultimately, improve outcomes for separated asylum seeking children. The specific aims of the research are:

- To examine existing policy and practice in relation to age assessment by the Home Office, local authorities and others;
- To examine the implications of age dispute issues and of a child being treated as an adult for the way in which the asylum application is assessed, including the information that is (and is not) taken into account in making the decision, vulnerability to and experience of detention, and the consequences of the decision, including actual and potential removal from the UK;
- To examine the consequences of age dispute issues and of a child being treated as an adult for the provision of legal representation, education, housing, welfare and support to children, including any inconsistencies or differences between local authorities in their approaches to the issue of age dispute and the nature and extent of any provision made;
- To identify any child protection issues which arise in age disputed cases as a result of detention, inappropriate accommodation provision by local authorities and the National Asylum Support Service (NASS)<sup>12</sup> and lack of access to existing child protection mechanisms;

<sup>12</sup> Although reference is made to NASS support throughout this paper, we understand that the service itself will no longer continue to provide support and accommodation once the new arrangements associated with the New Asylum Model (NAM) are established.

- To consider the implications for children's mental and emotional well-being of having their stated age disputed and the consequences for their personal and educational development; and
- To develop concrete and practical policy recommendations on an appropriate process for agreeing age in the asylum context, and on the relationship between the process of age assessment, the asylum determination process and support and leaving care arrangements.

### 1.3 The evidence base

The research for this report began in November 2005 and the fieldwork was undertaken during the first six months of 2006. A multi-method approach was adopted and evidence was collected from a wide range of sources including:

- A review of existing evidence encompassing 'grey literature' and policy documents from the UK;
- 26 in-depth semi-structured interviews and meetings with policy makers, legal representatives and voluntary sector organisations, as well as other forms of communication (by telephone or email) with other interested parties;
- Three days spent on location at the Asylum Screening Unit (ASU) in Croydon to observe the processes by which age is assessed and the procedures for referring age disputed individuals to the Children's Panel and social services;
- In-depth discussions with 32 social workers from 14 local authorities based in different regions of the UK; and
- Case studies of 27 separated asylum seeking children, whose age has been disputed, collected primarily through in-depth semi-structured interviews, with additional information acquired through case file analysis where appropriate and possible.

The research has been supported by an expert Advisory Group which has provided guidance on the focus of the research and has contributed to our understanding of current policy and practice. A list of the members of the Advisory Group is provided at Appendix 1.

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The experiences of children form a particularly important aspect of the evidence base. Case studies are provided throughout the report to illustrate the different issues that arise when age is disputed. These case studies were gathered with the assistance of the Children's Panel, voluntary sector organisations, and legal representatives based in different areas of the UK.

The case studies are illustrative rather than representative and are intended to demonstrate the range of additional issues and problems that can face a child when his or her age is disputed. Names have been changed throughout in order to protect the identity of children and young people. The ages of children given in the case studies relate to the stated age of a child at the time of his or her application for asylum. This is often, but not always, the age at which the child came to the UK. In many cases children's ages have been confirmed through a social services or paediatric assessment.

The methodology for the research was carefully devised to reflect the important practical and ethical issues involved in working with children and young people, particularly where these children are vulnerable and have already been subjected to repeated interviews about their experiences. Appropriate steps were always taken to ensure that children were able to give consent that was genuinely informed. At the outset of the project, a letter was sent to the majority of local authorities in the UK advising them of the research and providing an opportunity for children in their care to be 'opted-out' of the research process. No local authority chose to do so and a number of local authorities asked for children in their care to be included in the research.

Once children who might participate in the research were identified, they were provided with information about the research and the optional nature of participation. This information was provided in both oral and written form and translated into the child or young person's own language where appropriate.

There was active discussion with potential respondents of the potential costs and hoped-for benefits of their participation in the research and it was made clear that the researcher was unable to assist children with their application or with any unresolved disputes over their stated age.

Children and young people who participated in the research were able to choose the location and circumstances under which they were interviewed and the timing of interviews was flexible to reflect their existing educational, social and employment commitments.

The strength of the evidence underpinning our analysis and conclusions is a reflection of the multi-method approach we have adopted. This approach also reveals the contradictory nature of the information available as it relates to specific cases or issues when gathered from different sources and perspectives. We are confident that this evidence base is able to provide insights into the current situation which could not be secured through any other methodological approach.

The quality of the evidence has been confirmed during our discussions with others. In February 2007 an expert roundtable was held to discuss the emerging recommendations of our research, the structure of the final report and strategies to disseminate and implement its recommendations. The roundtable was an important part of the methodological approach for this work and was intended to ensure that a wide breadth of knowledge, experience and interest in this issue could be taken into account prior to the publication of the final report. A list of roundtable participants is provided in Appendix 2.

## 1.4 Structure of the report

**Chapter 2** outlines the factors that underlie disputes over age in the asylum context and the reasons why the number of age disputes appears to have increased over recent years.

**Chapter 3** sets out the findings of our research in relation to the asylum screening process and the effectiveness of current procedures for ensuring that children are given the benefit of the doubt where their stated age is disputed.

**Chapter 4** examines current procedures for ensuring that asylum seekers whose age is disputed are able to access a formal social service age assessment and that the outcome of this assessment is taken into account. It also examines the potential for conflicts of interest arising from the assessment process and considers the implications of the co-location of social workers at screening units and ports and the service they provide.

**Chapter 5** provides an overview of our findings in relation to the process of age assessment itself, including the quality of the assessments undertaken by social workers, the use of the practice guidelines developed by the London Boroughs of Hillingdon and Croydon and the extent to which supporting documentary and medical or professional evidence is taken into account. This chapter also sets out the implications of ongoing disputes over age for both local authorities and for children seeking asylum.

**Chapter 6** explores the implications of age disputes for the ability of children to access international protection. It outlines the consequences of age disputes for the way in which information about a child's asylum application is collected and assessed, and the potential for children to be unlawfully detained and even removed from the UK.

**Chapter 7** considers the implications of being age disputed for the ability of children to access appropriate services and support. It also examines the issues that age disputes raise for both child protection and the mental health of the children concerned.



**Chapter 8** provides a summary of the changes to policy and practice that we conclude are needed to ensure that the number of disputes over the age of separated asylum seeking children is reduced, that appropriate procedures are in place for ensuring that all age disputed asylum seekers are able to access a formal, independent and holistic assessment of their age and needs, and that there is a formal review of the age assessment process at the earliest stage possible.

A summary of our key and additional recommendations is provided at the end of the report.

## 1.5 Currency of this report

The law and policy discussed in this report is correct at 1 March 2007.

As this report went to press, the Border and Immigration Agency (previously IND) provided stakeholders with information on proposed new policies for dealing with the applications and support for asylum seeking children whose staged age they dispute. These policies and instructions refer to new cases being processed under the New Asylum Model. It is our understanding that they do not apply to applications made before 5 March 2007 and it remains unclear what will happen to the very many children who applied for asylum before that time but were age disputed and have not yet been formally assessed.

This report identifies significant gaps between policy and practice in many of the areas affecting children whose age is disputed. Given evidence of these gaps, those concerned about the implications of age disputes for separated asylum seeking children should continue to monitor the implementation of any new policies and the experiences of the children affected by them.

ILPA updates on policy and practice in relation to age disputed cases will be available at [www.ilpa.org.uk/infoservice](http://www.ilpa.org.uk/infoservice).



## CHAPTER 2

# Understanding age disputes

## 2

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This chapter outlines the factors that underlie disputes over age in the asylum context and the reasons why the number of age disputes appears to have increased over recent years.

### Case study

Mireille, 17, from Benin

## 2.1 The circumstances in which age is disputed

Understanding the reasons why age is disputed is a complex task, not least because of the wide range of circumstances in which age may be disputed. This is a consequence of the different individuals and organisations with whom an asylum seeking child may come into contact, all of which may dispute the child's stated age.

Although there is no statistical information available on the circumstances in which age disputes arise, the evidence suggests that most age disputes arise when an asylum seeker first applies for asylum, usually at a port of entry or screening unit. In these cases the child or young person's age will not be subject to a formal assessment but a judgment will be made on the basis of physical appearance, demeanour and any documentation produced.

Some children may be referred to the Immigration Service as adults by others – for example, the police – who have no obligation to give the benefit of the doubt and will have received no training in how to assess whether an asylum seeker is the age that he or she claims to be. This is particularly clear in cases of children and young people who enter the UK clandestinely and are subsequently picked up by the police, for example, at the side of the motorway or at a service station.

An asylum seeker's stated age may also be disputed by a SSD as a result of a formal or informal process of age assessment. The dispute may reflect or confirm the Home Office's initial decision to dispute age or may arise as a result of a needs assessment. In some cases social services may decide to dispute a child's age even though the applicant has not been age disputed by the Home Office and is being treated as a separated child for the purpose of the asylum process:

- ❖ In some cases they are not age disputed by the Home Office but during our assessment under the Children Act we may decide that they are an adult in which case they would be sent to access adult services through NASS. ❧
  - Social work manager
- ❖ In cases where the Home Office have age disputed, we will undertake an age assessment. The bulk of referrals we do come to us this way but we may also assess someone who we think may be an adult but the Home Office hasn't disputed. ❧
  - Social work manager

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## ■ Mireille, 17, from Benin

Mireille is a 17 year old girl from Benin. She was brought to the UK when she was about 10 or 11 years of age by a woman who had taken her in after her parents died.

After arriving in the UK, Mireille was effectively made a domestic slave with responsibility for looking after the woman's children and her home. She did not attend school and rarely left the house. When Mireille was around 15 years of age the woman abandoned her in a park and she was found by a member of the public and taken to a police station. The Immigration Service was called and she claimed asylum. Her age was disputed because the documents she was carrying indicated that she was over 18 years of age.

Mireille was dispersed to a city in the north east but after seven months living in a hostel was taken into the care of local social services who were concerned about her welfare and assessed her as being a child. The Home Office accepted the social services age assessment and she was granted discretionary leave for twelve months.

At the time of the research Mireille was heavily pregnant but was very reluctant to discuss the circumstances of her pregnancy. She is very anxious about her safety because of threats she has received from the woman for whom she previously worked. She is also very anxious about the possibility of being removed to Benin when she turns 18 and is convinced that if she is returned she will be killed because she has no one to protect her.

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Alternatively the SSD may accept that the applicant is a child but may conclude that he or she is older than is claimed. It is important to note here that disputes over age are not only associated with whether or not someone is under 18 years of age; 16 years of age is also an important 'cut off point' because it has significant implications for the level and type of care to which a child or young person is entitled under the Children Act 1989.

The evidence collected during the course of this research suggests that an increasing number of social service disputes over age occur in relation to whether a child is under or over 16 years of age. In some cases a SSD may initially accept or assess a child to be the age that he or she claims to be but may subsequently dispute that child's age, perhaps after a period of time spent in a foster placement or at school, or because of a reassessment that has been undertaken for other reasons. Other practitioners or service providers – such as teachers or health professionals – with whom a child comes into contact whilst in the care of social services may also express a view as to whether services are being provided that are appropriate to the age and needs of that individual.

It should also be noted that age disputes do not necessarily arise immediately or soon after a child has arrived in the UK and/or claimed asylum. Mireille (► see case study, preceding page) had been living in the UK as a domestic slave for at least five years before she came to the attention of the immigration authorities. Her age was disputed and she was dispersed to a city in the north east but taken into the care of social services because they were concerned that she was young and vulnerable.

One of the consequences of the wide range of circumstances in which age can be disputed is that there can be conflicting approaches taken by social services and the Home Office, and even different approaches taken by different SSDs or different parts of the Immigration Service. This problem is exacerbated by failures in the recording and documentation of individual decisions and outcomes in relation to age which means that some children are treated as both adults and children simultaneously by different departments. In other cases there are conflicting assessments by different parties involved in providing immigration and social care services. For example, a child who is already being looked after by a local authority because he or she has been

identified as having a social care need may subsequently be age disputed by the Home Office at the screening unit because a formal age assessment has not been undertaken and/or presented. Contradictions and discrepancies in the assessed age can also leave children without any services and different departments insisting that the individual concerned does not fall within their area of responsibility. Prior to the recent policy change relating to fast track detention (discussed in detail in chapter 6), age disputed children were often detained as adults pending a formal age assessment.

The varied, complex and sometimes conflicting circumstances in which age is disputed are reflected in the experiences of the children and young people who participated in this research. Of the 27 cases included in the analysis, the majority were disputed in the first instance by Immigration Officers either at a port of entry or screening unit. In two cases children were age disputed by one part of the Immigration Service but not by another. In both cases these children were dispersed through NASS even though officers refused to detain them because of concern that they might be under 18 years of age. In both cases the children concerned were subsequently assessed as children by a local authority.

The sample also includes a number of cases where age was disputed by social services but not by the Home Office. The Home Office decided to detain George (► case study, chapter 4.3) on the basis of an assessment which concluded that he was over 18 years of age although his age had been initially accepted by the Home Office. George was subsequently reassessed as 16 years of age by another local authority into whose care he was taken. Lavdie (► case study, chapter 7.3) was trafficked to the UK from Eastern Europe by her 'boyfriend' who also raped her. Her age has never been disputed by the Home Office who have gathered information from her about her traffickers for a police investigation. Yet the local authority to whom she was referred disputed that she was a child and only agreed to provide support after challenges from the Children's Panel and a legal representative.

The documentary evidence relating to a significant proportion of the case studies is contradictory and confusing. In a number of cases children's stated age has been disputed by the Home Office but this information is not included on the Asylum Registration Card (ARC).

In other cases paperwork from the Home Office indicates that the child's age is not in dispute and that he or she is being treated as a child but the ARC states they are age disputed.

These problems and contradictions in the paperwork can lead to additional complications. For example, Hakim, a 13 year old boy from Afghanistan, described how he had been assessed as 16 years of age by his social worker and was therefore unable to go to school (► case study, chapter 7.1). This situation was resolved only when his birth certificate was sent by his brother who was living in Pakistan. Lavdie (► case study, chapter 7.3) was unable to go to school because her age was disputed by the local authority yet was not allowed to attend college because all her documents (ARC, passport and birth certificate) confirmed that she was 15 years old.

There is also some evidence that children may claim to be adults (for a variety of different reasons) but are not age disputed despite the obvious risks to the child or young person:

- 4 It's important to remember that there are also children who claim to be adults. They are told by traffickers to say that they are older and as a result they don't even go into the child protection system. These children go into the adult system and are never heard of again. We have real concerns about children who do not come into contact with any agencies. 7
- Voluntary sector practitioner

## 2.2 Reasons why age is disputed

### The (in)significance of age

Chronological age is both significant and insignificant. For the asylum process and for the provision of welfare and education support, an individual's chronological age – and whether he or she is socially and legally defined as a child or an adult – has huge implications and is highly significant. Chronological age is much less significant for children and young people themselves. Not all countries and cultures attach the same importance to chronological age, and birth records may therefore be afforded less importance.



In many countries birthdays are not marked. This may reflect the social and cultural context from which children originate, or conditions of poverty and/or conflict which render such celebrations impossible. Children may also have grown up in economic and political contexts where being a child does not confer any particular rights or privileges, or indeed may be a distinct disadvantage in the fight for resources or even survival. These children are forced to grow up very quickly because there is no advantage to be gained from remaining 'childlike' or dependent for longer than absolutely necessary.

The insignificance of chronological age is reflected in the fact that many separated asylum seeking children do not know their date of birth or even their age. When asked how old they are, many children calculate or guess their age on the basis of events that have happened in their lives or information that has been given to them by others prior to their departure:

- “ The next time I went [to the Home Office] they asked me how old I was. My parents told me that I was ten just before they were killed by the Taliban. The Home Office asked me when they were killed. I told them that it was five years ago, that's how I calculated that I was 15. They just asked questions and didn't say anything else.”
  - Behkam, 15, Afghanistan
- “ [We] don't really celebrate birthdays...In Uganda birthdays are the least you can think about. They don't give you the documents because they think you will lose them so you just tell them what you know. It's funny how you can live without knowing the truth.”
  - Angelina, 16, Uganda

When asked how he knew how old he was, Rasheen from Afghanistan said:

- “ Just my parents mentioned to me I was 15 then I become 16 they mentioned my age. We didn't have any birthday party... Because I didn't know my date of birth they [the IO] write 01/01 which makes me 17 now. But I am 16...They asked me lots of questions but in the end they disputed me and they put this on my ID [ARC] card. Because of this they mentioned that they must choose a date for me. They didn't say anything else, they just sent me to Oakington.”
  - Rasheen, 16, Afghanistan

Although it is assumed by IND staff and some social workers that adults are claiming to be younger than they are in order to access children's services, there is evidence that many children do not realise the significance and implications of having their age disputed, either in terms of the way in which their application for asylum is processed or in terms of entitlements to welfare and education:

“ The Home Office first disputed me [my age]. They said I'm 18 not 17. They just looked at me and say 'you are not 17'. But how do you [they] know? You [they] were not here when I was born. I said okay. I didn't know about the difference between being 18 and being 20. I didn't care.”

■ Veronica, 17, Guinea

“ I didn't know what to think [when the immigration officer disputed my age]. First I thought how could he consider me as an adult? Then I thought it's a normal thing. I turned into an adult but I didn't understand how he could say I was an adult. Then he wrote on some papers and I thought perhaps it doesn't matter if I'm an adult. He didn't explain that it would make a difference.”

■ Gloria, 16, Angola

Several social workers also reported that many of the children with whom they work are simply unaware of their chronological age or its significance:

“ Some people genuinely don't know their age. Some people you know straight away that here is someone who has no idea how old they are because it's just not important in the place where they are coming from. Sometimes at the end of the assessment they say 'I'm glad you can tell me how old I am'.”

■ Social work manager

Disputes over age can also arise because of a lack of understanding of the way in which dates of birth and calendars are calculated in other countries and cultures, and associated confusion and misunderstandings over what is being said by a child about his or her age. This problem was observed at the screening unit in Croydon when two Kurdish boys from Iran arrived and presented their passports. The dates of birth in the passports indicated that they had both recently turned 16 years of age but their ages were disputed because they had both stated that they were in their 17th year when asked their respective ages.

According to the chief immigration officer (CIO) the decision to dispute age had been made on the basis that the boys' accounts were 'totally inconsistent...if you've only just had your birthday I think you would know how old you are!' Yet in countries such as Iran age is calculated in a different way. As an Iranian interpreter pointed out during an interview with one of the research respondents, 'Iranians do age differently. After a kid is born they say he is in their first year'. The boys were processed as adults and sent to Migrant Helpline for dispersal through NASS.

Differences in the significance given to chronological age and in the recording conventions and calendars of the countries and cultures from which many separated asylum seeking children originate can also create difficulties during the screening process. Several children from Afghanistan presented at the screening unit during the period of observation. When one Afghan boy was asked his age by the Immigration Officer he responded that he was 14 years old. When asked how he knew this he said that he was told by his aunt. The IO commented: 'This is the kind of thing that is a real problem. We can't just assume a year but we need a year, a date of birth, because the computer won't accept blanks.' After some discussion the boy was given a date of birth of 01/01/1990. It was pointed out that this made him 16 years of age. The date of birth was recalculated following further discussion with the interpreter and his date of birth was changed to 01/01/1992. Both the allocation of an arbitrary 01/01 birth date and mistakes in the translation of ages and dates can have hugely significant implications for the ability of children to access appropriate services and support.

## Documentary evidence

In our politically and legally constructed model of childhood, documentary evidence of identity and birth are very important. This is not necessarily the case in other parts of the world from which asylum seekers originate and many separated asylum seeking children are unable to present documentary evidence of their age. There is evidence that issues relating to documentation including birth certificates and ID cards can be a significant factor in the decision to dispute age and that this can be exacerbated by the use of different calendars in some countries of origin (for example, Iran and Afghanistan).

Issues of documentation may also be tied in with the perceived credibility (or otherwise) of the child's account of his or her stated age and experiences. For example, if forged documents are produced this may be perceived (by the immigration officer, social worker or immigration judge) as undermining the veracity of the account regardless of its content.

Among those age disputed children who participated in this research, there is considerable variation in whether or not they arrived with documents confirming their identity and age, or were able to provide such documentation at a later stage in the process. Nine of the respondents had arrived without any documents and had not been able to access documents confirming their date of birth at a later stage. This included all those from Afghanistan and some other nationalities.

Others reported that their original documents had been taken from them at the screening stage and that they had been given photocopies. For several children, this caused problems with social services and other service providers at a later date, an issue that is discussed in detail in chapter 7.

The inability of children to present documentary evidence in support of their stated age can clearly increase the possibility that the applicant's age is disputed:

- “ They asked me how old I was and I told them I was 16. They ask if I have anything to prove it. Then he said if you don't have nothing to prove you are 16 I will consider you are an adult because the news insisted that the person must have a document to prove their age.”
  - Gloria, 16, Angola

But there is also evidence that even where children and young people are able to present documentation in support of their stated age their age may still be disputed. Seven of the respondents presented documents on arrival but these were not accepted as evidence of their stated age. In most cases these documents were assumed to be forged or to belong to someone else:

- “ I brought a document with me from the party I was associated with in Angola and this document had details about my birth. They looked at the document but they don't accept it. The document was to replace my birth certificate.”
  - Duarte, 16, Angola

“ When I applied I gave them my documents but they didn’t believe me and they disputed my age. I insisted that this is my date of birth but still they didn’t believe me. They didn’t give me any reason. I had an ID card but the Home Office kept it. They didn’t give me any photocopy.”

■ Neroz, 15, Iran

Astrit is from Kosovo. He was 17 when he arrived in the UK and his age was disputed at the screening unit. This was despite the fact that he had his birth certificate with him:

“ When I told her my age she said did I have any documents. I said yes and gave her my birth certificate. She called a person to look at me. He came and looked at my birth certificate but he said ‘I don’t believe you because you don’t have a photo or a stamp’. But in Kosovo our birth certificates don’t have a photo or a stamp. The English authorities became fantastically qualified to tell me my age! Other people who go there without documents are accepted as minors and I went with a document and I wasn’t accepted. It wasn’t normal to me. What more do you want? I’ve got the document that says my name and my age. It’s not normal how they were behaving with me... They said ‘now you are going to be considered as an adult’. The only reason they said this is because of the birth certificate which they think is not complete.”

■ Astrit, 17, Kosovo

There is also some evidence that where children have used adult documents to enter the UK they may find it difficult to prove that they are not the person in the document and are therefore treated as adults for the purpose of immigration control and social welfare. Hassan was 16 years old when he arrived in the UK. He was interviewed at Heathrow airport after he arrived using false documents provided by the agent who had transported him from China. His age was disputed from the outset of the interview and immigration officers refused to accept that the passport he presented did not actually belong to him:

“ During this time from the beginning they said ‘no, we don’t believe you are 16’. I kept saying ‘this passport is not a genuine passport. Nothing in the passport is right’... I kept telling them this is not my name but they wouldn’t believe me.”

■ Hassan, 16, Iran

Hassan was subsequently detained at Oakington but was assessed as a child by social services and released after 8 days.

## Adults claiming to be children

The Home Office is of the view that the number of age dispute cases 'is illustrative of a serious level of abuse of the system'.<sup>1</sup> This has been the prevailing view for a number of years. For example, the Home Office's 2002 White Paper addressed the 'need to identify children in genuine need at the earliest possible stage, to sift out adults posing as children and to deter those seeking to abuse the system.'<sup>2</sup> The White Paper went on to note (at paragraph 4.56) that Home Office staff were 'already taking steps to challenge older applicants and divert them to the adult asylum process so that adults posing as children do not become a problem for local authorities'.<sup>3</sup>

More recently the Children's Champion for IND, Jeremy Oppenheim, stated in evidence to the Joint Committee on Human Rights that there are only three possible reasons for the increase in age disputed cases:

'The first is that, over time, we have improved, with agencies who deal with children, our identification of what we call age disputed cases. Over time it has become something on which we have worked more closely with other agency partnerships in identifying. Secondly, there are some improved methods for revealing age disputed cases than there have been previously and I think that has been going on over the last three or four years. Lastly, I think there is a greater evidence of exploitation by people claiming to be one age when they are possibly another. There are significant incentives for people at the moment to claim to be younger than they are...'<sup>4</sup>

These comments reflect the strongly held view of the Home Office that the primary reason for the increase in age disputes is that many asylum seekers are not the age that they claim to be and are actually adults claiming to be children. Officials and policy makers point to the fact that disproportionately large numbers of asylum seekers claim to be 17, while disproportionately few claim to be 18, as illustrative of this problem.

<sup>1</sup> Home Office 2007, paragraph 24.

<sup>2</sup> Home Office 2002, paragraph 4.55.

<sup>3</sup> This point is also noted by Bhabha and Finch 2007.

<sup>4</sup> JCHR 2007, paragraph 198.

The view of the Home Office is that the primary reason for so doing is to benefit from the more generous asylum policies and support arrangements that are applied to children. In particular, separated asylum seeking children will generally not be detained or subject to the fast track procedures,<sup>5</sup> those whose asylum claims are refused are only removed from the UK if adequate care and reception arrangements are in place in their country of origin, and separated children benefit from being looked after by local authorities under the Children Act 1989. The Home Office is also of the view that many adults are claiming to be children in order to benefit from a period of discretionary leave (DL) up until their 18th birthday.<sup>6</sup>

This view is shared by some social workers who are concerned about placing individuals who might be adults claiming to be children in foster care or in a residential home alongside children.<sup>7</sup> Among social work managers and social workers the most commonly held view is that adults claim to be children in order to access services and welfare support to which they could not otherwise be entitled:

- 4 Social workers get fairly cheesed off with constantly seeing people coming in and claiming there are under 18 where clearly they are not. 7
  - Social worker

Some social workers also hold the view that increasing numbers of separated asylum seeking children who they accept are under 18 years of age are claiming to be younger than they actually are in order to access the immigration and welfare related benefits that this brings:

- 5 The detained 'fast track' process ' is intended for asylum claims which the immigration authorities have classed as 'manifestly unfounded' including, for example, asylum claims from countries which are on the 'white' or 'safe' country list. Cases considered suitable for fast track processing are those which the Government considers can be determined quickly. Applicants for asylum who are fast tracked do not have an appeal right which can be exercised in the UK and which suspends removal pending re-consideration of the case.
- 6 Discretionary leave (DL) is time-limited permission to stay, granted where the Home Office does not accept that either refugee status or humanitarian protection is appropriate. DL is normally given for three years or until the child's 18th birthday, whichever is the shorter period. The period of DL may be shorter for separated asylum seeking children from 'white list' countries.
- 7 See also Bhabha and Finch 2007.

- 4 There are more and more people claiming to be under 14 and 15 because they will get discretionary leave for three years until they are 18.7
- Social worker

The fact that children may claim to be younger than they actually are can create a range of difficulties over the longer term. For example, a child of 16 or 17 years of age may want to access semi-independent or independent accommodation, or claim benefits, or attend college rather than school but will be unable to do so.

There is no doubt that the age assessment process is a difficult one and that where adults claim to be children this creates additional problems for immigration officers and social workers given the difficult task of trying to decide who is an adult and who is a child. It is also clear from the evidence collected during the course of this research that some adults are claiming to be children and that this can lead to disputes over age. However there is no evidence that the increase in age disputed cases is primarily or even largely the result of adults claiming to be children. Indeed the fact that a significant proportion of age disputed cases are subsequently formally assessed and accepted as children suggests that quite the opposite is the case.

Although it is important and necessary to distinguish between adults and children for the purposes of both the asylum determination process and the provision of appropriate welfare and support, the evidence presented in this report raises serious questions about the way in which current policy in relation to age disputes is applied. It is clear from this evidence that a better balance needs to be achieved between controlling immigration and safeguarding the needs and rights of children.

### The 'culture of disbelief'

There is strong evidence from this research that the apparent increase in the number of age disputed cases largely reflects a 'culture of disbelief' which has developed towards those seeking asylum in the UK. Children and young people have not been excluded from this development. The most obvious consequence of the culture of disbelief is that separated asylum seeking children are simply not believed.



There is often no rationale or logical explanation for why they are disbelieved; children are simply treated with disbelief from the beginning of the process and immigration officers look for information to confirm their pre-conceptions.

The time spent observing procedures at the screening unit confirms that there is a widespread doubt and cynicism about the legitimacy or otherwise of asylum applications made by separated asylum seeking children. Children including those whose age was not disputed, were variously described by immigration officers as 'rolling in', 'turning on the waterworks' and 'pretending to be stupid'. Comments were made about the legitimacy of children's needs before basic information had been collected about their experiences.

There is also clear evidence of a general lack of care and empathy. Children were greeted with hostility upon their arrival and told to sit in the waiting area for hours on end with no explanation of the process and no food or drink provided. They were prevented from talking to one another. Where conversations occurred assumptions were made about whether individuals did in fact know each other previously and were pretending to be on their own. Foster carers, social workers and legal representatives were, for the most part, treated with contempt. The view that a culture of disbelief permeates the screening process was shared by many of the social workers who participated in the research.

It is also evident from discussions with some social workers that a similar culture of disbelief or cynicism about separated asylum seeking children has been allowed to develop in some SSDs. For example, social workers spoke of being put under pressure by managers to assess children as being over rather than under 16 or 18 years of age. They also described a general atmosphere in which a client's account of his or her experiences is disbelieved and credibility increasingly used as the basis for disputing a child's stated age:

- ▣ The whole ethos is that all clients are deceptive. If they turn up in a car the managers stand about saying 'they must be 25'. They all run up to the windows and have a look. The whole thing is that asylum seekers are liars and are really economic migrants. The workers are okay, it's management that are the problem. ▸
- Social worker

This culture of disbelief can also be seen in the tendency to exaggerate or over-emphasise the proportion of age disputed clients who are assessed as being adults. When asked the proportion of age disputed referrals that were found to be adults, one social worker commented that 'I would say it's 99%'. Another said, 'I don't think it's that high – maybe about 90%'. Figures obtained for that local authority indicate that the number is actually much lower.<sup>8</sup> Further specific examples and the implications of such an approach for disputes over age and the assessment process are discussed throughout this report.

## 2.3 Difficulties in assessing chronological age

The assessment of chronological age is notoriously difficult. Even among children who grow up in the same social and economic environment and come from similar ethnic backgrounds, there are significant physical and emotional differences, as well as differences in needs and vulnerability, between children of the same age. Separated asylum seeking children come from cultures and contexts in which childhood is defined in different ways and where the social, economic and political circumstances in which they live make it impossible for them to do the things that we expect children living in the UK to be able to do.

These children are much less likely to go to school – the taken for granted 'norm' of childhood in our society – and much more likely to work, involve themselves in political activities, be caught up in conflict and fight for their communities or even their survival. Many of these children come from cultural contexts where chronological age is insignificant or from situations of conflict and violence which render it effectively meaningless. Not only may they look and behave older than we would expect children in our society to look and behave, but they often have no documentary evidence – no passport or birth certificate – to confirm that they are the age they know or believe themselves to be.

The difficulty in assessing chronological age is further exacerbated by the fact that there is no scientific or medical assessment process

<sup>8</sup> Unpublished figures provided by the Children's Panel.

which can solve this problem accurately. The medical assessment methods described in this chapter are associated with a margin of error of at least two years in either direction. In other words, a child or young person may actually be up to two years older or younger than the estimated chronological age, reflected in the fact that an assessed age is often expressed in terms of being plus or minus (+/-) two years. Age assessment is particularly difficult for those who are aged between 15 and 20 years of age and yet this is where the assessment of age – and the outcome of the process – is most critical.

Although this research does not attempt to give a definitive account of the different medical or scientific methods for the assessment of age, it is important to understand some of the methods that may be used in an attempt to assess developmental maturity and from which it may be possible to 'read off' an approximate chronological age. These methods can be grouped into the following types: assessment of bone age; dental age assessments; and the assessment of physical development (including puberty, height, weight and skin).<sup>9</sup>

The assessment of bone age is most commonly based on x-rays of the hand and wrist which are compared to one of two different but similar reference atlases developed by Greulich and Pyle and Tanner and Whitehouse. The Greulich and Pyle method was established as a result of a 1935 study which did not attempt to evaluate age but rather assessed skeletal maturity and did not take inter-racial or socio-economic differences into consideration. The authors themselves recognised that there was not necessarily a relationship between the chronological age of a child and the amount of progress which the child has made toward attaining skeletal adulthood.

Reflecting this, numerous studies of the Greulich and Pyle standards and other dental and bone age standards have found discrepancies and variability. Ontell et al (1997) conclude that using the standards of Greulich and Pyle to determine bone age must be done with reservations, particularly in black and Hispanic girls and in Asian and Hispanic boys in late childhood and adolescence.

<sup>9</sup> For an overview of the various scientific and medical techniques available for the assessment of age see Eizenberger 2003.

Another study of US children of European and African descent, published in 2001, concludes that new standards are needed to make clinical decisions that require reliable bone ages and accurately represent a multiethnic paediatric population.<sup>10</sup>

The Tanner and Whitehouse (TW-2) method of bone age assessment is based on the assessment of skeletal maturity and a prediction of adult height. In this case each of the 20 bones in the hand is individually compared with a series of pictures of the development of that particular bone. The reference standards which are used were established in the 1950s and 1960s. There is evidence that bone maturity is reached sooner now than four or five decades ago and that this is a particularly unreliable method for older groups (those of 15 to 18 years of age) and for those from different ethnic and racial backgrounds.<sup>11</sup>

It seems likely therefore that both methods of bone age assessment involving x-rays of the wrist and hand are affected by racial differences. A further method of bone age assessment involving the fusion of the clavicle has been used in some contexts but is generally considered to be relevant only in determining whether an individual is over or under 21 years of age, which is the approximate chronological age at which full clavicle development is most usually observed.

Although several countries which have previously used bone age assessment methods have discontinued this practice (for example Germany, Austria, Switzerland), this method is still used in several European countries, such as Belgium, Finland, Lithuania and France. In the Netherlands the Committee on Age Determination has been dismissive of age assessment being conducted solely on the basis of x-rays of the hand–wrist region because ‘the exclusive use of the hand–wrist region means that about 90% of all girls and some 50% of all boys reach the physical criterion for exclusion before they reach the age of 18, which means they may be unjustly refused treatment as minors’.<sup>12</sup> The Dutch authorities use clavicle x-rays along with x-rays of the hand–wrist region to determine age although this is a much more intrusive process and the margin of error remains considerable.

<sup>10</sup> Mora et al 2001.

<sup>11</sup> Eizenberger 2003.

<sup>12</sup> Committee on Age Determination 2006, 9.

One of the most common methods for the medical assessment of age is dental age assessment using x-rays. Dental maturity, often expressed as dental age, is an indicator of the biological maturity of growing children. Although different methods have been proposed to determine dental age – most of which involve counting the number of primary or permanent teeth, the existence or otherwise of wisdom-teeth and studying the mineralization of the teeth – the system developed by Demirjian has gained the widest acceptance.

There is however, a widely accepted margin of error associated with dental age assessment. Critics, such as the German Association of Forensic Medicine and researchers in Sweden, Finland, France and the USA, state that the development of teeth depends on the environment, nutrition, as well as ethnicity and race.

Those studies which have been undertaken looking at the applicability of dental age assessments to different populations suggest that there are wide variations in the chronological ages that are associated with different recognised stages of dental development. For example:

- Koshy and Tandon (1998) found that Demirjian's method of age assessment is not accurate when applied to South Indian children. In this case it was found that Demirjian's method gave an overestimation of 3.04 and 2.82 years in males and females respectively. The study concludes that this method of age assessment was not applicable for this group of children;
- Thorson and Hagg (2001) investigated the accuracy of the development of one molar often used to estimate chronological age in certain young foreign individuals with uncertain birth records. They found that the difference between estimated and true chronological age was large: plus or minus 4.5 years in girls and plus or minus 2.8 years in boys. They concluded that the association between dental age and chronological age, expressed in correlation coefficients, was poor;
- Eid et al (2002) applied the Demirjian method to Brazilian children aged 6 to 14 years of age and found that compared to the French-Canadian sample of Demirjian, Brazilian males and females were 0.6 years more advanced in dental maturity;

- McKenna et al (2002) applied the Demirjian method to South Australian children in order to assess its accuracy and concluded that the mean of differences was consistently outside the range of what would be considered acceptable for forensic age determination;
- Ethnic differences in the mineralization of third molars have been identified by Olze et al (2004; 2006);
- Combining a bone age measurement with dental exams still yielded significant overestimation of chronological age in another study of Swedish adolescents (Kullman 1995); and
- A number of other studies have also found multi-year differences between chronological and dental age.<sup>13</sup>

One of the main problems with the use of dental age assessments in the asylum context is that there is no benchmark data relating to the countries from which asylum seeking children originate. Moreover many of the samples that exist in relation to other populations are for groups of children who are much younger in age, most commonly under 14 years of age. During the earlier developmental stages, tooth development in males and females coincides closely. However, during later developmental stages, particularly root formation, a notable divergence between the sexes arises; with females being advanced when compared with males.<sup>14</sup> This is in keeping with other studies and reaffirms that any assessment of dental maturation must take into account these gender differences and the fact that the margin of error increases as children get older.

Because of the problems of sample size and ethnic and other differences, dental age assessments are widely regarded as being highly unreliable for assessing age. In the Netherlands, for example, dental age examination is regarded as being unsound because 25% of all people grow no wisdom teeth and because root development of the wisdom tooth demonstrates an extreme degree of inter-personal variation in the maturation process. According to a recent report by the Committee on Age Determination, 'about 10% of all girls and some 16% of all boys

<sup>13</sup> See Physicians for Human Rights (2003) for further information.

<sup>14</sup> McKenna et al 2002.

reach the criterion for exclusion before they are 18 years old and may therefore be unjustly refused treatment as a minor'.<sup>15</sup>

Finally, there are a number of anthropometric measurements (including puberty, height, weight and skin) which do not involve the use of x-rays, and have been used in a number of countries, including the UK, in an attempt to assess age. However these methods are also problematic. Although they do not involve x-rays, anthropometric measurements have been highly criticised because they do not take into consideration variations according to ethnicity, race, nutritional intake and socio-economic background. The reference tables are 35–40 years old and no longer correspond to the size of people living in Europe today. There are also problems with pubertal staging as a method of age assessment because it only provides an indication of whether someone is over approximately 15 years of age. Moreover any kind of puberty test involving an examination of the genitals is highly unlikely to be anything other than abusive.

There are increasing concerns among academics and practitioners alike that despite the problems with medical assessments of age outlined above, unreliable medical tests and examinations are being given unwarranted scientific legitimacy in the search for a technically simple solution to a difficult and seemingly intractable problem. At a conference held on 7 March 2000, organised by the Austrian NGO *Kinderstimme* (Children's Voice), experts came to the conclusion that age determination is not possible using existing medical methods.<sup>16</sup> In most cases medical tests are very expensive and can only indicate whether the age is under 16 years of age or over 20. According to medical research, a divergence of up to three years between the chronological age and the assessed age of the bones is possible. Any parameter variation from a growth source varies as children get older and this variation reduces the degree of accuracy. To this extent, age assessment is not a determination of chronological age but rather an educated guess.

<sup>15</sup> Committee on Age Determination 2006, 9.

<sup>16</sup> Eizenberger 2003.

The difficulties in assessing chronological age using medical techniques are reflected in international and national guidance, including UNHCR's *Guidelines on policies and procedures in dealing with unaccompanied children seeking asylum* (1997), the *Statement of Good Practice* issued by the Separated Children in Europe Programme. In the UK the clearest guidance on the assessment of age is that provided by the Royal College of Paediatrics and Child Health (RCPCH) in 1999. The guidelines state that:

'In practice, age determination is extremely difficult to do with certainty, and no single approach to this can be relied upon. Moreover for young people aged 15–18, it is even less possible to be certain about age. There may also be difficulties in determining whether a young person who might be as old as 23 could, in fact, be under the age of 18. Age determination is an inexact science and the margin of error can sometimes be as much as five years either side. Assessments of age measure maturity, not chronological age.'<sup>17</sup>

According to the RCPCH guidelines, the determination of age is a complex and often inexact set of skills where various types of physical, social and cultural factors all play their part, although none provide a wholly exact or reliable indication of age, especially for older children. For this reason assessments of age should only be made in the context of a holistic examination of the child and no single measurement or type of assessment should be relied upon. The RCPCH also notes the existence of well-documented uncertainties about the accuracy of dental age assessments and the fact that estimates of a child's physical age from his or her dental development are accurate only to within plus or minus two years for 95% of the population.

The RCPCH has also expressed its opposition to the use of x-rays for non-clinical purposes. In 1996 the Royal College of Radiologists advised its members that it was inappropriate to undertake an x-ray for the purposes of age estimation. This advice has not changed in the intervening decade.

Reflecting the position set out in the RCPCH guidelines most paediatricians in the UK have taken a decision against involvement in the process of age assessment, considering, it is assumed, that

<sup>17</sup> RCPCH 1999, paragraph 5.6.



they have little to add to the process. The few paediatricians who have become involved in undertaking age assessments of children have become caught up in a difficult and increasingly litigious process. This situation and its implications is discussed in more detail in chapter 5.

Medical tests to assess age also raise important issues around informed consent. Central to the dental and medical professions' ethical codes are principles of patient autonomy, welfare and consent. Dental and bone age testing examination, which are conducted by a limited number of physicians and dentists and are effectively contracted and paid for by the government, seem to breach all three of these ethical principles.

Given that medical age assessments constitute an invasion of privacy for no therapeutic gain, it is particularly important that the informed consent of those who are to be subjected to these procedures is secured before they are undertaken. It seems unlikely that a child or young person who is asked at a screening unit or port of arrival whether he or she is willing to undergo a dental x-ray to ascertain age, will be in a position to give consent that is both genuine and informed. In particular there are concerns that if an individual refuses to undertake a medical assessment in such circumstances he or she will be assumed to be an adult so that 'informed consent' effectively becomes compulsion in practice.

Given the problems associated with medical assessments of chronological age and the ethical issues associated with x-rays undertaken for non-medical purposes, it is surprising that the Home Office has indicated that it intends to make greater use of dental development x-rays where there is a reasonable doubt about the claimed age.<sup>18</sup> According to the consultation document which was published whilst this report was being finalised, 'there does appear to have been more recent research that indicates x-ray analysis (of the teeth and collar and wrist bones) can be a more reliable means of determining age than was once thought. That is certainly the belief of some of our EU partners, who regularly use these techniques for immigration purposes.'<sup>19</sup> The source of evidence on which these statements are made is not provided.

<sup>18</sup> Home Office 2007, paragraph 31.

<sup>19</sup> Home Office 2007, paragraph 27.

Contrary to these assertions, this research has found that there is no evidence that x-ray analysis can be a more reliable means of determining age than was once thought. Indeed the more that studies are conducted involving populations from different socio-economic and ethnic backgrounds the more *unreliable* such methods appear to be.

Moreover it remains the case that x-rays are not, and cannot ever be, used to ascertain chronological age. They can only ever provide an indication of skeletal or developmental maturity from which conclusions about chronological age may be inferred. Relying upon these methods does not provide any insight into the vulnerability and needs of the child or young person concerned. This is significant because social and psychological factors are also important in the assessment of age and need.

## 2.4 The risks of getting it wrong

📌 In September there was a young girl who claimed she was 14. The Home Office disputed her as being 17 or 18. We came to the conclusion that she was 14 and reunited her with her father in London. We managed to get her birth certificate and passport and it turns out she is 11 and has gone into year 7 at school. But the Home Office wanted to detain her as a 17 or 18 year old. 📌

■ Social worker

There is evidence that the age of separated asylum seeking children is often wrongly disputed. Statistical evidence on the number of wrongly disputed children is limited. In March 2007 the Government was asked how many age disputed applicants were subsequently assessed as being children. The Minister responded that this information would only be available by examination of individual case-files at disproportionate cost and was therefore not available.<sup>20</sup>

According to the Home Office's own published statistics however, a total of 1145 cases were 'resolved' during 2004 and 2005.<sup>21</sup>

<sup>20</sup> Hansard written answers 23 March 2007: Column 1162W, [www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070323/text/70323w0003.htm](http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070323/text/70323w0003.htm) [accessed 1 March 2007].

<sup>21</sup> Home Office 2005.

Without separating the 'resolved' cases into those that were subsequently accepted by the Home Office as children and those that withdrew their claim to be under 18 years of age, it is difficult to know how many separated asylum seeking children were deprived of the protection to which they were entitled and for how long. However it seems likely that in the vast majority of cases the evidence of a social work assessment has been accepted.<sup>22</sup> It also seems likely from the evidence collected during this research and discussed in the chapters that follow, that the number of cases where children are wrongly age disputed is even higher than this figure suggests. This is because not all children are able to access a social work assessment of their age and even when they are assessed as being under 18 years of age their records are not updated accordingly.

Statistical evidence from other sources confirms this conclusion. For example, statistics on the number of age disputed cases brought into the Oakington Reception Centre and the 'outcomes' for each case have been collected by the Refugee Council. In 2005 over 60% of those assessed by the local authority – amounting to 101 children over the course of the year – were found to be children following a detailed assessment. For three months of the year this rose to more than 80% of cases. The overwhelming evidence from the Oakington statistics is that the 'benefit of the doubt' is not being properly applied by immigration officers at ports of entry and screening units. It should also be noted that a significant proportion (around one third) of all assessments end up being cancelled. This may be because the child concerned has already been removed from the UK.<sup>23</sup>

The Children's Panel also collects statistics on the outcome of age disputed cases being dealt with by local authorities in the London area. For the 15-month period March 2005–May 2006, the Panel was in contact with a total of 164 age disputed cases. Of these half (49%) went on to be assessed by a local authority as being children and supported by them. 41% were assessed as adults

<sup>22</sup> This research did not uncover any evidence of claims to be a child being withdrawn.

<sup>23</sup> It is not known what happened to these children as there are no records of the outcome in such cases.

and referred to NASS for support. A small number (8 in total) were either removed or disappeared. It should be noted that there are significant differences in the 'success' rates for reassessments between London boroughs. For some local authorities it was 14%; for others only 1, 2 or 3%.

The Home Office's policy on disputed age cases is discussed in more detail in the following chapters. It should be noted here however that the fact that IND does not treat age disputed applicants as children unless and until their age is established as being under 18 is a cause of very great concern among social workers, legal representatives and voluntary sector practitioners alike:

- “ My biggest worry is that the system isn't working. It's failing at a number of different levels. Disputes over age are a sizable problem and the policy response is effectively a failure of child protection. ”
  - Medical practitioner
- “ What really concerns me is that someone who has not been assessed should be treated as an adult...it's a huge risk...it's important that they sit outside the adult system because of child protection and other issues. ”
  - Voluntary sector practitioner

Many of those working with separated asylum seeking children consider that there are significant risks associated with treating children as adults. These include:

- Risks that children will not receive the international protection to which they are entitled, including protection from detention and removal from the UK;
- Health, welfare and social risks resulting from the failure to provide appropriate welfare and support, including the risks of children being dispersed around the UK; and
- Child protection risks associated with placing vulnerable children, including those who have been trafficked, with adults.

All of these risks must be understood in the context of the Government's safeguarding children agenda.<sup>24</sup>

<sup>24</sup> Section 11 of the Children Act 2004 places a statutory duty on key people and bodies to make arrangements to safeguard and promote the welfare of children.

Although the Home Office is aware of these concerns,<sup>25</sup> Ministers and senior policy officials have consistently chosen to focus on the risks of adults being placed in the children system to a far greater extent than on the risks to children of being placed in the adult system. This focus partly reflects a conviction, discussed earlier, that the problem of age disputes stems primarily from adults claiming to be children and not from problems in immigration or social work policy and practice.

And yet even from a common-sense point of view the risks of wrongly treating children as adults are considerably higher than the other way around. This is because the children system has in-built support and supervision to prevent children from being harmed. No such safeguards exist in the adult system. Indeed it appears that any 'risks' associated with adults in the children system are much more related to the economic implications and a perception that immigration controls are being undermined than they are with outcomes for children.

It is clear from the evidence presented in the preceding section that there is no easy or straightforward way of determining chronological age. But it is also clear that in a significant number of cases each year, involving hundreds of separated asylum seeking children, the wrong decision is reached at the beginning of the asylum process with all the associated risks that this entails. The process by which age comes to be disputed, the effectiveness of procedures for assessing age, and the implications of age disputes for the children form the basis of the analysis and discussion in the chapters that follow.

<sup>25</sup> The Home Office's consultation paper on proposed reforms to the programme of support for unaccompanied asylum seeking children acknowledges that '[s]takeholders frequently draw attention to the serious child protection issues that could arise as a consequence of decisions that lead to children being placed in accommodation designed for adults' (Home Office 2007, paragraph 25).



## CHAPTER 3

# Screening and disputes over age

This chapter sets out the findings of our research in relation to the asylum screening process and the effectiveness of current procedures for ensuring that children are given the benefit of the doubt where their stated age is disputed.

### Case study

Duarte, 16, from Angola

### 3.1 Policy and procedural framework

This section outlines what is supposed to happen in terms of Home Office policy and procedures, the role of the Children's Panel, and the relationship between social services and the Home Office in terms of the process of age assessment. It draws in part on the guide to Home Office policy and procedures on handling age disputed cases produced by the Children's Legal Centre (2005).<sup>1</sup>

A child, whether unaccompanied or accompanied, is defined in the Immigration Rules (HC395, as amended) as a person under 18 years of age or who, in the absence of documentary evidence establishing age, appears to be under that age. An unaccompanied asylum seeking child (UASC) is defined as a child who is applying for asylum in his or her own right and is separated from both parents and not being cared for by an adult who by law or custom has responsibility to do so.<sup>2</sup> This definition is crucial as it has implications for a child's eligibility for services under the Children Act 1989 and for social services' ability to recoup from central government some of the costs of providing services under the Special Grant (for unaccompanied asylum seeking children).

Home Office policy in relation to asylum seeking children and young people including those whose age is disputed is set out in a number of policy documents and bulletins. These include *Policy bulletin 33*,<sup>3</sup> *Guidance on processing applications from children* (August 2005)<sup>4</sup> and *Guidance on disputed age cases* (3rd edition, August 2005), which specifically sets out procedures for how to dispute a claimant's age where they claim to be a child but are believed to be an adult, and for handling and processing

<sup>1</sup> The guide, which is intended to assist local authorities, legal representatives and voluntary sector organisations in understanding current policy and procedures, is available at [www.childrenslegalcentre.com/shared\\_asp\\_files/uploadedfiles/174A48D3-F558-4F0A-9B62-C1CBC5C8BBC8\\_InformationNote-agedisputesv3.pdf](http://www.childrenslegalcentre.com/shared_asp_files/uploadedfiles/174A48D3-F558-4F0A-9B62-C1CBC5C8BBC8_InformationNote-agedisputesv3.pdf) [accessed 1 March 2007].

<sup>2</sup> These definitions are set out in the Immigration Rules (paragraphs 349–352 of HC395, as amended).

<sup>3</sup> Available at [www.ind.homeoffice.gov.uk/6353/12358/pb33.pdf](http://www.ind.homeoffice.gov.uk/6353/12358/pb33.pdf) [accessed 1 March 2007].

<sup>4</sup> Available at [www.ind.homeoffice.gov.uk/documents/chapter5/apmsections/applicationsfromchildren.pdf?view=Binary](http://www.ind.homeoffice.gov.uk/documents/chapter5/apmsections/applicationsfromchildren.pdf?view=Binary) [accessed 1 March 2007].



asylum cases where the claimant's age has been disputed. There is also an *Asylum policy instruction on children* ('Children API') of April 2006.<sup>5</sup>

IND's *Guidance on disputed age cases* states clearly that when a claimant's age is disputed 'a claimant *must* be given the benefit of the doubt with regards to their age unless their physical appearance *strongly* suggests that they are aged 18 or over' (paragraph 2, emphasis in original). Reflecting the problems that can arise from the unlawful detention of separated children who are subsequently assessed as being 18 years of age, recently updated guidance on age disputed cases and fast track detention further emphasises the need for evidence that the person whose age is disputed is over 18 years of age. In these cases there must be a full 'Merton-compliant' age assessment or the physical appearance or demeanour of the applicant must *very strongly* indicate that they are *significantly* 18 years of age or over (emphasis in original).<sup>6</sup> This approach has not yet been extended to all age disputed cases despite the risks that are associated with a child's age being disputed.

IND's guidance also sets out detailed procedures to be followed in cases where age is disputed. Although there is no *duty* on immigration officers to refer age disputed cases to the appropriate local authority for an age assessment, all age disputed applicants should in principle be referred to a local authority for such an assessment to be undertaken. Immigration officers are also required to refer such cases to the Children's Panel who may, in turn, refer the applicant to a local authority for an age assessment.<sup>7</sup> The guidance states that where a local authority undertakes an age assessment and finds the applicant to be under 18 years of age, this assessment should be accepted and the applicant's records updated accordingly.

<sup>5</sup> Available at [www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/](http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/) [accessed 1 March 2007].

<sup>6</sup> This policy change is discussed in detail in chapter 6.

<sup>7</sup> It should be noted that the Refugee Council Children's Panel has no jurisdiction in Scotland or Wales so that this minimal arrangement to offer a safety net to age disputed cases does not apply to children and young people living there. There is no comparable arrangement with either the Scottish or Welsh Refugee Councils.

The guidance also sets out the kinds of evidence that might be taken into account in making a decision about an applicant's age. In addition to a social services assessment of age, an original and genuine passport, a travel document, or national identity card is considered to be sufficient proof of age. Immigration officers are required to exercise caution when accepting birth certificates because these may not necessarily have been legitimately issued or obtained. Where an applicant submits a document which suggests that they are an adult but claims to be a child, that person must be given the benefit of the doubt and be treated as a child if their physical appearance suggests that they are under 18 years of age.

IND's guidance states that where an age disputed child submits a report written by a practising consultant paediatrician that concludes that the claimant is under 18 at the time of the application then this must be considered, but emphasises that care should be taken with such reports as the margin of error can be as much as 5 years each way.

In addition to its own policy guidance for dealing with age disputed cases, IND has been working with the Association of Directors of Social Services (ADSS) to produce an *Age assessment joint working protocol* for UK local government and statutory childcare agencies. Version one of the protocol was issued in November 2005.<sup>8</sup> Its stated purpose is to set out arrangements to support a co-operative approach to age assessment. The protocol highlights the need for IND and SSDs to communicate disputes and decisions at the earliest possible opportunity because delay in notifying changes of status can be prejudicial to the welfare of the applicant and can lead to incorrect decisions and/or loss of support.

### 3.2 The realities of current practice

The research has identified widespread anomalies and confusion about procedures and processes for dealing with children whose age is disputed. Many of the problems facing children and those tasked with providing services for them arise from the failure to implement current policy. There is evidence of a significant gap between *what is supposed to happen* and *what happens in practice*.

<sup>8</sup> Available at <http://www.adss.org.uk/publications/guidance/ageassessment.pdf> [accessed 1 March 2007].

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### ■ Duarte, 16, from Angola

Duarte is from Angola where he was a member of the Frente de Libertação dos Enclaves de Cabinda (FLEC). Duarte was imprisoned for a month as a result of his activities and subjected to horrific daily abuse. During the day he was forced to do hard labour and deprived of food. At night he was beaten and raped and forced to perform oral sex. His health quickly deteriorated and he was sent to the local hospital under armed guard suffering from malaria.

Duarte was aware that previous cell mates had been taken ill or collapsed as a result of torture inflicted and had died. A doctor from Cabinda helped Duarte to escape from hospital and arranged for him to leave the country. Duarte was traumatized when he arrived in the UK and in considerable pain. When he attended the screening unit his age was disputed on the basis of his physical appearance although he presented an identity card confirming that his age was 16. He was placed in an adult hostel but referred to the Children's Panel after concerns were expressed about him by a member of staff. The Children's Panel arranged for him to be referred to a local authority on the unaccompanied minors' rota.

After one month Duarte was formally age assessed by the local authority who concluded that he was over 18 years of age. He was sent back to the Children's Panel and placed in emergency accommodation. He saw a paediatrician who assessed him to be 16 as stated. The Children's Panel challenged the local authority on the basis that they had not carried out a Merton-compliant assessment and the local authority subsequently accepted Duarte was a child on the basis of the new medical evidence. Duarte is now in their care.

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## The screening process

Although the focus of this report is on the experiences of age disputed children, the research found strong evidence of a general lack of concern for the welfare of separated asylum seeking children during the screening process. This is of concern both in itself and because it makes it more likely that children's stated ages and experiences will be contested. For example, separated asylum seeking children who arrive at the screening unit in Croydon are not separated from adults whilst they are waiting to be interviewed.<sup>9</sup> Although there are separate interview rooms which are available for children who are attending a screening interview, the pre-screening interview is always conducted through a glass screen in the public area.

Other issues observed at the screening unit include:

- A general lack of care for the welfare of a vulnerable group of children and young people, including a lack of food and water, a lack of information and reassurance about the screening and asylum process and no measures to ensure that children are safe whilst waiting to be screened;
- Not always accepting children into the screening unit if they arrive after 1pm (which is the policy position in relation to vulnerable categories);
- A failure to use the separate interview rooms that are available for screening interviews undertaken with separated children. In one case the Immigration Officer decided to interview a child in the open area rather than a private interview room because he thought the child was 17 years old and commented that '[h]e's grown up so we can do it here'. During the interview it transpired that the boy was actually 14 years of age;
- Difficulties with microphones which means that conversations held through the glass screen in the public area can be overheard or not heard at all and there is sometimes excessive background noise; and

<sup>9</sup> Although separated children sit in a different area from adults, there is no physical separation of the two spaces and adults walk through the area to be interviewed, photographed and fingerprinted

- Interviews being conducted with children under 16 years of age without the social worker being present as a responsible adult because the social worker is otherwise engaged and a child 'looks old enough to handle himself' or 'is nearly 16 anyway.'<sup>47</sup>

These problems with the screening process were found to exist despite assurances from senior managers that there have been improvements in procedures for dealing with applications from separated asylum seeking children and that staff working in the Children's Section at the screening unit are fully trained to deal properly with such cases. Moreover there is no evidence that the co-location of social workers at some ports and screening units has ensured that the welfare of separated children is properly considered during the screening process, an issue which is discussed in detail in the following chapter.

These general findings in relation to the screening process are reflected in the comments of children who participated in this research, many of whom made unsolicited comments about their treatment during the screening process. Angelina was heavily pregnant when she arrived in the UK and claimed asylum at the screening unit three days later. She had to wait for nearly six hours before she was interviewed:

- “ No one told me what was happening. I had nothing to eat or drink, not even water. I went to the toilet, that's where I got water to drink because at the time you don't have any money. It was difficult because I am pregnant. They should put like water to drink or something... It was really bad. It's how they treat you and deal with the other people and ignore you like you are not there. Then they ask you the same questions again and again. ”

- Angelina, 16, Uganda

After her interview she waited until around 7 o'clock when she was taken by the local authority and placed in hostel accommodation. She had nothing to eat until late that evening.

<sup>10</sup> Issues associated with the co-location of social workers at screening units and ports are discussed in detail in chapter 5.

Many children described how they had been required to wait for many hours at the screening unit with no information about the process and nothing to eat or drink. Some were then subjected to rude or aggressive questioning by immigration officers:

- “ I arrived [at the ASU] in the morning and I left around 8 o’clock at night. I was absolutely starving but that’s how every poor person is supposed to be. You are at someone’s mercy. I will never forget how they treated me when I went there. ”
  - Michel, 16, Rwanda
- “ I hated the first [screening] interview. They were so rude. They said just say yes or no. It didn’t make me feel good, it just make me feel bad. He [the IO] wasn’t listening to me. He was so rude. I just hate him. ”
  - Faela, 15, DRC

Social workers with experience of receiving this group of children into their care reinforced these concerns:

- “ Sometimes we pick people up at four o’clock and they have had nothing to eat or drink. It affects how they are when we pick them up. They are exhausted, frightened, not fed at all...it can’t help the screening process. ”
  - Social worker

The research also identified regional problems and issues around the screening process for separated asylum seeking children. In some regions screening interviews are no longer carried out locally. As a result children are required to travel long distances – sometimes a round journey of 10 hours – in order to be screened. This can be both disruptive and costly if the child is to be accompanied by a responsible adult or guardian and legal representative, especially if the interview is conducted in the morning and an overnight stay is required.

## Reliance on physical appearance

It is IND policy to dispute the age of an asylum seeker who claims to be a child only if his or her physical appearance *strongly* suggests that they are aged 18 years or over. In borderline cases, it is IND policy to give the applicant the benefit of the doubt and treat them as a child.

Immigration officers are aware that they need to give applicants the benefit of the doubt but find the assessment process very difficult:

- ▣ In borderline cases we are supposed to accept them as minors. But it's a very difficult assessment. Age is very much in the eyes of the beholder. My guidance is essentially looking if they are under 18. If they are in their early 20s it could be borderline. I look at their demeanour and general mannerisms. If you are looking at someone who is 22 or 23 then they could be borderline...If you really think someone is over 18 then the way forward is to treat them as an adult. But if it's too close to call then you may treat them as a minor...<sup>7</sup>

- Chief Immigration Office, screening unit

As a result, there is evidence that much of what currently passes for 'age assessment', particularly at screening units and ports but also among some social workers, legal representatives, immigration judges and other practitioners, is essentially a rapid visual assessment which concludes that an individual *doesn't look like a child*. This conclusion is inevitably based on a socially constructed understanding of what a child should look like.

As was suggested in the previous chapter, the problem with an over-reliance on physical appearance is that it is not a very good indicator of chronological age. Many separated asylum seeking children have been brought up in conditions of poverty. Some have worked or have been forced to work. Others have been effectively 'aged' by their experiences before arriving in the UK. Beckham described his life in Afghanistan and the fact that his face and hands had been weathered by his outdoor life as a shepherd. He commented that it was not possible to compare his physical appearance with that of a child of a comparable age who had been brought up in the UK because of their different life experiences:

- ▣ When I went to the Home Office they told me I was over 18 even though I had a hard and a difficult life in Afghanistan. I worked for the family as a shepherd and it was a tough life. That's why my face looks much older than I am...Last time I went to the Home Office I told them that I am now 16 and they looked at my hands and said 'no, you are not 16'. But I am not like a British child. They don't work. My fingers and my hands, they have all got hard and old and soiled by work. That's why it's different.<sup>7</sup>

- Beckham, 15, Afghanistan

Lavdie was trafficked into the UK when she was just 15 years old (► case study, chapter 7.3). Her comments reflect these experiences:

- “ Every time I go to the mirror and say did I change too much? If you buy two t-shirts and use one every day and the other one you keep it, which one will look older? ”

Many of the stakeholders and practitioners who participated in this research also commented on an over-reliance on physical appearance, particularly at the screening stage which often takes place shortly after a child's arrival in the UK. Many social workers identified ethnic and racial differences as being important in making individuals appear older or younger than they actually are when compared with the physical characteristics of children who have grown up in the UK:

- “ Most of my clients are now age disputes. I do believe the Home Office are being unfair. Most of my asylum seekers are coming from African and Arab countries, places like Iran and Iraq. The Arab men tend to have a lot of black hair...even some of the girls and women have facial hair. It can make you look older than you are. Depending on whether you are European or Asian you are going to look older. European children have no dark features, no weathered skin... ”

- Social worker

- “ Middle Eastern men tend to be hairier and because they have more facial hair people assume they are therefore older. Different cultures also have a different ageing process. With girls it can be very difficult to tell how old they are especially given that some of them have their own babies. There needs to be more cultural awareness. ”

- Social worker

- “ Physical appearance is important but it's unreliable. Someone can have grey hair but still be very childlike when you talk to them. Even within our own ethnic backgrounds it's difficult especially if children are going through puberty. There are variations in children's development even if they are the same age. And we think we know people's systems but we don't. ”

- Voluntary sector practitioner

In several cases which were observed at the screening unit a decision was made to dispute a child's age on the basis of a perfunctory visual assessment by an Inspector who simply asked a child to stand up and then looked him up and down briefly.



During the period of observation a young Bangladeshi arrived for a screening interview with his foster carer (who was related) and a legal representative. The immigration officer decided that he was over 18 years of age and asked for his decision to be confirmed by a chief immigration officer. The CIO asked the applicant a few brief questions and asked to look at his hands. She shook her head and walked away. The IO then informed the applicant's guardian that his age was being disputed and he was to be treated as an adult.

Many of the children who participated in this research felt bewildered and sometimes intimidated by the way in which their age came to be disputed a result of a cursory visual assessment, often conducted through a glass screen or at some distance:

“Initially when I went to the Home Office they told me that my physical appearance showed them that I was not of the age that I said I was, but they didn't say anything else.”

■ Neroz, 15, Iran

“When I got to the screening unit they gave me a ticket. I waited about an hour. After they call you they talk to you and they write down stuff. They ask you when you came, where you come from, what you want... The lady at reception she asked me how old I am. I said I am 16 and the man behind the glass he looked at me like this... [looked up and down]... and he said 'you don't look 16 because of your physical appearance. He just looked at me and said no I am not 16.’”

■ Angelina, 16, Uganda

Hassan was 16 years old when he arrived at Heathrow airport and claimed asylum. He described how he left Iran after his parents had separated and he was forced to live with his father who was abusive towards him. He was taken to Thailand by an agent and then on to China. His hair was bleached blonde in Thailand and his head shaved in China. In neither place was he allowed to leave the room in which he was staying. It is unclear why he had spent time in each country and he was unwilling to elaborate. What is clear however was that he was deeply troubled by the way in which he was treated by immigration officers when he arrived at Heathrow airport and his age was disputed:

- “ The worst thing I can remember they made me sit there and like a slave market other immigration officers were told to look at me and guess my age. It was like I’m going to be sold. One would say 24, another would say 21. I was told to stand up and down. Then they said you are over 18...When they were deciding my age in that place it was like they are going to buy you. It was the worst point. ”
- Hassan, 16, Iran

Hassan’s age was disputed and he was taken to Oakington where he was detained for eight days. He was subsequently assessed by social services who confirmed that he was the age he said he was and took him into their care.

Michel (► case study, chapter 7.2) is from Rwanda and was 16 years old when he applied for asylum at the screening unit. He described the circumstances of the dispute over his age and his feelings about what happened at that time:

- “ The Home Office disputed me first on my first visit to Croydon ASU. Someone saw me and just said ‘no’. I could hear them speak. There was a kind of screen between them and me. I could hear some were saying accept him as a minor but one of them, a manager, said ‘no, he has to fight it on his own’ There is just a big screen that separates you. You just hear them arguing about it and coming to that conclusion... The interpreter just told me she said no. I asked why and they just said they disputed my age. I didn’t have any documents to prove it...They just asked me about my mum and how old she was and my dad and how old he was. That was it really. They didn’t vigorously check my age. ”

Faela is from the DRC. She was 15 when she arrived in the UK. She described how she had gone to the screening unit and was made to wait a long time because of a problem getting an interpreter. It was nearly 5pm before she was interviewed. No one explained the purpose of the interview to her. She described the circumstances in which her age came to be disputed:

- “ [The immigration officer] called one black lady. I was standing here. There was like a window. She look at me and she just shook her head and went away...she just look at me like that and shook her head and said you’re not 15, you’re just lying...She was so rude, she was just looking at me really badly, she seemed furious but I don’t know what about. She looked at me like everything I’m telling is a lie. ”
- Faela, 15, DRC

A significant proportion of social workers were critical of the process that takes place at the screening unit. Many are of the view that the number of age disputes could be substantially reduced at the outset of the process if the methods for assessing age at this early stage were improved, and if the 'benefit of the doubt' were given:

- “ The majority of age assessments we do show that the Home Office process leaves a lot to be desired. The initial assessment is done by a screening officer based on their physical presentation. If there was a slightly more sophisticated process at the Home Office it would really help us all. The current process causes so many problems. ”
  - Social work manager
- “ The IO is seeing the child as a one off. What sort of training and guidelines do they use to make their decision? They just talk through the glass and it is crowded all around. Other people are standing around the person because there is only one seat. If he gives a nod then he's accepted they're a minor but he couldn't even see all the person because they are sitting. That's appalling if that's the way they make decisions, but it seems to be the norm. ”
  - Social work manager

Social workers are concerned that the current over-reliance on physical appearance leads to outcomes which are arbitrary and inconsistent. As well as creating difficulties for asylum seeking children whose age is disputed, the current approach can also lead to adults who claim to be children *not* having their age disputed because some young people appear much younger than they actually are.

It can also result in children who claim to be adults not being afforded the protection and support that they need. Social workers reported that some children claim to be adults when they arrive at the screening unit and this is simply accepted.

## Demeanour and credibility

In addition to an over-reliance on physical appearance, the research has found that demeanour or behaviour influences the decision to dispute an asylum seeker's stated age:

- “ When you talk to them...some of them have quite an attitude, which suggests they are an adult. We take it all into account...there are a number of things you look for. You can usually tell if they are a child if they make eye contact. Or else it's an attitude thing....the sullen ones won't talk to you. Especially if they are hiding something then they don't trust you to look at them too much. ”
  - Chief immigration officer, screening unit

As with physical appearance, demeanour is not a good indicator of chronological age, particularly where children have been through difficult or traumatic experiences, where they have had to grow up quickly in order to survive or behave in an adult-like way in order to reach the UK:

- “ As a teenager the situation forced me to become an adult very quickly. ”
  - Lavdie, 15, Albania
- “ In order to get into the country you have to pretend you are older than you are...you have to behave older and more confident. ”
  - Voluntary sector practitioner

There is also evidence that credibility may be used as a proxy or indicator of whether or not a child is being truthful in relation to his or her stated age. In some cases concerns about credibility may have nothing at all to do with the child or young person's stated age but may be related to the overall asylum claim or circumstances by which the individual travelled to or arrived in the UK. For example, several of the children who participated in this research had been age disputed because the language they spoke did not appear consistent with the stated country of origin. Joseph (► case study, chapter 6.1) was 14 years old when he arrived in the UK from Rwanda. He described how both his age and his nationality had been disputed because he chose to speak in English rather than French or Kinyarwanda:

- “ Because I spoke English in my country of origin they [the immigration officers] called another lady and they said to her ‘how old do you think this person is? She said ‘I think he is over 18’. I was being disputed – my age and my nationality. They didn’t say why but I think it was because I spoke English. But they didn’t give me any reasons... they didn’t really tell me what was happening. ”

  - Joseph, 14, Rwanda

A similar case was reported by a legal practitioner:

- “ We have a new client who is Iranian. He went up to the Home Office with a [SSD] age assessment that said he was under 18. He was refused by the Home Office. They said the client speaks too much English so he can’t be the age he says he is. ”

  - Legal practitioner

Although the language spoken by an asylum seeker bears no relationship to his or her stated age, there is evidence to suggest that where the credibility of an application is questioned, the child’s age is also more likely to be disputed. Moreover where a child’s age is disputed for reasons of physical appearance, demeanour or documentation, this often reflects negatively on the credibility of the asylum application itself, an issue that is discussed in more detail in chapter 5.

There is also evidence that issues relating to documentation including birth certificates and ID cards can be a significant factor in the decision to dispute age and that this can be exacerbated by the use of different calendars in some countries of origin (for example Iran and Afghanistan). Issues of documentation may also be tied in with the perceived credibility (or otherwise) of the child or young person’s account of his or her stated age and experiences.

Disputes over age can also arise because of a lack of understanding of the way in which dates of birth and calendars are calculated in other countries and cultures, and associated confusion and misunderstandings over what is being said by a child about his or her age.

The screening of two Kurdish boys from Iran which was observed at the screening unit and discussed briefly in the preceding chapter is illustrative of this problem. The dates of birth in the passports indicated that they had both recently turned 16 years of age.

However according to the CIO on duty, the ages of both boys was being disputed because they had both stated that they were in their 17th year when asked how old they were. The boys were processed as adults and sent to Migrant Helpline for dispersal through NASS. Although the social worker based at the screening unit had tried to explain the anomaly in the date of births in the document and the boys stated age, there was no suggestion from anyone – including the social worker – that they should be referred to social services. Rather their cases were not considered to be credible because of perceived inconsistencies in the accounts given.

## Referral and recording processes

IND policy states that separated asylum seeking children should be dealt with as a priority by the screening unit. In practice however there is evidence that many of those who are age disputed are simply assumed to be adults and are treated accordingly. When a child is age disputed both the child and the paperwork associated with his or her case are moved physically to the adult section of the screening unit and they are required to wait their turn with other adults in what may be a very lengthy queue. This is in to prevent delays in processing the cases of those who are accepted as children:

- ┌ When someone is age disputed the whole file and case is moved to the adult section. Before we dealt with the age disputed ones as well minors weren't being given sufficient priority because we were effectively dealing with adults as well. Now the initial reception is dealt with by the minors unit and then we pass their details over to the other side. This ensures that all the minors are ready to go to [Social Services] by 4pm. We screen them and give them their ARC card but we have no interest after that. ┐
- Chief immigration officer, screening unit

One of the obvious implications of this approach is that age disputed cases are effectively treated as adults from the very beginning of the process. Where the applicant is not screened in time to be taken by the co-located social worker back to the local authority, the child will then be referred to Migrant Helpline at the end of the screening process. It is then the responsibility of staff at Migrant Helpline to make the appropriate referrals to the local authority and the Children's Panel.

There is some evidence that these referrals are not always made, possibly because documentation relating to a case does not clearly state that the applicant's age has been disputed. This can result in age disputed children being dispersed to different areas of the UK without a formal age assessment being undertaken. Some of these children may subsequently be identified by concerned accommodation providers and taken into the care of the local social services in the dispersal area. Others may never come to the attention of service providers and may be treated as adults throughout the process. These issues are discussed in more detail in chapter 6.

It is also IND policy that all separated asylum seeking children, including those whose stated age is disputed, should be referred to the Children's Panel for advice and support. The research confirms the concerns of social workers and voluntary sector practitioners that this does not always happen as it should. On the first day of observation at the screening unit in Croydon a total of 17 separated asylum seeking children were screened. According to records seen at the Children's Panel several weeks later, only seven of these cases were referred. Very little information was provided in relation to these cases: many did not even have a Home Office reference number. On the second day of observation there were a total of 16 separated asylum seeking children screened, of whom four were age disputed. Eight of these children were referred, including the four young people whose age was disputed, but one child was referred twice so there were effectively only seven referrals. This means that less than half of all the separated children screened at the screening unit during the observation period were referred to the Children's Panel.

Even where a referral is made to the Children's Panel, it should not be assumed that all children can access the support and assistance of a Panel adviser. The Children's Panel is under-resourced and does not have the capacity to help all children, including all those whose age is disputed. The Panel is unable to actively seek out many of the children who are referred by the Home Office, and a large proportion of its resources are concentrated on those who arrive at its offices in London.

There is evidence from this research that age disputed children who are dispersed as adults outside London are unlikely ever to come into contact with the Children's Panel. In principle this should not be able to happen because all age disputed cases that arrive at a screening unit will be referred to a local authority or will be referred by an emergency accommodation provider prior to dispersal taking place. In practice the dispersal of age disputed children without such a referral happens appears to take place on a regular basis. The Children's Panel support only a few cases outside London. According to one legal representative based in the north east:

- “ We do sometimes contact the Refugee Council but they can't do much because they have so much on their plate. In the past we've found that when we tell them about people they just don't bother. Because the relationship with the local authority is so good... we haven't really bothered with the Refugee Council. They don't have the resources to cope, plus we have to give them a lot of warning which we can't always do. ”
- Legal representative

The impact of age disputes on the limited resources that the Children's Panel has at its disposal should not be under-estimated. The shortage of resources also means that those children and young people who are referred to, or come into contact with, the Children's Panel may not benefit from the attendance of an adviser when they return to ASU in Croydon for the screening process despite the risks that a child's age may be disputed. Moreover age disputes have proved to be particularly problematic for the Children's Panel because as the numbers of disputes has increased advisers increasingly find themselves coming into conflict with local authorities because of differences of view over whether or not an asylum applicant is the age he or she claims to be.

Finally, the research also found that there are frequently discrepancies and anomalies in the records that are held by the Home Office, SSDs and other service providers. Many of these discrepancies arise from the failure to update the applicant's records properly to reflect the outcome of an age assessment. This problem – and the procedural issues that it raises regarding the working relationship between immigration officers and social workers – is discussed in more detail in the following chapter.



For the purpose of the discussion here however it is important to note that some of the discrepancies arise from simple administrative errors made at ports and screening units.

The documents shown to us by several of the children and young people who participated in this research showed clear inconsistencies. In some cases the applicant had been given a letter stating that age was disputed but their ARC did not contain a record of the dispute. Some children were given their own date of birth on the ARC; others were given a 01/01 date of birth which simply made them over 18 years of age, again with no record of the age dispute. In these cases the fact that they are age disputed would not be known to service providers.

One particularly clear illustration of the impact of administrative errors in the records can be seen in the case of a 16 year old Kurdish boy, Soran, from Iran who had been detained at Harmondsworth for 32 days (► case study, chapter 6.6). At the time of the research Soran was being supported by a local authority which had not disputed his age and he had an ARC card which records his correct date of birth and which does not indicate that his age is disputed by the Home Office. Despite this there are *three* different dates of birth recorded in the various official letters in his file from the Home Office. These range from 1987 to 1990. There are a number of other administrative errors in the paperwork. For example, although Soran was detained at Harmondsworth, his place of detention is recorded as Campsfield, his next reporting date is listed as 2222 and the photograph on his ARC has clearly identifiable people in the background. Soran was given an adult SEF form for completion and return within 10 days rather than a SEF(C) form. When his Children's Panel adviser contacted the Home Office to find out the reasons for this she was informed that his age was in fact being disputed by the Home Office despite a letter from the local authority confirming that he is being supported under the Children Act. The Home Office is requesting proof from the local authority that an age assessment has been undertaken. The local authority does not consider it necessary or appropriate to undertake an age assessment given that it does not dispute the applicant's stated age, as recorded on the ARC.

### 3.3 Implications and recommendations

The research has identified considerable evidence of an over-reliance upon physical appearance as a proxy or indicator for chronological age, even though this is notoriously unreliable given the varied ethnic and social backgrounds of those who seek asylum. Many separated asylum seeking children have been brought up in conditions of poverty. Some have been involved in manual labour. Others have effectively been 'aged' by their experiences before arriving in the UK. Whilst physical appearance is clearly important in the assessment of age it cannot and should not be the only indicator that is used. The perceived credibility of an asylum application, as well as errors and misunderstandings over stated dates of birth, may also lead to a child's age being disputed at the screening stage.

The research has also identified a gap between the processes for referring age disputed children as set out in IND's own policy guidance and what happens in practice. This gap appears to result from a lack of clarity about the procedures for referrals and because age disputed applicants are often simply treated as if they are adults. As a result age disputed children are not automatically referred to social services for an age assessment, or to the Children's Panel for support and advice. These problems are exacerbated by administrative errors in the records that are held by the Home Office and the documents provided to age disputed cases.

In relation to the screening process and the current high number of age disputes, our key recommendation is that IND staff should follow their own policy guidance in relation to age disputed cases. Physical appearance is not an accurate indicator of chronological age and therefore should not be overly relied upon. The 'benefit of the doubt' needs to be given at the initial screening stage. Guidance given to IND staff should be brought into line with the recent guidance issued in relation to fast track detention to reduce the number of age disputes. Only those applicants whose physical appearance or demeanour very strongly indicates that they are significantly 18 years of age or over should be age disputed.

There are also a number of specific steps which should be taken to ensure that there are appropriate procedures in place for the formal assessment of age where an asylum seeker's age continues

to be disputed even where the benefit of the doubt is properly applied. Placing age disputed asylum seekers in adult processes is a high risk strategy. The default position should be that age disputed applicants are potentially children. Appropriate mechanisms and procedures should be developed to reflect this, for example, age disputed applicants should not be interviewed as adults at the screening stage or allowed to simply leave the screening unit and return to their accommodation if they are not in need of NASS accommodation (as is currently the case).

There needs to be a clear procedure in place for ensuring that all age disputed asylum applicants receive a formal age assessment before their asylum claim is considered. This is necessary to ensure that child-specific procedures are followed if the applicant is assessed as being under 18 years of age and to ensure that he or she is placed in the appropriate segment of the NAM. Asylum applicants whose age is disputed should automatically be referred for a formal age assessment. The referral should be to a local authority or, ideally, to a separate, independently resourced, regional age assessment centre.<sup>11</sup>

Age assessments should not be undertaken at ports or screening units. The difficulties inherent in the assessment of age are exacerbated when a child or young person is assessed immediately upon arrival and in an immigration setting.

All separated asylum seeking children – including those whose age is disputed – must be referred to the Children’s Panel. One mechanism for ensuring that referrals are made is for an adviser from the Children’s Panel to be based at screening units and ports.

Publicly funded legal advice should be available for all separated asylum seeking children, including those whose stated age is disputed.

Finally any medical assessments of age – including through the use of x-rays and dental age assessment – should only take place in the context of a holistic assessment process. Any medical examination must take place with consent which is genuinely informed. It is not possible to secure the genuinely informed consent of separated asylum seeking children immediately or soon after their arrival.

<sup>11</sup> Our proposals for regional age assessments centre are outlined in chapter 4.5.



## CHAPTER 4

# Procedures for assessing age and the role of social services

This chapter examines current procedures for ensuring that asylum seekers whose age is disputed are able to access a formal social service age assessment and that the outcome of this assessment is taken into account.

It also examines the potential for conflicts of interest arising from the assessment process and considers the implications of the co-location of social workers at screening units and ports and the service they provide.

4

### Case studies

Semira, 15, from Ethiopia

George, 16, from Kenya

Co-located social work practice: a case study

## 4.1 Procedures for assessing age

Local authorities have a statutory duty to provide services necessary to safeguard and promote the welfare of all children deemed to be 'in need' under the provisions of the Children Act 1989. Children who are defined as being 'in need' are those whose vulnerability is such that they are unlikely to reach or maintain a satisfactory level of health and development, or their health or development is likely to be significantly impaired, without the provision of services.<sup>1</sup>

In the absence of their parents or customary care giver, separated asylum seeking children are by definition children 'in need' and are therefore eligible for services – provided that they are indeed children. In order therefore to decide whether an asylum seeker is eligible for support, a local authority will need to decide whether an asylum seeker who presents as a child is under 18 years of age.

In the absence of statutory guidance, the Association of Directors of Social Services (ADSS) protocol sets out the process by which an age assessment will be undertaken. It states that where IND is the first agency to come into contact with a child or young person and doubts his or her stated age, he or she will be treated as an adult but may approach a local authority for a formal assessment of age. Where the local authority is the first point of contact, an age assessment should be conducted, ideally on the same day, and the outcome of that assessment relayed to IND. Throughout the ADSS protocol reference is made to a 'central point of contact' between SSDs and the IND through which information about the assessment process and its outcome should be relayed. The protocol also sets out the procedures which should be followed where there are conflicting assessments between the local authority and IND, or between local authorities.

This research has identified a number of problems with the current guidance and the support available to local authorities on procedures for the assessment of age. The ADSS protocol not only contains inaccuracies and is outdated but is also not widely known about or used. Very few (only 2 out of 14) local authorities participating in this research were aware of its existence, and these authorities complained that the procedures were not followed in practice.

<sup>1</sup> Children Act 1989, section 17(10).

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## ■ Semira, 15, from Ethiopia

Semira was 15 years old when she arrived in the UK. Her father is a Jehovah's Witness from Eritrea and her mother is from Ethiopia.

Semira's father was accused of assisting the Eritrean government and was arrested and taken to the police station, along with Semira and her two brothers. She was taken to prison where she remained for eight months and was repeatedly raped.

Semira was helped by a member of her family to escape from Ethiopia. Her age was disputed when she first went to the screening unit and she was referred to social services for a formal age assessment. The local authority did not undertake an assessment but simply agreed with the Home Office's view that she was an adult.

Semira was supported by the Children's Panel and provided with emergency accommodation in order for a paediatrician to undertake a medical assessment. The paediatrician assessed her as 16 years old plus or minus two years. Despite this the local authority refused to undertake a reassessment or to take her into its care. Semira is supported by NASS as an adult and has never been accepted as a child by social services. Her asylum application was refused by IND and has also been refused on appeal.

The absence of any statutory guidance and the inadequacy of other information is reflected in the fact that most local authorities are unclear as to their roles and responsibilities in the age assessment process.

In an attempt to 'iron out' procedural difficulties in the age assessment process and increase consistency, some local authorities in England have developed local protocols for age assessment. Several local authorities provided us with examples of information that they provide to their social workers to ensure that they understand what their obligations are in relation to age assessment and the legal and policy context in which the assessment takes place.

The guidance provided by one local authority (► see pages 68–69) sets out clearly the practical issues involved in working with separated asylum seeking children. This guidance is aimed specifically at social workers and community support workers in the local authority area. It includes information on the definition of a refugee and separated asylum seeking children, information about what happens to children at the point of entry and difficulties associated with gathering information from children immediately on their arrival and throughout the asylum process. It also deals with health and educational issues. The same local authority also provides guidance to its staff on procedures for dealing with age disputed asylum seeking children.

Although these procedural guidelines appear to be proving helpful for staff at the local level they have yet to be adopted widely. In other cases there is a gap between the local authority's own guidance to its staff and what happens in practice. For example, the guidance provided by another local authority states that only those young people who are considered to be outside the age eligibility by five years will be refused a service. The evidence collected about the experiences of children in that local authority suggests that this is not the case in practice.

## Accessing an assessment

As was noted in chapter 2, the circumstances in which age is disputed vary. Some children's age is disputed immediately they claim asylum; for others it may be disputed at a later date by a local authority.



For those whose age is disputed at a port or asylum screening unit, accessing a social services age assessment can be a significant problem.

Until February 2006, all applicants who were age disputed when they attended the screening unit in Croydon were issued with a letter which informed them of their right to approach the social work department of a local authority for a 'social work assessment'. While there were problems in ensuring that the applicant understood the procedural right contained in the letter (because it was in English, provided at the same time as a mass of other documentation etc), it at least provided a minimum safeguard. The edition of the letter currently issued by the Immigration Service has removed this paragraph. It is unclear how age disputed applicants are supposed to find out about this important right.

The evidence in chapters 2 and 7 indicates that although age disputed applicants are supposed to be referred to a local authority for an age assessment, in practice this does not always happen. The failure to make a referral may be for reasons specific to the applicant: for example because the applicant does not require local authority or NASS support and therefore simply returns to their existing accommodation. Or it may happen because of failures in the referral process itself. There is strong evidence – which can be seen in chapter 7 – that some age disputed children have been dispersed to NASS accommodation without a formal age assessment having taken place, and only subsequently, often by chance, are they identified as possibly under 18 and referred to a local authority for assessment.

Although the presence of social workers at the screening unit in Croydon is supposed to ensure that all age disputed applicants are referred to a local authority in London for an age assessment, the evidence presented in the previous chapter suggests that in practice this does not always happen.

Other children may directly seek the support of a local authority before an application for asylum is made. Local authorities – both within and outside London – receive referrals through a variety of sources. One social work manager told us that age disputed cases 'mostly just turn up in the area'.

## Example of local authority guidance on procedures for age assessment

Age assessments of unaccompanied children seeking asylum where their age is disputed have the following implications:

- The Home Office Immigration and Nationality Directorate (IND) question the age given by unaccompanied children seeking asylum more and more often;
- The Home Office treats an 'age disputed' person as an adult unless a subsequent children's social care assessment finds the person to be under 18 years of age.
- The Home Office will accept the assessment given by children's social care

If the person is considered to be over 18 by IND and social services or Children and Families does not carry out an assessment, the implications for the young person are that:

- Their support will come from NASS and not Children and Families
- They will be treated as an adult in the asylum process

## When does the IND dispute age?

Age is normally disputed at first contact with an immigration officer. This will be:

- At the police station, if an immigration officer is present
- At the screening interview held later at the Croydon IND office

'Age dispute' is written on the ARC card, the ID card given to the young person at the end of the screening interview. You should:

- Inform your team manager as soon as possible when age is disputed
  - Photocopy all ARC cards
  - Keep one copy on the file
-

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## Procedure for age assessment disputes

- Carry out an age assessment within 5 working days of the age being disputed
- Two workers from the relevant team carry out the assessment
- Record the assessment on the form approved by the Home Office
- Carry out the assessment at [location] with an interpreter
- Book the interpreter via Customer Services
- The allocated social worker writes up the assessment
- The team manager makes the final decision
- Communicate the final decision to the young person in their language of choice with a copy in English attached
- Allocated worker sends a copy of the age assessment to the Home Office. This is crucial for funding purposes. The contact details are [provided]
- Keep a copy of the assessment on the client file
- Record the decision on SWIFT

## Requests for age assessments

Where another agency or a young person requests an age assessment, find out if the young person is already known to another local authority

- If yes, then refer back to that local authority for assessment of age and need
- If no, carry out an age assessment as above

If the age assessment concludes that the young person is a minor, consider the young person as a new referral

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Referrals may be made by the police who have picked children and young people up on the side of the motorway or at a service station; in these cases, we were told that ‘the process and the status they get are made even more haphazard because it is also dependent on the police force that picks them up’. As noted above, some SSDs only come into contact with cases because they have been dispersed as adults and are living in NASS accommodation within their local authority area.

There is also evidence of wide variation in whether or not an age assessment is undertaken even where a child whose age is disputed is referred to a SSD. Some local authorities do not routinely undertake formal age assessments when they get referrals or come into contact with children whose age is disputed. Michel (► case study, chapter 7.2) described how he was referred to a local authority in London by the Children’s Panel after his age was disputed at the Asylum Screening Unit:

- ❖ [The local authority] didn’t accept I was a child. They mishandled the process. They just read the form from the Home Office and said ‘the Home Office didn’t accept your age so we can’t accept your age’. So they referred me back to the Refugee Council. It was horrendous... I didn’t have any assessment. I had just been turned down on two occasions. I was just so shocked and surprised that this could happen. No one could give me a reason why. It was appalling to be honest. ❧
- Michel, 16, Rwanda

Other local authorities will only undertake a formal age assessment if they are put under pressure to do so by a legal representative, Children’s Panel adviser or other concerned party. Many of those who are age disputed – and especially those who live outside London – do not realise that they are entitled to be formally assessed and have neither a legal representative nor anyone else who can advocate on their behalf. The possibilities of obtaining a formal assessment are therefore limited:

- ❖ The legal rep needs to trigger the connection to the age assessment process in many cases. It’s very difficult to see how an age assessment will be done if the child has no legal rep or they don’t know what they are doing. ❧
- Legal practitioner

There is also evidence that some local authorities simply take the decision that a child or young person is the age that he or she claims to be on the basis of physical appearance and they then provide a service on that basis. Many local authorities do not have the resources to routinely undertake formal assessments of age, and are also concerned about the impact of multiple interviews and assessments on children and young people themselves:

- “ We might choose to do an assessment. We don’t question large numbers but if their behaviour makes us unsure then we do an assessment. We don’t rush to do age assessments on those who come to us disputed. ”
  - Social worker
- “ We only undertake assessment as a need. We recognise that the age assessment process is intrusive and that it reinforces what they [children and young people] might have experienced already. ”
  - Social worker

In the current context this can create difficulties at a later date: for example, a child who is being supported by a local authority social services department may still be age disputed by the Home Office unless he or she can provide evidence that a formal age assessment has been undertaken. One local authority reported that because of these kinds of problems they routinely age assess all asylum seeking children, despite the additional demands that this makes on resources and staff and the difficulties that this can cause for children who are subjected to multiple, and unnecessary, interviews.

It should also be noted here that because of errors and inconsistencies in Home Office documents provided to age disputed children, local authorities may not even be aware that an age assessment needs to be conducted. Several social work managers told us that they may not know who is and is not age disputed until the end of year grant application or the end of the asylum process when the person is refused. This problem is exacerbated by the fact that documentation relating to the case may not accurately record this information:

- “ Sometimes there has been no doubt in our mind that they are a child and we get to the end of the process and find out that they are age disputed and treated as an adult by the Home Office and it’s too late for us to help them. ”
  - Social work manager

All these circumstances can mean that age disputed children are simply unable to access a formal age assessment or that there may be considerable delays in the assessment process. Delays in the conduct of assessments appear to be particularly significant in those local authority areas where there are a larger number of asylum applicants – and therefore a potentially larger number of disputes – and where asylum teams are recently established and lacking experience and expertise. The research found evidence that these delays can have significant implications for children in terms of both the asylum process and access to welfare and support:

“ One of the young people we have is quite easily identifiable as under 16 – he’s probably about 14 – but he has been disputed and he is still where he is. He’s never been to school. We still have one age assessment outstanding that has been waiting for more than 100 days. We had one case where he waited for 160 days. They found he was under 18 but he turns 18 in seven weeks... Young women with children receive no extra support. Some of them are still age disputed. We had a 17 year old with three children under 5. The whole unit were not assessed as needing support for 164 days. ”

■ Voluntary sector practitioner

Although some age disputed children experience difficulties in accessing a formal assessment of age, others may be age assessed on a number of separate occasions by a number of different local authorities. They may be reassessed by the same local authority, sometimes with conflicting and contradictory results. The reasons for this vary. For example, some SSDs may decide to reassess those who have previously been assessed as being under 18 years of age, because new information has come to light:

“ If we think they are older or younger than what they say they are we will do a second age determination. The Home Office don’t like it but it’s important to know how old they are, for example, they may appear older because of the way they behave in different settings. If there is a legal challenge then we will also do an age determination on the basis of the legal challenge. It’s not good for young people to be put through this process so we try to keep it to a minimum but we will do up to three assessments. At the third assessment we get someone independent of the authority to sit in on the determination, for example, someone from [another local authority]. ”

■ Social work manager

Other social workers told us that different views and approaches within the same local authority may lead to a child's age being reassessed:

- “ Once they are transferred to the youth team there is a real stumbling block. Somehow the whole age of the young person is put into question. They used to come back to the intake team for a reassessment. They [the Youth Asylum Team] would catch us and ask us what we really think. They would say things like, ‘look he’s in reception now, look at him, look at his trainers.’ ”

- Social worker

Social workers reported that multiple assessments by different local authorities often reflect discrepancies and differences in the way in which local authorities conduct assessments. Sometimes age disputed children and young people are assessed as adults by a local authority which concludes that they are over 18 and they are subsequently dispersed through NASS. If social workers in another local authority come across these young people, or if they are alerted to their presence by an accommodation or service provider or a legal representative, the local authority then has a statutory obligation under the Children Act 1989 to make sure that there are no children in need living in their area without appropriate support:

- “ The age dispute cases we have are from other local authorities. We’re not getting new age disputes...One kid was in London and got age assessed. The social worker obviously took an intense dislike to her. It was a disgraceful age assessment. I had to ask the local authority to do a reassessment and the local authority accepted that she was a child. ”

- Legal representative

Multiple assessments, particularly where these are undertaken by different local authorities, can lead to a whole range of problems:

- “ In the case of [one child], he was assessed loads of times...it’s a real total mess. He arrived at terminal 2 and was seen by an IO who didn’t believe his date of birth but thought he was a child. The IO called [the local authority] who assessed him as being over 18. So he became an IND age dispute and was sent to Oakington. Then he was age assessed by [another local authority] who found him to be 16 and were going to take him into their care but realised he was a Heathrow case and sent him back to [the first local authority] who assessed him again as being over 18 and he ended up back in Oakington. ”

Then he was assessed by [the second local authority] as being over 18 and by [a paediatrician] as being under 16. IND basically decided to go with all the ones that assessed him as being over 18 even though he had originally been accepted by an IO as a child. It's a very good example of a mess. 7

- Legal representative

The existence of multiple assessments further illustrates procedural inconsistencies in the mechanisms for age assessment and variations in the quality of the age assessment process itself. The ADSS protocol states that it is the intention of the ADSS to reduce unnecessary repetition of the assessment process and therefore the possibility of conflicting assessments between local authorities. It is not clear how this will be achieved in practice.

## The outcome of the assessment

The current policy framework states that where a local authority undertakes an age assessment and finds the applicant to be under 18 years of age, this assessment should be accepted and the applicant's records updated accordingly. The research has found that there is currently no effective mechanism for ensuring that IND is made aware of the outcome of the age assessment undertaken by social services and for ensuring that Home Office records are updated.

Many social workers and legal representatives raised concerns about the lack of a central contact point through which the outcome of the assessment can be relayed. In particular many social workers and social work managers were critical that whilst only a named person is able to contact the Home Office, no named person or contact is available within IND:

4 Where we disagree with the Home Office we will send them a copy of the assessment but it's difficult to know who to send it to. We need to have someone in the Home Office who can take responsibility. Some kind of procedure is needed. If we find someone is a minor we need to have a contact within the Home Office and clarity about what needs to be done for IND to adjust their records...a process of conflict resolution. At the moment we are just sending off all the information without getting a response. 7

- Social work manager



“ There is a huge problem of getting them [the assessments] to the Home Office. I have no idea what happens to the faxes that we send. They just go missing...nothing seems to happen. It causes total frustration. ”

■ Social work manager

Communication problems between SSDs and IND are reflected in evidence that a child's documents, including the ARC, are not routinely changed or updated when someone is assessed as being under 18 years of age by social services:

“ There is the problem that even when you do it [the age assessment] the Home Office don't change the date of birth and how the process of asylum is undertaken. It can have huge implications. The Home Office is always losing paperwork...they are chaotic and disorganised. And I'm not sure quite how we are meant to get hold of them to sort things out. ”

■ Social worker

Social workers pointed to a number of consequences for children of the failure of the Home Office to update its records, including inappropriate reporting requirements and the detention of children who are in foster care:

“ The young person may be requested to sign weekly which as a looked after child in a foster home they shouldn't be. Some young people are detained even when they are in foster care. This can happen because the Home Office doesn't have the outcome of the age assessment. They [the Home Office] don't always get it because there is not one place where age assessments can be sent. ”

■ Social work manager

Social workers also reported that contrary to current policy, IND staff do not always take account of the local authority's view as to the age of a child. Immigration Service staff confirmed that this is the case:

“ If they come back with an age assessment we will overturn the decision [to dispute age] if we are happy with its content. We mostly accept age assessment [undertaken by social services]. Sometimes they are contradictory and don't help at all. ”

■ Chief immigration officer, screening unit

Social workers expressed particular concern about the fact that a letter or verbal communication from a social worker confirming that they accept the child's age and that they are providing support is not considered to be sufficient by IND. As was noted above, many SSDs do not consider it necessary or appropriate to undertake a formal age assessment if, in their view, the asylum seeker seeking their support is clearly a child. However the inability or failure to produce evidence of the outcome of a formal age assessment may mean that a child's age may continue to be disputed, even where the supporting social worker is in attendance:

- ⌘ Social services arrived [at the screening unit] with three claimed minors. [Social services] had already done age assessments but they hadn't provided the Home Office with the assessments so they were still disputed. Unless social services show them the assessment they won't just accept them outright. ↗
  - Social worker

## 4.2 The role of social services: a conflict of interests?

The findings of our research also raise important questions about the role of social services in the process of age assessment. Some social workers consider that there are overwhelming and irreconcilable tensions between the role of social workers in assessing age and in providing support. Others take the view that the assessment of age is part of the assessment of need, and maintain that social workers have an important role to play in ensuring that children and young people receive the appropriate entitlements.

Questions about the role of social services partly reflect wider debates about the relationship between social care and immigration control, an issue which is discussed later in this chapter. But they also reflect growing concerns about a potential conflict of interest associated with a local authority being required to make a decision about a child or young person's age in the context of political and resource pressures on local authorities relating to the support of separated asylum seeking children. These concerns have been expressed most explicitly by the Children's Commissioner for England.<sup>2</sup>

<sup>2</sup> According to the Commissioner, there is evidence that 'outcomes' vary considerably between local authorities required to conduct age assessments and that there are financial considerations behind such judgments.

It is important to note at the outset of this discussion that the resource implications of age disputes and the process of age assessment vary enormously between local authorities. The increase in age disputed cases has clearly had significant resource implications for those local authorities where there are ports and screening units (most notably the London Boroughs of Croydon and Hillingdon, Kent, Liverpool and West Sussex).

Age disputed cases are also more likely to be referred to those local authorities in which voluntary sector organisations (including the Children's Panel) are active, where legal representatives are aware of the rights of age disputed applicants to request that a formal assessment be undertaken by social services or where there are Immigration Removal Centres (IRC). For other local authorities the numbers may be much smaller but there may be a correspondingly small (or even non-existent) asylum team and/or a lack of expertise in dealing with such cases: in these circumstances the implications of age disputes may be disproportionate to the actual numbers involved.

It is also important to note that there are different kinds of resource implications associated with age assessment. Some of these arise from the process of age assessment itself. For SSDs that undertake a large number of assessments, in some cases up to 30 each month, these costs are considerable. Social workers in asylum intake teams may spend a significant proportion of their time undertaking assessment interviews and writing up their conclusions. They will then need to ensure that the outcome of the assessment is properly recorded by IND, a process which may in itself be time-consuming and far from straightforward. Where an assessment concludes that the applicant is a child they will need to accompany him or her to the screening unit, a process which can be very lengthy. And they will need to ensure that others involved in the assessment process and the child's asylum application – including the legal representative – are aware of what has been decided and its implications. It is not clear that the costs of this process will be reimbursed by the Home Office when a young person is assessed as being an adult:

- 4 The age assessment process is very heavy in terms of resources and it's very stressful. We don't get any extra resources as such and we can't claim back the costs of doing the assessment from anyone if we find that they are an adult. ”
- Social worker

The resource implications associated with the *outcome* of the assessment process give rise to the greatest concern. The concern, put simply, is that where social services are involved in the assessment of those for whom they must ultimately take responsibility, a potential conflict of interest arises. These concerns are shared by legal and voluntary sector practitioners working with separated asylum seeking children:

- “ Ultimately they [social workers] have an interest in the outcome so you wonder if there is an agenda for keeping the numbers down. ”
  - Voluntary sector practitioner
- “ It is difficult to have confidence in a process where the local authority then has to spend money on someone they find to be a child. ”
  - Legal practitioner

The findings of this research reinforce these concerns. There is evidence that social work managers in some local authority areas instruct, or put pressure on, staff to decide that age disputed individuals as being over 18 years of age when social workers have assessed them as children:

- “ Even when things aren’t made explicit, there are a number of underlying messages. Managers make certain remarks...like when you are leaving to do an assessment there will be a jokey comment from a manager saying ‘make sure you come back from the assessment with a negative decision’. And they will roll their eyes if you come back with a positive one. ”
  - Social worker
- “ Management are constantly bullying the staff. It means that there are high stress levels. There is a real culture of ‘no’. You are constantly being asked ‘why did you accept this person?’ ”
  - Social worker

Social workers may also find themselves under pressure to find children to be over 16 years of age when the assessment process suggests that they are younger:

- “ The ones where you assess them as 15 cause the most problems because then you get asked ‘are you sure they are not 16?’. ”
  - Social worker

As was noted in the previous section, different departments within the same local authority may also reassess a child's age at a later date and conclude that they are no longer entitled to local authority support.

This situation is interpreted as arising from the fact that managers see themselves as defenders of the local purse and has – in the view of virtually all of the social workers participating in this research – been exacerbated by the Hillingdon judgment.<sup>3</sup> This judgment confirmed that it is unlawful to refuse leaving care services to young people who have been in local authority care for more than 13 weeks.

### 4.3 Immigration control vs. social care

## 4

The process of age assessment also raises important questions about a potential tension between the provision of social care and maintenance of immigration control. Over recent years a growing number of academics and social work professionals have drawn attention to the tensions that arise for social workers in the front line of the asylum system where access to welfare is utilised by central government as a mechanism for delivering immigration controls.

Although the link between immigration controls and welfare is nothing new – it has been a feature of immigration control since 1905 – there is concern that social workers are being drawn into practices that are blatantly at odds with the principles held by the profession. To this extent, the issues around the age assessment process which are the focus of the report are not just about 'what works' in policy and practice but about the motivations and ideologies that inform social policies and the role of social services.

The role of social workers in relation to asylum seekers has been discussed elsewhere.<sup>4</sup> It is clear that constant legislative changes associated with asylum seekers pose significant challenges to those working in this field. The struggle to keep up to date with,

<sup>3</sup> *Behre (and Others) v London Borough of Hillingdon* [2003] EWHC 2075 (Admin). For further information and discussion of this case see Crawley 2006.

<sup>4</sup> See, for example Christie (2002, 2003), Cemlyn and Briskman (2003), Humphries (2004a, 2004b) and Dunkerley et al (2005).

and understand the implications of, changes to asylum and immigration law and practice is a major concern among social workers trying to deliver front line services.

But these critiques of the relationship between social work and immigration control extend beyond the practical considerations of policy change. They also point to the changing role of social workers in relation to asylum seekers – and particularly asylum seeking children and young people – and the potential conflicts and tensions that can arise between social care and immigration control. Christie (2002) draws attention to social workers' potentially 'collusive role in the reproduction of national and other boundaries that contribute to the exclusion of particular groups and to the facilitation of others'.<sup>5</sup> Cemlyn and Briskman (2003) similarly conclude that 'in various ways [statutory social care] has been co-opted by state policies and practices into upholding an oppressive system of asylum and immigration control'.<sup>6</sup> Research with front-line staff undertaken by Dunkerley et al (2005) suggests that some social workers see their professional standing as being compromised, not least because their role in ensuring the welfare of children is effectively being undermined by decisions taken elsewhere.

The evidence from this research confirms the existence of these tensions. Many social workers and their managers expressed strong reservations about the role that they are increasingly required to play in the assessment of age. Some of these reservations arise from the fact that age assessment, unlike the vast majority of current social work practice, does not automatically engage a range of professionals and is approached within a single rather than multi-agency framework. The absence of multi-agency working, absence of statutory guidance and lack of support and training for social workers undertaking age assessments has the effect of increasing the burden of responsibility that many social workers feel for decisions which are critical for the well-being of the children and young people:

<sup>5</sup> Christie 2002, 196.

<sup>6</sup> Cemlyn and Briskman 2003, 174.

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## ■ George, 16, from Kenya

George arrived in the UK in February 2005 when he was 16 years old. He was already in the care of a local authority when he applied for asylum. His age had not been disputed at this time.

George travelled to the Home Office in Croydon for his asylum screening interview and took with him a letter which he had been given by his social worker. He was not aware of its contents. At the end of his interview he was about to leave when he remembered the letter and handed it over to the interviewing officer. When the officer read its contents she tore up the paperwork and told him that the letter from social services indicated that the local authority was disputing his age and that they would need to do the interview again.

At the end of the interview George was told that he should go to Migrant Helpline and to return the following day for a further interview. When he came back George was asked to take off his belt and shoes and empty his pockets. He was left in a room on his own all day and in the evening taken to a van and told he was going to Oakington. He did not realise he was being detained until a fellow detainee told him.

George was held at Oakington for one month at the end of which time he was told his application for asylum had been refused and he was to be removed. Fortunately his legal representative was able to arrange for an age assessment to be undertaken by social services and George was released back into the care of the local authority that had disputed his age. Social services undertook a formal age assessment which concluded that he was over 18 years of age. There were errors in the assessment and another local authority was persuaded to undertake a reassessment. They found him to be 16 years of age and agreed to support him.

The Home Office was eventually persuaded to drop its decision to refuse the asylum application and George has recently been granted discretionary leave until his 18th birthday.

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“ The worst bit for me is being left with that responsibility as a professional without having other professionals on board. It’s a huge responsibility for any social worker to be left with. For me that’s one of the worst issues to deal with...One of the biggest anxieties is the unavailability of cross-referencing processes. Social workers are left carrying all the doubts and assessments of other professionals. There is a lack of support from other professionals. It’s very difficult. ”

■ Social work manager

“ I don’t feel supported in the area of age assessment. There is a lack of support from external agencies and bodies. Age assessment is not familiar to them and it’s new for us. There clearly is an anxiety for everyone you speak to. I don’t get the collective sense that other agencies have joined together their approach and have joint responsibility. Age assessment is seen as a primitive thing to be doing to somebody. No one wants to get challenged just for acting in someone’s best interests or meeting an identified need. Health and education also have a responsibility for the welfare of the young person but it [age assessment] is not seen as a joint responsibility. ”

■ Social work manager

For many social workers and their managers this problem is exacerbated by the fact that the Home Office does not appear to respect the professional skills of social workers. Three social work managers in different local authority areas (both within and outside London) expressed the view that the difficulties associated with the process of age assessment are compounded by the way in which they are viewed and treated by the Home Office. There was a widely held view that IND staff are dismissive of the views and professional opinions of social workers and that social work as a profession is not held in high regard by those responsible for immigration control:

“ Things are getting worse. As a social worker I find it offensive the way the Home Office treat us. I don’t have anything to win or lose. I’m paid to do a job. They should trust me to do an important job. I personally get paid the same money whether I have 10 or 500 children. ”

■ Social work manager

“ Immigration seem to have a very patronising view of social services, they are very dismissive. They are the ones with the power. ”

■ Social work manager



Reflecting these comments, it is clear that the difficulty for many social workers is not just the lack of support provided to undertake age assessments but also the interface with immigration control itself. Most social workers acknowledge that age assessment is an important aspect of any needs assessment and that they have a statutory obligation to ensure that they provide appropriate services to children and young people. They are also acutely aware that the increase in the number of age disputes is closely associated with changes in immigration policy. The outcomes of the age assessment are intended to contribute mainly to the immigration control process rather than the delivery of social care. They point to the fact that the chronological age they are being asked to determine – whether a child of young person is older or younger than 18 – is the important ‘cut-off’ point for immigration control purposes but that other ages have significance in the social care context.

Many social workers also pointed to the fact that the assessment of need is, or should be, more about vulnerability than about chronological age.

- “ At the moment the age assessment interview feels like a mix between a social service interview and a Home Office interview. It’s an area which is very difficult. Sometimes it feels like a passive immigration function... that social workers are wearing a passive immigration type hat. ”
  - Social work manager
- “ I often feel like we are trying to trip up the young person through their chronology etc. I feel like we are repeatedly trying to trip someone up who has already been through a lot. The lead professional in an age assessment is a social worker, not the Home Office or immigration. We should have different agendas. ”
  - Social worker

For asylum seeking children themselves, these tensions are reflected in a lack of clarity about the role of the social worker and a blurring of the line between immigration control and social care. Age disputed children are often unable to differentiate between the role of social services and the role of IND. And some have experienced most hostility and emotional harm at the hands of social workers as opposed to immigration staff. This hostility is strongly felt because it runs contrary to expectations.

Veronica was assessed by a paediatrician as being under 18 years of age but was not taken into the care of social services until several weeks later, as a result of which she is not entitled to leaving care services:

- “ The Home Office are like social services. They behave like what [the social worker] did to me. They just look at your papers and say yes or no. It’s just like when I was here. I was desperate. She [the social worker] made me scared... She told me ‘we don’t have any place for you to live. It’s better to stay where you are’...They kicked me away from them...Why did they do that to me? They knew I want to get out of that hostel. I don’t know why she did that anyway.”
- Veronica, 17, Guinea

Lavdie was trafficked to the UK when she was 15 years old (► case study, chapter 7.3). She applied for asylum, was accepted as being the age she said she was, and referred to a local authority as a separated asylum seeking child in need of support. Only at this point was her age disputed. Lavdie described her treatment by social services in detail. She was required to attend early in the morning and wait around all day to see a social worker. Her description of her experiences resonates strongly with the descriptions provided by other children about their time spent at the screening unit, but are made worse by the fact that the social worker asked the views of other children attending the department about whether Lavdie appeared to be the age that she said she was:

- “ All day long I was at social services, from 9.30 in the morning until 6pm. They were just saying to the boys collecting their cash, ‘does she look 15 to you?’ Everyone who used to come there, they would just say that... I had my ID card and the letter from the Home Office but they didn’t believe me. I just waited there all day without any food or water. They even didn’t ask me how I was feeling. My solicitor called them but they slammed the phone down on her. I was very scared.”
- Lavdie, 15, Albania

Her account, which includes a description of the way she was treated by her social worker when she was taken into hospital for an emergency operation for appendicitis, suggests a lack of care on the part of social services for those children for whom they are obliged to provide a service but do not consider to be under 18 or deserving of support:

- 4 They didn't treat me like a human being at social services. She [social worker] said to me: 'Do you think it's the first time I'm hearing this story?' I said to her: 'Do you think these things can't happen?'...I would just like someone to talk to you about how you are feeling, to sit down and talk to me like a human being. I just came from the hospital and I couldn't sleep [during the day] because I was up waiting for the social workers to arrive. They never arrived...It's horrible how they treat me. 7

■ Lavdie, 15, Albania

The experiences of George (► case study, chapter 4.3) are striking not only because the age assessment resulted in his detention but also because of the strength of his feelings about the way in which he was treated by social services. George described feeling 'betrayed' by the social workers who were supposed to be supporting and looking after him. He considers this betrayal to be more significant in his life than the period of detention itself. This is partly because his experiences with social services resonate closely with what had happened to him in his country of origin and the reasons why he had been compelled to claim asylum in the UK:

- 4 The social service they didn't even tell me they were disputing me. So I end up confused annoyed...and in detention. It feels like you are running in mud... they really lost my trust forever. They just gave me something [the letter] that would change my life forever and they didn't tell me. Now I don't trust anyone...I can't trust nobody. It's the [social service] thing that has really changed how I see things and how I see people. I always see like there is something else going on. They talked to me nicely and they gave me an envelope with a smile. I always feel like I'm betrayed. 7

■ George, 16, Kenya

There is also some evidence of social workers inappropriately drawing upon aspects of the asylum application – including what is said during interviews with the Immigration Service – to 'test' the credibility of what a child or young person is saying about his or her experiences in the context of an age assessment. Sempala (► case study, chapter 6.4) explained how things became particularly difficult when social services asked to see the SEF form which formed the basis of his application for asylum. Comparisons were then made between the two accounts and conclusions drawn about the credibility of what was said during the age assessment process:

- “ Social services asked for my Home Office SEF form. That’s when they started really picking on me badly. They were developing ideas from my SEF form. I didn’t know the lady and I didn’t know she would behave that way. It was as if I had annoyed her before...as if I was her enemy. ”
  - Sempala, 16, Uganda

The inappropriate use of information about the asylum application and the focus on credibility as part of the assessment process is discussed further in the following chapter.

The perspectives and insights of these children raise important questions about the actual and perceived role of social services in the age assessment process, including whether social workers should be involved in the age assessment process at all. Among social worker respondents, the views on this question were mixed. Some social workers view their role in the assessment process simply as a reflection of the way in which the role of social services is changing more generally, and in particular the increasing focus on eligibility criteria across a range of functions. They also consider that social workers are in a better position than any other profession to undertake the assessment process:

- “ Social work is in a position to be able to do this. It’s always open to other people to do it. It depends on your point of view whether you think social services should be doing the assessment. If your point of view is that the assessment is crucial in determining what service is appropriate, then it is appropriate for social services to keep doing it. ”
  - Social work manager
- “ There are differences of opinion about age assessments. Some social workers say they don’t like doing this...that it’s oppressive and they don’t like making a decision. But the assessment always determines whether a person qualifies for services and what kind of service. It’s just another part of the process. ”
  - Social worker

Others, including some social workers but also legal representatives and practitioners working with children, are less clear that this is the route social work should be going down. However, few articulated the view that it was inappropriate for social services to play a role in the process of age assessment or that social workers should withdraw from the process. Their views, as well as those of children themselves, should be taken into account in relation to the co-location of social workers and immigration officers.

## 4.4 Co-location of immigration and social work services

Social workers have been co-located with immigration officers at the screening unit in Croydon since late 2004, and at the screening unit in Liverpool since early 2006. The co-location of social workers at ports and screening units is viewed by the Home Office as an important mechanism for improving the quality of support available to separated asylum seeking children and as critical for any future efforts to improve the process of age assessment.

According to the Home Office's consultation paper on plans to improve the outcomes and support to separated asylum seeking children, '[t]he presence of social work teams helps facilitate timely and accurate decisions on age that offer absolute clarity about the path of the individual through the appropriate asylum and support systems'.<sup>7</sup> The evidence collected during the course of this research questions that assertion. It also suggests that whilst the co-location of social workers with immigration officials at ports and screening units *reduces* the potential for conflicts of interest over resources, it *increases* the potential for actual and perceived co-option of social workers into the process of immigration control.

It is our understanding that the primary objective of co-location from the point of view of both immigration and those social services departments involved in the process, is to ensure that consistent procedures are followed in relation to the assessment of need and age and that the social worker, by virtue of being involved in the screening process, will be able to look after and represent the child's best interests and ensure that appropriate referrals are made. Unfortunately the observation of co-located social work practice at the screening unit in Croydon confirms and reinforces the concerns of some social workers, legal representatives and voluntary sector practitioners that social workers are not necessarily able to provide an appropriate service to children when they are based at ports and screening units.

<sup>7</sup> Home Office 2007, paragraph 26.

In particular we found that:

- Social workers do not arrive at the screening unit until 10am by which time children may already have arrived and been age disputed;
- Social workers do not provide information about the process at the screening unit or any reassurance to children about what is going to happen to them. This is the case even where age is not disputed and when there are very young separated children waiting to be screened;
- Social workers do not explain their role or how this differs from that of the immigration officer. At no point was any social worker observed explaining his or her role to a child;
- Social workers do not provide or ensure access to any kind of practical support, for example food or water;
- Social workers are not always available to ensure that children who are waiting to be screened are safe. As social workers are located in a separate room or area, they are unable to observe what is going on in the waiting area including, for example, whether children are anxious, disturbed, concerned or upset;
- Social workers may not be able to ensure that age disputed asylum seekers are referred for an age assessment because they leave the screening unit before the adult asylum screening process has been completed for all applicants;
- Social workers do not always intervene to ensure that screening interviews are conducted in the appropriate location (for example, in specially allocated interview rooms) or in a way that ensures the child is given appropriate services and support. The fact that a co-located social worker sits next to an immigration officer during a pre-screening interview which is conducted with a separated child sitting on the other side of a glass screen both illustrates and confirms concerns about a potential conflict of interests;
- Social workers were observed conducting their own needs assessment interviews in the public area through a glass screen rather than in the separate interview rooms that are available for this purpose;
- Social workers do not always challenge the decision of the Home Office to dispute age, including where the dispute arises from an administrative error; and
- Some social workers behave unprofessionally, for example taking calls during the interview or arriving or leaving midway through an interview.

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## ■ Co-located social work practice: a case study

A 15 year old Afghan boy arrived at the screening unit at 7.45am in the morning. He was dirty and dishevelled and appeared blind in one eye. After a few questions to establish his name and age, the boy was asked to sit down in the waiting area. There was a discussion between the IO and CIO about whether he looked older than he was claiming to be but it was decided that he would be treated as a child.

At 12 noon the boy was still sitting in the waiting area. He had not been informed about the process by the social worker or anyone else, nor had he been offered anything to eat or drink. He was interviewed just before 1pm.

During the interview the social worker – who was present as an ‘appropriate adult’ because the boy was under 16 years of age – left to take a phone call. When he returned he asked whether the boy was being age disputed. The IO said that they were not disputing the boy’s stated age of 15 and the social worker took him to one of the podium rooms to undertake a needs assessment interview.

The social worker began the interview by explaining his role and the purpose of the interview. The interview included questions about why the boy had left Afghanistan and his route to the UK. He then asked a series of simple questions about his health (including how his eye had been damaged), education and hobbies. The interview ended with an explanation by the social worker that he would be collected at 4pm and placed in the care of a foster family who would arrange for a solicitor to help him with his asylum application and who would help him to get medical treatment.

It subsequently emerged that because the boy’s date of birth had been incorrectly recorded by IND as 01/01/1990 he was actually being treated as 16 rather than 15 years old. The social worker did not object to this happening or attempt to persuade IND that the child’s date of birth had been recorded wrongly.

On the basis of this administrative error the boy was placed in semi-independent accommodation rather than being placed with a foster family.

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Social workers and social work managers who participated in this research expressed different views as to whether the co-location of social workers at ports and screening units is an appropriate way forward for resolving the problems associated with current processes and practices. Some were clearly of the view that co-location would be a better way of doing things and that because the assessment would be undertaken at an early stage, the number of age disputed cases might be reduced and the relationship between the Home Office and SSDs would – or could potentially – be improved:

- “ I think it’s a good idea having social workers in the ASU. It will probably encourage the Home Office to link up more with social services. ”
  - Social worker
- “ In theory it sounds good. It’s about screening and pushing into the right pathway from the outset. But in terms of how it works out in practice, I’m not sure. It depends on the quality of the intake teams.... ”
  - Social work manager

Social workers involved in co-location view their presence at the screening unit as beneficial, not least because it assists with the practicalities of allocating appropriate services and prevents delays taking place in the assessment process. Social workers based at screening units consider themselves able to maintain their independence from the Home Office although some concerns were expressed about who would take the final decision on an individual’s age where there were conflicting opinions between IND and social services, and about whether the approach taken towards age disputed cases was appropriate.

Other respondents were less clear that co-location can resolve the current problems in the process of age assessment and expressed concern that these tensions between the functions of social care and immigration control could be exacerbated rather than reduced by co-location. These concerns – which focus on whether children and young people are getting advocacy separately from social services and on the nature of the partnership approach – are shared by legal and voluntary sector practitioners, particularly in areas where there is co-location:



- ❏ I'm concerned about the closeness of the relationship with the Home Office. There is a potential that social workers are unwittingly colluding in processes. ❏
  - Voluntary sector practitioner
- ❏ I can't see how they [social workers in the screening unit] can maintain their professional boundary. They can't flex their professional muscle because it's not their territory. Social work claims to occupy a space about anti-oppressive practice but you can't be anti-oppressive in that environment...if you are on the same side of the glass as the person who is conducting the interview how can you argue what needs to be done? They should have a separate team where they come to after the screening unit. It would be a better physical environment. ❏
  - Voluntary sector practitioner

These concerns are exacerbated by a lack of transparency about the process of co-location and the role of social services within the screening process and beyond:

- ❏ At the moment we don't know what their role is in the ASU. There is no written information. Most social workers I know say 'I don't want to do this but I've got to do it so I want to do it properly and do the best I can for the kids'. It would be good if they were at least arguing with screening officers and defending the rights of kids. ❏
  - Voluntary sector practitioner

At the end of this chapter we recommend that a different process should be established for the assessment of age which disconnects responsibility for age assessment from responsibility for support. If social workers are to continue to be co-located at ports and screening units, greater transparency and more autonomy will need to be given to their role and responsibilities in order that they can fulfil their statutory obligations towards asylum seeking children under the Children Act 1989.

One of the key responsibilities of social workers is to ensure that children are effectively linked into appropriate services. In the case of age disputed asylum seekers, the responsibility of the social worker should be to ensure that the individual concerned is referred to a regional assessment centre for an age assessment (as discussed at 4.5).

The age assessment process itself should not be conducted at the port or screening unit by co-located social workers because asylum seeking children and young people who are recently arrived in the UK are invariably tired, stressed and anxious. They are unlikely to understand the purpose of the assessment process or the role of the social worker. As will be suggested in the following chapter, the process of age assessment should be holistic and involve a range of other professionals as well as interactions with a child or young person over a period of time. This is not possible where the age assessment is conducted at a port or screening unit.

## 4.5 Implications and recommendations

The research has identified considerable – and highly unsatisfactory – variations in procedures for undertaking formal assessments of age. Whilst there is some good practice in some local authorities, in many local authorities current practice leaves much to be desired.

There continues to be a lack of knowledge and understanding among SSDs about what exactly their role is in relation to age disputes and what procedures they should be following when undertaking an assessment and relaying the outcome of that assessment to the Home Office. This is reflected in difficulties for children whose age is disputed in accessing an assessment, multiple assessments by local authorities which may reach conflicting conclusions and a failure on the part of the Home Office to update its records to include the outcome of the assessment. Most social workers and voluntary sector practitioners who participated in this research are of the view that a better model of undertaking age assessments needs to be developed to replace the ad-hoc and inconsistent approach that has evolved over recent years.

In relation to procedures for assessing age and the role of social services, our key recommendation is that a number of regional age assessment centres should be established to which age disputed applicants are referred at the beginning of the asylum process. These regional assessments centres would need to be funded independently of the local authorities taking responsibility for children. They would be multi-agency in composition and draw upon the expertise of a range of other professionals in addition to social workers: including teachers, health and medical practitioners,

paediatricians, counsellors, youth workers and voluntary sector organisations including the Children's Panel. This approach would provide better and more sustainable outcomes because it would enable the development of specialist expertise in the age assessment process.

Those being accommodated in regional assessment centres would also be provided with a range of induction, health and legal services (including information about entitlements and referral to legal representatives) to ensure that they would be in a position to move into the appropriate process and support package at the conclusion of the assessment process. We make specific recommendations for the age assessment process itself at the end of our analysis in chapter 5.

We believe that our proposal for regional assessment centres fits well with the new intake teams that it is understood the Home Office is planning to establish as part of the proposed reforms of the system of support for separated asylum seeking children.<sup>8</sup> Where, at the end of the assessment period, it is determined that the person concerned is an adult he or she would enter the NASS process. Where an individual is assessed as a child in need he or she would then be referred to a regional specialist authority able to meet the needs of that child.

Although a full economic costing would need to be undertaken, it seems likely that additional resources to establish and run the centres could be made available under the auspices of 'spend to save', with a contribution from local authorities that would no longer be required to undertake their own age assessment procedures. It is anticipated that the costs of establishing and running the centres would be significantly less than those associated with current procedures for age assessment, particularly when the costs of legal challenges and ongoing disputes (including within and between local authorities) are taken into account.

If our proposed regional assessment centres are not established, then there will need to be greater support and training for all social workers involved in the age assessment process. It is clear from this research that social workers play an important role in the assessment process: age assessment can only be undertaken

<sup>8</sup> Home Office 2007.

as part of the assessment of needs and within the context of the statutory duties to support children in need under the Children Act 1989. If our proposed regional assessment centres are not established the social workers need to be provided with appropriate training, guidelines and support to enable them to undertake age assessments.

There is also evidence that social workers, legal representatives and voluntary sector practitioners are right to be concerned about the process of co-location and what it means in practice for the service received by separated asylum seeking children, and most particularly those whose age is disputed. It is easy to assume that the co-location of social workers at ports and screening units can only serve to improve the process. In practice and for a whole range of reasons – including work practices, the quality of individual staff, and the culture of disbelief that is apparent in the screening process – this is not what was observed. There is little or no purpose in having social workers co-located at ports and screening units if they do not look out for the interests of children.

If social workers are to continue to be co-located at ports and screening units, greater transparency and more autonomy will need to be given to their role and responsibilities in order that they can fulfil their statutory obligations towards asylum seeking children under the Children Act 1989.

One of the key statutory responsibilities of social workers is to ensure that children are effectively linked into appropriate services. The role of the social worker should be clearly defined and explained to children. At the very minimum they should make children aware at the outset what will happen during the screening process and beyond. They should ensure that children are provided with food and water as appropriate. They should check that children are not vulnerable to inappropriate attention whilst waiting to be screened. They should sit on the public side of the glass with the child. They should follow correct procedures to ensure that all children are referred to social services and that age disputed cases are not left to wait in the adult section without a referral to a local authority for assessment. The social worker should also be required to make sure that all children, including all age disputed applicants, are immediately referred to the Children's Panel.

## CHAPTER 5

# The assessment of age

This chapter provides an overview of our findings in relation to the process of age assessment itself, including the quality of the assessments undertaken by social workers, the use of the practice guidelines developed by the London boroughs of Hillingdon and Croydon and the extent to which supporting documentary and medical or professional evidence is taken into account.

It also sets out the implications of ongoing disputes over age for both local authorities and children seeking asylum.

### Case studies

Fatuma, 14, from Liberia

Sembala, 15, from Uganda

Desta, 16, from Ethiopia

Erbil, 14, from Iran

Yvette, 16, from the Democratic Republic of the Congo

## 5.1 Making a lawful assessment

There is currently no statutory procedure or guidance for local authorities as to how to conduct an assessment of age of a person claiming to be child. Rather the current approach for undertaking assessments of age has evolved through practice by social service departments and a growing number of legal challenges to the process.

The increased number of disputes over age, the lack of statutory guidance and support available to social workers and a desire to improve consistency in the processes and outcomes of age assessment led to the development in March 2003 of *Practice guidelines for age assessment of young unaccompanied asylum seekers* ('the practice guidelines') by the London boroughs of Hillingdon and Croydon.<sup>1</sup> Both of these local authorities have been particularly affected by the increase in age disputed cases because of their proximity to Heathrow and the screening unit respectively. Both were struggling to deal with the number of age assessments which they were required to undertake and there were concerns that outcomes were not consistent within and between SSDs.

The practice guidelines provide a pro forma on which to base the assessment interview with a series of guidance notes and indicators on the areas and issues that need to be explored when undertaking an assessment of age. The guidelines recommend that the assessment process should involve two assessing workers and that it should take place over a period of time and involve other professionals, such as residential social work staff, teachers, and other young people where appropriate. The guidelines emphasise the need to ensure that the young person understands the role of the assessing worker and comprehends the interpreter. They encourage the use of open-ended, non-leading questions and flexibility in the way the form is utilised. The pro forma itself includes space for information to be collected as to an asylum applicant's physical appearance and demeanour, manner of interaction with the assessing social worker, social history and family composition, developmental considerations (such as information about the types of activities

<sup>1</sup> Available at [www.childrenslegalcentre.com/shared\\_asp\\_files/uploadedfiles/%7B6C6EA3D2-7003-453D-8D0A-7783ECCF53B1%7D\\_Karen%20Goodman.pdf](http://www.childrenslegalcentre.com/shared_asp_files/uploadedfiles/%7B6C6EA3D2-7003-453D-8D0A-7783ECCF53B1%7D_Karen%20Goodman.pdf) [accessed 1 March 2007].

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## ■ Fatuma, 14, from Liberia

Fatuma was a domestic slave in Liberia until she managed to escape the country and travel to the UK. She was 14 years old when she arrived in December 2004 and claimed asylum.

Fatuma provided the Home Office with her birth certificate but was age disputed and placed in temporary accommodation by the Refugee Arrivals Project pending a formal assessment of her age. The local authority assessed her age and decided that she was over 18. She was then returned to her temporary accommodation.

Fatuma's solicitor expressed concerns to social services that the assessment had been conducted without an interpreter and was able to persuade NASS to suspend dispersal until the dispute over her age had been resolved. Fatuma was also referred to a paediatrician for a medical assessment, which concluded that her age was consistent with the stated date of birth. The local authority was asked to reassess Fatuma's age on the basis of this evidence but refused to do so because her account was not considered to be credible. The social worker pointed to the fact that Fatuma claimed to have eaten only rice and oil whilst living in Liberia but ate a chicken sandwich and a bag of crisps before the age assessment without any signs of difficulty or discomfort. Inconsistencies between the information Fatuma provided to the paediatrician and the information she had provided during the age assessment process were also highlighted.

Fatuma's solicitors issued proceedings for a judicial review of the case and obtained an injunction from the court ordering that the local authority provide emergency accommodation after NASS support was withdrawn. Fatuma began attending school where her teachers confirmed that her age was consistent with that of a 15 year old girl.

Despite this, NASS continued to press for dispersal and the local authority refused to accept she was a child. The case was the subject of lengthy and continuing litigation. Eventually, in June 2005, the local authority undertook a reassessment of Fatuma's age which concluded that she was a child but was 17 years old, not 15 as stated. She was given a new date of birth to reflect this decision.

Legal action is continuing to ensure that Fatuma receives educational services and support appropriate to her age.

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that the person was involved in before arriving in the UK), education, his or her level of independence and self-care, health and medical assessment, information from documentation and other sources and, finally, the conclusion of the assessment. The side notes provide helpful but commonsense suggestions and reminders including that a medical opinion and view of age will always be helpful.

The practice guidelines were approved by Stanley Burton J in *R & B v London Borough of Merton* ('Merton')<sup>2</sup> and Jackson J in *R (T) v London Borough of Enfield* ('Enfield').<sup>3</sup> Taken together these two cases – and in particular Merton – provide the basis for determining whether or not an age assessment undertaken by a local authority SSD can be said to be lawful and therefore 'Merton-compliant'.

The aspects of the Merton judgment that are of particular note include the following:

- Physical appearance and behaviour cannot be isolated from the question of the veracity of the applicant: appearance, behaviour and the credibility of his account are all matters that reflect on each other (paragraph 28);
- The assessment of age in borderline cases is a difficult matter, but it is not complex and can be determined informally, provided that safeguards of minimum standards of inquiry and of fairness are adhered to (paragraph 36);
- The decision maker cannot determine age solely on the basis of the appearance of the applicant. The decision maker must seek to elicit the general background of the applicant, including family circumstances and history, educational background, and activities during the previous few years. Ethnic and cultural information will also be important. If there is a reason to doubt the applicant's statement as to his or her age, the decision maker will have to make an assessment of the applicant's credibility, and will have to ask questions designed to test credibility (paragraph 37);

<sup>2</sup> *R & B v London Borough of Merton* [2003] EWHC 1689 (Admin) [2003] 4 All ER 280.

<sup>3</sup> *R (T) v London Borough of Enfield* [2004] EWHC 2297 (Admin) (unreported).



- The local authority must make an assessment on the material available to and obtained by it. There should be no predisposition, divorced from the information and evidence available to the local authority, to assume that the applicant is an adult, or conversely that he or she is a child (paragraph 38);
- The social services department of a local authority cannot simply adopt a decision made by the Home Office. It must decide itself whether an applicant is a child in need (paragraph 39);
- A local authority is obliged to give adequate reasons for its decision that an applicant claiming to be a child is not a child (paragraph 45);
- It is not necessary to obtain medical evidence (paragraph 51);
- Where an interpreter is required, he or she should ideally be present during the interview (paragraph 52);
- The decision maker must explain to an applicant the purpose of the interview (paragraph 55);
- Procedural fairness requires the assessing officers to put to the child matters which they are minded to hold against him or her, so that there is an opportunity to rectify any misunderstanding (paragraph 55);

The evidence collected during the course of this research suggests that the Merton judgment has had both positive and negative implications for the process of age assessment. On the one hand, the judgment clearly states that age cannot be determined solely on the basis of physical appearance and that a wide range of different background factors should be taken into account. Assumptions should not be made in advance of the assessment process about whether the applicant is an adult or a child. The decision reached by the Home Office cannot simply be adopted and reasons for the outcome must be given. On the other hand, there is evidence that the judgment, and in particular the wording of the judge's conclusions in paragraph 37, has encouraged some local authorities to focus disproportionately on the credibility of an asylum seeker's account.

Judicial reviews of the process by which age is assessed have also raised questions about the assessment process itself and, specifically, about the weight that should be given to evidence provided by experts such as paediatricians.

Many of these cases relate to situations where an age disputed child has been detained and is subsequently assessed as being under 18 years old and awarded damages for unlawful detention. The key cases are *R (on the application of A) v SSHD* and *R (I & O) v SSHD*. In *R (on the application of A) v SSHD*, the Secretary of State accepted that he was not entitled to detain A as an adult relying on an informal, unreasoned and imprecise assessment of age carried out by an emergency duty social services team, and that he could not detain A as an adult in reliance on an informal assessment of him as an adult when a consultant paediatrician with experience in conducting age assessments had come to the conclusion that A was likely to be a child.<sup>4</sup> The judge in this case ruled that Hillingdon's initial assessment of A's age was informal and not in compliance with the guidance set out in Merton and that the paediatrician's assessment of A's age as 16 plus or minus two years made it *more likely* that he was a minor than he was an adult.

The case of *R (I & O) v SSHD* further explores the issue of the margin of error in paediatric age assessments.<sup>5</sup> In this case the court found that the immigration officer who had chosen to reject the paediatric assessments of the boys' ages had misunderstood or misapplied the RCPCH guidelines and that the paediatric assessment constituted 'credible medical evidence' that the children were the ages that they claimed to be. Moreover the judge concluded that based on the paediatrician's experience of undertaking age assessments in more than 1,500 cases, his extensive specialist experience and the fact that he was qualified to undertake dental examinations, it was irrational for the Home Office to choose to take notice of an unsubstantiated assessment undertaken by an emergency duty social services team over that of a medically qualified expert. The judge concluded that the detention of both children was therefore unlawful.

<sup>4</sup> *R (on the application of A) v SSHD*, CO/2858/2004. See 'Note on Implications' by Blake, N and Kilroy, C, available at [www.childrenslegalcentre.com/shared\\_asp\\_files/uploadedfiles/%7BB77EF00D-D6A8-470E-BFD7-AA9FCF2C6923%7D\\_Note%20on%20consent%20order%20\\_oakington\\_%202019.10.pdf](http://www.childrenslegalcentre.com/shared_asp_files/uploadedfiles/%7BB77EF00D-D6A8-470E-BFD7-AA9FCF2C6923%7D_Note%20on%20consent%20order%20_oakington_%202019.10.pdf) [accessed 1 March 2007].

<sup>5</sup> *R (I & O) v SSHD* [2005] EWHC 1025 (Admin).

Latham (2004) draws on the practice guidelines and the judgments in the cases of Merton and Enfield to set out a series of criteria for determining whether an age assessment is legal, rational and fair:

- *In order to be legal*, an assessment must not be based solely on the decision taken by the Home Office but must have regard to the available material. If the applicant has been consistent as to his or her date of birth this may be decisive in the absence of compelling evidence to the contrary. The authority is obliged to give reasons for any adverse decision;
- *In order to be rational*, a local authority must take into account all matters relevant to the assessment and ignore irrelevant matters. This includes an understanding of why an applicant believes they were born on a particular date and an exploration of the applicant's family composition, their social history and education. A history accepted as true and consistent with an age below 18 should lead to a conclusion that the applicant is a child but conversely an untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant. A rational assessment process should also have due regard to expert evidence submitted in support of the applicant's stated age; and
- *In order to be fair*, the assessment process should be conducted with two assessors, due regard should be taken of the applicant's level of tiredness, trauma, bewilderment and anxiety and he or she should understand the purpose of the interview and role of the assessor. Open-ended, non-leading questions should be asked and the questioning should be undertaken in a structured and generally sympathetic manner. Most importantly, the interview must be conducted with an open mind. Where required, a competent interpreter should be used, preferably one that is present rather than at the end of a telephone. If the assessor forms a view that the applicant is lying about his or her age, the applicant must be provided with an opportunity to address the matters that have led to that view, and to provide an explanation.

This framework is useful when considering the extent to which age assessments currently undertaken by local authorities are able to deliver appropriate and consistent outcomes. It is also helpful to bear in mind that an assessment can fulfil one or two of the criteria without meeting all three. The assessment will be susceptible to legal challenge unless it complies with all three criteria.

## 5.2 The experience of being age assessed

Before proceeding with a discussion of the mechanics of the assessment process itself, it is important to try to understand this process from a child's perspective. As one social worker commented, '[a] lot of young people have been downplaying how it feels to be age assessed...they downplay it and don't name it'. This is partly because age assessments are widely considered to be a relatively minor part of a much bigger process of asylum determination but also because children's voices are rarely heard in debates about policy and practice.

All the evidence points to the fact that children themselves experience being age disputed as one of the most distressing things that happens to them in the UK and that it often has significant mental health implications. This is because the dispute over a child's age represents a dispute over the child's identity and life history, an issue that is discussed in more detail in chapter 7.

It is important to acknowledge that not all age assessments undertaken by social workers are experienced negatively by children. Some of those who were interviewed spoke positively about the assessment process which they considered to have been fairer than that undertaken by the Home Office. The majority of the children participating in this research however viewed the age assessment process with a mixture of bewilderment, incredulity and anger. Most of these children had been assessed as being over 18 by the local authority but had subsequently been reassessed or had submitted additional information and had been accepted as children. Many children feel 'wronged' by the way in which their assessment is conducted. Duarte (► case study, chapter 3.2) was age disputed by the Home Office because of his physical appearance, an experience which was replicated when he was assessed by social services:

- ▣ They asked me about how I lived with my mother in Angola. I explained everything to them...They said they were doing the interview to find out my age because they didn't believe me. It might have been something to do with my beard...My father was also of a race which has a beard young. And also some things that I said they didn't believe. At first they were fine but at the end they said 'we have come to the conclusion you are an adult'...I was very shocked and I haven't been able to eat. I had problems in Angola and now I'm having problems here about my age. ▸

■ Duarte, 16, Angola

## ■ Sempala, 15, from Uganda

Sempala arrived in the UK when he was 15 years old and his age was disputed by the Home Office, who referred him to a local authority in London. Sempala was interviewed on two separate occasions by several different social workers as part of the process of age assessment. Sempala described the way in which he was treated by the social workers who interviewed him. He described being repeatedly criticised and told that he was lying. He was repeatedly laughed at and 'threatened' with a medical assessment if he did not tell the truth about his age. After he was assessed by a paediatrician who found him to be 17 plus or minus two years, the social worker asked him whether he was naked when he was with the doctor, whether he had sex with him or what else he did to get the assessment, and then dismissed it as proof that he was an adult.

Sempala found the assessment process so distressing that he was compelled to write of his experiences and feelings at the time. Extracts from his notes are provided below:

- ‘ I would say that I can't forget this lady's face because of what unexpected torture I detected when assessing me that I can't forget. ’
- ‘ I wasn't happy with the threat that I obtained from the lady who assessed me. At her face she seemed to be a polite lady but within herself she was different. More of this I proved from the second assessment I had with the same lady accompanied by another. This is a horrible (dangerous) time in the second assessment. As if I had made a crime to be a person of 15. ’
- ‘ I went back to [the local authority] but it was as if I had fallen into a hungry demand of torture. I politely attended the assessment but it was not an assessment. I would say it was an interview with torture unless I answered politely to the interviewers wishes. There was one social worker sitting, the other standing. They called me 'deceiving'. They told me 'this report from the doctor was not in your favour. It indicates that you are 17+2 years. Therefore you are 19.' ’
- ‘ With great emphasis I was accused of being 15 to an extent that I thought it's a crime yet anyone above 15 must one year have been 15. ’

Sempala was eventually accepted by the local authority as being 15 years old. He was placed with a foster family and has since been recognised as a refugee (► see also case study, chapter 6.4).

Faela was 15 years old when her age was disputed by the Home Office. She was referred to Migrant Helpline who referred her to the Children's Panel who in turn referred her to a local authority for an age assessment to be undertaken. She described being very tired by the time she arrived at social services and her confusion about the questions asked during the assessment interview:

- It was too long. They were asking me lots of questions. There was no interpreter but there was an interpreter on the telephone line instead. Its hard to do...it was like two hours. It was so tiring. They asked me everything. They asked me where did I come here from and what happened. They asked me about my life back home as well...my education, my parents, family, school...They asked so many questions. I was so tired. It was the next day after the Home Office. They didn't tell me anything when it finished, they just told me to wait again. 7

Faela was not made aware of the outcome of the age assessment until she went to see her solicitor. She found out that social services had also disputed her age and she was referred by her solicitor to a paediatrician who assessed her as 16 plus or minus two years. The solicitor sent the paediatric assessment to the Home Office and she was granted discretionary leave. Another local authority then agreed to provide support.

Several children who had been assessed as adults by the SSD to which they were referred also commented that the questions asked of them were meaningless in the context of their experiences in the country of origin and whilst travelling to the UK. In other cases children felt that the reality of their lived experiences was simply not believed because these experiences did not resemble those of children living in the UK.

Michel was a child soldier in Rwanda (► case study, chapter 7.2). When asked how he found the age assessment process he simply laughed and said that the questions asked were irrelevant to his experiences. However he realised the significance of the interview and was determined to provide a good account of himself:

- They asked me about my education, the trail of my education. They asked me about my parents. They asked me about my kin, my sisters and brothers...such questions as these. They asked me when I was born and such questions. To me I have a strong character and I know I had a lot to prove because in the first place they had regarded me as someone useless. 7

Gloria was 16 years old when she arrived in the UK from Angola with her 9 year old niece Maria (► case study, chapter 7.1). Gloria described feeling angry and upset that the things she was saying were not believed. Gloria has subsequently been recognised as a refugee but has never been treated as a child by the local authority:

- “ She [the social worker] asked me how old I am, how I come here, how do I look after my niece, what I remember about my family... When she finished she said ‘no, you are not young’. She said ‘for your age you know too much about your niece’ She said I know too much about how my niece grew up. She said ‘you can remember too much’. She just said you remember too many things...I think I felt very, very angry. If in my mind I can remember all these things, how can she say I shouldn’t remember these things? I couldn’t understand. She was telling me ‘you’re not allowed to remember’. It was very strange. ”

- Gloria, 16, Angola

Other children described their feelings about the age assessment process in similar terms. For these children it was not the assessment of age that they found difficult so much as the very fact that their experiences were disbelieved:

- “ I just feel bad about the age assessment but it isn’t only the age. It just seemed that they weren’t accepting what I’m saying as true, it’s not just the age. I just hated those times, it was so hard. The worst thing is that people don’t believe you. You know sometimes there is no point in saying something because no one will believe you. ”

- Faela, 15, DRC

- “ You know, if you are intelligent and all your life you have always been respected, and done well at school, then to come here and to people stand you up and tell you that you are a liar...How would you feel if they did that to you? From the first moment I was accused. ”

- Hassan, 16, Iran

To this extent the experiences of Sempala (► case study, chapter 5.2) reflect the general levels of antagonism and hostility that many age disputed children feel is directed towards them by social workers undertaking age assessments, and which some social workers have themselves observed among colleagues.

## 5.3 Quality of the assessment process

There are a number of different factors that need to be considered when examining the quality of the assessment process. These include: the location and timing of the assessment; whether or not its purpose is understood by the child whose age is being disputed; the extent to which the practice guidelines are followed; and whether the assessment process itself is legal, rational and fair including in relation to the kinds of information that the social worker seeks to elicit, the way in which the assessment is conducted and the factors that are considered in reaching a decision. This section considers each of these aspects in turn.

### Location and timing

The location and timing of the age assessment interview is important in ensuring that the age assessment process is fair and that the conclusion which is reached is an accurate reflection of the age and needs of that child. A substantial and growing number of assessments are conducted by social workers at airports (especially Gatwick and Heathrow), in immigration removal centres (especially Harmondsworth and until recently Oakington) and at screening units.

It is clear from the evidence presented in chapters 3 and 4 that ports and screening units are not the appropriate location for age assessments. Asylum seeking children who have recently or only just arrived in the UK or are detained are invariably tired, stressed and anxious. Children are unlikely to understand the purpose of the assessment process or to have had access to legal advice and representation. There is no opportunity to collect expert evidence on the child's age or to observe peer interaction.

The problems and difficulties associated with age assessments conducted at ports and screening units are reflected in comments of social workers and voluntary sector practitioners:

- ⌘ When we go to [the airport] the kids have already been there for five hours. They are then asked more random questions by two social workers in a dreary office. For them we are just another person sitting behind a desk asking questions. ➤
  - Social worker



- ▣ We see these people quite late in the day. They turn up here tired and hungry. We try to accommodate them as quickly as possible so at least they get a bed and food. They always arrive very hungry. We do a referral to the Refugee Council straight away and the next day if possible we take them to the Refugee Council. A lot of them do look frightened and confused. They are physically tired and worn out. Looking at them I don't think I'd be able to tell how old they are. ʹ

- Voluntary sector practitioner

Many children do not understand the purpose of the assessment interview or its implications and are unable to differentiate between the roles of the people who interview them, especially when these roles are not explained. Whilst this is a problem regardless of where the assessment is conducted, particular issues arise if it is conducted immediately on arrival in the context of a port, screening unit or detention centre and the child has not been able to access any form of legal advice. It is therefore important that the purpose of the assessment is set out clearly at the outset of the interview even if this is difficult to do:

- ▣ It's incredibly difficult for a young person to understand the systems we work with. There are huge problems trying to get them to understand what is going to happen. We try to explain to children the processes so that they understand the rules about what we need to do. We try desperately to explain to young people what will happen to them. But there is a cultural gap...it's just beyond their perception and experience. So they just grow up with a little bit of understanding about the rules. Some of the young people are from a mountain-top village so for them it's all just mind-blowing. ʹ

- Social worker

There is also a problem of time. Age assessments undertaken at ports and screening units are invariably based on a relatively short single interview. There is no opportunity to meet with the child on separate occasions or in different settings. This is important because virtually all social workers who participated in this research are of the view that an assessment of age cannot be undertaken properly through a single interview or over a short period of time.

These concerns were expressed not only in relation to assessment interviews undertaken at ports and screening units but also more generally. Particular concern was expressed about the time available to undertake the interview in the context of the NAM process.

Social workers also noted that age disputed children may be dispersed or moved around the detention estate before there has been sufficient time to undertake a proper assessment:

- “ It would be better if all local authorities were using the guidelines and doing a more in-depth assessment. At the moment there is simply not enough information there. You can't do it on arrival but within two weeks of entering the country they are dispersed as an adult. It's partly about the timing of things. You just can't do it on demand in that time. ”
  - Social work manager
- “ There is also an issue about how long you have to do an age assessment. Realistically, to have a good age assessment takes a month. You need to be able to talk to them two or three times, check out stuff, find out what's happened in their country and then make a decision at the end of it. In the NAM the time is squeezed down to a week and that's for everything. One one-hour interview is the best outcome. And that's only if you can get everyone in the room at the same time. There is no space to check out the information you have gathered or go back and ask more questions. We need some recognition that this [age assessment] is a long process, even just from the point of view of consistency. ”
  - Voluntary sector practitioner

## Use of the practice guidelines

The practice guidelines developed by the London boroughs of Hillingdon and Croydon are viewed by social workers as a key tool in the assessment process. The majority of social workers who participated in this research are familiar with the practice guidelines and use the pro forma to collect information during the assessment interview. Most social workers are aware of the limitations of the pro forma and recognise that it needs to be used flexibly:

- “ The pro forma has different sections but you just let the client talk, you don't go through the format. We get the client to feel at ease and explain who we are and what we do. We ask them about their health and if they are detained, how they are being treated. We ask them about any concerns and problems they may have. We explain that our main priority is to look after them. Basically you are trying to get away from being seen as immigration. If they want to tell you the reasons for asylum then they can but we are not interested in knowing. ”
  - Social worker

- ⌘ It's helpful having the pointers/headers because it shows you what you should be covering. But we are flexible. It's just a tool. And it only works if you are not trying to use it to trip people up.
  - Social work manager
- ⌘ None of the sections [in the pro forma] on their own make any sense. It's a jigsaw...you have to put it all together to get the complete picture.
  - Social worker

Although most social workers are aware of the practice guidelines, some social workers do not know how they should be used and none of those we spoke to had received training on how to conduct assessments. One local authority had given an age disputed child a copy of the blank age assessment pro forma and told him to fill it out himself or to get the Refugee Council or his solicitor to help him. Some social workers forward the entire pro forma to the Home Office rather than the conclusion of the assessment process. The information collected during the assessment process may then be used in relation to the asylum application. These problems arise largely from the fact that there is currently no statutory guidance on the conduct of age assessment to which local authorities are obliged to adhere.

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## The assessment process

There is evidence that social workers in some local authorities are competent in the assessment of age and conscious of the fact that age assessment needs to be a holistic process. These social workers start the assessment with an open mind about whether or not the individual being assessed is a child. They are conscious of the fact that age is experienced differently in other countries, that poverty can cause children to age quickly and that children who have had responsibilities at a very early age may appear mature and older than their years. They explore the context from which a child or young person comes. They take account of not just physical appearance and demeanour but also how the individual being assessed behaves and interacts with others.

Many of these social workers recognise that undertaking a holistic age assessment process can take a considerable length of time and may need to take place over more than one meeting or discussion, although time and resources pressures means that this is not always possible:

- “ I think the Home Office should be more realistic on age. They still do cursory interview. I can spend an hour, two hours, with someone and meet them again in a month’s time.”
  - Social work manager
- “ It’s important to have a holistic age assessment process which adds up different bits of information from different sources. That can be difficult because we need to do the age assessment as soon as possible. Really the age assessment needs to be done over a period of time.”
  - Social worker

Unfortunately there is evidence of variation in the quality of the assessment process. As a result the experiences of children like Desta (► case study, chapter 5.3) and Erbil (► case study, chapter 5.3) are not unusual. This variation partly reflects differences in the number of separated asylum seeking children for which the local authority is responsible and the number of referrals for age assessments that it receives. If the number of referrals is high, staff may become experienced in undertaking assessments but may also be under time pressures and may become cynical and case-hardened. If there are few referrals, social workers may have time and resources to undertake the assessment but lack both expertise and experience.

These differences are acknowledged by local authorities, which may decide to reassess a child’s age where this is disputed by another authority:

- “ It’s clear that the authorities who have done the other assessments don’t assess in the same way. They often contain judgmental inappropriate descriptions of someone. We get the impression that they haven’t actually spoken to the young person at all...on other local authorities we have seen prejudicial subjective opinions that are not really relevant.”
  - Social work manager
- “ Age dispute does bring different local authorities into conflict with each other potentially. Just from what we’ve seen recently...the age disputes we’ve seen...some of them are second age assessments...the first assessment is just appalling. It appears to have been done with total disregard for the guidelines. I can’t believe that [the age assessment interview] lasted more than half an hour from going through the form. You can’t even get a feel for the direction of a child’s life in less than an hour. There are different approaches among different authorities.

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## ■ Desta, 16, from Ethiopia

Desta was 16 years old when she arrived in the UK and claimed asylum at the airport. Her age was disputed and she was placed in hostel accommodation and referred to social services for an age assessment.

The age assessment interview was undertaken six weeks later with the use of an Amharic interpreter. The social worker conducting the interview considered that Desta answered his questions with very little emotion, seemed to be withholding information and was evasive. Her mannerisms were considered to be older than those of a 16 year old.

The social worker also asked a wide range of questions about the basis of the asylum application and concluded that she was avoiding some of his questions and that her account was inconsistent. The social worker identified contradictions in the account given to the paediatrician as further evidence that Desta was older than she claimed to be. He concluded that her desire to live on her own was demonstrative of the fact that she was older than she claimed to be.

Following the age assessment by social services, Desta stayed in a hostel in London for around a year before being dispersed to a city in the north east. During this time her appeal against the refusal to grant asylum was dismissed. She was subsequently reassessed by the local social services in the area to which she was moved and accepted as being a child. She is currently being supported by them pending the conclusion of her case.

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Some assessments are basically one-liners where the young person has been interviewed at the airport. Some are quite comprehensive but others are absolutely disgusting. 7

- Social work manager

Despite pockets of good practice therefore, the overall finding of this research is that the quality of the age assessment process undertaken by social workers is often poor. Some social workers in some local authorities rely too heavily upon physical appearance or socially constructed ideas of appropriate behaviour to determine age. In the case of Erbil (► case study, next page), a physically well-built and tall boy from Iran, the local authority assessment concluded that he was over 18 years of age based in significant part on his physical appearance and the fact that he was heavily bearded and had 'mature' facial features. Both a paediatrician and an immigration judge<sup>6</sup> subsequently concluded that Erbil was in fact 15 years of age. The judge was critical of the local authority's apparent confusion of physical size with other more reliable indicators of age to judgment.

There is also evidence that social service assessments of age frequently reflect socially constructed understandings about how children should *behave*. Children may not be viewed as sufficiently 'childlike' by social workers in the way in which they behave. They may be wrongly assessed as adults when they are not sufficiently 'victim like', when they are too 'political', demand their rights or are sexually aware:

- 4 If they are an adult they are likely to be more aggressive and evasive. This could be put in the report to justify a negative decision [on age]. 7
- Social worker

Some children are viewed as being 'overly confident' or 'too self-assured'. They are seen as lacking respect for social workers or being rude or aggressive. All of these characteristics are seen as being typical of the behaviour of adults not children.

<sup>6</sup> On 4 April 2005, the two tier asylum and immigration appeals system which existed prior to that time and comprised adjudicators at the first tier and the Immigration Appeals Tribunal (IAT) as the second tier, was replaced by a single tier Asylum and Immigration Tribunal (AIT). Decision makers in the AIT are known as immigration judges.

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## ■ Erbil, 14, from Iran

Erbil is a Kurd from Iran. When he arrived in the UK he was 14 years old. He applied for asylum when he was 15 but his age was disputed by the Home Office.

Erbil was referred to a local authority in London in February 2005 which undertook an age assessment and came to the conclusion that he was over 18 years of age. He returned to Migrant Helpline and was placed in emergency accommodation whilst the Children's Panel arranged for an examination to be undertaken by a paediatrician. The paediatrician concluded that Erbil was the age he claimed to be and a request was made for a reassessment by the local authority, which remained of the view that Erbil was an adult and refused to support him.

In the meantime the application for asylum was refused and an appeal heard by the AIT in September 2005. Although the judge dismissed the appeal, he accepted that Erbil was 15 years of age and made a recommendation that he be granted discretionary leave until his 18th birthday. The judge was critical of the local authority's approach to the age assessment which, he suggested, confused physical size with other more reliable indicators of age, and of the Home Office's uncritical acceptance of the adverse local authority view.

As a result of the court's decision, the local authority was obliged to take him into their care and Erbil is currently being looked after by them. His solicitor wrote to the Home Office shortly after the appeal requesting that Erbil be granted leave in line with current policy.

Despite the recommendation from the judge, Erbil was without any status at the time of the research (nearly six months after the appeal hearing) and did not even possess an ARC. He expressed his fears about what would happen to him if he was unable to prove who he was to the police. These fears were exacerbated by the fact that he had recently been arrested.

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In a number of cases, there was also evidence that the desire to live independently and not maintain close contact with social services may be viewed as evidence that someone is an adult rather than a child. This is despite the fact that many of these children have been separated from parents and carers, sometimes for a considerable period of time, and are therefore used to living independently of adults.

In the case of Yvette (► case study, chapter 5.5), the local authority view of her age – as reflected in the text of the completed age assessment pro forma – is based largely on the fact that she can be rude and demanding and is in conflict with her social worker:

- ❖ This is a young woman who is able to make herself and her feelings understood. She has been strong minded and single mind[ed], focused in everything she has done with very little assistance from social services and other agencies to the point that she has sometimes been rude and demanding. ❖
- Social worker

In the age assessment, the social worker accuses Yvette of being evasive and draws a number of conclusions about her age from the way in which she presents herself and the manner of her interactions which those in authority, including the fact that if she was an African child (rather than an adult) she would have been taught to be respectful of her elders and would not have maintained good eye contact during the interview. Yvette is of the view that the social worker simply did not like her and did not understand the impact of the traumatic events that had happened to her, including being raped and being witness to others being raped whilst in a refugee camp:

- ❖ From the very beginning of my contact with [the social worker] I felt that she disliked me...I sensed that the social worker did not like me and I felt threatened and mistrustful. I had only been in the country for a short period...When I told her I had been given discretionary leave to remain in the country she said 'do you think this means you will be allowed to stay here for good?' ❖
- Yvette, 16, DRC

The culture of disbelief observed at the screening unit also exists in some SSDs. Some local authorities have interpreted the Merton judgment as shifting the emphasis away from objective measures of age and towards the inappropriate assessment of the credibility



of the applicant's account. This is associated with an increasing focus on consistency, not only in the account given during the assessment interview itself but in relation to information provided in other interviews and documents, for example, in the asylum interview or during a paediatric assessment.

The case study of Fatuma (► case study, chapter 5.1) is illustrative of the way in which the perceived credibility or otherwise of the asylum application can come to dominate the age assessment process, even though this may not be relevant to the issue of whether a child is the age he or she says. During the initial age assessment the social worker expressed serious doubts about the credibility of the information Fatuma had given about her diet whilst held as a domestic slave because she had been able to eat a chicken sandwich without any negative effects.

During the reassessment of her age which concluded that she was 17 years of age, Fatuma was accused of deliberately attempting to distract the social workers by spilling water. Again, conclusions were drawn about the credibility of her claim to have been held as a domestic slave:

“ [Fatuma] was able to make good eye contact during the periods that she was telling her asylum story. When she was asked to expand or provide detail she would look away. She requested water on two occasions and started to pour the water between the two plastic cups and spilled it on her bag, as if to cause a distraction during these episodes. It was perplexing to observe that [Fatuma] was apparently wasting water after having related that she walked for several hours a day to carry water to the household. ”

■ Social worker

The focus on credibility and consistency in many age assessments was criticised by stakeholders and legal practitioners because it means that assessments can become highly subjective. This focus is inappropriate because, as was acknowledged in the Merton judgment, inconsistencies in the asylum application (about which questions are increasingly asked) do not necessarily mean that a child is lying about his or her age. Moreover inconsistencies in accounts can be the almost inevitable consequence of a process in which asylum seekers are repeatedly interviewed or asked about their experiences:

- ┌ The gist of age assessments definitely changed after Merton. Now we see the credibility argument all the time. It's ridiculous. Lying is not an indicator of age. 15 years olds do lie. The credibility argument needs to be shown for what it is. Teenagers who come into the UK will almost certainly tell a lot of lies. ┐
  - Medical practitioner
- ┌ Many of the age assessments focus on consistency. This is a constant argument about the process of age assessment. We all change the story we tell, and its okay to do that. When you add in trauma we should expect people to tell us inconsistencies. To argue that it has a bearing on age assessment whether or not you think someone is lying is ridiculous...but there is pressure on the age assessment to be consistent from start to finish. The job of an age assessment is not to get to the truth...We need to acknowledge that no one keeps the story for so long and that trauma and experience will have an impact on the way we tell our stories. ┐
  - Voluntary sector practitioner

## 5.4 Supporting information

There is evidence of considerable variation in the use and interpretation of documentary, expert and medical evidence in the age assessment process. Many social workers do not know what weight they should give to the different – and sometimes conflicting – evidence that is presented in particular cases. This includes documentary evidence, medical evidence and in particular paediatric reports, and evidence provided by other professionals.

### Documentary evidence

There is evidence that some local authorities take documentary evidence into account when it is presented. Hakim is a 13 year old boy from Afghanistan (► case study, chapter 7.1). After his age was disputed and he was dispersed by NASS, his age was assessed by social services who concluded that he was 16 years of age and gave him a date of birth of 01/01/1990. When a birth certificate confirming his age was subsequently sent by his brother his date of birth was changed accordingly. As a result he was placed with a foster family and is attending school.

As with many aspects of the age assessment process however, there are inconsistencies in the extent to which appropriate consideration is given to documentary evidence which confirms a child's stated age. Many social workers expressed concerns about the authenticity of the documents that are presented:

‘ Often we don't know whether it's authentic or if it's useful. It can be authentic but might not be useful. We take documentary evidence but we have no way of verifying it and knowing whether it's authentic or not. There are other kinds of documents that can be useful, for school photos, especially old ones, are helpful. We always tell people, 'if you can provide documentary evidence you can come back but we can't guarantee we will change our decision on the basis of this.' ’

■ Social worker

‘ We don't have to automatically accept a birth certificate as proof of age. Birth certificates are not necessarily a proof of identity. Someone could have arrived in the UK using false documents because of the risk of having a genuine form of identity with them. If they have arrived using false documents then they are people who have access to false documents....We can take account of how the young person says they have their birth certificate and no other supporting documents with them. ’

■ Social worker

In some cases these concerns about the authenticity or otherwise of documents are exacerbated by the fact that the original documents have been held by the Home Office and only a photocopy is available. When Yvette (► case study, chapter 5.5) applied for asylum at the screening unit, she took with her the original of her *Attestation de Naissance*<sup>7</sup> confirming that she was a child. The Home Office kept the original document and gave her a photocopy. Although an academic professor with expertise in the DRC authenticated the document, the social worker did not accept that the *Attestation* provided evidence of her age because it was a copy of the original and because there was nothing to indicate that the Home Office had seen the original as verification of Yvette's date of birth. The Home Office subsequently sent the original *Attestation* to the solicitor but it did not arrive.

<sup>7</sup> An *Attestation* is not a 'birth certificate' of the sort used in the UK but 'confirmation of birth' which will normally have been based on documents provided by the person or persons concerned or, less usually, by a relative on their behalf to a local authority, a justice of the peace or an equivalent of a 'responsible person'.

Social workers undertaking age assessments may also ignore documentary evidence of a child's age because the Home Office ignored it. Astrit was 17 when he arrived in the UK in January 2006. Although he presented his birth certificate and UN identity certificate at the screening unit, his age was disputed. He was referred by the Children's Panel to a local authority in London who assessed him as being over 18 years of age and referred him back to the Children's Panel. When Astrit's adviser at the Panel asked whether consideration had been given to the birth certificate, she was told that it had not been considered because Astrit's age was disputed by the Home Office who had already seen the certificate. This is not consistent with the Merton judgment, which states that a local authority must make an assessment on the material available to and obtained by it.

This approach towards documentary evidence can create huge problems for children and is associated with ongoing disputes over age (as discussed below). The evidence presented in chapters 2 and 3 suggests that the inability of children to present documentary evidence in support of their stated age can increase the possibility that the applicant's age is disputed. The evidence presented here suggests that even those able to provide documentary evidence in support of their age may continue to be treated as adults by social services:

- ⌘ Some local authorities are not accepting documents even if they are authenticated. In these cases the young person starts to question the evidence. If they still don't believe who I am does that mean I'm not anybody? ↗
  - Social work manager

This can also create a situation where children are put at considerable additional risk. When Lavdie (▶ case study, chapter 7.3) applied for asylum at the screening unit, both her passport and birth certificate were taken from her and she was given photocopies. Her age was then disputed by the SSD to whom she was referred for support. According to correspondence between the social worker and Children's Panel, the social worker believed that the documents were forged or did not belong to Lavdie although she had not seen the original documents that were with Home Office and which had not disputed their authenticity.

The social worker told Lavdie that her age would not be disputed if she was able to obtain another birth certificate from Albania, despite the obvious risks that this might entail both for her and her family:

“ They wanted my passport but I had just a photocopy. They said ‘if you bring your birth certificate we believe you and everything will be okay’. Because of this I made myself in risk by phoning my sister. If my father knows where I am he will kill me. She sent me the certificate but they still don’t believe me. ”

■ Lavdie, 15, Albania

## Medical evidence

The evidence presented in chapter 2 strongly suggests that there is no reliable medical or other scientific test to establish chronological age. Nonetheless these methods are being increasingly used by SSDs and legal practitioners in an effort to resolve disputes over age. The most commonly used medical evidence is an assessment undertaken by a consultant paediatrician. This method of age assessment typically involves anthropometric measurements including height, weight, skin and non-objective indicators, such as a young person’s interactions with the paediatrician.

Although most children do not consider paediatric assessment to be particularly intrusive, there is evidence that paediatric assessment of age is not always useful in the current context where age has become so contested. Although some local authorities may accept the assessment of a paediatrician and amend their assessment of a child’s age accordingly, in other cases the assessment itself may become the subject of an ongoing dispute between the child and local authority or between different local authorities. Moreover paediatric assessments of age are not necessarily or automatically accepted by the Home Office as evidence that a child or young person is the age that he or she claims to be.

Some of these problems arise from the fact that many paediatric assessments of age are undertaken by one paediatrician. Although that paediatrician does not assess all to be under 18 years of age there is a perception, held by many of the social workers that were interviewed during the course of this research and by Home Office officials and policy makers, that the majority of age disputed cases are assessed as children and that this evidence is therefore

not objective and impartial. This perception arises in significant part from the fact that the assessment is usually commissioned by a legal representative, who pays the fee for the assessment process and who will only relay the outcome of the assessment to the local authority and/or Home Office if it is in the client's favour.

Some social workers are particularly hostile to paediatric assessments submitted in a child's favour and may compare the account given by the child during the paediatric assessment process with that provided during the social service interview or at other times. Where differences or inconsistencies in the account are identified this may be used as evidence that the child is lying about their age. Others are dismissive of the views of the paediatrician who they do not consider as expert or experienced as themselves.

Concerns about the objectivity or otherwise of paediatric assessments are exacerbated by the fact that there are sometimes errors in the reports provided to local authorities. Because the process of age assessment has become so contested, such errors, even where they are relatively minor factual or typographical in nature, can lead to accusations that a child has been inconsistent in the information that provided to different assessors. For example, the social worker involved in the case of Fatuma (► case study, chapter 5.1) states in ongoing correspondence with the child's legal representative that there are inconsistencies between the information given to the paediatrician and the information collected during the age assessment. When raised with the paediatrician, it was accepted that there had been a typographical error in the date of birth given.

Most importantly, it is the margin of error which is inherent in *all* medical assessments of age and which is an explicit feature of the paediatric assessments submitted to local authorities and the Home Office, which creates the most significant difficulties in the use and interpretation of medical evidence of this kind. In some cases the margin of error is interpreted as confirmation that an age disputed child is an adult even where the assessment states that he or she has been assessed as being 16 or 17 years old plus or minus two years. In other words, the assessment is interpreted as meaning that someone who is assessed as being 16 years of age could actually be 18 and someone who is assessed as 17 could actually be 19.

This is despite the fact that the balance of probabilities means that someone who is assessed as 17 is *more likely* to be a child of 15, 16 or 17 than an adult of 18:<sup>8</sup>

“ [A paediatrician] still uses a two year span and often concludes that someone is between 17 and 19 or 16 and 18. It simply doesn't help us. When we get an assessment like that we will mostly conclude that they are still adults.”

■ Social work manager

“ A paediatric report is no better or worse than ours so we have only commissioned one or two of those. Usually what we do is sit down with the report and try to answer any questions raised or statements made. Some people are using medical qualifications to add credence to the assessment but it doesn't say anything different.”

■ Social work manager

This approach to the margin of error is reflected in the fact that until recently it had become increasingly common for the Home Office to refuse to accept a consultant paediatrician's report as an independent assessment of age. This was challenged in the cases of *R (on the application of A)* and *R (I & O)* which are discussed above. Both of these cases involved age disputed children who had been unlawfully detained.<sup>9</sup>

It should also be noted here that whilst paediatric age assessments are the most common kind of medical evidence submitted in support of age disputed children and young people, there is also anecdotal evidence that local authorities and legal representatives are increasingly commissioning other kinds of medical examinations in an attempt to assess age, including examinations which involve the use of x-rays. Such x-rays may be undertaken specifically as part of the age assessment process or in the context of a routine dental check-up:

<sup>8</sup> See 'Note on Implications' by Blake, N and Kilroy, C, available at [www.childrenslegalcentre.com/shared\\_asp\\_files/uploadedfiles/%7BB77EF00D-D6A8-470E-BFD7-AA9FCF2C6923%7D\\_Note%20on%20consent%20order%20\\_oakington\\_%2019.10.pdf](http://www.childrenslegalcentre.com/shared_asp_files/uploadedfiles/%7BB77EF00D-D6A8-470E-BFD7-AA9FCF2C6923%7D_Note%20on%20consent%20order%20_oakington_%2019.10.pdf) [accessed 1 March 2007].

<sup>9</sup> See chapter 6 for a detailed discussion of detention.

“ My solicitor made an appointment for an age assessment. I went to a doctor...The doctor searched my teeth and do some x-ray. The x-rays were of my face and inside my mouth. And then he checked my hands, my forearms and my wrists. It [the examination] was normal...he said my real age and didn't make any confusion...he assessed my age as being between 16 and 17. ”

■ Darab, 16, Iran

Although it may be presented as definitive and accurate, medical evidence is always open to interpretation. To this extent it is not at all clear that medical evidence provides the solution to the difficulties of age assessment. These approaches can in themselves be abusive and damaging to children and may simply increase the competing claims of those with an interest in the outcome of the process. There is a danger that one set of measurements that assess 'childhood' on the basis of our norms and expectations of physical behaviour and demeanour are replaced with another set of norms which are based on physical measurements and assumptions that are not necessarily universal but are assumed to be. This may be appealing because it gives the contentious process of age assessment an air of scientific legitimacy but there is no evidence that it is more reliable.

Medical evidence may be an important part of the picture in the assessment of age but it should not be relied upon in isolation from other evidence and information. As has been suggested throughout this chapter, social workers and voluntary sector practitioners are of the view that age assessment should be a holistic process in which the view of different types of evidence provided by different kinds of professionals are taken into account. This is the only way in which ongoing disputes over the assessment of age can be avoided.

## Evidence from other professionals

A number of children participating in this research commented that the questions that were asked of them during the age assessment process were irrelevant to their experiences and did not allow them to properly explain the circumstances of their lives in the country of origin. The difficulties in understanding and making sense of children's experiences suggest that social workers should develop good working relationships with other professionals in contact with separated asylum seeking children.



Many social workers recognise the importance of understanding life in the countries of origin, and some local authorities have developed partnerships with local voluntary and statutory organisations in order to achieve this. Although these relationships can be difficult, especially where there are differences of view as to the age and needs of children and young people, they are nonetheless largely viewed as being worthwhile. Others highlighted the important role that other professionals can potentially play in the age assessment process. This echoes the concerns of some social workers which were raised in the previous chapter about the absence of a multi-agency approach towards the age assessment process.

Despite social workers' recognition of the potential value of evidence provided by other professionals, it is apparent that the weight placed on that evidence varies in the assessment process. Although some social workers shared information about their own good practice in this respect, others were dismissive of the evidence provided by other service providers (for example, teachers, doctors and mental health workers) in support of a child's stated age on the basis that the opinions of these professionals were in some way biased in favour of the child. For example, in Yvette's case (► case study, chapter 5.5) additional information provided by two child and adolescent psychotherapists and a Children's Panel adviser appears to have made little or no difference to the assessment process. In the case of Fatuma (► case study, chapter 5.1) neither a paediatric assessment, nor a letter from an adviser at the Refugee Arrivals Project, nor a specialist psychiatrist's report were taken into account until legal action was taken.

Some local authorities do not even undertake formal age assessments but rely instead on the observations of third parties, particularly foster carers. This can be problematic if there is a conflict between the child and the foster carer which might influence the outcome of the process. In one case of which we were made aware, an age disputed child claimed that the foster carer had told the local authority that he was an adult as punishment for his refusal to undertake unpaid work in the family business. Whilst the views of the foster carer can appropriately be taken into account, these views should not, in and of themselves, result in a decision to treat a child as an adult. Rather a holistic process requires that the assessment takes place over a period of time and involves a wide range of professionals:

- “ I think it would be better if there was a longer process, perhaps over a week. It would involve the foster carer or key worker and any adult with contact with the young person, for example, education providers if they are on an ESOL course. It’s important to take account of how the young person interacts with others, including, for example, volunteers at any social group the young person is involved with. I think this would help us to create a fuller picture. We should still err on the side of caution but it should be more evidence based and not just based on a one hour conversation with a social worker.”
  - Social worker
- “ The ideal scenario would be that there is some kind of social interface and a support team with some cultural background involved. There could be a six-week support package as part of the induction process. The young people could be provided with a bit of education, some creative input. It would be a holistic process with an element of trying to check someone’s age. In that way the process would be beneficial regardless of the outcome.”
  - Social work manager

## 5.5 Outcome of the assessment and ongoing disputes

The process of age assessment has become the subject of increasing conflict between children and their legal representatives and some SSDs. This situation has arisen largely because of the considerable variations in the way in which the age assessment process is conducted and the inconsistencies in the weight given to different kinds of evidence identified by this research.

Many ongoing disputes over age reflect actual or perceived inconsistencies in the account, minor and seemingly inconsequential events or errors (including typographical and administrative errors), and assumptions about behaviour and actions that are not necessarily appropriate or accurate.

Because the age assessment process is not based on statutory guidance and because there is no independent review mechanism to examine the process by which a decision as to a child’s age has been reached, the only option available where there are concerns about the quality of the assessment process is judicial review.

## ■ Yvette, 16, from the Democratic Republic of the Congo

Yvette was 16 years old when she arrived from the Democratic Republic of the Congo (DRC). She was referred to the Children's Panel by a voluntary organisation and claimed asylum at the screening unit shortly afterwards. Her age was disputed despite the fact that she had a copy of her birth certificate.

Yvette was referred to Migrant Helpline for dispersal through NASS. They in turn referred Yvette back to the Children's Panel who referred her to a local authority for support. An age assessment was conducted shortly afterwards. Although the local authority concluded that she was not a child, this decision was revised after Yvette provided a paediatric assessment which said she was 17 years old plus or minus two years. At the same time the Home Office – which now accepted that she was a child – refused her asylum application but granted her discretionary leave until her 18th birthday. During the months that followed her social workers decided that her behaviour was not that of a child: they claimed that she had been rude and demanding and had refused to cooperate with them. A reassessment was undertaken which concluded that she was not the age she stated and therefore not eligible for services. She was made homeless.

In January 2005 Yvette's legal representatives requested that the assessment be reconsidered in the light of further information they had obtained from other sources. A further (third) age assessment was undertaken but the decision remained unchanged. An unsuccessful application was made for a judicial review of the local authority's decision that she was not entitled to support as a child. The immigration judge concluded that the age assessment undertaken by social services was carried out fairly and in a proper manner with necessary objectivity.

By this time Yvette had moved to another local authority area and made a homelessness application but was refused accommodation on the basis of the dispute over her age. The second local authority was asked by the legal representative to carry out a fresh assessment of Yvette's age but declined to do so until February 2006. At the time of the research the reassessment was the subject of a further delay and Yvette's 18th birthday was less than six weeks away.

This situation is far from ideal. As has already been suggested, age disputed children will not necessarily have access to legal representation or a legal remedy. Some children are dispersed without a formal assessment and/or they are unable to secure legal advice and representation or maintain contact with their legal representative following dispersal. In these circumstances they will be unable to challenge the assessment of their age and will continue to be treated as adults. In addition legal remedies do not necessarily deliver outcomes that are any better and/or acceptable to all the parties involved.

A number of social workers and social work managers commented that one of the consequences of increased litigation around age disputes is that they may be required to support young people who they consider to be adults following a judge's decision that they are a child based on physical appearance. This problem was also noted in relation to asylum appeals (also discussed in 6.4) and is considered by some social workers to raise child protection concerns:

“ We are doing more and more age disputes that are being challenged, for example, where a young person goes to court about their asylum decision and the judge thinks they are a minor and that the local authority should reconsider. There are situations where social workers have spent however long gathering information and the judge does what the Home Office has done in the beginning and just looks at them and makes a decision on appearance. ”

■ Social worker

“ The appeal court judges are amending age assessments and forcing us to take them back....There is no new evidence as such. On that basis we might as well go on what the Home Office say. I don't want anyone saying that we go on physical appearance and I don't agree with these appeal judges doing that either...I see it as a child protection issue. I will not condone putting adults in with vulnerable young people. ”

■ Social worker

Moreover there is evidence that even where legal challenges to the age assessment process are determined in favour of the child, the decision of the judge in these cases may not be put into practice. This may lead to yet further legal challenges.

For children themselves, ongoing disputes over age can be incredibly stressful. Because disputes may remain unresolved for some time, children can find themselves being sent backwards and forwards between different service providers and local authorities. Often they are not aware of the significance or implications of what is happening to them or the roles of the different individuals and organisations involved. During this time they will not be able to access appropriate accommodation, education or support.

The experiences of Yvette (► case study, chapter 5.5) illustrate the difficulties that protracted disputes can create. Yvette's age has been the subject of long and ongoing litigation involving two local authorities, neither of which accept that she is under 18 years of age despite a paediatric assessment which suggests that she is likely to be a child.

Simret was 15 when she arrived in the UK from Eritrea (► case study, chapter 6.5). Her age was disputed by the Home Office and her application for asylum refused. At her appeal in front of the IAA, the adjudicator<sup>10</sup> was critical of the reliance upon physical appearance that had led to her age being disputed in the first instance, and of the failure of the local authority to take account of either the paediatric assessment or Baptism certificate that had been submitted as evidence of her age. The adjudicator found that Simret was under 18 years of age and recommended that she be recognised as a refugee. Despite this decision, Simret remains unable to access local authority support and her case is the subject of an ongoing legal dispute.

Whilst it is clear that litigation is the only way forward in some cases, it is also clear that the absence of a review mechanism for ensuring that the process of age assessment has been conducted in a way that is legal, rational and fair has served only to increase conflicts between those who have a role in the age assessment process. The findings of this research suggest that there are a number of steps which can and should be taken before it is necessary to resort to litigation. An essential first step is that children whose age is assessed by a local authority should be given an opportunity to respond to the outcome of that assessment and to what is said about them in the assessment process:

<sup>10</sup> Appeals decision makers prior to the establishment of the AIT in April 2005 were known as adjudicators. See also fn 6 in this chapter.

- ▣ If a young person has an age assessment and is not aware of what is being said about them then it isn't fair. We should make it clear that it's not that we are disputing their age because we don't believe them...it's on the basis of what you say. We should give them an opportunity to provide more information. ▸
- Social work manager

The outcome of the assessment should also be made available on request to a child's legal representative where there is one. This is important in order to identify whether or not the assessment is 'Merton-compliant'. Following the outcome of the assessment there should also be an opportunity to discuss differences of view. It is notable that there is currently no equivalent of a case conference where those involved in the case meet with the individual concerned and discuss the issues involved. This means that there is no opportunity to discuss or resolve misunderstandings over who said what and actual or perceived inconsistencies in the account. Ultimately however the most important measure that is needed to reduce the number of legal challenges to the age assessment process and improve the quality of the age assessment process over the longer term is statutory guidance and an independent review of the process by which the decision about a child's age has been reached.

## 5.6 Implications and recommendations

Although children's experiences of the age assessment process vary considerably, many describe feelings of anxiety, anger and bewilderment at the way it was conducted. Many feel that they have been 'wronged' and their views and experiences have not been believed or understood.

The experiences of children are a reflection of the variations that currently exist in the quality of the assessment process undertaken by local authorities. These variations have been identified in relation to the location of the assessment interview; informing the child about the purpose of the interview; the attitude and approach of the assessors; and the analysis of the information obtained.

There is no consistency in the use and interpretation of documentary, expert and medical evidence in the age assessment process. This suggests that although the age assessment process undertaken by local authorities is likely to be more comprehensive than the rapid visual assessment undertaken by immigration officers at the screening units and ports, there is currently an over-reliance on social service age assessments which are often not very good.

The lack of an independent review process for ensuring that the age assessment process has been conducted fairly has resulted in an increase in high-profile and expensive litigation. Age disputed asylum seekers will not necessarily have access to legal representation or a legal remedy. Some children are dispersed without a formal assessment and/or they are unable to secure legal advice and representation or maintain contact with their legal representative. Moreover whilst judicial review challenges the procedures by which age was assessed in an individual case there is no evidence that the increased number of cases is leading to a better process for assessing age.

Our key recommendation is that age assessments should not be undertaken by individual SSDs with varying skills and resources but by social workers based in the smaller number of properly and independently resourced regional assessment centres we have proposed. This would enable appropriate training and guidance to be provided and would ensure that the age assessment process is undertaken without potential conflicts arising over time and resources. There should be built in quality assurance and safeguards. Regional assessment centres should be based on general social care standards and should be properly overseen and audited.

The determination of age is a difficult and often inexact task where various types of physical, social and cultural factors all play their part. For this reason the age assessment itself should be a holistic process which takes into account a range of social, emotional and psychological indicators of age and need and does not rely solely or primarily on physical characteristics.

In order to improve the quality and consistency of the age assessment process, the Department for Education and Skills (DfES) should publish guidance to local authorities on the age assessment process. This guidance should build on the practice guidelines which are already in use and be based on the following principles:

- Age assessment should not take place at ports of entry or screening units;
- The assessment should be conducted over a period of time (ideally a minimum of seven days) so that the behaviour and relationships that a child or young person develops can be observed;
- The purpose of the age assessment process and the implications of the outcome should be properly and clearly explained to the child or young person. The conclusions of the assessment should be open to revision where new evidence comes to light;
- Original documentation provided by the applicant should be made available to those undertaking the age assessment process. If there are concerns about the authenticity or otherwise of the documents then these should be verified by independent experts;
- Social workers involved in the process of age assessment should be provided with appropriate guidance, training and support;
- The assessment process should link into Children Act 1989 processes and statutory duties towards children and young people arising from the Children Act;
- Those responsible for the assessment process need to be conscious of the fact that it is abusive for a child to be repeatedly interviewed about his or her experiences. The number of interviews should be limited to prevent systems abuse of this kind;
- The process of age assessment should allow for input from all who play a role in the child's life, for example social workers, health professionals, psychologists, teachers and youth workers, and should include all the information that might be relevant to the decision, including paediatric and medical evidence where this is available;



- Although age assessment must be comprehensive and make use of all available expert assessments and techniques, the limitations of technological/medical assessments of age mean that there should not be *primary* use of any single medical test to establish the age of a child or young person. Medical assessments of age provide a guideline only as to the age range within which an applicant falls and should be treated as only one of a series of possible tools for assessing age.

The age assessment process could be supported by an independent age assessment panel. The panel could provide overarching support and guidance and could help the regional assessment centres to deliver a consistent and credible service which is less likely to be challenged by others. It could also play a role in the auditing process.

Finally there also needs to be an appropriate process for taking forward the outcome of the assessment process and for resolving any ongoing disputes at the earliest possible opportunity. Those asylum seekers who are assessed as being adults should be given an adequate opportunity to answer the points that are being held against them. This could take the form of a case conference involving the young person themselves and the people involved in his or her life. If differences of view cannot be resolved at this stage then there should be a clear, simple, independent and robust process for reviewing the assessment process and for ensuring that the evidence has been appropriately considered.



## CHAPTER 6

# Implications for the asylum determination process

This chapter explores the implications of age disputes for the ability of children to access international protection.

It outlines the consequences of age disputes for the way in which information about a child's asylum application is collected and assessed, and considers the potential for children to be unlawfully detained and even removed from the UK.

### Case studies

Joseph, 14, from Rwanda

Sempala, 15, from Uganda

Simret, 15, from Eritrea

Soran, 16, from Iran

## 6.1 The asylum process

Whilst there are well-documented problems in the current policy approach to the asylum claims made by separated children,<sup>1</sup> there are some concessions granted to children as asylum seekers on the basis of their vulnerability and needs. For example, an asylum seeker who is accepted as a separated child is subject to a more child-appropriate asylum determination procedure, has a right to be legally represented and accompanied to interviews and will have their claim assessed by a specialist children's unit.

The consequences of an adverse asylum decision are also less extreme in the short term for a child than for an adult because a child will normally be granted discretionary leave until their 18th birthday if there are no adequate reception arrangements in their own country (or for a shorter period if they come from a 'white list' country).<sup>2</sup> The Home Office's approach to separated children seeking asylum is set out in the Children API which was issued in April 2006, the details of which are referred to throughout this chapter.

If a child's stated age is disputed and he or she is either not formally age assessed or is incorrectly assessed by social services as being over 18 years of age, that child will enter the adult asylum determination process. Age disputed applicants do not benefit from any of the concessions available to children whose age is not in dispute. This is because until such time as an age dispute is resolved in a child's favour, the Home Office continues to treat the child as an adult: determining their claim for asylum through adult procedures and using against them the powers it has available to use against adults under immigration control. This means they will have more limited time for returning details of their asylum claim, will be called for an asylum interview at which there will be no public funding available to have a lawyer present, will not benefit from the presence of a responsible adult at the asylum interview and may be detained pending an asylum decision.

<sup>1</sup> For a detailed discussion of these problems see Crawley 2006.

<sup>2</sup> See also chapter 2, fn 6.

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## ■ Joseph, 14, from Rwanda

Joseph is from Rwanda. His family was killed during the genocide when he was very young. His mother was Tutsi and was decapitated in front of him. His mother's family believed that Joseph's father – who was Hutu – was responsible for her death. They took revenge by killing his father, two brothers and two sisters. Joseph was present but survived the massacre.

After his family had been killed, Joseph went to stay with his uncle who lived on the Congolese border. He was around ten at that time. He described how his uncle had sent him to different groups with guns, food and medication. One day he was captured by the Rwandan Patriotic Front (RPF) who killed his uncle and took him to prison. He was beaten every day.

Eventually Joseph was rescued from the prison by a woman who used to work with his mother. He arrived in the UK in 2001 and was 14 years old at that time. His age was disputed when he claimed asylum at the screening unit. One week later he was interviewed substantively about his experiences. At his asylum interview Joseph was asked to speak in French or Kinyarwanda even though he was schooled in Kenya and considers English to be his mother tongue. During the interview Joseph became stressed and began to speak Kikongo, the dialect spoken by his uncle. As a result his nationality was also disputed.

After the interview Joseph was sent to Migrant Helpline who referred him to the Children's Panel who in turn referred him to a local authority in London. His age was not disputed by the local authority who agreed that he was the age he claimed to be and took him into their care. Although he was supported by the local authority until he was 18 years of age and is now receiving leaving care services, the Home Office continue to dispute his age and have never treated him as a child for the purpose of the asylum determination process.

Joseph was eventually refused asylum on his 19th birthday. At the time of the research, he was waiting for his appeal to be heard.

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There is no separate process or procedure for age disputed individuals which might take into account any possible errors in the initial 'assessment' by IND. With the exception of fast track detention policy – which requires that a full 'Merton-compliant' age assessment be undertaken before an age disputed asylum seeker is detained – an individual whose age is disputed is treated as an adult for the purpose of the asylum application and welfare support unless and until an age assessment undertaken by social services concludes that he or she is under 18 years of age.

Yet as the evidence in earlier chapters has shown, there is currently no obligation on immigration officers to refer an age dispute case to a local authority and many age disputed applicants are not aware that this is an option. Indeed even for those who are formally assessed and found to be children, the gap between policy and practice outlined in chapter 4 may mean children continue to be treated as adults in the asylum process because the Home Office records are not always updated to record the outcome of the assessment process.

## 6.2 Collecting information about the claim

Being treated as an adult has a number of consequences for the collection of information about the asylum application. These include both *the way* in which the information is collected and *the kinds* of information gathered. The Children API states an asylum application made by, or on behalf of a child, should be handled sensitively at all stages by caseworkers who are trained in interviewing children and are aware of the basic signs and symptoms of abuse.

If the decision is taken to proceed with an interview, it must be conducted with an appropriate adult present, and by caseworkers with children specific interview training. The setting should be informal and the interview should be non-adversarial and child-friendly. The interviewer should attempt to make the child feel at ease and should commence the interview by explaining the process including that it is permissible for the child to say if he or she doesn't understand a question. The interviewer should adopt child-sensitive language and child-appropriate questioning techniques. Children should be able to express themselves in their own way and at their own speed.

If the child appears tired or distressed, the interview should be stopped. There should always be attention paid to the child's welfare. Interviews should be culturally sensitive to the child and acknowledgment should be given to the fact that the child is giving information in an alien environment and may fear/distrust someone in authority. All of this guidance is breached where an age disputed child is treated as an adult for the purpose of the asylum determination process.

Chapter 3 described the process by which age disputed children are screened. It is clear from observations at the screening unit in Croydon that where the decision is taken to dispute the age of an asylum seeker at the pre-screening stage (when the applicant's basic details are being collected and entered onto the computer system), the screening interview and, in turn the asylum interview, will be undertaken on the assumption that the applicant is an adult. Indeed there is some evidence that even those whose age is accepted by the Home Office may be interviewed through an adult process:

- 4 On Monday one of our reps attended a substantive asylum interview at the ASU. It was based on a SEF not a SEF(C). It was a completely adult based process. And this was a child whose age wasn't even disputed. 7
- Legal practitioner

Many children whose age was disputed when they first arrived at the screening unit described the screening interview itself as being very difficult. Most had waited for many hours before being interviewed and believed that they were treated with more hostility than adult applicants because of assumptions made by interviewing officers that they have lied about their age. Desta is from Ethiopia (► case study, chapter 5.3). She was 16 years old when she was interviewed:

- 4 After four hours she called me. I got there around 9am and I was waiting and waiting and at around 2.30pm she called my number and then she took me to the backroom. She was asking me, and shouting at me. When she asked me 'when did you start school?', I couldn't remember properly. She just kept shouting at me. I was crying, I couldn't remember. She was shouting 'You're lying aren't you? When did you start school, when did you finish school?' She just kept shouting and I told her that I couldn't think. She told me she would throw me out if I didn't tell her. After that she just wrote down some things.

She had a bad attitude, some problems, because she is putting you on the spot and you can't think straight and you have all these things in your head and you are angry at the same time so you can't think. 7

■ Desta, 16, Ethiopia

Other children also described being badly treated during the interview process and being unable to relay the full details of their journey to the UK and the basis of their claim for asylum. Hassan described how he had arrived in the UK after several months, travelling initially from Iran to Thailand, and then to China before boarding a plane to the UK. He described the anxieties he felt when he arrived and the problems he experienced with the interpreter:

4 All I wanted to do was to get away from my father and, you know, I hadn't slept on the 12 hour flight because of the anxiety. The Immigration Officer couldn't understand me, I had to repeat many times. He pointed to some chairs and told me 'sit there'. I sat on the chair with my heart in my mouth and waited for six hours. Believe me, I was dying from [lack of] sleep and I wanted to go to the toilet but I didn't know who to ask or what to do. Then the worst part was to follow. This interpreter not only was he an Iranian he was very rude and very impatient and talked to me like I am dead. I hardly understood him. He kept telling me, 'come on, get on with it, hurry up'. I couldn't understand his accent. He started treating me like I was dead... They kept saying I lied. After more than 24 hours of anxiety and discomfort and tension I was being asked questions in a manner that frightened me. It went on for two hours. By half way through I couldn't think straight, I was exhausted. I couldn't concentrate to answer the man. 8

■ Hassan, 16, Iran

Other children may become upset or confused during the interview but the interview is not stopped because they are considered to be adults and the questioning of immigration officers is viewed as appropriate. Joseph (► case study, chapter 6.1) described how his nationality as well as his age had been disputed because he chose to speak in English rather than French or Kinyarwanda at his asylum interview and slipped into the dialect of his uncle, with whom he had lived on the Congolese border after his parents were killed during the genocide. During the interview Joseph became very stressed and anxious and was unable to describe what had been very difficult experiences in Rwanda:



- ⌘ The first interview was a week after I came and I was just on my own...The interview didn't go well. When I came for my interview they just put me in a room and that was it. They didn't really tell me I was applying for asylum. They just started asking questions...The guys who were doing the interview kept laughing at me. I had my education in Kenya and I couldn't work out the years because I was so stressed... I missed some questions and I felt bad because they would just laugh at me. They kept saying 'why are you crying? This won't help you'.

■ Joseph, 14, Rwanda

The problem that children experience with interpreters during their interview about their experiences was also a recurrent theme in the evidence gathered. These problems may be exacerbated by the use of interpreters who are unable to translate the responses in a child-like manner and instead use adult language and expressions or who direct the applicant to give certain kinds of responses:

- ⌘ They didn't want me to speak English even though that was my language. They said 'we won't do this [the interview] unless you speak an African language'. And then the interpreters interpret something different. When I spoke in Kinyarwanda the interpreter got it wrong. I said 'no, I didn't say those things', and the immigration officer said I had to talk through the interpreter. The interpreter said I was asking too much, that they were simple questions and I should give short answers.

■ Joseph, 14, Rwanda

Joseph said that the interpreter had also threatened him: 'The interpreter said I was lying and that I shouldn't lie or they would send me to prison. I had just come from prison'. It is important to note that interpreters working with children need to be trained to be able to pick up the innuendos of how a child is expressing him- or herself. Often the interpreter puts what the child says into adult language. This can cause problems in terms of both the content of what a child says and the perceived credibility or otherwise of the way in which it is said. This applies to the both screening and substantive asylum interviews and the age assessment process.

Being treated as an adult also has implications for the *kind of information* that is collected during the asylum interview. Michel (► case study, chapter 7.2) was a child soldier in Rwanda before being imprisoned and tortured. He was rescued by a well-known organisation before travelling to the UK. He described his asylum claim in some detail, including the fact that he did not feel able to provide the information that he wanted to provide because of the way in which the questions were structured:

- “ The way I was treated in the first place [at the ASU], it really made me disgusted with the process. I know that whatever is said there is not a grain of truth they would take out of it. I gave it my best shot but I knew it was just a process and they had already made a decision... No, they didn't want to hear what happened to you. They structure questions in a way which is not clear. They are not interested in what you have told them. They are only interested in their own issues. They are doing the interview in the best interests of the Home Office. ”
- Michel, 16, Rwanda

Some legal representatives and voluntary sector practitioners commented on the fact that the questions asked during an adult asylum interview – which often relate to political party membership and formal political activities – may not be relevant in the context of children's experiences. This may come to light and be remedied only at the appeal stage:

- “ I have been to [asylum] interviews where they haven't been age assessed. They are clearly very young but they are treated as adults throughout the interview, even when they look very young. One kid was asked about his political party and didn't know what to say. He went on to be age assessed correctly and got full refugee status. The judge said that he didn't like the manner he was interviewed. ”
- Voluntary sector practitioner

The failure to collect information about children's experiences of persecution can also be seen in the case of Simret (► case study, chapter 6.5). The asylum interview transcript records how she was asked her age, which she stated as being 15, but the questions then proceeded as though she were an adult. She told the interviewer that although she was too young to be conscripted at that time she feared she would be called up soon. There were no follow up questions.

## 6.3 Legal advice and representation

Whilst the problem of securing access to good quality legal advice is certainly not unique to asylum seeking children whose age is disputed, there is evidence that this group of children often falls through the gaps of existing provision and support. Children whose age is disputed may not have access to the specialist legal advice and representation needed to request a formal age assessment by social services, to commission expert evidence, and to present their asylum application. This problem is exacerbated if there is no referral to the Children's Panel.

The evidence from this research suggests that many age disputed children may never come into contact with a legal representative or anyone who might advise them on challenging the decision that has been taken in relation to their age or obtaining a social services age assessment.

Brehane (► case study, chapter 7.1) applied for asylum three days after her arrival in the UK. Her age was disputed and she was dispersed to a city in the north east after spending five months in a hostel in London. She was unable to secure access to a legal representative until she was taken into the care of social services. She was critical of the role of the solicitor because he had simply failed to challenge the fact that her age was disputed until the end of the asylum process:

- “ Nearly all of them don't do anything about it [challenging the age dispute] until the end of the line. The solicitor doesn't do anything until they are refused. If you have failed and you say you are a minor people don't believe you. ”

Some legal representatives also expressed concern that not all of those representing age disputed clients take the necessary steps to ensure that a child is not treated inappropriately as an adult in the asylum process:

- “ There are real problems sometimes with the cases that are transferred to us. Some clients are very poorly served by their representative. The decision is not challenged earlier or there is social service information on the file that has not been seen by the Home Office. Quite a lot of firms treat age disputed minors as adults. They basically accept the Home Office reasoning and don't fight to get the decision overturned. ”
- Legal practitioner

Although it is important to recognise that children's views on the quality of legal representation generally tend to reflect the outcome of the asylum process, the attitudes that a legal representative takes towards a child, the way in which the asylum process is explained, the nature of the questions asked and the extent to which the child is kept updated on the progress of the case all make a huge difference to perceptions and experiences of the legal representation that children receive. This is particularly clear where children's experiences in the country of origin make them reluctant to talk about what has happened:

“ I didn't really trust [the solicitors] at first. They were asking the same questions as the Home Office and I was fresh from prison...they asked lots of the same questions there too. Now I know my position. With the previous solicitor I didn't even go into what happened in prison. Nobody explained to me what they were trying to do. I thought they were just trying to find the woman who brought me here. They kept saying you will go back to prison. One of my friends was detained. ”

■ Joseph, 14, Rwanda

Age disputed children who are able to secure access to legal advice are often very confused about the implications of the age dispute for their asylum application and support options. This problem is exacerbated by the need for two legal representatives in age dispute cases because immigration solicitors are rarely able to deal with the welfare and family law issues associated with the social service assessment process, and vice versa.

The research has found evidence of a lack of joined-up working between those legal representatives dealing with immigration matters and those dealing with welfare issues. For example, although an age disputed child's welfare solicitor may insist that local social services undertake a formal age assessment, the conclusions of this process and its implication for the asylum process may never be discussed with the immigration solicitor.

In addition legal representatives expressed concern that they do not always get paid for the additional work required to ensure that age disputed clients are properly represented and advised. This includes the additional work associated with liaising with a welfare solicitor and medical experts as appropriate and necessary to resolve the age dispute itself. These problems are further exacerbated by the absence of a guardian able to link up those with different roles in different parts of the asylum process.

## 6.4 Assessment of the application

The Children API recognises that where an asylum applicant is a child this will have implications for the consideration of whether the application meets the definition of a refugee as set out in the Refugee Convention. Reflecting this, the API outlines child-specific forms of persecution which caseworkers should take into account when assessing the claim. These include harmful traditional practices, the recruitment of children into the armed forces or a rebel faction and trafficking. The API also acknowledges that imputed or perceived political opinion may be relevant for children: 'for example, in many age-related claims the claimant may be targeted as a member of a politically-active tribe, community or family. Children may also be targeted because the persecutor wants to extract information or co-operation from politically active family-members or to punish them. In such cases the child might not even know what the adults' political activities or opinion are'.<sup>3</sup>

The evidence from this research suggests that disputes over age can have significant implications for the assessment of the asylum application. One of the biggest problems for these children is the fact that a decision – almost always negative – is made on the asylum application before the dispute over age is resolved.

In some cases the application may be processed through the fast track process and, until very recently, age disputed children and young people could be detained during this time. George (► case study, chapter 4.3) was taken to the Oakington Reception Centre after he presented a letter from the local authority that was supporting him stating that they considered him to be over 18 years of age. George was interviewed as an adult whilst in detention and his application was refused shortly afterwards. This was despite a request from his legal representative that the asylum decision be postponed pending an age assessment by the local authority or a paediatrician:

- “ The decision came and it was negative, that is, they refused my claim and now they are making arrangements for me to be deported. So I really got a shock. I was thinking ‘what next?’ The solicitor said she would write a letter and attach the report [from the paediatrician]. By that time I had almost lost hope. I was so confused. Things were happening so fast. I don’t even know what happened. ”

■ George, 16, Kenya

<sup>3</sup> Home Office 2006b, paragraph 8.4.3.

George was eventually released from detention with the assistance of the Children's Panel. He was taken back into the care of the local authority that had disputed his age but after a formal assessment which contained a number of errors, was referred by the Children's Panel to another local authority who assessed him to be a child and took him into their care. George was granted DL by the Home Office and told to submit a fresh asylum application. At the time of the research he had not received a decision of that application.

There is also strong evidence from this research that where a child who is age disputed is treated as adult, children's experiences *as children* are not taken into account in the assessment of the application. The experiences of several children interviewed for this research are directly related to, or exacerbated by, their status as children. Michel (► case study, chapter 7.2) was a child soldier in Rwanda. George (► case study, chapter 4.3) was harassed, marginalised and ostracised from his family and the community in which he was living because he is an illegitimate child. Lavdie (► case study, chapter 7.3) was trafficked into the UK when she was 15 years old.

Faela was persecuted because she is the daughter of a journalist. She described how her father had been a journalist in her country of origin (the DRC) and how she had accompanied him when he went to the airport to cover the story of the opposition leader returning to the country after a period in exile:

“ Suddenly the president's soldiers came to chase everybody. That's when it all started. Some people were killed there. They took me to a prison with some other people. I was there about one month. There were many girls there. They were really horrible...When I escaped they took me to a church for a few days, but they said it wasn't safe to stay. Because they knew I was my father's daughter they wanted to get me.”

■ Faela, 15, DRC

In other cases there was evidence that children's political activity or involvement is perceived as being incompatible with the claim to be a child. There is a tension in the current approach in these cases: age disputed young people are viewed as 'too young' to be involved in politics but 'too old' to be treated as children.

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## ■ Sempala, 15, from Uganda

Sempala was 15 years old when he arrived in the UK and claimed asylum in 2004. His age was disputed by the Home Office and he was referred to the Children's Panel who sent him to a local authority for his age to be formally assessed.

After several very unpleasant age assessment interviews (► case study, chapter 5.2), the local authority concluded that he was over 18 years of age and refused to support him under the Children Act 1989. With the assistance of the Children's Panel and his solicitor, Sempala was re-assessed by another London borough. He was found to be the age he said he was and provided with a foster placement.

Sempala's substantive asylum interview was held before he was accepted by a local authority and his application refused. With the assistance of a legal representative, Sempala was able to submit an appeal. His appeal was successful and he was recognised as a refugee in June 2005.

For example, Erbil, a Kurd from Iran (► case study, chapter 5.3) described how he had become involved in a local incident which led to a statue of an important Islamic leader being destroyed. He believed that the Iranian army would try to arrest him, as had happened to others involved in the event:

- “ There was a group of children. The leader of them, he disappeared, and others disappeared. They have their nails taken off ... So that’s why I escaped and came here to the UK...The Home Office looked on the internet about my case and they saw that there was a problem. But they said you are too young and the government wouldn’t kill you if you go back. They say I’m not young. It’s not true. ”
- Erbil, 14, Iran

These tensions are reflected in the determination of the AIT in this case. Although the judge accepted that he was the age that he claimed to be, he also concluded that this very fact made it unlikely that Erbil would have been involved in any political activity or that the Iranian authorities would be interested in him, stating that:

- “ Your immaturity was accepted as an indication of your age but also makes it unlikely that you were politically involved as claimed... he shared no serious interest in or real knowledge of politics, as of course would be expected of most boys of the age he was then... We regard his claim that he helped people to topple the statue... as no more than youthful bravado and to be unworthy of belief. ”

An assessment of the credibility of an application for asylum plays an increasingly important part in the determination process. Because children’s experiences do not necessarily make sense when assessed through an adult process, the overall credibility of the application may be called into question by the decision maker. Moreover there is strong evidence that the credibility of an asylum application is undermined by the very fact that age is disputed and the applicant is considered to be lying about his or her experiences. This problem was highlighted by many research respondents, including several social workers:

- “ The age dispute definitely has an impact on the case...You’re not credible because the Home Office believes you lied about your age. ”
- Social worker



In addition there is some evidence that information contained in social service age assessments may be used by the Home Office to dispute the credibility of the asylum application. Where social workers provide immigration officers with the entire document relating to the age assessment interview as opposed to its outcome, the account given in one interview may be compared with the account given in another and discrepancies identified. This is despite the fact that the information in each interview is collected for a different purpose.

Disputes over age and delays in the assessment of age are also clearly associated with delays in making a decision on the asylum application. Many children described how their cases were refused as adults prior to resolution of the dispute over age, and how they were subsequently granted discretionary leave as children, once their age had been formally assessed, only to face repeated delays in the consideration of the asylum claim on turning 18. Some described the problems that this had caused for them because their experiences *as children* had never been properly considered or taken into account in the asylum determination process. Lack of access to legal advice and representation, or the failure of legal practitioners to take into account a child's experiences because his or her age has been disputed, exacerbates further the problems for children identified in this research:

- “ By the time they get to me they are over 18 whatever age they say they were when they arrived. They've lost their appeal and have been referred here as an end of the line case. As a result none of the child relevant aspects have been taken into account. ”
- Legal representative

The implications of disputes over age for the way in which the application is determined strongly suggest that no action should be taken in relation to the asylum claim unless and until any outstanding issues or disputes over the applicant's age have been resolved. In the absence of a resolution of these issues it is not possible to properly assess the application.

## 6.5 The appeals process

The Asylum and Immigration Tribunal (AIT) recognises that distinctions should be made in the handling of child and adult appeals. In April 2004 the Chief Adjudicator produced a *Guidance note on unaccompanied children*<sup>4</sup> which alerts immigration judges to the need for careful case management and additional caution when dealing with appeals by separated children seeking asylum in the UK. The guidance states that where age is disputed the appellant should be treated as a child (paragraph 3.4). It also states that in reaching a decision as to whether the child is a minor, immigration judges should bear in mind the guidance of Stanley Burton J in the Merton case (discussed in detail in the preceding chapter).<sup>5</sup>

The research has identified inconsistencies and anomalies in the way in which age disputed asylum cases are dealt with at the appeals stage. In some cases the applicant's age has not been formally assessed by a social services department prior to an appeal in front of an immigration judge. The judge may or may not make a finding in relation to age based on a visual assessment of the applicant and/or other evidence which is presented by the legal representative.

In other cases, immigration judges overturn the outcome of a formal age assessment undertaken by a SSD. Several social workers we spoke to were particularly critical of the decision of an immigration judge where this has been made on the basis of physical appearance alone. They pointed out that this is an approach which is widely criticised in relation to a decision taken by an immigration officer to dispute a child's stated age. The local authority concerned may then refuse to implement the judge's finding, sometimes because of concerns about the implications for other children in the care of that authority.

<sup>4</sup> Guidance note 8, available at [www.ait.gov.uk/practice\\_directions/documents/guide\\_note9.pdf](http://www.ait.gov.uk/practice_directions/documents/guide_note9.pdf) [accessed 1 March 2007].

<sup>5</sup> Specifically the guidance states that the decision maker must not simply adopt the assessment made by the Home Office nor the local authority, that the decision maker cannot determine age solely on the basis of the applicant's physical appearance and must elicit appropriate background information, that the decision maker will have to make an assessment of credibility if there is reason to doubt the applicant's statement as to his age and that the burden of proof rests with the applicant.

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## ■ Simret, 15, from Eritrea

Simret was 15 when she arrived in the UK from Eritrea. Her father had been elected by the community to work for the Eritrean government as a regional administrator.

When war broke out between Ethiopia and Eritrea in 1998, Simret's father tried to evade military service but eventually he was conscripted, along with one of her brothers. When her brother went missing, it was assumed by the military that he had deserted. As a result Simret's mother was detained and beaten.

Simret's father unexpectedly returned home from military service and was accused by security guards who visited their house of working against the government. Fearing that the remaining family members would be conscripted, Simret's father one day took her and her other brother out of Eritrea. Although her father was captured by the border police, Simret and her brother managed to escape and travelled to the Sudan where they met with a group of Eritreans. The group travelled to Libya, where they were arrested for entering the country illegally and detained for three months. Simret and her brother managed to escape and Simret travelled to the UK on a ship and then a lorry with a number of other Eritreans. Her brother remained behind.

When Simret arrived in the UK she was caught by the police and made an application for asylum on the same day. Her age was disputed and she was interviewed as an adult. Simret was subsequently assessed by a local authority as being over 18 years of age despite the fact that both a Baptism Certificate and a paediatric report supported her stated age. Her asylum application was refused in March 2005 and removal directions issued shortly afterwards.

In May 2005 her appeal was heard by the AIT. Based on the paediatric assessment and the Baptism Certificate, the immigration judge concluded that Simret was under 18 years of age and should be treated as a child for the purpose of the asylum application. The judge also found that there was a real risk to Simret that she would be considered a draft evader if she were to be returned to Eritrea and granted asylum on the basis that she would face persecution on account of imputed political opinion.

Despite this decision her age continues to be disputed by the local authority and is the subject of ongoing litigation.

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There is evidence that some children who have been recognised as refugees at the appeal stage are effectively left in limbo and are unable to access appropriate local authority care. This is the situation facing Simret, a 15 year old girl from Ethiopia (► case study, chapter 6.5). Judicial review is currently the only review mechanism available in such cases.

In other cases where a child's stated age is disputed the entire hearing may proceed without taking proper account of the Chief Adjudicator's guidelines for the conduct of hearings with separated children. This is because there is nothing in the current guidance which indicates at what *stage* in the appeals process the immigration judge should take a view as to the appellant's age. This problem is exacerbated by a lack of case law which directs immigration judges towards making an early decision as to whether an appellant should be treated as a child or an adult. Indeed the existing case law is unhelpful in this regard because it seems to indicate that age should not be dealt with as a preliminary issue but as part of the whole case.

For example, in the case of a Palestinian boy who arrived in the UK shortly before his 18th birthday and whose age was disputed,<sup>6</sup> the Tribunal held that disputes over age should not normally be dealt with as a preliminary issue because 'the issue as to the appellant's age will usually be one of several issues that the adjudicator is required to resolve... the appellant's age may only finally be determined at the conclusion of the hearing and not during the course of it' (paragraph 11). To this extent, it appears that age is viewed by the Tribunal as being closely tied into the question of the appellant's overall credibility, a feature which was also noted in the proceeding section in relation to the initial asylum decision.

There is also a view shared by many of the practitioners and stakeholders with whom we spoke that immigration judges do not always know what kinds of weight should be given to expert advice and that expert evidence in support of a child's stated age is generally not well considered.<sup>7</sup>

<sup>6</sup> Immigration Appeal Tribunal IAT00040 (8 March 2004).

<sup>7</sup> The Court of Appeal held in the case of *Mibanga v SSHD* [2005] EWCA Civ 367 that in assessing credibility, an adjudicator – now an immigration judge – should have regard to all the relevant evidence. If an expert's report is to be rejected then some explanation should be given of the terms and reasons for the rejection.

Again this can contribute to inconsistencies in process and outcome. The asylum claim made by Desta (► case study, chapter 5.3) was refused by the Home Office and an appeal against that decision was heard by the IAA in March 2005. In dismissing the appeal, the adjudicator described the age assessment undertaken by the social worker as ‘clearly a very subjective assessment of the appellant’s mannerisms and motives’. The adjudicator found the assessment undertaken by a paediatrician – which assessed her as a child – equally unhelpful. The adjudicator went on to conclude that appellant was over 18 years old on the basis that she was ‘a dedicated liar but not a nervous or unaccomplished one’.

By contrast the judge at Simret’s appeal hearing, dealt with the issue of her age as a preliminary issue on the basis that the outcome would determine the scope of the proceedings (► case study, chapter 6.5). The judge was critical of the reliance on physical appearance as a method for the assessment of age and of the lack of weight given to either the paediatric assessment or Baptism Certificate that was presented as evidence of age. She concluded that the appellant was a child and found that she should be recognised as a refugee. This decision as to Simret’s age has not been accepted by the local authority.

This evidence strongly suggests that disputes over the age of the appellant should be dealt with as a preliminary issue. This is because, in order to properly determine a case and follow guidance on the conduct of hearings with separated children, the immigration judge needs first to know whether an appellant’s age is disputed and then determine whether or not to treat the appellant as an adult or a child.

Given the difficulties inherent in the assessment of chronological age which are discussed in chapters 2 and 5, it is important that the question of age is not allowed to become part of the overall consideration or assessment of an appellant’s credibility. Rather the assessment of age should be dealt with as a separate issue determined on the evidence, with appropriate guidance.

## 6.6 Unlawful detention and removal

Home Office policy does not allow the detention of separated asylum children save for the most exceptional circumstances and then normally overnight, with appropriate care whilst alternative arrangements for care and safety are made.<sup>8</sup> In reality, the practice of treating age disputed cases as adults means that separated children have routinely been held in detention centres designed for adult applicants.

Evidence about the detention of age disputed children in adult facilities and the asylum, welfare and child protection issues that it raises has been growing over recent years.<sup>9</sup> This evidence suggests that age disputed children are frequently detained for weeks waiting for an assessment; they are held with adult detainees by officials who have not been checked by the Criminal Records Bureau (CRB); and they are frequently subjected to inappropriate procedures.

The best statistical evidence on the detention of separated children comes from the Oakington Immigration Reception Centre. The Refugee Council at Oakington maintained accurate statistics on the number of age disputed cases brought into the Centre and the 'outcomes' for each case. In 2005 over 60% of those assessed by the local authority – representing 101 children over the course of the year – were found to be children following a detailed assessment. For three months of the year this rose to more than 80% of cases.<sup>10</sup>

Five of the children who participated in this research had been detained in the UK during the asylum process.<sup>11</sup> All had subsequently been assessed by social services as being under 18 years of age. One of these children had been detained at Harmondsworth and the others at Oakington. The experiences of these children varied considerably.

<sup>8</sup> OEM chapter 38, paragraph 38.9.3.

<sup>9</sup> See for example Crawley and Lester 2005.

<sup>10</sup> It is also notable that the proportion of those found to be children following a social work assessment showed a rising trend throughout the course of the year.

<sup>11</sup> This is not necessarily representative of age disputed children more generally: the overall numbers of detained age disputed cases is unknown because the Home Office does not differentiate in the published statistics on detention.

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## ■ Soran, 16, from Iran

Soran is a 16 year old Kurdish boy from Iran. He arrived clandestinely in the back of a lorry in January 2006 and was arrested by the police and taken to Harmondsworth IRC. He remained in detention for 32 days.

Whilst at Harmondsworth, Soran met someone from a visitor's group who referred him to the Children's Panel. The Panel in turn put him in contact with a solicitor who visited him in detention and referred him to the local authority for an age assessment to be undertaken. No assessment was undertaken despite repeated requests from both the Children's Panel and solicitor.

Eventually the solicitor was able to secure his release. Soran was referred to the Home Office for a screening interview as there was no record of an existing application in the Home Office system. Some of his documents state that his age was disputed at that time; others do not.

Following the interview, Soran was provided with emergency accommodation by Migrant Helpline and went onto the London rota for the allocation of separated asylum seeking children. He is being accommodated by a local authority in London. The local authority did not undertake a formal age assessment but accept that he is the age he says he is and are supporting him under section 20 of the Children Act 1989.

Soran was granted discretionary leave shortly afterwards and has been advised by his solicitor to consider civil litigation proceedings to secure damages for unlawful detention.

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Some children reported being relieved at arriving safely in the UK and compared their time in Oakington favourably with the experience of being detained in Afghanistan:

- “ It was a lot different between Oakington Centre and Afghanistan. In Afghanistan there was no food, no drink and they would beat me a lot and work me a lot. It is like a hotel in Oakington and they treat me very well. ”
  - Raheen, 16, Afghanistan
- “ While I was detained I didn’t think about anything, just eating and drinking... All I care is I’m happy because I’m alive. ”
  - Soran, 16, Afghanistan

Others described the boredom and anxiety associated with being detained and intimidation experienced at the hands of staff. George (► case study, chapter 4.3) described how he had tried to commit suicide whilst he was detained at Oakington. He was subsequently released and assessed by a different local authority as 16 years of age:

- “ When I was taken to Oakington I thought about suicide. I tried to kill myself. I had my belt on so I could do it when everyone is asleep in the middle of the night. People tell you that when you are taken to Oakington you are on the next step home, that there is no way you will be released into the country. I just thought ‘I can’t handle this, it’s too much for me’. I was caught and they put a lot of security around me and counselling and stuff. ”
  - George, 16, Kenya

Hassan was detained after arriving at the airport and before an age assessment was undertaken. He was assessed as 16 years old whilst in Oakington and released into the care of the local authority. Hassan described his feelings about his detention and, in particular, about the intimidating treatment that he and other detainees experienced:

- “ You know, when I was in Oakington I came out and looked at all the barbed wire, the security, I felt maybe I have committed a crime... It was utter boredom and anxiety. I just try to play table tennis to pass the time...The common room was full of smoke. I couldn’t go out and get fresh air because it was cold. The guards were very stern. I tell you, what bothered me most was the guards used to make fun...they make noises over the loud speaker. It used to be very loud.



They would say Ab-dull-ah like the sound of the call for prayer. Then we could hear them laugh. 7

- Hassan, 16, Iran

Several respondents also expressed anxieties about staying in detention accommodation with others who were much older. This situation raises a number of child protection concerns.<sup>12</sup>

The steady rise in the numbers of separated children subjected to adult detention, coupled with successful litigation which has resulted in the Home Office having to pay out substantial compensation for unlawful imprisonment, led to a significant policy change in November 2005. This policy change took the form of revised 'fast track suitability criteria'. The Secretary of State has recently conceded that the Home Office's policy prior to this change was unlawful.<sup>13</sup> Since that time, the Home Office's policy is that age disputed asylum seekers should be detained only if the following criteria apply:

- There is credible and clear documentary evidence that they are 18 years of age or over;
- A full 'Merton-compliant' age assessment by social services is available stating that they are 18 years of age or over;
- Their physical appearance/demeanour very strongly indicates that they are *significantly* 18 years of age or over and no credible evidence exists to the contrary (emphasis in original).<sup>14</sup>

The guidance emphasises that assessments completed by emergency duty social service teams are not acceptable evidence of age, and stresses that if there is any room for doubt, age disputed applicants should not be referred for detention fast track processes.

<sup>12</sup> See also Crawley and Lester 2005.

<sup>13</sup> For further details see [news.bbc.co.uk/1/hi/uk\\_politics/6302919.stm](http://news.bbc.co.uk/1/hi/uk_politics/6302919.stm) [accessed 1 March 2007].

<sup>14</sup> For further information see the information note produced by the Children's Legal Centre and available at [www.childrenslegalcentre.com/Shared\\_ASP\\_Files/UploadedFiles/772AF674-82C5-4D52-89AB-8649750974AB\\_ChangestotheDetainedFasttrack.pdf](http://www.childrenslegalcentre.com/Shared_ASP_Files/UploadedFiles/772AF674-82C5-4D52-89AB-8649750974AB_ChangestotheDetainedFasttrack.pdf) [accessed 1 March 2007].

Although the change of policy for the fast track detention of age disputed cases is to be welcomed, there is evidence that some age disputed children are still being processed in the detained fast track without a formal age assessment being undertaken.<sup>15</sup> There are also concerns that whilst the fast track detention of age disputed cases at Oakington may no longer be an issue – not least because Oakington itself is in the process of closing down – these cases may simply have been redistributed to other IRCs.

Part of this concern arises from the fact that unlike Oakington, where there were on-site legal representatives who could identify and refer age disputed cases for an assessment by the local authority, there are no on-site NGOs to monitor the number of such cases at other detention centres including Harmondsworth and Yarls Wood. Legal representation is provided by a duty solicitor scheme operated by the Legal Services Commission (LSC). There is no evidence of any regulated procedures in place for IND, legal representatives, visitors' groups or any other bodies to make referrals to the local authority where an applicant is claiming to be a child. Moreover, the very tight time scales in which claims are processed in the 'super fast track'<sup>16</sup> may preclude the possibility of an assessment by the local authority:

“ If the system is working properly then age disputed clients will still be coming to Oakington but with Merton-compliant assessments. I'm concerned about where these cases are going...what's happening to them? Fast track detention of age disputes in Oakington alone could well be sorted. But if the problem isn't at Oakington now, where is it? There is a danger that we have just shoved it somewhere where there aren't two sets of eyes looking at every case and where there isn't an on-site legal representative to pick up the age dispute issues right at the beginning.”

■ Legal practitioner

<sup>15</sup> Joint Committee on Human Rights 2007.

<sup>16</sup> The fast track process operating at Harmondsworth (since April 2003) and Yarls Wood (since May 2005) is sometimes referred to as 'super fast track'. This entails an even quicker timescale whereby the asylum applicant is interviewed on day two, served with a decision on day three, has two days to lodge any appeals, and the appeal hearing on day nine. Asylum applicants are detained throughout any appeals they make, until they are removed from the UK or given refugee status, humanitarian protection or discretionary leave.

- ❖ I have no idea how many age disputes there are in Harmondsworth. It's entirely possible that the duty solicitors are not picking up these cases. Most solicitors have no idea that there should be a process in place and are generally not aware of the age dispute issue. 7
- Legal practitioner

The case of Soran (► case study, chapter 6.6) suggests that even where the local authority is made aware that an age disputed applicant is being detained, an age assessment is not always undertaken by the local authority as a matter of urgency. This may partly reflect the resource issues discussed in chapter 4.

Finally, but perhaps most importantly, because the Home Office's general policy on the detention of age disputed cases has not been amended, there are concerns that children may still be detained and even summarily removed on the basis of the previous policy and without social services ever undertaking a formal age assessment. In particular age disputed children continue to be detained on 'third country' grounds or in order to facilitate their removal from the UK at the end of the asylum determination process. Although Ministers have given a commitment that no separated child will be removed from the UK unless IND is satisfied that adequate reception and care arrangements are in place in the country to which he or she is to be removed or their families have been traced,<sup>17</sup> the default position of treating age disputed cases as adults means that children can be removed from the UK without appropriate measures being taken to ensure that they will be safe upon their return.

During the course of the research details were obtained about the case of two boys – both around 15 years of age – who had been held in a detention facility in Dover. These children had come to the attention of the Children's Panel because the CIO at the facility had sent an email to the Children's Panel asking what he should do about them. Fellow detainees and IOs had expressed concern about the fact that the boys were being detained despite appearing to be under 18 years of age. The Children's Panel alerted a legal representative about the situation and a paediatrician was commissioned to visit the detention centre and undertake a formal age assessment.

<sup>17</sup> Home Office 2007.

Unfortunately by the time the paediatrician arrived, one of the boys had already been transferred to Tinsley House as a third country removal and was due to be removed. It is not known what happened to either of these children.

There is also some evidence from the research that children who are looked after by local authorities as 'children in need' but are not able to produce a completed age assessment document (a copy of which they may never have been given) may be age disputed, detained and removed at the end of the asylum process without further enquiry or reference to the local authorities concerned:

“ In the case of children and young people from places like Iran, Iraq and Afghanistan, the Home Office is beginning to snatch them and send them back to the country they came from, usually Turkey or Greece. They don't inform us and they do it in very devious ways. This happens even when they have been accepted as being under 18. They get taken to detention centres and we are not allowed access to them. There have been situations where we've been led to believe that the young person is in one detention centre and they're actually in another. We just get sent around the houses.”

■ Social work manager

Even where an assessment does take place there may be actual or attempted removals of children to other countries, including countries in which their stated (and assessed) age may not be accepted:

“ One young man was trafficked to Holland. In Holland the trafficker told him to say he was 27 but he was quite clearly not 27. Although immigration in Holland queried his age they didn't do anything about it. He was refused asylum and brought to this country. He had with him proof of his age but in Holland he had not been allowed to give it. He was accepted by the Home Office as a 16 year old but because he was a third country case they banged on his door at quarter to seven one morning. This kid was only 17 at that time. They packed his bags and didn't contact social services. He shouted and screamed so much that the security guard phoned [the solicitor]... in the end they took him off the flight and let him go. The impact on his mental health was horrendous. He was terrified. The impact of trying to remove him had done greater damage than anything else.”

■ Social work manager

Many of the children participating in this research described their concerns and fears about being detained and removed because their age continues to be disputed and their immigration status is unclear. George's asylum application was dealt with through the fast track detention process and refused. His fears about being returned to Kenya led him to attempt suicide whilst detained at Oakington. He remains anxious about the prospect of being removed despite being granted discretionary leave until his eighteenth birthday, commenting that 'in the back of my mind I always know that the Home Office can just decide to send me back'. For those who are in semi-independent living or who have subsequently turned 18, these fears were particularly apparent:

- “ One time the police came to the house and said 'we are looking for this person. We want to check all your documents'. It scares me because of what happened in my country. One of [my housemates] was detained when they last came. He has been refused on his appeal. They took him to the station and since he has been removed. He's the same age as me. ”
- Joseph, 14, Rwanda

## 6.7 Implications and recommendations

## 6

It is clear from the evidence presented in this chapter that sufficient time, child-sensitive interviewing techniques, appropriate child-focused questions and good quality legal representation are essential for ensuring that all the information relevant to the asylum claim is collected. Children whose age is disputed are typically afforded none of these. Neither will they be accompanied by an appropriate adult. The use of interpreters who are not trained in working with children can increase the possibility that a child's age is disputed. This is because interpreters who are not trained in working with children may translate what is said by the child using adult language and expressions.

There is strong research evidence that where a child is incorrectly treated as adult during the determination process, children's experiences of persecution are not properly taken into account in the assessment of the application. Within the case studies these include experiences of being a child soldier, military conscription, trafficking, social ostracism and persecution because of politically active family members.

Although there is no statistical information on the outcome of asylum cases where the applicant's stated age is in dispute, it seems probable that asylum claims made by age disputed applicants are likely to be refused in the first instance, not least because the age dispute itself reflects negatively on the perceived credibility of the application. A decision on the asylum claim may be reached before the dispute over age is resolved.

The research has found that access to legal advice and representation is essential for age disputed cases from the very beginning of the asylum process. This is necessary to ensure that children and young people are able to secure access to the formal age assessment to which they are entitled, and that children are not inappropriately treated as adults in the process of asylum determination. The research has also found that access to legal representation varies considerably.

It is also clear that a number of cases come before immigration judges with continuing disputes about the age of the appellant, or indeed with disputes over age only being raised at this stage. This is highly unsatisfactory. At a very basic level it is indicative of a failure to 'front load' the decision making process and ensure that the case is dealt with in the appropriate manner.

We believe that our recommendations in relation to the screening and age assessment processes will considerably reduce the number of age dispute cases which remain unresolved at the appeal stage. However the research raises a number of important questions about how best to proceed with cases where these disputes remain. These include when the question of the applicant's age should be addressed and how expert evidence from medical practitioners and others should be considered.

In relation to the implications of age disputes for the asylum determination process, our key recommendation is that disputes over an asylum seeker's stated age need to be resolved before any aspect of the asylum determination process begins. The only way to ensure that asylum applications made by separated asylum seeking children are not inappropriately fast tracked and/or subjected to a procedure designed for adult applicants is by undertaking a fully Merton-compliant age assessment at the beginning of the asylum process in all age dispute cases.

This is particularly critical in the context of the NAM and the segmentation of applications according to the characteristics of applicants and their claims.

Many of the problems associated with age disputes that arise at the appeal stage will disappear if this issue is dealt with properly at the beginning of the asylum determination process. For those cases already in the asylum system or where disputes are ongoing, there will need to be a mechanism for referring a child to a local authority – or ideally a regional assessment centre – in order for a formal Merton-compliant age assessment to be undertaken. This will be necessary to ensure that age disputed asylum seekers are not summarily removed without their age being properly assessed.

In addition to our key recommendation, a number of further changes to policy and practice are necessary to ensure that the experiences of children *as children* are properly taken into account during the asylum determination process and that credibility issues associated with age disputes do not undermine the credibility of the asylum claim itself.

All separated asylum seeking children – including those whose age is disputed – should be provided with access to publicly funded specialist legal advice and representation at the beginning of the asylum process and throughout, including at the appeal stage. The recent proposals from the Legal Services Commission (LSC) and Department of Constitutional Affairs (DCA) for a fixed fee funding regime envisage exempting separated asylum seeking children from the fixed fee scheme and contracting with specialists to represent. We are still looking for clarification and reassurance from the LSC and DCA that the proposals are intended to cover age disputed cases. The evidence from this research strongly suggests that age disputed cases should be included in provisions for children.

It is important that decision makers at all levels do not allow disputes over age to go to the heart of the overall assessment of credibility of an applicant's claim for asylum. An asylum claim may be wholly credible but the person may be lying about his or her age or vice versa.

In addition, interpreters working with children need to be trained to be able to pick up the subtleties of how a child is expressing him or herself. This applies to screening and substantive asylum interviews, court hearings and the age assessment process itself.

Clear guidance is needed for immigration judges on how age dispute cases should be identified and handled when they appear at the appeal stage. Guidance for immigration judges on separated children should be updated to include specific instructions on how to proceed in cases where age is disputed. The evidence from this research suggests that questions and disputes surrounding the appellant's age should be dealt with as a preliminary issue. Without a decision as to the age of the appellant being taken at a preliminary stage, it is impossible for judges to determine whether or not to treat the appellant as an adult or a child.

Finally, because of the child protection and other risks associated with the unlawful detention of children, the revised criteria for fast track detention should be applied to *all* of the detention estate and not just fast track detention facilities in order that the risks of detaining children as adults are fully negated.



## CHAPTER 7

# Health and welfare consequences

Being treated as an adult also has significant implications for the ability of children to access appropriate welfare services and support. These impacts and the issues that age disputes raise for both child protection and the mental health of the children concerned form the focus of the analysis in this chapter.

### Case studies

Hakim, 13, from Afghanistan

Brehane, 16, from Ethiopia

Gloria, 16, and Maria, 9, from Angola

Michel, 16, from Rwanda

Lavdie, 15, from Albania

## 7.1 Social welfare

The decision that is taken about an applicant's age will determine the provision of social welfare support. Where the decision is taken to accept the applicant as a separated child, he or she will be provided with accommodation and support by a local authority under the Children Act 1989. The type and level of support, accommodation, and education which a separated asylum seeking child receives usually depends on whether he or she is assessed as being under or over 16 years of age.

Where the applicant is treated as an adult and has no funds of their own and is not detained, he or she will be accommodated by NASS under powers contained in the Immigration and Asylum Act 1999. As a result separated children who are age disputed may not be able to access the protection and services to which they are entitled.

The evidence from this research suggests that there are significant health and social welfare implications for children associated with the current approach to age disputes. The research has also found evidence that age disputes and the process of age assessment have a negative impact on the mental health of children and young people.

Among those children and young people who had been age disputed, but were subsequently assessed as being under 18 years of age, we found evidence that:

- Children have been age disputed at the screening unit in Croydon and dispersed through NASS as adults. These children had not been referred to any SSD although they may have come into contact with social services in the region to which they were dispersed at a later date (for example, where an accommodation provider has expressed concerns);
- NASS has attempted to disperse age disputed applicants even where there are ongoing legal challenges to the age assessment;
- Some children are age assessed by social services as being over 16 but under 18 and this is not properly recorded in Home Office paperwork. Because the social service age assessment may record the child's age as being in dispute these children may be treated as adults and therefore detained or dispersed even though it is accepted that they are children;

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## ■ Hakim, 13, from Afghanistan

Hakim arrived in the UK in September 2005 after travelling for eight days in the back of a lorry from Turkey. He was picked up by the police in Dover and taken to the police station where he was kept overnight in a cell.

The next day he was interviewed by the Immigration Service and his age was disputed. He was taken to Dover IRC but staff at the centre refused to accept him because they believed he was a child. He was returned to bed-and-breakfast (B&B) accommodation in Dover and then dispersed by NASS to a city in the Midlands where he lived in a house with another man who tried to look after him as best he could.

During this time Hakim came into contact with an adviser from the Children's Panel who referred him to social services for an age assessment. He was also assessed by a paediatrician. The social service age assessment process concluded that Hakim was 16 and he was placed with a foster family. Unfortunately the placement was not successful and he ran away and returned to his NASS accommodation. The man he shared the accommodation with took him back to the SSD, which again placed him in a B&B.

Hakim was upset and frustrated about the social service assessment which had concluded that he was 16 years of age. Shortly after he participated in the research it is understood that social services readjusted their assessment on the basis of a birth certificate sent by Hakim's brother, who is living in Pakistan. He is now living with a foster family and is in full time education.

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- There are differences in the quality and type of care provided to children and young people whilst an age assessment is being undertaken and subsequently;
- Issues arise from foster placements including concerns among social workers that they are being required to place young people inappropriately because of decisions made by the courts in relation to age; and
- There are ongoing difficulties in the provision of education and support which arise from differences in the age(s) that are recorded in different parts of the system.

Several children described the stress and anxiety they felt when they were initially referred to Migrant Helpline for dispersal through NASS. Some of these children were then referred to the Children's Panel but found the offices closed or that no one was available to assist them when they arrived. Some of those who were able to access an age assessment were considered as being over 18 years of age and referred back to NASS for dispersal. We met some of these children in other areas of the UK where they were being looked after by another local authority that had assessed them as being a child and provided them with social welfare and support. The experiences of Hakim (► case study, preceding page) and Brehane (► case study, next page) are illustrative of this problem.

Age disputed children in the NASS system are treated as adults and are therefore not excluded from dispersal (and re-dispersal) to different areas of the country. This can make it even more difficult for voluntary sector and legal practitioners to secure access to a formal age assessment (or reassessment) by the local authority. We found evidence of attempts by NASS to disperse age disputed children even where there are ongoing legal challenges to the age assessment process.

For example, one voluntary sector practitioner told us that NASS occasionally run one-off special exercises intended to move people from parts of the country in which there are over bookings into block-booked areas with available beds. Age disputed applicants are not excluded from the process. According to the practitioner, this is 'because as far as NASS is concerned they are treating them as adults'.

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## ■ Brehane, 16, from Ethiopia

Brehane's age was disputed when she applied for asylum at the screening unit in Croydon shortly after her arrival in the UK. She was placed in bed-and-breakfast (B&B) accommodation in London in order that a formal age assessment could be undertaken by social services. Brehane was assessed as being over 18 years of age and moved to another B&B in London. After five months Brehane was dispersed to accommodation in a major city in the north of England.

After social workers visited the accommodation to see another child about whom they were concerned, Brehane was re-assessed and found to be under 18 years of age. Although the local authority took her into their care, there was a delay of two weeks before this happened which meant that it was less than 13 weeks before her 18th birthday.

Unlike her friends, many of whom are older than she is, Brehane is not entitled to any leaving care services. Moreover she is still being treated as an adult by the Home Office for the purpose of the asylum determination process. Her claim for asylum has been refused by the Home Office and because her age continues to be disputed, she does not have discretionary leave.

Like many other children living outside London, Brehane does not and never has had any contact with the Children's Panel.

The practitioner described one particular occasion when a significant number of age disputed cases were dispersed from Liverpool to inappropriate accommodation in the south east of England where there were bed spaces. This information correlates with information provided by an accommodation provider in the south east of England who told us that during a short period of time 20 to 25 age disputed cases were referred from Liverpool to inappropriate hostel accommodation.

The dispersal of age disputed applicants away from areas in which they may have access to the Children's Panel and/or legal practitioners who are able to advocate on their behalf has obvious implications in terms of health and social welfare. For some children the effects of dispersal is potentially devastating because of health issues and concerns. Duarte is from Angola (► case study, chapter 3.2) where he been subjected to horrific daily abuse whilst detained. Duarte's health remains poor and he has constant pain in his back and his head. Throughout the period that his age was disputed – initially by the Home Office and then by the local authority – his adviser at the Children's Panel was concerned about the possibility that Duarte would be dispersed as an adult and that his medical care would cease.

Our research has also found that there are substantial differences in the quality and type of care provided to age disputed children both whilst waiting for an age assessment and subsequently. In some cases there may be delays in the correct assessment of age which can mean that children are not provided with an appropriate service by the local authority until just before their 18th birthday. These children are unable to access leaving care services.

The experiences of Brehane (► case study, preceding page) are illustrative of this problem. Brehane was age disputed and treated as an adult by NASS, who dispersed her to the north of England without any formal assessment of her age. Although Brehane was subsequently taken into the care of a local authority she is not entitled to leaving care services. Brehane described feeling frustrated and upset about what she perceives as unfairness in the system of support available to children and young people seeking asylum.

In another case, two separated asylum seeking children who arrived in the UK together were treated as a family by NASS after the age of the older child was disputed, first by the Home Office and then by a local authority. Gloria (► case study, chapter 7.1) has never been treated as a child for the purposes of welfare and support and those advocating on behalf of her and her niece Maria have been reluctant to challenge the decision to dispute her age because of concerns that the children would be separated.

We also found evidence of efforts by some local authorities to reduce the financial implications of section 20 support by delaying age assessments and/or de-accommodating. 'De-accommodation' is a technical term which means essentially that children are taken out of the 'looked after' system and provided with support under the leaving care provisions of the Children Act 1989 *before* they turn 18. These children will be provided with the support package that is provided to care leavers. They will have access to a personal adviser rather than a qualified social worker. Their needs *as children* will not be assessed or reviewed.<sup>1</sup>

One social services manager told us that some children are de-accommodated at 13 weeks because of pressures from senior managers to limit financial implications of retaining asylum seeking children within the 'looked after' system:

- “ All new arrivals have to be assessed under section 20 until we have assessed their needs and the level of services we will provide. As a result they become 'looked after'. My boss doesn't like it because of what it does to the figures even though the Home Office pays for it all. As a result we are tending to de-accommodate at 13 weeks... they are looked after for 13 weeks and then de-accommodated. 13 weeks is at least long enough for people to have a view about how old they are. If we think they are older or younger than what they say they are, we will do a second age determination. ”

■ Social work manager

<sup>1</sup> See also Joint Committee on Human Rights, 2007. The Committee was provided with evidence of 'de-accommodation' and suggested that this problem arises partly from the fact that the financial costs, both direct and indirect, of providing an appropriate accommodation and support package to separated asylum seeking children under section 20 of the Children Act 1989 are only partly met by the Home Office's grant.

A social worker in a different local authority described how children are age assessed by the intake team but may subsequently be re-assessed by another team within the same authority. The re-assessing team may decide that the child is 18 or over and de-accommodate at that stage:

- “ We are keeping them by default, sometimes for 10 or 11 weeks. By that time we are at the second review. They will often be ‘de-accommodated’ at that stage i.e. before 13 weeks so that they are no longer ‘looked after’ for the purpose of leaving care. It doesn’t mean anything in practical terms for the child – they are not physically taken out of their accommodation. It’s a paper exercise. But it makes a lot of difference in the longer term.”
- Social worker

As was discussed in chapter 5, we also found evidence that some social work managers place implicit or explicit pressure on social workers to assess children as being older than they actually are. Because of the resource implications associated with assessing a child to be under rather than over 16 years of age, social workers in some local authorities are more likely to assess a child as being over than under 16 years of age. In some cases social work managers will criticize, or even over-ride, the finding by the assessing social worker that an age disputed asylum seeker is a child or that he or she is under 16 or 18 years of age.

This decision has implications for the package of support which a child then receives. Children who are assessed as being over 16 will usually be placed in semi-independent accommodation rather than a foster placement and will be excluded from school. Those who are assessed as being adults will be returned to NASS for dispersal or may become involved in ongoing legal disputes with the local authority.

Unresolved disputes over age or mistakes and inconsistencies in the dates of birth recorded in different documents can also lead to difficulties and confusion in the delivery of social welfare and support. For example, where a child maintains that he or she is under 16 years of age but is assessed by social services as being over 16 but under 18 years of age, this may be recorded by the Home Office as indicating that the child’s stated age is disputed by the SSD. These children may be treated as adults, which is the default position for age disputed cases, and therefore detained or dispersed.



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## ■ Gloria, 16, and Maria, 9, from Angola

Gloria was 16 years old when she arrived from Angola with her niece Maria who was then aged nine.

When Gloria went to the Home Office to claim asylum her age was disputed. She was told to go to a local authority in London the following day but social services refused to accept them because they were considered to be a family unit rather than separated children. The local authority told them to go to the Refugee Council who would arrange for them to be supported by NASS.

When the girls arrived at the Refugee Council, they were seen by the Children's Panel who insisted that the local authority undertake a formal age assessment. An age assessment was eventually undertaken and social services concluded that Gloria was over 18 years of age. The Children's Panel arranged for an assessment to be undertaken by a paediatrician who concluded that she was 18 plus or minus two years.

Despite this assessment, the local authority was unwilling to support Gloria and her niece, and the Children's Panel was concerned that if Gloria was assessed as a child she would be placed in semi-independent living and would not be allowed to look after Maria (who would be placed in foster care). The Children's Panel arranged for the girls to be supported by NASS in London rather than being dispersed to another area of the UK. Throughout the period during which Gloria's age was disputed, the girls were without a social worker or guardian with responsibility for their care. Gloria was refused asylum and lost her initial appeal but was recognised as a refugee at a subsequent appeal.

Gloria and Maria have recently been provided with permanent accommodation by the local authority in which they were living and both are in full-time education.

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A number of social workers and voluntary sector practitioners pointed to inconsistencies in the ages recorded in a child's paperwork, a problem that was also highlighted in chapter 4:

- 4 Some of the paper work says all sorts of different things. You have an ARC that says they are age disputed, paperwork from the CIO that says they are over 18 and a GP saying they are a minor. We have no idea what we are supposed to be doing. 7
- Voluntary sector practitioner

Children can also fall through the gaps between the different systems of welfare provision available to children and adults as a result of disputes over age. During the course of the research we were informed about two Iranian Kurds who are brothers. They claimed asylum and were housed with a foster family in a London borough. After concerns were raised by the foster family about whether the brothers were children, the local authority decided that they were over 18 and withdrew its support. No formal age assessment was undertaken. An application was then made for the brothers to be supported by NASS but by this time they had been granted discretionary leave and were therefore not eligible for NASS support or accommodation. Both were effectively made homeless.

This case not only raises questions about the role of the foster carer but also illustrates the concerns of some social workers about the placement of young adults in foster placements which may put other children at risk. Several social workers expressed particular concern and frustration about those cases where a judgment made by the courts in relation to age effectively forces local authorities to make what they consider to be an inappropriate foster placement. As was suggested in chapter 6, some local authorities will simply refuse to implement the decision of the court leaving children in limbo in terms of their access to welfare support.

Finally it is important to acknowledge that the level of welfare and support which age disputed asylum seeking children fight hard to obtain is limited. Most find themselves in bed-and-breakfast or semi-independent accommodation with little support and few friends. They receive limited welfare income, insufficient to buy three meals a day, and often have no cooking facilities.

Many feel that they are in limbo waiting for a decision to be made on their asylum application and the day when their quality of life might finally improve:

- “ I am not feeling well because the place where I am staying has no plates, no dishes and no pans to cook or prepare food. I feel very lonely and there are no Kurdish people to speak with. It makes the situation worse. I would like to have cooking facilities so I can cook for myself.”

  - Nevoz, 15, Iran
- “ I am staying in a room with just £5 per day to live on. It is not enough. I see other boys of my age going swimming, going to college...they have got bus passes....but I haven't got anything...The doctor told me that it is good for me to get out of my room and to go and see some places for a change but I have no money so I cannot go.”

  - Behkam, 15, Afghanistan

## 7.2 Educational provision

Access to, and success in, education is viewed by the majority of children and young people who participated in this research as one of the most important aspects of their lives. However children who are age disputed have considerable difficulties in accessing appropriate educational provision. These difficulties appear to stem largely from the fact that many of the young people who participated in this research were either 16 or 17 years of age (or had been assessed as such by the local authority) but had not been granted DL by the Home Office. As a result they were not provided with a place in a school and instead attended English language and other classes at a local college. Most of these children are very unhappy and disappointed with both the level and the amount of education available to them:

- “ They [social services] assessed that I was 16. They promised that they would send me to school and I could do English classes and sports. Now just I came here [to the support group] for some English. There are no activities, no school, just English four hours a week and the refugee support. They have not explained. I am very disappointed because I must go to school... The social worker is good but the main problem is that there is no school. She didn't mention about why she's not sending me to school but she promised if she would find somewhere she would bring me to school... I want to go to school and learn properly English and other subjects.”

  - Rasheen, 15, Afghanistan

“ The most important thing is the education. I would like to be an engineer or a person who deals with cars because I like technical things. One of my friends who lives with me in the house he has a school. He is 15. I said to my social worker can I go with him if possible? I think it’s a very good school for beginners because they teach good English. Since we came here we are the same level but he has improved because he has school. ”

■ Zelgai, 15, Afghanistan

Other children described how delays in being granted discretionary leave as a result of the dispute over their age had led to delays in being able to access education. George (► case study, chapter 4.3) described how the dispute over his age, subsequent detention and refusal of his application led to a delay in being granted DL. When leave was eventually granted when he was 17 neither he nor his solicitor was informed of the decision:

“ It has taken almost a whole year. It’s really frustrating because there is not one day when I don’t think about it. It even affects your studies and your social life. It really affects people... you never stop thinking about it...If I got leave to remain last year I would at least get some basic things. I had to struggle very much to get admission to the college. They can treat you as a home student even if you only have discretionary leave. The hassle to get into the college was a really, really big one. If I had DL, the whole of the year I would have been in peace studying. ”

■ George, 16, Kenya

For other children, ongoing disputes over age can mean that they are unable to access the educational services to which they are entitled, or indeed any education at all. Lavdie (► case study, chapter 7.3) was accepted as being 15 years of age by the Home Office but her age was subsequently disputed by the local authority from which she sought support. After being challenged by the Children’s Panel and a legal representative, the local authority accepted that Lavdie was a child but not that she was 15 years of age and refused to put her in a school with other 15 year olds. At the same time Lavdie was unable to attend classes in a college because her ARC, passport and birth certificate all stated that she was 15. For several months Lavdie was without access to any education.

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## ■ Michel, 16, from Rwanda

Michel is from Rwanda and was 16 years old when he applied in the UK. In Rwanda he was a child soldier for a rebel force and was captured and subsequently imprisoned and tortured by the government. He was rescued and taken into rehabilitation by a well-known international organisation before being brought to the UK.

When Michel arrived in the UK he applied for asylum at the screening unit in Croydon. His age was disputed and he was referred to Migrant Helpline who provided him with overnight accommodation and in turn referred him to the Children's Panel. The Children's Panel still had responsibility for the local authority rota at that time and referred Michel to social services.

The local authority did not undertake an age assessment but simply accepted the decision taken by the Home Office and referred him back to the Refugee Council for dispersal through NASS. The local authority was eventually persuaded by the Children's Panel to undertake a formal age assessment and assessed Michel as being the age he said he was. The Home Office granted discretionary leave on the basis of the local authority assessment but by this time Michel was 17½ years old. Eighteen months later he was still waiting for a decision on his application for asylum and had moved home several times at the request of the local authority.

At the time of the research Michel had been offered a place at Cambridge University to read politics but was unable to take up the offer because of his immigration status.

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On several occasions Lavdie commented that her flat mates were in college all day and that she needed something to take her mind off what had happened to her. She was very vulnerable to further exploitation as a result of this situation. Eventually the local authority accepted that she was 15 years old and allowed her to enrol at school. She completed the end of Year 10 and at the time of the research was studying for her A levels.

For those who have been able to secure access to education, there is evidence that ongoing disputes over age can continue to have implications for many years. Joseph (► case study, chapter 6.1) was 14 when he arrived in the UK from Rwanda. He had been living in the UK for nearly five years at the time of the research but continues to be age disputed by the Home Office despite being supported by a local authority in London. Because he has been supported by the local authority, Joseph has been able to access educational services and completed both GCSE and A levels. He did, however, describe the difficulties associated with trying to study when his asylum application has been refused and when required to report to the Immigration Services. Joseph described how he has twice had to turn down places at University because his immigration status remains unresolved:

“ I applied for university and got an offer at Kings College London but I couldn't go to University because of my status. I re-applied through clearing to get a place in March because I thought my case would be sorted but I was refused so I lost my place again. I was just sleeping and staying indoors. I thought I was going to University in September. All my mates went. And then I was refused in November and I had to get another solicitor. You can't study when you are like this. When you have to meet your solicitor you can't do anything. You just can't concentrate. It's like a bad dream. ”

## 7.3 Child protection

The Home Office has recently introduced a number of policy changes in an attempt to reduce the vulnerability of separated asylum seeking children, including at the asylum screening stage. These include insisting that children attending the screening process with an adult who is not their parent are referred to social services before welfare and other benefits can be accessed, and preventing legal representatives who are not accredited from gaining access to the screening unit.<sup>2</sup>

The findings of this research suggest that the Home Office's current approach to child protection is problematic in many respects. Some of these concerns lie beyond the scope of this report and reflect the Government's current and evolving approach to child trafficking, which are heavily biased towards border control and crime reduction.<sup>3</sup> Others reflect the gap between policy and practice which has been identified throughout this report and which brings into question the effectiveness of current procedures. This evidence suggests that whilst child protection concerns may lie behind these changes they do not always have the intended outcomes.

There is some evidence that these new procedures make it more difficult for those supporting and representing the interests of children – including legal representatives – to do their job properly, or may have a limited impact on child protection in practice. For example, ARCs were described by one IO as 'a carrot to make sure people come back...we won't issue an ARC [to a child living with a guardian or carer] unless they come back to us with a letter from the local social services where there is a connection'. However when asked what would happen if the 'guardian' did not return with the child, the IO responded that there were no procedures in place to deal with such a situation.

<sup>2</sup> ILPA is opposed to the exclusion of non-accredited reps because those who are paid for privately need not be accredited. What matters is that representatives are able to present at the ASU with a letter from a firm of solicitors or OISC regulated organisation. As imposed, this measure does not protect children.

<sup>3</sup> For further information see Beddoe (2006) Bhabha and Finch (2007).

Most importantly for the purposes of this research, this increased awareness and concern about child protection issues is not reflected in the current approach to age disputes. The default position of treating age disputed asylum seekers as adults for the purpose of welfare and support has obvious child protection implications. Making assumptions about an asylum seeker's age on the basis of physical appearance or demeanour, detaining age disputed individuals for the purpose of fast track and third country procedures, dispersing children to other parts of the UK without a formal age assessment, failing to update information to reflect a positive outcome or entering into protracted legal disputes over the assessment of age inevitably increases the risks to those who are children.

Some social workers also raised child protection concerns about adults who are accepted by the Home Office as children when, in their view, they are clearly not. For example, one social worker commented that, 'we've had issues with older people in school and older men have been caught behaving very inappropriately towards girls in foster placements'. Social workers are unhappy about being obliged to accommodate those considered to be adults as a result of legal challenges to the age assessment process, with consequent risks to the children already in their care. Concerns were also raised about children over the age of 16 years being placed in school with younger children.

Many of the children who participated in this research were clearly placed at risk by the dispute over their stated age and their subsequent treatment as adults. The failure of the current approach to protect children from actual and potential harm is graphically illustrated by the case of Lavdie (► case study, next page). Lavdie was trafficked into the UK from Eastern Europe. When she went to the ASU in Croydon for her screening interview she described what had happened to her and was interviewed by a child protection officer to whom she provided details of her traffickers. However she was then referred back to the local authority in the area of London where she had first arrived where her age was disputed.



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## ■ Lavdie, 15, from Albania

Lavdie is a 15 year old girl who was trafficked to the UK from Eastern Europe. Lavdie was just 14 years old when she was raped by her boyfriend and became pregnant. Her strongly Muslim family was in the process of trying to arrange a marriage partner for her at the time. Her mother told her that her father would try to kill her and advised her to leave. Lavdie phoned her boyfriend who promised to help her and arranged for her to stay in a hotel for two months whilst he made arrangements for her to travel to Italy. She was taken onto a boat and given a tablet which induced a miscarriage.

When she arrived in Italy, Lavdie was put in a house with two other girls from Eastern Europe. She bled for 25 days and lost her baby. Her boyfriend then told her that he expected her to work for him as a prostitute. When she refused he threatened to kill her and then sold her to another trafficker. She was put in the back of a lorry which travelled to the UK where she managed to escape.

With the assistance of an Albanian man whom she met, Lavdie was referred to a solicitor and the local authority. Social services told her that they could not help her as she had not been to the Home Office to claim asylum. She was provided with emergency accommodation by the Refugee Council for one night and the following day made her way to the screening unit in Croydon. Lavdie had her passport and birth certificate and her age was not disputed. Lavdie was also interviewed by a child protection officer based at the screening unit to whom she provided details of her journey to the UK and the traffickers. The Home Office sent her back to the local authority where her age was disputed on the basis that she looked older than 18 and that social workers believed that her documents were forged. Her original documents had been held by the Home Office and she was only able to provide photocopies.

Lavdie felt humiliated by the treatment she received from social services. She was placed in inappropriate accommodation whilst the local authority decision was challenged by a Children's Panel adviser and was told by her social worker to try to obtain copies of her documents from her family even though this would put her at further risk. She was unable to go to school for several months. After repeated attempts by the Children's Panel to secure an appropriate service for Lavdie, the SSD eventually accepted that she was a child but not that she was 15 years of age. Lavdie is living in independent accommodation. She would like to live with a foster family.

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Another case which raises obvious child protection concerns is that of Faela, who was 15 when she arrived in the UK from the DRC. She described how her age was disputed at the ASU in Croydon and she was referred to Migrant Helpline. When she arrived at Migrant Helpline she was sent to hostel accommodation pending a referral to the Children's Panel. She described her anxieties about not knowing where to go or whom she could trust:

- “ When I went [to Migrant Helpline] they gave me a bus ticket and they gave me a map to go to hostel. I didn't know that place. It was raining. I didn't know there or where to go. He told me to take bus 250 but the bus was out of service. I had a map but I couldn't read it properly. It was raining and very dark. I saw one man and he asked me how come I was there on my own. I wasn't speaking good English. The man said he would help me. It was scary. He took the papers and just walked. He stopped a cab. I was scared. I didn't know what to say. He gave the driver some money and asked the driver to give me the change. I was just wondering where he was going to take me. I was so scared. He was a good man but I didn't know that. ”

Faela, 15, DRC

Several of the girls who were staying at one hostel in a city in the north east expressed concerns about their safety whilst living there. Some of these children had been removed from their NASS accommodation and taken into the care of social services precisely because social workers did not believe they were safe.

## 7.4 Impacts on mental health

Finally, but importantly, the research has found that the experience of being age disputed can be very difficult for many children and can have significant mental health implications. Some of the children and young people interviewed during the course of this research clearly have very complex mental health issues and needs with which they – and those who are attempting to support them – are grappling on a day-to-day basis. These include anger and deep upset about what had happened to them, in the country of origin, during their journey to the UK and since they have arrived.

One young woman who was 19 at the time of the research but 15 when she arrived in the UK described how she had been told that when she got to the UK her family would be waiting for her.

She hasn't seen them since. When asked how she felt she simply said 'everything is terrible for me because I don't have my family' and burst into tears. She was unable to stop crying for the duration of the interview.

In some cases these mental health problems can translate into aggressive behaviour towards others. Erbil (► case study, chapter 5.3) repeatedly loses his temper and gets aggressive towards others like him i.e. refugees and people from ethnic minority backgrounds. According to his counsellor, Erbil 'is clearly a distressed young man, whose needs are apparently not being met appropriately'. His counsellor has recommended that he be found appropriate foster carers who can help him in regard to developmental processes. It seems likely that Erbil's mental health difficulties, which existed prior to his arrival in the UK, were exacerbated by the problems that arose in relation to his age and the fact that he was inappropriately accommodated. Erbil described his feelings about the dispute over his age:

“ It has had a very bad impact on my mental condition. Sometimes I cannot sleep. Why do they not accept my age? That's the age that my father told me. I am upset that they are not accepting my age. I am not feeling comfortable. I am very worried. ”

■ Erbil, 14, Iran

For many children there is evidence that mental health difficulties are directly associated with, or exacerbated by, the experience of being age disputed. This is because disputes over age bring into question the child's past and identity in a way that goes beyond the asylum process itself.

Age is an important part of a human being's identity. To deny this part of a child's identity can have significant and long-lasting consequences. Many children expressed a deep sense of 'being wronged' when their age was disputed by either social services staff or by immigration officers:

“ I had a very bad experience. I also had a bad experience back home. Nobody believed me and what I am. I don't know what the future hold. I feel lost. ”

■ Desta, 16, Ethiopia

“ I am very upset and because of that I am getting a kind of depression. Even now just because of that they don’t believe how old I am and I get headaches...one day I am okay and one day I am just much worse. Because of that it really upset me because someone wouldn’t believe what I am. ”

■ Brehane, 16, Ethiopia

The negative mental health implications of being age disputed are particularly evident where the dispute over age is tied into wider issues of credibility including, in some cases, disputes over nationality. Joseph (► case study, chapter 6.1) is from Rwanda and was 14 years old when he arrived in the UK. Both his age and nationality have been disputed and his asylum application refused. He described how his feelings of self-doubt have been exacerbated by the dispute over his age and by the asylum determination process:

“ When I feel bad I try to reflect on the good things as well. I’m not being made better by the things I’ve been through...it makes the pain come back more...I’ve lost confidence in myself. When I talk I think my refusal letter was so disbelieving. They [Home Office] don’t believe my nationality and don’t believe my age. Sometimes I even doubt if I’m Rwandan. How can you prove your age and nationality? You can send your documents to expert workers who can see if it is genuine but the Home Office don’t even believe in these documents most of the time.... I feel upset...sometimes even...sometimes if someone says you are a liar you start to question you are really that age...These are the psychological problems I face every day. ”

■ Joseph, 14, Rwanda

These feelings may be compounded by the process of being age assessed and its outcome, including in terms of ongoing unresolved disputes. Some children are deeply resentful of any process of age assessment in which they have to justify and explain their past experiences where these are often inexplicable or cannot be easily understood by those without experience or knowledge of the situation in their country of origin. Others, including Michel (► case study, chapter 6.1), talked about wanting to self-harm or even kill themselves:

- “ I think its disgusting, really appalling. There were two occasions when I really wanted to commit suicide...I just couldn't believe the way the Home Office was bullying me. The kind of trauma which it imposed on me was just unbearable for me to be honest. It was a traumatic experience. I just couldn't believe someone could say you are not what you are. I found it really offensive that someone could say 'oh no, I don't believe you'. It was so dehumanising. No one listens to you. No one gives you a chance to say what you are thinking. They always think they are right. ”
- Michel, 16, Rwanda
- “ I cried a lot. I do all kinds of things. I do counselling...I am going to fight. I used to cry, I didn't used to sleep. I don't care now. From now I'm not ready to go back to my country but I'm not scared anymore... One time I wake up in my bed. I wanted to kill myself. It was too hard. But I think if I do that God would be angry with me. ”
- Veronica, 17, Guinea

George's age was disputed by the local authority looking after him and as a result he was detained when he attended his asylum interview (► case study, chapter 4.3). George was deeply affected by what he perceived as a betrayal by the very people who were supposed to be taking care of him. His feelings of rejection resonated deeply with what had happened to him in his country of origin when he was rejected as an outcast in the community and forced to leave his home:

- “ When you have an expectation of something and it doesn't happen it is very hard. I was expecting life would be much better here; that I will have peace and that people won't judge my background and reject me. ”
- George, 16, Kenya

These impacts on his mental health were exacerbated by the time spent in detention and uncertainty about his future:

- “ I have never been in peace actually. I don't think I can tell you I have ever been happy about anything...If you combine it with what's happening at home then you get really, really upset. It's not that I'm ashamed because I feel I am strong enough. When I was taken to Oakington I thought about suicide. I tried to kill myself. I had my belt on so I could do it when everyone is asleep in the middle of the night. People tell you that when you are taken to Oakington you are on the next step home, that there is no way you will be released into the country.

I just thought 'I can't handle this, it's too much for me'. I was caught and they put a lot of security around me and counselling and stuff. I have had counselling when I was in Oakington and after. It has helped me to be a bit stronger but I think sometimes I still don't trust anyone, not even the doctor. ʹ

■ George, 16, Kenya

Yvette (► case study, chapter 5.5) has been repeatedly age disputed by both the Home Office and two local authorities because of her demeanour and the fact that she does not appear to be a vulnerable young person in need of support. For example, in one of the age assessments her social worker describes her as very confident, socially able, articulate and able to deal with emotional traumas in her life. She goes on to say that:

ʹ In order for a black woman to have been able to achieve as much as [Yvette] has in such a short space of time would require a great deal of maturity of mind, commonsense, she would also have to be very articulate in order to deal with the systems which would have been alien to her. ʹ

■ Social worker

The opinion of the social worker about Yvette stands in stark contrast with the comments made by others with expertise in mental health issues, including the assessment made by a child and adolescent psychotherapist who describes her as 'clinically depressed', as suffering from Post-Traumatic Stress Disorder and as having 'thoughts of self-harm and suicide ideation'. The stark contrast between comments such as these suggest that it is difficult for anyone but an independent expert to reach a conclusion about the mental health impacts of disputes over age or the implications of mental health issues for the assessment of age.

Some social workers also described the mental health implications for young people who claim to be children but are actually over 18. Some of these young people struggle to maintain a different identity, particularly as they become settled in the UK and develop skills and qualifications:

- ┌ If they are under 18 they think they will get an all singing, all dancing service and a good education. They get themselves into the lie of saying they are kids so they can't work. They are trapped. They lie that they are under 18 and then find it incredibly difficult to sustain the lie when they are working with a social worker. ┐
  - Social worker
- ┌ One young person told us that she hated living a lie, using a different name, a different age, saying her family were dead when they weren't. Eventually she had a mental breakdown. All the certificates she had been working so hard for were in the wrong name. ┐
  - Social worker

## 7.5 Implications and recommendations

It is clear from the evidence presented in this chapter that disputes over age can, and often do, have significant implications for the ability of children to access appropriate social welfare, health and educational support. It is also clear that there are substantial mental health implications for children of being age disputed which arises from a process of questioning the identity of children who are already geographically and socially displaced and looking to re-establish their place in society. Whilst disputes over age raise critical child protection issues, these issues are rarely taken into consideration when deciding to treat a child as an adult.

Our key recommendation for reducing the significant health, social welfare and child protection concerns associated age disputed cases is, in line with our previous recommendations, that all age disputed cases should be formally age assessed in regional age assessment centres at the beginning of the asylum process. This is the only way to ensure that separated asylum seeking children are treated as children and are not dispersed.

Although the Home Office has introduced procedures at the screening units for referring age disputed cases for a formal age assessment by social services, there is evidence that not all asylum seekers whose age is disputed at the screening units are formally age assessed, and that there are gaps in the referral process for age disputed applicants who claim asylum elsewhere.

Moreover, as noted in chapter 5, there are significant variations in the quality of the age assessments which serve to undermine confidence in the process and increase the number of legal challenges.

We also believe that regional assessment centres where the age disputed applicant is resident and can be observed interacting with others would eliminate the concerns of some social workers about adults being inappropriately supported in foster placements and children's homes whilst the assessment process is undertaken.

In addition this research raises important questions about the package of support that is made available to children during and after the process of age assessment, and about the mental health implications of the age assessment process itself. All separated asylum seeking children should be supported under section 20 of the Children Act 1989. The practice of de-accommodating children at 13 weeks or creating delays in the age assessment process in order to prevent them from having access to an appropriate package of care is unlawful and should be stopped. This will require that services provided by the local authority for separated asylum seeking children and young people are properly resourced.

All of those involved in working with separated asylum seeking children whose age is disputed need to recognise and be aware of the mental health implications that being age disputed can have over and above the direct practical implications for the asylum determination process and welfare support. This is because of the implications for a child's self identity and self-esteem. Multiple interviews and assessments which repeatedly refer to the issue of age should be avoided.

Finally, it is important to recognise that whatever the consequences of proposed changes to procedures for supporting separated asylum seeking children, there remain a significant number of children within the existing system who have never been age assessed and who are not receiving the care and support to which they are entitled. A process should be established by the Home Office for ensuring that age disputed asylum applicants who are already in adult systems of NASS support and asylum determination and have never had a formal assessment of their age are referred to a local authority – or ideally one of the proposed regional assessment centres – for a formal age assessment to be undertaken.



## CHAPTER 8

# An alternative approach

In this chapter we provide a summary of the changes to policy and practice that we conclude are needed to ensure that the number of disputes over the age of separated asylum seeking children is reduced, that appropriate procedures are in place for ensuring that all age disputed asylum seekers are able to access a formal, independent and holistic assessment of their age and needs, and that there is a formal review of the age assessment process at the earliest stage possible.

It is clear from the evidence presented in this report that the Home Office's approach to age disputes and the process of age assessment does not deliver high quality or appropriate outcomes for IND, for SSDs or for separated asylum seeking children themselves.

For IND, the decision to dispute age based on a rapid visual assessment at a screening unit or port means that a child may be incorrectly and inappropriately treated as an adult for the purpose of the asylum determination process. Treating a child as an adult inevitably reduces the quality of initial decision making, leads to delays and legal challenges at the appeals stage, opens up the possibility that a child will be unlawfully detained or even removed with resulting liability for damages and compensation, and creates additional and unacceptable child protection risks and concerns. Medical assessments of age are unable to provide any certainty about the chronological age of an applicant unless the applicant is very significantly older than he or she claims to be.

For SSDs, the increase in age disputed cases has significant resource and practice implications. Many social workers are required to undertake age assessments without appropriate training or support and in the absence of any statutory guidance. They are faced with a range of different kinds of evidence, the relative merits of which they are unable to assess. Social work managers find their professional judgment increasingly challenged by legal practitioners who are concerned about the apparent inconsistency and arbitrariness of the age assessment process. Age assessments have also created a potential conflict of interest between the need to undertake the age assessments to establish whether an applicant is a child in need and the financial implications of assessing an asylum seeker as being under 16, or under 18 years of age.

For separated asylum seeking children, the implications of being wrongly age disputed and treated as an adult are clear and potentially devastating. The child will not benefit from any of the procedures that IND has put in place to ensure that children are able to fully explain the basis of the application for asylum. Nor will any child-specific experiences of persecution be taken into account. The application may be refused and the child detained and removed without ever having his or her age formally assessed.

Where an age assessment does take place, the child may be disbelieved about his or her experiences and identity. The findings of this research suggest that age disputes have significant implications for the level of welfare support and care that a child receives, particularly where the dispute is ongoing.

It is clear that a different approach to age disputes and the assessment of age needs to be developed in the asylum context. An important first step towards improving current practice would be to bridge the gap between what is supposed to happen in principle and what actually happens in practice. The overall approach must move away from treating age disputed applicants as adults unless and until there is evidence that they are under 18 years of age and instead put appropriate procedures and policies in place to assess age and needs as a matter of course.

The research has identified a series of different points at which current policy and practice fails to deliver appropriate outcomes and we have made a number of recommendations about how these failures of policy and practice could best be addressed. We conclude that there are a series of steps which will need to be followed to reduce the number of age disputes and to ensure that there are appropriate procedures in place for the assessment of age in these cases. These steps are presented below.

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**Step 1** Reduce the number of age disputed cases

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**Step 2** Automatically refer age disputed cases to an age assessment centre

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**Step 3** Improve the process of age assessment

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**Step 4** Establish an independent review process

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## 8.1 Reducing the number of age disputes

In order for the number of age disputes to be reduced there will need to be a shift in the current culture of disbelief. We have found evidence that a significant proportion of age disputes could be avoided if the Home Office's own guidance for dealing with age disputed applicants were followed and applicants were given the 'benefit of the doubt' in practice.

This will require that immigration officers working in asylum screening units and others who come into contact with children at the beginning of the process are given better training to ensure that they do not rely inappropriately on physical appearance as a proxy for chronological age. They need to be fully aware of the implications that children's prior experiences and country of origin will have for their ability to present documents in support of age and/or to behave in ways that are considered to be 'childlike' in the UK. A rapid visual assessment of an individual which results in that person's stated age being disputed or an age allocated to the child is not acceptable.

Given the significant implications for both the asylum application and welfare and support of children wrongly being treated adults, guidance given to IND staff should be brought into line with the recent guidance issued in relation to fast track detention to reduce the number of age disputes so that only those applicants whose physical appearance or demeanour *very strongly indicate that they are significantly 18 years of age or over* are age disputed.

## 8.2 New procedures for dealing with disputed cases

Despite the co-location of social workers at ports and screening units, some age disputed asylum seekers never have their age formally assessed by a SSD. Some are simply dispersed as adults and never come into contact with a local authority. Others are referred to a local authority which simply accepts the child's stated age. An assessment may never be conducted, creating problems for the immigration process at a later date. In some cases errors in the paperwork or a failure on the part of the Home Office to update its records may mean that a child continues to be treated

as an adult despite being formally assessed as a child. There is also evidence from this research that co-located social workers do not always deliver an appropriate level of support and guidance to separated asylum seeking children.

All of these problems suggest that a different referral process is required, whereby all age disputed cases are automatically referred for an age assessment. This assessment should not take place immediately on arrival or in the context of a port or screening unit because of the additional difficulties that this creates in assessing age and needs.

The evidence presented in this report indicates that children are unable to differentiate between the roles and responsibilities of the different professionals with whom they come into contact at the screening unit and that age assessments cannot be appropriately conducted in an immigration setting. Observation of current practice where co-location takes place raises significant concerns about the actual and perceived independence of the social worker and about his or her propensity and ability to intervene on behalf of a child and represent his or her interests.

Co-location is also associated with a rapid age assessment which is unable to take account of the views of other professionals with whom the child or young person may be in contact or with whom he or she may be able to develop a relationship if the assessment is undertaken over a longer period of time.

In order to ensure the independence and consistency of the age assessment process, we have recommended that a number of regional age assessment centres should be established in the UK. These assessment centres would need to be funded independently of the local authority responsible for providing care when a separated asylum seeking child is identified.

One of the main benefits of establishing regional age assessment centres is that potential conflicts of interest and the current resource issues associated with social service assessments can be avoided. At the same time those undertaking age assessments in regional teams will be able to develop skills and expertise in conducting age assessments which will result in better quality and more consistent outcomes. This will reduce the likelihood that the age assessment process will be the subject of litigation.

Whilst the assessment is being undertaken all decisions in relation to the asylum application will need to be put on hold. This is essential because it will not be possible to ensure that the child or young person is processed through the appropriate route unless and until the assessment is concluded.

### 8.3 Improving the process of age assessment

The research has identified variation in the quality of the age assessment process as currently undertaken by social services departments and scope for significant improvements in the process of age assessment. Social workers need more time and resources and better training and support in order to conduct age assessments that are legal, rational and fair.

The research has found that many asylum seekers whose age is disputed are not made fully aware of the purpose of the assessment and that the credibility of the applicant's account is inappropriately used by social workers as a proxy indicator of chronological age. The lack of statutory guidance on the process of age assessment has resulted in inconsistencies in the weight given to evidence and information that might be relevant to the decision, including paediatric and medical evidence where this is available.

In order to improve the process of age assessment so that it is genuinely holistic, produces consistent and better informed outcomes, and is less likely to be challenged, we have proposed that assessments be undertaken by multi-agency teams based in regional age assessment centres. The multi-agency team would include social workers, paediatricians, psychologists, teachers and others able to contribute to the assessment process.

Those responsible for the assessment process need to be conscious of the fact that it is abusive for one child to see too many people for a formal assessment interview. However it is perfectly acceptable for those responsible for assessments to take into account the views of other professionals who are in contact with the child for other reasons. It would be much easier – and more cost-effective – to provide a multi-agency approach in the context of a regional assessment centre than within individual SSDs.

The age assessment itself should be based on statutory guidance issued by the Department for Education and Skills (DfES) and would be a holistic process which takes into account a range of social, emotional and psychological indicators of age and need and does not rely solely or primarily on physiological characteristics or factors. It would be able to assess the applicant's needs and vulnerability as well as his or her chronological age. Although age assessment must be comprehensive and make use of all available expert assessments and techniques, the limitations of technological/medical assessments of age mean that there should not be *primary* use of any single medical test to establish the age of a child or young person.

We have also suggested that the age assessment process could be supported by an independent age assessment panel which is able to provide overarching support and guidance and could help the regional assessment centres to deliver a consistent and credible service which is less likely to be challenged by others. The panel could also play a role in the auditing process. The key to the success of this approach will be to establish a process in which everyone has confidence so that the number of continuing disputes and extent of litigation is reduced from its current level.

If we assume that an age disputed individual might be a child, then he or she should also be allocated a guardian who can look out for the best interests of that child, help him or her to go through the procedures and contribute to the age assessment process as appropriate. This is consistent with the EU Reception Directive which requires that separated children seeking asylum should be provided with a legal guardian.<sup>1</sup> A guardian is also necessary to help the child or young person to negotiate the review process that is proposed below.

<sup>1</sup> Article 19(1) of COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, available at [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/L\\_031/L\\_03120030206en00180025.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/L_031/L_03120030206en00180025.pdf) [accessed 1 March 2007].

## 8.4 Reviewing the age assessment process

We anticipate that steps 1–3 outlined above will substantially reduce the number of ongoing disputes over age. However we also accept that some disputes may be more difficult to resolve and that in the absence of any definitive process (medical, scientific or otherwise) for the assessment of chronological age there may continue to be a difference of view between different professionals in some cases.

For these cases it is important that a mechanism is established for independently reviewing the *process* by which the conclusion about an individual's age has been reached *before* recourse to the courts. We have found evidence that ongoing disputes over age can become focused on small and seemingly insignificant issues or events which gain significance as the legal process proceeds. This problem appears to be closely associated with the increasing focus on the credibility or otherwise of an applicant's account.

One way forward would be to build a 'case conference' into the assessment process. This would ensure that all of the people involved in a particular case, including the age disputed applicant, sit down together and discuss the basis of the decision that has been reached. An independent third party should be present at any case conference, one of whose duties will be to ensure that the child or young person's interests are represented and that the process is conducted fairly and appropriately. The child or young person should also be allocated a guardian to assist him or her to negotiate the process and represent his or her best interests as appropriate.

Where there are ongoing disagreements these should be the subject of an independent review of the process by which the decision about an asylum seeker's age has been reached. The review will require that statutory guidance is established against which the quality of the assessment process can be measured. The review could be undertaken by the independent age assessment panel, the local authority ombudsman or another third party as appropriate.

We believe that the establishment of an independent review process would minimise the use of the courts, which is expensive, adversarial and not available to those without legal advice and representation. We also believe that it would contribute to improvements in the process of age assessment over the longer term.



## 8.5 Taking forward the research findings

'The process for dealing with age disputes should be reviewed, particularly in light of the evidence and recommendations arising from the research currently being undertaken by ILPA and due to be published shortly.'

JCHR 2007, paragraph 204

This research has identified serious shortcomings in the process for dealing with age disputes and in the assessment of age and vulnerability. Many of these shortcomings stem from a gap between the policies in place to deal with disputes over age and the reality of current practice. There is evidence that 'the benefit of the doubt' is not given because of assumptions about the 'appropriate' physical appearance and behaviour of children from very different social, economic, cultural and ethnic backgrounds. There is also evidence that the perceived credibility or otherwise of the asylum application itself has become closely tied in with a decision about whether a child is being honest about his or her stated age. In reality there may be no relationship between the two.

The findings of our research demonstrate very clearly that the current approach benefits no one. The process is protracted, financially costly and puts children at risk. This is increasingly acknowledged by all those working with separated asylum seeking children and the Home Office's recent consultation paper on proposed reforms of the system of support for separated asylum seeking children makes clear that solutions are being sought as a matter of urgency.<sup>2</sup> The solutions proposed, and in particular the reliance upon technological or pseudo-scientific approaches to the assessment of age, will not address the complex issues and concerns highlighted in this report. This is because they are underpinned by assumptions about the reasons why age disputes arise in the first place and a misplaced confidence in the ability of medical and technological processes to provide an accurate determination of chronological age.

<sup>2</sup> Home Office 2007.

This report provides concrete and practical policy recommendations on an appropriate process for agreeing age in the asylum context, and on the relationship between the process of age assessment, the asylum determination process and support and leaving care arrangements. We believe that the evidence-based policy and practice changes we have proposed would lead to improved outcomes for children and more efficient and better decision making and service provision. An added benefit will be the reduction of the costs currently associated with age disputes and a major source of potential and actual conflict between different service providers who should be working together to support the child.

Throughout the research process we have engaged directly with the different parties involved in the age assessment process to ensure that the findings and implications of our research are known beyond the immediate Advisory Group. We have also tried to ensure that our research takes into account, and is responsive to, the broader and potentially wide-ranging changes that are taking place in the asylum determination process more generally and in the provision of support to separated asylum seeking children in particular.

Just as importantly we have spoken directly with separated asylum seeking children whose experiences offer new insights into the implications of being age disputed. For many of the children we spoke to, the experience of being age disputed was profound and damaging. This is not only because of the implications of the dispute for the asylum determination process and for the ability of children to access appropriate support and protection but also because of the consequences for self-identity and the ability to rebuild already shattered lives. It is in their interests, as much as those of IND, local authorities and the asylum system as a whole that we find a better way of identifying when a child is not a child and providing appropriate support and protection to those who are children.

# Summary of recommendations

## Key recommendations

- IND staff should follow their own policy guidance in relation to age disputed cases. Physical appearance is not an accurate indicator of chronological age and therefore should not be overly relied upon. The 'benefit of the doubt' needs to be given at the initial screening stage.
- Guidance given to IND staff should be brought into line with the recent guidance issued in relation to fast track detention to reduce the number of age disputes. Only those applicants whose physical appearance or demeanour *very strongly indicates that they are significantly 18 years of age or over* should be age disputed.
- A number of regional age assessment centres should be established to which all age disputed cases are referred at the beginning of the asylum process. These regional assessment centres would need to be funded independently of the local authorities taking responsibility for children. They would be multi-agency in composition and draw upon the expertise of a range of other professionals in addition to social workers including teachers, health and medical practitioners, paediatricians, counsellors, youth workers and voluntary sector organisations including the Children's Panel.
- Age assessments should not be undertaken by individual SSDs with varying skills and resources but by social workers based in a smaller number of properly and independently resourced regional assessment centres.

- The age assessment itself should be a holistic process which takes into account a range of social, emotional and psychological indicators of age and need and does not rely solely or primarily on physiological characteristics or factors. The assessment should be conducted over a period of time (ideally a minimum of seven days) with input from other professionals and experts.
- The age assessment process could be supported by an independent age assessment panel. The panel could provide overarching support and guidance and could help the regional assessment centres to deliver a consistent and credible service which is less likely to be challenged by others. It could also play a role in the auditing process.
- Asylum seekers who are assessed as being adults should be given an adequate opportunity to answer the points that are being held against them. This could take the form of a case conference involving all the people involved in a young person's life plus the young person themselves, an allocated guardian to help him or her negotiate the process and an independent third party. If differences of view cannot be resolved at this stage then there should be a clear, simple and independent process for reviewing the assessment process and ensuring that the evidence has been appropriately considered.

## Additional recommendations

- Placing age disputed asylum seekers in adult processes is a high risk strategy. The default position should be that age disputed applicants are *potentially children*. Appropriate mechanisms and procedures should be developed to reflect this, for example, age disputed applicants should not be interviewed as adults at the screening stage or allowed to simply leave the screening unit and return to their accommodation if they are not in need of NASS support (as is currently the case).
- There needs to be a clear procedure in place for ensuring that all age disputed asylum applicants receive a formal age assessment before their asylum claim is considered. This is necessary to ensure that child-specific procedures are followed if the applicant is assessed as being under 18 years of age and to ensure that he or she is placed in the appropriate segment of the New Asylum Model.

- The difficulties inherent in the assessment of age are exacerbated when a child or young person is assessed immediately upon arrival and in an immigration setting. Age assessments should not be undertaken at ports or screening unit. Social workers should be identifiable as independent of the authority running the screening unit.
- All separated asylum seeking children – including those whose age is disputed – must be referred to the Children’s Panel. One mechanism for ensuring that this happens is for a Children’s Panel adviser to be based at screening units and ports.
- All separated asylum seeking children – including those whose stated age is disputed – should be provided with access to publicly funded specialist legal advice and representation at the beginning of the asylum process and throughout, including at the appeal stage.
- Medical age assessment – including through the use of x-rays and dental age assessment – should only take place in the context of a holistic assessment process. Any medical examination must take place with consent which is genuinely informed. It is not possible to secure genuinely informed consent from separated asylum seeking children immediately on arrival.
- There is an important role for social workers in the assessment process: age assessment can only be undertaken as part of a wider process of needs assessment and within the context of the statutory duties to support children in need under the Children Act 1989. Social workers need to be provided with appropriate training and support to enable them to undertake age assessments.
- The role of social workers who are co-located at ports and screening units should be clear – and made clear to children. This role should include *at a very minimum*, making children aware of what will happen during the screening process and beyond at the outset, ensuring that children are provided with food and water as appropriate, checking that children are not vulnerable to inappropriate attention by adults whilst waiting to be screened, sitting on the appropriate side of the glass, following correct procedures to ensure that all children get a referral to social services and that age disputed cases are not ‘left behind’ in the adult section and have to make their own way to a local authority for assessment. The social worker should also be required to make sure that all children and young people are referred to the Children’s Panel at the end of each day.

- The Department for Education and Skills (DfES) should publish guidance to local authorities on the age assessment process. This guidance should be based on the practice guidelines which are already in use and should be produced in liaison with ILPA, The Refugee Children's Consortium and the Children's Commissioner.
- Age assessment should not take place at ports of entry or screening units. The difficulties inherent in the assessment of age are exacerbated when a child is assessed immediately upon arrival and in an immigration setting.
- The process of age assessment should be conducted over a period of time so that the behaviour and relationships that a child or young person develops can be observed.
- The purpose of the age assessment process and the implications of the outcome should be properly and clearly explained to the child or young person before the age assessment is conducted. The conclusions of the assessment should be open to revision where new evidence comes to light.
- Social workers involved in the process of age assessment should be provided with appropriate guidance, training and support.
- The assessment process should link into Children Act processes and statutory duties towards children and young people arising from the Children Act 1989.
- Those responsible for the assessment process need to be conscious of the fact that it is abusive for a child to be repeatedly interviewed about his or her experiences. The number of interviews should be limited to prevent systems abuse of this kind.
- The process of age assessment should include all of those that have a role/input into the child's life (for example social workers, health practitioners, foster carers, youth workers) and should include all the information that might be relevant to the decision, including paediatric and medical evidence where this is available.

- Although age assessment must be comprehensive and make use of all available expert assessments and techniques, the limitations of technological/medical assessments of age mean that there should not be *primary* use of any single medical test to establish the age of a child or young person. Medical assessments of age provide a guideline only as to the age range within which an applicant falls and should be treated as only one of a series of possible tools for assessing age.
- Disputes over an asylum seeker's stated age need to be resolved before the process of asylum determination proceeds. The only way to ensure that asylum applications made by separated asylum seeking children are not inappropriately fast tracked and/or subjected to a procedure designed for adult applicants is by undertaking a fully Merton-compliant age assessment at the beginning of the asylum process in all age dispute cases.
- Disputes over age should not go to the heart of the overall assessment of credibility of an applicant's claim for asylum. An asylum claim may be wholly credible but the person may be lying about his or her age or vice versa.
- Interpreters working with children need to be trained to be able to pick up the innuendos of how a child is expressing him or herself. This applies to interpreters involved in screening and substantive asylum interviews, the age assessment process and court hearings.
- For those cases already in the asylum system or where disputes are ongoing, there should be a mechanism for referring a child to a local authority, or preferably a regional assessment centre, in order for a formal Merton-compliant age assessment to be undertaken.
- Guidance for immigration judges on separated children should be updated to include specific instructions on how to proceed in cases where age is disputed. Questions and issues surrounding the appellant's age should be dealt with as a preliminary issue. Without a decision as to the age of the appellant being taken at a preliminary stage, it will be impossible for judges to determine whether or not to treat the appellant as adult or a child.
- The revised criteria for fast track detention should be applied to *all* of the detention estate and not just fast track detention facilities so that the risks of detaining children as adults are fully negated.

- Age disputed asylum seekers must not be removed without their age being properly assessed.
- All separated asylum seeking children should be supported under section 20 of the Children Act 1989. The practice of de-accommodating children at 13 weeks or creating delays in the age assessment process in order to prevent them from having access to an appropriate leaving care service is unlawful and should be stopped. This will require that leaving care and other services provided by the local authority for separated asylum seeking children and young people are properly resourced.
- All of those involved in working with separated asylum seeking children and young people whose age is disputed need to recognise and be aware of the mental health implications that being age disputed can have over and above the direct practical implications for the asylum determination process and welfare support. This is because of the implications for self-identity and self-esteem. Multiple interviews and assessments which repeatedly refer to the issue of age should be avoided.
- A process should be established by the Home Office for ensuring that age disputed asylum applicants who are already in adult systems of NASS support and have never had a formal assessment of their age are referred to a local authority – or ideally one of the proposed regional assessment centres – for a formal age assessment to be undertaken.



## APPENDIX 1

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