



# **AGE ASSESSMENT GUIDANCE**

Guidance to assist social workers and their managers in  
undertaking age assessments in England

**OCTOBER 2015**

## Acknowledgements

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## Introduction

The age assessment of unaccompanied children seeking asylum is a challenging process. This document is designed to address the gap there has been in national guidance on this topic by providing user-friendly practice guidance to social workers.

Those of us who have been involved in writing this guidance have direct experience in the age assessment process, either as social workers, social work managers, advocates, or solicitors for children and young people who are age assessed. We have seen the challenges faced by young people and the repercussions when things do not go well. We have had the pleasure of supporting children and young people through their journeys within the UK. We have also experienced the stress of working in pressurised local authority environments with limited resources.

We have tried to bring together these experiences to create guidance on best practice during the age assessment process, while also acknowledging the challenges social workers face in their day-to-day work. With that in mind, we have kept the guidance itself intentionally brief, and we have put more detailed information in the appendices.

Age assessments are a controversial subject, and indeed there is a robust debate on whether social workers should complete age assessments at all. While we acknowledge the contested nature of age assessments, some children arrive in the UK whose age may be unclear, unknown or disputed. The fact remains that social workers are currently required to complete age assessments in England so as to ensure any service a child requires is provided appropriate to their age and assessed needs. Social workers, by nature of their education, experience and specialist skills in working with and interviewing vulnerable children and young people, are uniquely positioned to undertake holistic assessments. This guidance aims to support social workers seeking to make the best assessment of age possible.

As for all work with vulnerable children and young people, it is important to engage with the network of professionals who may be supporting them. The views of a teacher, psychologist, police officer, paediatrician or other relevant practitioner should always be considered where available. In the event that a number of agencies have been involved, a Professionals Meeting may help synthesise the social worker's views. We recognise that some professionals may currently feel unable to comment on age, and we hope that in the future other agencies, such as paediatricians and police, will develop their own guidance in relation to age assessment practice. The key is for agencies to work together in a child-focused manner.

In this guidance, our use of the words "children" and "young people" has been very deliberate. In the majority of cases, we use the word "child" when it is very clear we are

discussing an individual that is under the age of 18. We use the term “young person” when we are not yet sure whether the individual is under 18, but if they could very well be. Even if after an age assessment it is acknowledged that a young person is under the age of 18, we may continue to use “young person” as many adolescents do not appreciate being called “children”. We have tried to use language which the young people we know and support would be comfortable with.

We have also used checklists, but intentionally not used tick boxes, in each chapter. The questions asked are designed to support good practice, and are set out with the intention of guiding the discussion with the child and other agencies, not as a list of “everything I need to cover.” As every child and young person is different, so every interview will be different, and social workers will need to modify questions and their approach depending on the unique qualities of each presenting young person.

The goal is to make the process accessible to all social workers. There is some repetition, which serves both to emphasise salient points and to acknowledge that some will read only the chapters that they need at a particular time. This is guidance for best social work practice with this vulnerable group of children and young people, considering their human rights under the UN Convention on the Rights of the Child, while understanding the demands on local authority social workers and managers. The information provided is accurate at the time of publication.

This guidance has been produced concurrently with the Association of Directors of Children’s Services (ADCS) and Home Office Age Assessment Joint Working Guidance (JWG). The JWG is designed to assist local authorities and the Home Office in negotiating joint working and information sharing. The JWG should be read in conjunction with this document, which is specifically to help social workers complete the best age assessments possible, bearing in mind the needs of young people. They are separate and distinct documents, but work together to aid all involved in reaching appropriate outcomes for unaccompanied, asylum-seeking young people.

We are confident that this practice guidance gives social workers the tools to complete age assessments in a child-friendly way, using best social work practice and ethics and utilising the knowledge of all agencies involved in the life of the child to inform the holistic assessment of a young person’s age.

## Chapter 1 – Do you need to undertake this age assessment?

### Checklist:

- **Is it absolutely necessary to undertake this age assessment?**
  - **A needs assessment should be separate from an age assessment (though the age assessment may help to inform the needs assessment).**
- 

Statutory guidance on the care of unaccompanied children states that:

*Age assessments should only be carried out where there is significant reason to doubt that the claimant is a child. Age assessments should not be a routine part of a local authority's assessment of unaccompanied or trafficked children.<sup>1</sup>*

The phrase “significant reason to doubt that the claimant is a child” has led to considerable discussion amongst professionals involved in age assessment practice. What one social worker deems a “significant reason” may differ from another social worker’s opinion. Our interpretation of this guidance is that age assessments should not be carried out on every child or young person approaching a local authority seeking support, but should be used to ensure that appropriate services (including education) are offered. In order to be able to assess the needs of a child, the social worker must be satisfied that the individual is a child, but young people should not be subjected to multiple assessments for administrative purposes only. A social worker should be clear what the “significant reason” is to doubt the age, and this should be conveyed to the young person.

This guidance is also relevant where all parties accept that the young person is a child but where the exact age is not clear. Many children and young people will not be able to provide evidence as to their age, and some may not even know their own chronological age. However, for any individual in the UK to receive services including health, education and identity documents, they will require a date of birth. Any assessment should be limited to the minimum necessary to ensure the child or young person receives the appropriate services and educational support for their age and development.

In other circumstances, the child or young person will be able to produce clear information about their age, for example, from documents or from reference to education. Lengthy

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<sup>1</sup> Department for Education (2014) *Care of Unaccompanied and Trafficked Children*, Available online at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf)

assessments which ask children and young people difficult and distressing questions should be avoided unless you are clear that this is likely to be helpful and productive.

Where you have decided that a standalone age assessment is not necessary, it will be helpful to make a note on the child or young person's file that you have accepted their claimed age, and why. This may help to avoid unnecessary confusion at a later date.

There may be occasions where you do not feel that an age assessment is necessary but where the Home Office requests an assessment before it will treat the young person as a child in the immigration process. In these circumstances you may need to negotiate with the Home Office to explain why the young person should be treated as a child without further assessment, or conduct an assessment sufficiently comprehensive that it enables the Home Office to be assured that the assessment is case-law compliant, as children may find multiple assessments repetitive and potentially distressing. The principle of the best interests of the child should always guide your decision making and work with children. Where an age assessment is unavoidable, it may be possible to use information which you have already gathered, for example, as part of your Looked After Child (LAC) assessments, rather than conducting further in-depth interviews which may cause unnecessary distress to the child or young person. Upon the conclusion of the age assessment, you will need to complete the Model Information Sharing Proforma attached at [Appendix A](#) to share your decision with the Home Office.

Age disputing a child or young person can affect the way they engage with their social worker, and the repeated questioning of their credibility and identity can leave children and young people feeling angry and bewildered. In this context, it is important that age assessments are not undertaken unless absolutely necessary.

The authors acknowledge and accept that some adults do claim to be children. In some rare circumstances, it will be very clear that the individual is an adult well over the age of 18, so prolonged inquiry may not be required, as stated in the *Merton* judgement.<sup>2</sup> Even in these rare circumstances when you are making a relatively quick decision, you are still undertaking an assessment, albeit a brief one, and you must record the rationale for your decision as well as share your decision with the individual being assessed. Where required to share that decision with the Home Office, you should still use the Model Information Sharing Proforma (attached at [Appendix A](#)).

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<sup>2</sup> See paragraph 50 of the *Merton* 2003 judgement: '*Cases will vary from those in which the answer is obvious to those in which it is far from being so, and the level of inquiry unnecessary in one type of case will be necessary in another.*' *R (B) v London Borough of Merton* [2003] EWHC 1689 (Admin). Available at <http://www.bailii.org/ew/cases/EWHC/Admin/2003/1689.html>



### Checklist:

- **Might the child or young person have been trafficked or experienced abuse?**
- **Does the child or young person have any other additional needs, aside from being alone in the UK? For example:**
  - **Might they have physical, mental or emotional health difficulties?**
  - **Might they have learning difficulties?**
  - **Might their experiences in their country of origin or during their journey to the UK have an impact on their ability to respond fully to questions you will be asking them?**
- **What is the current immigration status of the child or young person and do they need assistance with that before and/or after your assessment?**
- **Is the child or young person in suitable accommodation before and after the assessment?**

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### Trafficking

Since the inception of the National Referral Mechanism (NRM) for victims of trafficking, an increasing number of children have been identified as potential victims of trafficking.<sup>3</sup> At the time of writing, the NRM process had been reviewed, and a pilot scheme was being implemented to recognise victims of trafficking. As a social worker, you have an important role to play in ensuring the safety of trafficked children and young people.

Many trafficked children and young people go missing within 48 hours of becoming looked after. Suspicions of trafficking require a bold and immediate response to keep the child or young person safe, and a Section 47 enquiry and the development of a robust safety plan will be appropriate in most cases. Where there is uncertainty about age, a suspected victim of trafficking must be presumed to be a child and be accorded special protection measures pending assessment of their age.<sup>4</sup>

Children and young people who have been trafficked into the UK are likely to have had experiences which have an impact on their ability to participate fully and openly in an age assessment. Aside from the physical, sexual or emotional abuse they may have suffered,

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<sup>3</sup> Statistics compiled by the National Crime Agency  
<http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/502-national-referral-mechanism-statistics-end-of-year-summary-2014/file>

<sup>4</sup> S.51 *Modern Slavery Act 2015*, Available at:  
<http://www.legislation.gov.uk/ukpga/2015/30/section/51/enacted>

many trafficked children have been forced by their traffickers to learn a story to tell if they are questioned. Many children and young people are under threat directly themselves, or may have family members elsewhere who are under threat, or perceived threat. Children and young people may not know at this stage who they can trust. As a result, they may give information that is later contradictory to information provided initially. This is not necessarily an indication that a child or young person is trying to deceive social workers, and should not be considered as such. Social workers need to look at the situation holistically and consider the circumstances surrounding each child or young person.

Trafficked children and young people may have been provided with documents by their traffickers which are either false, or are genuine documents but not belonging to the child or young person. For example, it is common for visa applications with incorrect details to be made to enable the movement of children from one country to another. The existence of a document does not necessarily prove someone's age.

Your Local Safeguarding Children Board is now required to have local guidance for working with trafficked children. The London Safeguarding Children Board has also published comprehensive guidance and a toolkit for working with trafficked children, which is accessible to all via their website.<sup>5</sup>

Please see [Appendix B](#) for more information regarding trafficking and working with victims of trafficking.

### **Additional needs and vulnerabilities**

Many of the children and young people you assess will have needs and vulnerabilities beyond being a young person in a new country on their own, and you should bear that in mind when planning their assessment. Most assessing social workers will not be able to diagnose physical, mental or emotional health difficulties or learning difficulties, or the effects of trauma, but should be alert to the fact that the young person in front of them has undergone experiences which are likely to have a serious impact on their development and on their ability to answer clearly all questions put to them.

Much of the assessment is likely to rely on what the child or young person tells the assessing social workers. There is a significant body of research casting doubt on the accuracy of 'normal' memory, and most people have difficulties in accurately and repeatedly recalling some things in their lives. Children and young people are likely to find it even harder to recall and recount distressing memories clearly. Further, post-traumatic stress disorder (PTSD) and depression are the most common psychiatric diagnoses in asylum seekers, and

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<sup>5</sup> London Safeguarding Children Board child trafficking toolkit and guidance. Available at: <http://www.londonscb.gov.uk/trafficking/>

those illnesses impact on memory.<sup>6</sup> PTSD and depression may also affect how a child or young person is able to engage with questioning, their ability to concentrate and their demeanour, as well as their ability to recall and provide coherent narratives. These difficulties will be particularly prevalent for those children and young people who have been tortured.

While separated children and young people who have survived torture may show distress, it is also very common for them not to show emotion or ‘appropriate’ emotion. That can often be due to avoidance or dissociation, which are unconscious psychological processes operating to defend an individual against re-experiencing or being overwhelmed by memories and/or feelings of traumatic experiences and distress.<sup>7</sup> Similarly, avoidance or dissociation can often be wrongly interpreted as the child or young person being vague or evasive. There may be a risk that stereotypical and erroneous assumptions about trauma are made in relation to children and young people who are survivors of torture such as ‘she did not cry’ or ‘he didn’t react very strongly’. Flashbacks can also be triggered during an age assessment which may be misinterpreted as acting out behaviour.

It is also important to consider the fact that children and young people may have experienced or witnessed questioning under torture as part of their experiences of persecution. Consideration should be given to the impact that this might have on their responses, including fear or mistrust of people in positions of authority. Therefore power imbalances between the child or young person and the adults present in the interview(s) must be considered at all stages of the process. As a result of their age and experiences, children and young people may be overly compliant and answer questions in the affirmative in order to please interviewers, to protect themselves from anticipated harm, or to avoid painful or distressing memories. Avoidance of painful memories and shame and stigma attached to humiliating experiences of abuse may lead to confused narratives, inconsistencies or non-disclosure of significant events.

Please see [Appendix C](#) for further information regarding trauma and memory.

There is also the difficulty of communicating across different cultures. It is not possible within the scope of this guidance to cover all aspects of cultural difference and misunderstanding; however, as a social worker you will recognise the complexity of identity and diversity and apply anti-discriminatory and anti-oppressive principles to your practice. You should be mindful of how cultural norms and individual experiences may shape

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<sup>6</sup> A summary of research can be found at The British Journal of Psychiatry:

<http://bjp.rcpsych.org/content/191/1/3> .

See also Centre for the Study of Emotion and Law: [http://www.csel.org.uk/csel\\_publications.html](http://www.csel.org.uk/csel_publications.html)

<sup>7</sup> For example see the Centre for the Study of Emotion and Law:

[http://www.csel.org.uk/csel\\_publications.html](http://www.csel.org.uk/csel_publications.html) and National Centre for Biotechnology Information:

<http://www.ncbi.nlm.nih.gov/books/NBK207191/>

communication styles and expectations, including gesture and body language, vocabulary, and understanding of what information and feelings can or should be shared with someone you have just met and who represents authority.

At the time of assessment, the child or young person may have made a recent claim for asylum. They may have been questioned several times in recent days about their history by, for example, immigration officers and other Home Office officials, or solicitors. Some children and young people may never have been questioned about their lives in this way before, and may be confused, stressed or distressed by what they perceive to be repeated questioning and disbelief about their lives, for reasons which they do not understand.

### **Immigration status**

It is important that you know the immigration status of the child or young person you are assessing. You may need to take urgent action in relation to their asylum application if they have made one, and their status may dictate their options for support after your assessment. Sometimes the Home Office will wait for the outcome of the age assessment before they conduct their substantive asylum interview. While it is important that the age assessment process is not rushed, any unnecessary delays should be avoided.

Please see [Appendix D](#) for further information.

### **Suitable accommodation**

You will need to plan for suitable accommodation before, during and after the assessment. See the Department for Education statutory guidance on the 'Care of unaccompanied and trafficked children' for more help and information with regard to this.<sup>8</sup>

Other than in exceptional circumstances, children and young people will be looked after under Section 20 of the Children Act 1989 whilst the age assessment process continues. In many circumstances a foster placement should be provided, and the child or young person will benefit from that level of care and support in their early days as they recover from the experiences they had before they left their home country and whilst on their journey. You may have concerns about placing an unknown young person in a family setting, and you should bear in mind the lack of background knowledge you have when deciding with which family to place them. However, some young people may benefit from being placed in shared accommodation with other young people who have similar language and experiences. Whether in foster care or other accommodation, recently arrived children and young people will usually need a high level of support to ensure that they are safe and well, and that they

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<sup>8</sup> Department for Education (2014) *Care of Unaccompanied and Trafficked Children*, Available online at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf)

understand what is happening to them in the confusing first few weeks. Simple things like eating and sleeping properly can make a big difference to a child or young person's ability to participate fully in any assessment.

*'I stayed in a small hotel for a week. A man came in a taxi and said we are going to [local authority]. I asked how far, he said maybe 30 minutes. We got there and the taxi driver told me to go in. I waited for a while and the social worker told me to wait for an interpreter.'*

*(A young woman who was very confused about the process, and who was frightened about travelling alone in cars and entering strange buildings by herself, not knowing what was going to happen.)*

All children and young people need safe and supportive accommodation, but particular care must be given to planning accommodation for potential victims of trafficking who may be at risk of going missing very soon after discovery. Specialist placement should be considered for these children and young people.

Bed and breakfast accommodation is not suitable for any child under the age of 18, even on an emergency basis.

Please refer to [Appendix E](#) for additional information on placements.

If the young person is assessed to be an adult, you should in the first instance assist them to return to the relevant immigration service. Your local authority may need to continue to provide accommodation in the short term to ensure that they are not left homeless while they transition to other support; proper planning can make this process as smooth and quick as possible.

Clear protocols and effective liaison with your placements team and your local housing department can help to ensure that appropriate accommodation is provided for children/young people in a range of circumstances. Two-tier local authorities may not have direct access to Housing Departments so will need to negotiate with the District/Borough Councils in their area.

## Chapter 3 - Planning and preparation

### Checklist:

- Do you have a clear work plan for preparing, conducting and concluding the age assessment and have you allocated time for the relevant tasks?
- Has the child or young person been informed that an age assessment is going to be conducted, and are arrangements in place to ensure they been given the information they need about the process and the support available to them?
- Have arrangements been made for an appropriate adult and interpreter to assist with the interview/s?
- Has a suitable venue been arranged?
- Has relevant country of origin and background information been collated and read by both assessing social workers?
- Have arrangements been made to gather any relevant information available from other sources, including any documentation?

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Planning and preparing well for an age assessment is important to ensure a fair, good-quality and effective assessment. The process needs to be sensitive to the needs of the child or young person being assessed to enable them to participate to the best of their ability in the assessment interview(s).

*'My first understanding about age assessment came after they had finished the assessment; they told me what it was. After that my solicitor explained it to me.'*

*(A young woman, who had been very distressed before and during her assessment and did not know why she was being asked questions which upset her.)*

There are a number of tasks that need to be undertaken at the planning stage and time to complete them all will need to be allocated.

### Allocating social workers

Managers need to allocate two qualified and Health and Care Professions Council (HCPC) registered social workers to undertake the assessment (see [Appendix N](#)). Both social workers must have experience of working with children and young people, and of undertaking assessments of children in need. Best practice would be that at least one social worker has experience of working with young asylum seekers and undertaking age assessments. Where this proves practically difficult, local authorities may wish to consider

using an independent social worker with relevant experience or making arrangements with other local authorities.

Both assessing social workers must be clear about the relevant procedures and remit of the assessment. The remit of an age assessment is to make a determination of someone's age, *not* to assess their asylum application. Social workers need to be mindful that the child or young person may have been "coached" on aspects of their account, but this does not necessarily mean they are being untruthful about their age.

You also need to be aware of the potential indicators of human trafficking. If information arises during the planning process that indicates a child or young person may have been trafficked, appropriate action must be taken to safeguard them (refer to [Chapter 2](#) for more information).

Where possible, managers need to give consideration to gender issues in allocating assessing social workers, as the assessment may incorporate discussion of sensitive issues such as puberty, relationships, trauma and sexual assault. Best practice would allow the child or young person to discuss in advance any particular requests they have in regard to their interviewers.

### **Responsibility for work**

Roles in planning the assessment and conducting the interview(s) need to be discussed and agreed between both social workers and your manager, and will take into account the skills and experience of the workers involved. Tasks will include gathering information, practical arrangements such as booking a venue, an interpreter and an appropriate adult, planning the assessment interviews, gathering and reviewing any information already available, and drafting the assessment report. You may also wish to formulate some areas of discussion or questions in preparation for the interview(s).

### **Information gathering**

Assessing social workers will need to give consideration to the country of origin and culture of the child or young person being assessed. It is helpful to have information about religion, religious festivals, lifestyles, markers of maturity, the education system and so on. There are a number of sources which can assist with this including country of origin reports.

Please refer to [Appendix F](#) for further information on the use of country of origin information.

As well as gathering factual information to assist in understanding the history and life account of the child or young person being assessed, you also need to be aware of cultural and societal differences. These may include differences in verbal and non-verbal communication styles, attitudes towards authority, power, gender and age and towards

sharing personal information. It is not possible for this guidance to give a compendium of all cultural information, and no guidance will cover every person as each is an individual with their own experiences and understanding; however, an awareness and acknowledgement that these differences exist is important.

Information gathering in preparation for an age assessment may also mean scheduling time for reviewing current research in other relevant areas, such as PTSD and the impact of trauma upon memory.<sup>9</sup> Further information gathering may be required following the age assessment interview(s), to explore any issues which have been raised.

### Information from other sources

Foster carers, key workers, social care workers, advocates, teachers and college tutors may be involved in working with a child or young person depending upon their circumstances and placement arrangements, and they are likely to have high levels of contact with the child or young person. Their observations of children and young people in different settings and interactions with peers and other adults can make a useful contribution to your assessments. It is good practice to gather the information available prior to conducting the age assessment interview(s) with the child or young person.

You will need to consider the weight given to different sources of information. For example, you may attach greater weight to the views of a professional who has worked with a number of asylum-seeking children and young people from the same country of origin as the child or young person being assessed than you would to someone who has no previous experience of unaccompanied asylum-seeking children and young people.

Where the information available at the planning stage indicates the child or young person may have mental health issues or learning difficulties, further information or assessments may need to be sought. These potential needs will have to be considered both in conducting the interview(s) and in analysing the information.

Many children and young people seeking asylum enter the UK without documentation. However, where a child or young person has or later obtains documentation, the assessing workers may need to consider expert authentication of any document. As a general rule, an embassy should not be contacted if the child's application for asylum or other international

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<sup>9</sup> Helpful online resources on PTSD and memory include:

Graham, B., Herlihy, J. and Brewin, C.R. (2014) "Overgeneral memory in asylum seekers and refugees" *Journal of Behavior Therapy and Experimental Psychiatry*, 45, pp. 375-380. Available from:

<http://csei.org.uk/resources/graham-herlihy-brewin-2014-jbtep> or directly at:

<http://csei.org.uk/assets/images/resources/graham-herlihy-brewin-2014-jbtep/graham-herlihy-brewin-overgeneral-memory.pdf>

Royal College of Psychiatrists Public Education Committee (2013) *Post-traumatic Stress Disorder*, Available from: <http://www.rcpsych.ac.uk/healthadvice/problemsdisorders/posttraumaticstressdisorder.aspx>



protection has not been finally determined, as the child's state may have been fully or partially responsible for the ill-treatment and/or persecution he or she has suffered or fears in the future. Similarly, there may also be serious risks involved in contacting organisations either in the UK or in the child or young person's country of origin. Alerting others to the presence of the child or young person in the UK may place them and/or their family at risk, now or in the future.<sup>10</sup>

## Location/venue

The venue for the age assessment interview(s) needs to be conducive to helping the child or young person feel safe, comfortable and able to participate to the best of their ability in their interview(s). If a child or young person requests a specific venue for the interview(s) then that should be facilitated if it is appropriate and possible.

Facilities such as police stations would not be considered appropriate for conducting age assessments, and every effort should be made to take a child or young person out of a police station in order to conduct a lawful assessment. If you have difficulty in securing the release of the child or young person into your care for the purpose of age assessment, you may wish to refer to the Age Assessment Joint Working Guidance which states that police stations are not appropriate settings for age assessments. If necessary you can make an initial assessment 'without prejudice' to secure release, before conducting a further assessment at a more appropriate place and time.

For information on the assessment of young people who are detained within the criminal justice system, see [Appendix G](#), or for young people who are in immigration detention, [Appendix L](#).

The venue for the age assessment interview(s) needs to offer appropriate bathroom and drinks facilities. If the child or young person will be with you for some time then food and beverages should be provided. Similarly, a child or young person may arrive for the assessment without having eaten and may need to be provided with food before the interview commences. The room in which the interview is conducted must offer suitable seating, comfortable temperature and lighting, and be an appropriate size for the number of participants involved in the interview. A suitable quiet space needs to be available if the child or young person wishes to take a break during the course of the interview.

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<sup>10</sup> There are European-wide directives stating that extreme care must be taken if contacting others in relation to someone seeking asylum. For example, see Article 22 of the European Asylum Procedures Directive (2005) Available online at: <http://www.asylumlawdatabase.eu/en/content/en-asylum-procedures-directive-directive-200585ec-1-december-2005#Art%2022>

## Interpreter

The interpreter must have the appropriate skills and qualifications to undertake their role and should be experienced in working with children and young people. The interpreter will need to have the ability to translate and use words that they may not be comfortable with. Where possible, consideration needs to be given to gender issues in allocating an interpreter as the assessment may incorporate discussion of sensitive issues such as puberty, relationships and trauma.

In order to ensure that they can participate to the best of their ability in the assessment interview(s), it is vital that the child or young person being assessed understands the questions being asked of them and that their responses are accurately interpreted. To facilitate this, when booking the interpreter, you must ensure the interpreter speaks both the correct language and dialect for the child or young person.

You need to be mindful that interpreters may come from small communities, and it is particularly important that the interpreter is aware of the need for confidentiality. Reiterating this at the start of the age assessment interview when the child or young person is present may enable them to feel safer and participate more fully in the assessment interview(s).

Interpreters should not offer their own views about the credibility of the child or young person's account. They may be able to assist with explaining some cultural and country-specific issues in relation to what the child or young person is saying, but should not make general observations or judgements.

Best practice would be that the same interpreter is used for all age assessment interviews for the child or young person, unless the child or young person indicates that they do not wish for this to happen.

For more information about working with interpreters, please see [Appendix H](#).

## Appropriate adult

The appropriate adult must be independent of the local authority, have the relevant skills and training to undertake their role, and be experienced in working with children and young people. They need to be clear and confident about their role, have the skills to support the child or young person in the interview(s) and challenge social workers if they feel the interview is not being conducted appropriately. An appropriate adult should advocate on behalf of the child or young person, represent their best interests and ensure that the child or young person's welfare needs are met during the interview process. Where relevant and possible, gender issues need to be considered when making arrangements for booking the appropriate adult.

For more information see [Appendix J](#) and the Coram Children’s Legal Centre factsheet on Appropriate Adults.<sup>11</sup>

### **Scheduling time for assessment**

While the authors acknowledge the workload pressures for social workers, it is important that sufficient time is scheduled for all aspects of the work involved to enable the assessment to be completed promptly. This will include scheduling time for pre-assessment work as well as assessment interview(s), drafting the report and meeting with the young person to share the outcome of the assessment.

In scheduling the assessment interview(s), it is important to ensure that the child or young person has had sufficient time to recover from their journey to the UK, and is not tired or hungry. If the child or young person is fasting, then this also needs to be considered in planning the assessment interview(s).

### **Recording**

You will need to plan how the interview(s) will be recorded; this may be dependent upon the facilities and resources available. Consideration could be given to taping or videoing the interview(s) where appropriate facilities are available, and any impact on the child or young person’s ability to participate fully will need to be considered. Detailed written notes must be taken if the interview is not recorded by other means. Social workers who take written notes should be mindful of how they engage with the child or young person and to be aware of non-verbal cues. Hand written notes do not need to be verbatim, however, they do need to cover all significant points. Even if the notes are subsequently typed, the hand written notes should be retained on the child or young person’s case record. On rare occasions in which an age dispute is heard in court, any handwritten notes must be provided. Scanned copies of hand written notes are acceptable to the court.

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<sup>11</sup> Coram Children’s Legal Centre (2013) *Migrant Children’s Project Factsheet: Acting as an appropriate adult at a local authority age assessment*. Available at: [http://www.childrenslegalcentre.com/index.php?page=mcp\\_factsheets\\_age\\_disputes](http://www.childrenslegalcentre.com/index.php?page=mcp_factsheets_age_disputes)

## Chapter 4 - Conducting the interview(s)

### Checklist:

- **Are two registered social workers present? The same social workers should be present for all interviews.**
- **Have you explained and recorded the purpose of the interview(s), possible outcomes, the different roles of professionals and how the information may be shared?**
- **Have you explained the role of the appropriate adult?**
- **Does the child or young person understand the interpreter (e.g. correct dialect) and are they comfortable with them? Have you recorded that?**
- **Have you checked on the welfare and well-being of the child or young person, and are they fit to be interviewed?**
- **Are you alert to potential vulnerabilities of the child or young person, such as human trafficking, mental health concerns and any other safeguarding issues?**
- **Have you given the child or young person the opportunity to think about and explain any inconsistencies and/or gaps in their account?**

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Most children and young people who are age assessed will be new arrivals to the UK, and may have experienced a long and frightening journey. They may be fleeing persecution in their country of origin and they may have been victims of torture or trauma. All of these children and young people have experienced loss and separation from their family. When conducting an age assessment, it is essential that you be sensitive to the past experiences of children and young people, to display empathy and build rapport. Adopting a sensitive approach to the interview process may assist you in gathering more detailed information from children and young people.<sup>12</sup>

Children and young people who are age assessed are unlikely to be familiar with the role of a social worker. They may also not understand why their age is being assessed, they may have had previous negative experiences with adults in positions of power or those who worked for government organisations or they may simply feel frightened. Children and

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<sup>12</sup> The following joint publication provides a number of helpful recommendations for working with unaccompanied children, including the “best interests” principle and establishing trust: UNHCR/UNICEF, (2014) *Safe and Sound: What states can do to ensure respect for the best interests of unaccompanied and separated children in Europe*. Available at: [https://www.unicef.at/fileadmin/media/Infos\\_und\\_Medien/Aktuelle\\_Studien\\_und\\_Berichte/Safe\\_and\\_Sound/Safe\\_Sound.pdf](https://www.unicef.at/fileadmin/media/Infos_und_Medien/Aktuelle_Studien_und_Berichte/Safe_and_Sound/Safe_Sound.pdf)

young people may provide inconsistent information about their life unrelated to their age (such as their reason for seeking asylum or their journey to the UK) in order to protect themselves or for other reasons; this does not necessarily mean they are an adult. As social workers conducting age assessments, you should be aware of possible indicators of human trafficking or any other safeguarding issues, and take appropriate action to safeguard a child or young person if this is identified during the interviews. It is also important to remember that the age assessment process is separate from determining an asylum application; it is not the role of the social worker to determine a child or young person's immigration status.

### **Explaining the purpose of the interview and different roles**

It is important that the child or young person understands the purpose of the age assessment interview at the start of the meeting, the difference between the Home Office and Children's Services, and the possible outcomes of the age assessment.

### **Sample explanation of role:**

Below is an example of what you might say when explaining the interview process to a child or young person. You should personalise this for each interview you conduct, taking into account the child or young person's perceived level of understanding.

*The purpose of this interview is to assess your age and to establish if you are a child in need of support from Children's Services. We will be asking you questions about your life before you came to the UK. Sometimes it can be upsetting for people to talk about their experiences, so if you need to take a break, please just tell us. We will be taking notes during the interview to help us remember what you tell us. If you tell us anything we don't understand or that doesn't make sense to us, then we will ask you to clarify the information. If we have said or asked something you do not understand, please tell us, and we will rephrase what we have said to try to ensure you understand. We do not make the decision about whether you can stay in the UK; this decision is made by a different organisation called the Home Office. At the end of the interview(s), we will explain our decision about your age, and if we assess you as being under 18 years old, you will be supported as a child by this local authority. If you are assessed to be an adult, then another agency will support you. If you disagree with our decision, you may be able to challenge this decision with the help of a solicitor. Is there anything you would like to ask us before we begin?*

### **Appropriate adults**

A child or young person undergoing an age assessment must have the opportunity to have an appropriate adult present with them during the interviews. It is important that the role of the appropriate adult is clearly explained at the outset of the interviews, and it is

recommended that the same appropriate adult is used throughout the age assessment (unless the young person requests a change).

*'There were two social workers and an interpreter and a Refugee Council person in the room. To me 'Refugee Council' was a new word, I didn't know what the Refugee Council was or what social workers do.'*

(A young man who did not understand that the appropriate adult was there to support him during his age assessment.)

An appropriate adult should be independent of the local authority. Their role is to ensure the child or young person understands the questions posed to them, and that the assessing social workers conduct the age assessment in a child-friendly, clear and transparent manner. The appropriate adult may also support a child or young person to clarify questions posed by social workers, but cannot coach or answer questions on behalf of the child or young person. The appropriate adult may ask for breaks as appropriate, and may also take written notes during the assessment which may be shared with the assessing social workers or others at the child or young person's request.

For more detailed information on the use of appropriate adults, refer to [Chapter 3](#) and [Appendix J](#).

## **Interpreters**

Social workers should check thoroughly that the interpreter speaks the correct language and dialect and that the child or young person and the interpreter understand one another properly. You should make it clear that the interpreter's role is to translate direct communications between social workers and the child or young person, not to provide advice to the child or young person or act on their behalf. The language used should be simple and sensitive. The same interpreter should be used during the interviews unless there is a clear reason not to do so.

## **Recording and sharing information**

At the beginning of the interview, it is good practice to explain to the child or young person how the information provided in the interview will be recorded and how the findings of the assessment will be shared with the Home Office.

The assessing social workers should have a clear plan about recording information. Records do not have to be verbatim, but should be sufficiently comprehensive to include all significant information. You should record whether and how the young person has indicated they understand the purpose of the assessment, the interpreter and the role of the

appropriate adult. You should raise issues concerning accuracy or consistency as soon as possible so that clarification can be sought and noted by you and the appropriate adult.

You should advise the child or young person that after the conclusion of the assessment, they will be given the outcome of the age assessment in writing, including information about how they may challenge the decision. If the child or young person and their solicitor make a request for a copy of the full age assessment, then the local authority should comply with this request. The Home Office, as per the Association of Directors of Children's Services (ADCS) / Home Office agreement, should be provided with the Model Information Sharing Proforma,<sup>13</sup> which is a summary of the age assessment. It is not necessary to share the entire assessment directly with the Home Office. If the Home Office request a full copy of the age assessment, this should be done through the young person's solicitor.

## Timeliness

The process of assessing age can cause children and young people anxiety and stress, and can have an impact on their ability to access services, including education and health services. It is important that the age assessment be conducted in a timely manner and the decision provided to the child or young person as soon as possible. It is good practice to have interviews on different days, in order for the assessing social workers to have time to reflect on the answers provided by the child or young person and to clarify any inconsistencies prior to making a decision. Most age assessments should be completed within 28 days, however the timescale for assessment should be responsive to the needs of the child or young person. In cases where you have clear reasons to believe that an individual is a child (or indeed an adult), then a decision on age may be made more quickly (see also [Appendix M](#)).

## Questioning the child or young person

Building trust and developing rapport at the beginning of the interview process is vital, and it will support the child or young person to speak freely and provide a more detailed narrative to inform the assessment. Simple, open-ended questions should generally be used, and you should ensure that questions are not confusing, repetitive or oppressive. You must take a child-friendly and sensitive approach to questioning, including checking that questions have been understood and offering breaks. The child or young person should be asked their age and date of birth, and given the opportunity to explain how they know their age and date of birth. The purpose of the questions is to develop a picture of the child or young person's life and experiences, not to catch the child or young person in a "lie". Social workers who have received training on Achieving Best Evidence (ABE) will find this helpful in interviewing children and young people in these circumstances. Current case law advises

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<sup>13</sup> The Model Information Sharing Proforma is available at: <http://adcs.org.uk/safeguarding/article/age-assessment-information-sharing-for-unaccompanied-asylum-seeking-children>

that social workers should use the Hillingdon and Croydon Guidelines, covering a range of issues about the child or young person's background and development, to guide their assessment (see [Appendix J](#)).

*'They interviewed me for one hour, it was very scary for me, I was not used to being asked so many questions, I got very worried. I didn't think it would happen in this way, in one hour, with so many questions. I didn't think social services would ask me so much.'*

*(A young woman who was scared by the process, did not understand why she was asked these questions and what would happen to her next. She was asked later to say how she had been feeling before the assessment started, on a scale of one to ten, where one indicated feeling awful and ten indicated feeling great. She said 'one'.)*

An additional issue to consider is the gender of the assessing social workers, appropriate adult, and interpreters when discussing sensitive information, such as relationships or puberty. It is essential that interpreters and the child or young person understand the issue of confidentiality, and that information discussed in the age assessment will not be shared in the community.

For more detailed information about confidentiality, refer to [Appendix K](#).

## **Other issues**

Social workers must be alert to the potential vulnerabilities and possible exploitation, abuse, torture or trauma experienced by the child or young person. You should have a sound knowledge of child trafficking and exploitation risk factors, and must not hesitate to take appropriate safeguarding measures if the child or young person being age assessed is suspected of being a victim of trafficking (refer to [Appendix B](#)). You also need to be sensitive to possible mental health issues, learning difficulties, gender differences, cultural differences or life experiences which may impact on a child or young person's ability or willingness to disclose personal information.

Information gathered during the age assessment process is highly relevant to assessing need. Assessors should keep this in mind in order to minimise any potential duplication of processes if a child or young person becomes 'looked after'.



### Checklist:

- **If you are minded to disagree with a child or young person’s claimed age, they must be given the opportunity to discuss further any factors leading you towards this opinion.**
- **It is important to document each part of the process and the reasoning behind decisions and conclusions, including the views of others and any differences of opinion.**
- **If new information arises or if your opinion changes as you get to know the child or young person better, you should review the assessment and consider if a further age assessment is needed.**

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### Benefit of the doubt and presumption of age

Age assessments cannot be concluded with absolute certainty as there is not any current method that can determine age with 100% accuracy. The only exception to that is if there is definitive documentary evidence, such as a clear history of birth, school records, or other documentation which you accept as valid and authentic. Where definitive evidence is not available, the benefit of the doubt should be granted to children and young people presenting as such. In borderline cases, it may not be suitable to place older young people in foster placements with children.<sup>14</sup>

In accordance with the EU Directive on Trafficking in Human Beings and the Modern Slavery Act,<sup>15</sup> particular care should be given where there is any possibility that a child or young person has been trafficked, and in these cases the presenting child or young person should be presumed to be under 18 years of age.<sup>16</sup>

As age disputes may result in a legal challenge, it is important that you feel able to give evidence in the Court to justify your decision making. If you cannot meet that threshold, the

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<sup>14</sup> Implications of being assessed as an adult can be found in the appendix. The authors recognise the challenge of finding appropriate accommodation in many areas of England, and do not underestimate the difficulty this presents.

<sup>15</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> and <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

<sup>16</sup> The statutory guidance by the Department for Education for the care of unaccompanied and trafficked children states on p. 4, point 7: “Note that, where the person’s age is in doubt they must be treated as a child unless and until a full age assessment shows the person to be an adult.” [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf)

individual should be treated as a child. If you have assessed the child or young person to be aged only one to two years different from their stated age, you must be prepared to explain how this decision was reached. For example, how does a 16 year old differ from a 15 year old?

Physical appearance and demeanour should not be the sole basis on which age is assessed. However, there may be rare occasions where the individual does not provide any substantial information that can assist you. If your assessment is based on appearance and demeanour, and you are not accepting their claim to be a child, then you must have no doubt that they are an adult and you must be prepared to state this in court if necessary.

## Analysis

Once the interviews with the child or young person and relevant professionals have been completed and all other available information collated, you need to analyse the material holistically. As the information is pulled together, it can become easier to see themes and further lines of enquiry.

Many social workers find it helpful to start writing the information into the relevant assessment template after each interview, to see what questions may still need to be asked in subsequent interviews, either with the young person or other professionals. Many local authorities use a template based on the Hillingdon and Croydon guidelines.

Please refer to [Appendix J](#) for further information.

You should take some time to discuss your findings with your colleague who assisted in the interviews. It will have been challenging to document everything said, and one of you may have noticed or remembered something that the other did not – either a comment or an emotional reaction. It will be useful to talk through overall impressions and specific details to make sure the best possible decision is made given the information available.

In analysing the information, you should consider:

- The statements of the child or young person
- Country of origin information
- The child or young person's individual history and experiences, particularly any traumatic events
- The child or young person's cultural background, education level, gender, maturity, developmental stage and behaviours
- The appropriately weighted views and opinions of other professionals (key workers or foster carers, educators, medical professionals, etc.). For example, how does this child or young person compare to and interact with their peers? The other

professionals should be aware that their opinions are being documented, and may be presented in court.

- Any medical evidence, e.g. psychological reports
- Documentation presented. Are you able to verify the documents through channels that do not put the child or young person at risk? As a general rule, contacting embassies is not a safe or appropriate option.<sup>17</sup> It should be noted that if a child or young person's document is assessed to be false, this does not necessarily mean that they are lying about their age.
- Weight given to each piece of information collected. Not all information needs to be given the same weight, and the evidence will need to be considered on a case by case basis. For example, the views of a key worker who has significant experience working with adolescents from abroad and has worked with the young person on a daily basis may carry more weight than the views of a tutor who has one session with the young person and is unfamiliar with individuals from the particular region. You should avoid placing too much weight on physical appearance and demeanour.

### Addressing gaps and inconsistencies

It is very important that children and young people are given the opportunity to address any relevant gaps or inconsistencies that you may find; as a result, further interviews may need to be scheduled. While forming your decision, you should continue to talk to the child or young person in an inquisitorial, not adversarial, manner.

You need to bear in mind developmental stages, the memory process, as well as the impact of trauma. Gaps, inconsistencies or lack of information do not always mean that a child or young person is not being truthful, and this should not be the starting point. Inquisitiveness about finding the right age is better for the child or young person than trying to catch someone in a "lie". Consider also that many children and young people have been told by their families, smugglers or traffickers to tell particular stories about their life in order to protect others, which are not necessarily reliable indicators of their age.<sup>18</sup> Children and young people being age assessed will also often not know yet who to trust, so may not reveal their entire situation at the assessment stage. Note that this is not dissimilar to other young people who are coming into care and may not be clear who to trust.

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<sup>17</sup> There are European-wide directives stating that extreme care must be taken if contacting others in relation to someone seeking asylum. For example, see Article 22 of the European Asylum Procedures Directive (2005) Available online at: <http://www.asylumlawdatabase.eu/en/content/en-asylum-procedures-directive-directive-200585ec-1-december-2005#Art%2022>

<sup>18</sup> Merton Judgment: *'...an untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for reasons unconnected with the applicant's case as to his age....'* Paragraph 28 of <http://www.bailii.org/ew/cases/EWHC/Admin/2003/1689.html>

## **Clarifying information before reaching a decision**

Before reaching a decision that contradicts the stated age, you should discuss with the child or young person the factors which have led you to form your opinion. The interpreter and the appropriate adult should be present for that session to help the child or young person ask any questions or clarify information. If the child or young person offers any further information or explanation, this should be considered as part of the assessment before the final decision is made. Once all the information is compiled, you should set out the factors that lead to your conclusion.

## Chapter 6 – Conclusions and sharing results

### Checklist:

- **Have you gathered and analysed all available information before reaching a decision?**
  - **If you are minded to disagree with the child or young person’s claimed age, have you given them an opportunity to discuss that view?**
  - **Have you clearly documented the reasons for your conclusion in the written report?**
  - **The child or young person should be given the outcome promptly and with support.**
- 

### Conclusions

Only after a full analysis has been conducted, considering all the available information, should a conclusion be made. The conclusion should contain a detailed and holistic analysis, and explanation of how the decision was reached. In cases where the stated age has not been accepted, it will be particularly important to explain why, what information led to that conclusion, and why that information was given more weight than other information which aligned with the stated age. All of this information should be contained in the written report. Individuals should also be provided with a clear explanation of how they might be able to challenge any decision with which they do not agree, including the timeframes and the process to follow.

*‘They asked me about my age. I was told to take off my hijab (the interpreter left the room), then put it back, and he said he doesn’t believe my age. This is the question I ask myself: on what basis did they dispute my age? By looking at my hair?’*

(A young woman who did not understand why her age was not believed)

### Sharing Results

Some general principles for sharing the results of an age assessment are as follows:

- The child or young person being age assessed should be informed of the conclusion, face-to-face, at the earliest possible opportunity. This should be done in a manner which is in accordance with their assessed age and maturity and should also be provided in writing.
- An interpreter of the appropriate dialect should be used to ensure clarity in delivering the decision, preferably the same one who has been present at previous interviews.
- The child or young person should have an appropriate adult present at the meeting.

- The child or young person will have already had an opportunity to comment at the decision-making stage, and should be given an opportunity to comment on the conclusion.
- The child or young person should be advised both verbally and in writing that they may be able to challenge the decision and how to seek further advice regarding their assessment. In most cases, there will be a three month time limit to make an application for a judicial review.
- You should keep all your hand written notes, and write up the outcome of the assessment regardless of the conclusion.<sup>19</sup>
- It is recommended that the child or young person sign an acknowledgement (though not necessarily acceptance) of receiving the conclusion of the age assessment.
- The child or young person should be given a full copy of the age assessment. This should be done within a reasonable amount of time upon completion of the assessment. Delay may seriously prejudice the child or young person's ability to understand the decision, to know whether or not they can challenge it, and to access appropriate support. The child or young person should be made aware that this document contains their personal information and should be looked after very carefully.

The assessment belongs to the child or young person, so they should decide with whom the assessment is shared. If the child or young person and their solicitor make a request for a copy of the full age assessment, then the Local Authority should comply with that request. After the assessment has concluded, you should confirm with the Home Office that they are treating the child or young person at the assessed age.

If the Home Office has disputed the child or young person's age, then they will need to know your decision promptly. This should be shared through the agreed 'Model Information Sharing Pro Forma – Outcome of Age Assessment'.<sup>20</sup> The Home Office should not be provided with the complete assessment, as per the Association of Directors of Children's Services (ADCS) / Home Office Joint Working Guidance<sup>21</sup>. It is very important that the Home Office know what age you have assessed the child or young person to be. In almost all circumstances the Home Office will accept your decision on age and your decision is likely to have significant consequences for the young person's immigration status. Where the Home Office has concerns about the decision they will discuss these with you. A child or young

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<sup>19</sup> It is sufficient for clear scans of handwritten notes to be retained and stored electronically and these have been accepted by the courts. In these circumstances, it is not necessary to retain original paper copies of your handwritten notes.

<sup>20</sup> Association of Directors of Children's Services (2013), *Model Information Sharing Proforma – Outcome of Age Assessment*, available at: <http://adcs.org.uk/safeguarding/article/age-assessment-information-sharing-for-unaccompanied-asylum-seeking-children>

<sup>21</sup> ADCS and Home Office Age Assessment Joint Working Guidance: Available at: [http://adcs.org.uk/assets/documentation/age\\_assessment\\_joint\\_working\\_guidance\\_april\\_2015.pdf](http://adcs.org.uk/assets/documentation/age_assessment_joint_working_guidance_april_2015.pdf)

person should always give their written consent prior to you sharing their information with any other individual, unless you are ordered by the court to do so.

## Chapter 7 - What happens next?

### Checklist:

- **If the individual is assessed to be a child, ensure all appropriate looked-after children protocols are undertaken.**
  - **If the individual is assessed to be an adult, ensure an appropriate transition to adult asylum services.**
  - **Remember that age is a crucial factor of identity for children and young people.**
- 

The outcome of the age assessment must be clearly communicated in a way which the child or young person (or adult) can understand, even if they do not agree with the decision (see previous chapter for information about sharing the decision).

If you have assessed the child or young person to be their claimed age, then their care and support under Section 20 of the *Children Act 1989* should continue in accordance with statutory guidance on the care of unaccompanied and trafficked children.<sup>22</sup>

If you have assessed the young person to be a child but of an age different to that claimed, then their care and support should continue as above, but additional work will be needed to explain to the child why you have reached this decision and to attempt to develop a trusting and supportive relationship between the child and your authority.

Children and young people have often said that even when they have been assessed to be a child, at their claimed age or at a different age, they found the process very difficult and upsetting and it had left them with feelings of distrust. The impact on the child or young person should be acknowledged and every effort should be made to try to develop the child or young person's confidence in your local authority.

If you have assessed the young person to be an adult then you must arrange their safe transition to adult support, usually through Home Office Asylum Support (see [Appendix E](#) on accommodation/ placements).

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<sup>22</sup> Department for Education (2014) *Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children* Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf)



## Where further information becomes available

Age assessment is a difficult process for children and young people and for social workers undertaking the assessment; it should only be undertaken when there is significant reason to do so. However, there will be occasions when a further assessment is required. Other than on those occasions when reliable and authoritative information is available, an assessment will not allow the assessing social workers to know the age of a child or young person and will only allow them to come to a balanced and reasonable conclusion based on the information to hand and on benefit of the doubt. Other information may come to light at a later stage, for example, in the form of documentation or as professionals get to know the child or young person over time, which leads them to believe that the assessed age is wrong.

Where you believe that a significantly different conclusion might be reached and that the child or young person may be notably older or younger than initially assessed, then a new assessment should be undertaken. In most circumstances you will need to talk with the young person about this new information. There may be occasions when a re-assessment does not have to involve further questioning; for example, where new documentation has been provided which supports the child or young person's claim and it can be relied upon, a decision on age can be made on that basis. Any new decision and the reasons for it must be clearly communicated with the child or young person, and if they are to remain in your service, then thought must be given to rebuilding trust and confidence. The Home Office must be advised of any new decision, and the child or young person will need to be issued with new immigration documents which reflect their assessed age.

## Paperwork

All relevant paperwork including notes made during an assessment and other correspondence must be retained on the child or young person's file. Even if the child or young person does not wish to challenge your decision, the information gathered for these purposes forms an important part of their file and should be available to them. If a child or young person challenges your decision on age, then your authority may be required to share all relevant information with the child or young person and their solicitor. In the case of a judicial review, it is likely that the assessing social workers will be called on to give evidence in court to explain their decision-making process, and other expert witnesses may also be called.

Please refer to [Appendix N](#) on legislation and case law for further information.

## Conclusion

Everyone involved in this process would like children assessed to be children and adults assessed to be adults. However, there will be times when, even after assessment, you have some doubt about the age of the person you are assessing; you cannot be expected to know the age of everyone you assess. In these circumstances you are advised to give the benefit of the doubt, and this is partly because of the different implications for children and adults in getting the decision wrong. Children in the UK are afforded extra levels of protection compared to adults both in terms of how they are cared for and in terms of how they are treated in the immigration system, and it is vitally important that children are able to access this protection.

Social workers are justifiably concerned about the implications of taking an unknown adult into their care, and potentially placing them with vulnerable children. Many social workers have limited options when it comes to placement, but any placement decision should be taken carefully, taking into account the needs of anyone already in the placement, of the carers, and of the child or young person about whom you may know little at the start. The risks of placing a relatively unknown child or young person are mitigated by the fact that they will be supervised, either closely or at least on a regular basis by those employed to care for and support them. Where it becomes apparent that the placement is unsuitable because your understanding of the child or young person's age and/or needs changes, you are able to intervene and make the necessary changes, through further planning and assessment. However, if your initial assessment means that the young person is no longer in your care then you will have no opportunity to continue to assess and change your perception unless the young person is supported in challenging your decision. This can prove difficult and time consuming, and irreparable damage may have been done before any challenge is resolved. Safeguarding the welfare of all children is the primary responsibility of social workers and any decisions about age and placement must be made with this in mind. Similarly, section 11 of the Children Act 2004 places other professionals under a duty to have regard to the need to safeguard and promote the welfare of children.

The dangers inherent in not taking a child into your care are multiple. With regard to their care, a child who is being treated as an adult will not receive the support given by local authorities which is deemed necessary for other children and includes having safe accommodation, the support of a social worker and a foster carer or keyworker/support worker, and support with all the other things a child needs, including access to education and health care.

With regard to the immigration system, there are many important safeguards in place for children in the UK. These include the way that an asylum application is processed, and the possible outcomes of that application. For example, an unaccompanied child will not be

detained for immigration purposes, and if their asylum application is unsuccessful then they will not be removed to another country on their own unless the Secretary of State is satisfied that safe and adequate reception arrangements are in place. Therefore the child may receive a temporary grant of leave to ensure that they are protected in the short term. In contrast, a child who is treated as an adult may be detained and removed from the country without any planning or safeguards.

In many cases it will not be possible to know definitively the age of the child or young person with whom you are working. Where there is doubt about whether or not the young person is a child, the dangers inherent in treating a child as an adult are in almost all cases far greater than the dangers of taking a young adult into your care.

## A) Model information sharing proforma

The model information sharing proforma is available at:

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

<p style="text-align: center;"><b>Model Information Sharing Proforma</b></p> <p style="text-align: center;"><b>(Insert YOUR Local Authority)</b> and the Home Office regarding <b>OUTCOME OF AGE ASSESSMENT</b> <b>FOR</b> <i>names and any aka,</i> <i>country of origin (delete grey text)</i></p> <p><b>Claimed Date of Birth:</b></p> <p><b>Names of Assessing Workers:</b></p> <p><b>Date Assessment Completed:</b></p> <p><b>1. The assessment was undertaken by:</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;"><i>Worker A - Status, qualifications, experience - state if differential roles assigned e.g. lead worker. (delete grey text)</i></td> </tr> <tr> <td style="padding: 2px;"><i>Worker B - Status, qualifications, experience (delete grey text)</i></td> </tr> </table> <p><b>2. Outline of dates of interviews, venue, who present: including interpreter and any appropriate adult</b></p> <ul style="list-style-type: none"> <li>• Use of suitable venue</li> <li>• Case law requires the involvement of an 'appropriate adult' in the process, any absence should be explained e.g. with consent of young person.</li> <li>• If a telephone interpreter is used (or none) this should be made clear (delete grey text)</li> </ul> <p><b>3. Summary of process:</b></p> <p><i>(should include confirmation of)</i></p> <ul style="list-style-type: none"> <li>• Informed of reasons for interview</li> <li>• A social history, family background has been explored</li> <li>• Demonstrate that it has been conducted in a way that conforms to Merton</li> </ul> <p style="text-align: center;"><small>PRIVATE AND CONFIDENTIAL: INSERT YOUR LA STATEMENT HERE</small></p> <p style="font-size: 8px;"><small>E.g. This document and the information it contains is the property of XYZ Council and should not be copied, distributed or in any other way disseminated to any other person or bodies, without the prior (written) consent of XYZ Council. <span style="float: right;">Revised 03/2015</span></small></p>	<i>Worker A - Status, qualifications, experience - state if differential roles assigned e.g. lead worker. (delete grey text)</i>	<i>Worker B - Status, qualifications, experience (delete grey text)</i>	<p style="text-align: right;">2</p> <p style="text-align: center;"><i>and other relevant case law/guidance - (delete grey text)</i></p> <p><b>4. All available sources of information, including other age assessments that have been taken into consideration.</b></p> <p><b>5. Decision on age issue</b></p> <ul style="list-style-type: none"> <li>• Clear statement of outcome</li> <li>• brief summary and analysis of reasons</li> <li>• <i>should concur with/summarise conclusion of substantive report. (delete grey text)</i></li> </ul> <p><b>6. How shared and opportunity provided to check or challenge information included</b></p> <ul style="list-style-type: none"> <li>• read by interpreter in own language; written or audio translation</li> <li>• Indication that any challenge has been considered and how resolved</li> <li>• Note whether copy provided to solicitor (delete grey text)</li> </ul> <p><b>7. Assessed Date of Birth:</b></p> <p><b>8. Date new age/DoB effective from:</b></p> <p><b>9. Signed by both assessing workers:</b></p> <p><b>10. Endorsement of Manager/Supervisor:</b></p> <p style="font-size: 8px;"><small>I am in agreement with the conclusion of the assessment and confirm that the assessment process has been lawfully conducted and complies with guidance arising from the Merton Judgement and subsequent case law.</small></p> <p>Name:</p> <p>Status:</p> <p>Signed:</p> <p>Date:</p> <p style="text-align: center;"><small>PRIVATE AND CONFIDENTIAL - INSERT YOUR OWN LA STATEMENT HERE</small></p> <p style="font-size: 8px;"><small>E.g. This document and the information it contains is the property of XYZ Council and should not be copied, distributed or in any other way disseminated to any other person or bodies, without the prior (written) consent of XYZ Council.</small></p>
<i>Worker A - Status, qualifications, experience - state if differential roles assigned e.g. lead worker. (delete grey text)</i>			
<i>Worker B - Status, qualifications, experience (delete grey text)</i>			

## B) Trafficking

There is growing recognition that human trafficking is a very serious abuse of human rights and is taking place routinely into and within the UK. Social workers have a crucial role in identifying and protecting young people who are victims of trafficking or are at risk of being trafficked.

The Department for Education issued statutory guidance on the care of unaccompanied and trafficked children in July 2014: <https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children>. This emphasises that, where a young person's age is in doubt, they must be treated as a child unless and until a full age assessment shows the person to be an adult.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (also known as the Palermo Protocol) is the internationally accepted definition of human trafficking. The Palermo Protocol establishes children as a special case, as unlike in adult cases of suspected trafficking, only two components are required for them to be recognised as victims of trafficking: movement and exploitation. Unlike an adult, children cannot legally consent to their own exploitation, even if it appears they agree to being moved. It is important to note that children may be trafficked internally, i.e. within the UK, as well as across borders.

In addition to the Palermo Protocol, the Council of Europe Convention on Action against Trafficking in Human Beings entered into force in the UK in 2008. As part of its implementation of the Convention, the UK set up the National Referral Mechanism (NRM), a framework for identifying victims of human trafficking and ensuring they receive the appropriate protection and support.

The NRM is also the mechanism through which the UK Human Trafficking Centre (UKHTC) collects data about victims. This information helps the UK to collect evidence and build an understanding of the patterns of child trafficking. This helps to shape policy and can aid police investigations into trafficking.

In 2014, 627 children were referred to the National Referral Mechanism as potential victims of trafficking, 327 females and 300 males. Most of these children were trafficked for sexual exploitation, labour exploitation or domestic servitude. Social workers must be alert to the possibility of child trafficking, and be prepared to instigate a child protection response where a child may be at risk.

At the time of writing the NRM had been reviewed and a new pilot referral and support system was being implemented for children and adults in West Yorkshire and in the South

West region. You should seek current advice on its status and on your responsibilities within it. In 2014/2015 there was a trial of child trafficking advocates in 23 local authorities and the government had passed legislation to ensure the provision of advocates in the future. You should seek current advice about the role and implementation of advocates and how you can work closely with them to ensure that trafficked children are given the best possible protection and support.

Further information can be found at:

- **London Safeguarding Children Board:** The London Safeguarding Trafficked Children Guidance and Toolkit provides help to professionals working with children to identify and assess child victims of trafficking: <http://www.londonscb.gov.uk/trafficking>
- **National Crime Agency:** <http://www.nationalcrimeagency.gov.uk/crime-threats/human-trafficking> or <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism> for NRM statistics.
- **UKHTC Strategic Assessment on Trafficking 2012:** <http://www.nationalcrimeagency.gov.uk/publications/15-ukhtc-strategic-assessment-on-human-trafficking-in-2012/file>
- **Council of Europe Convention on Action Against Trafficking in Human Beings 2005:** <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>
- **Anti-Trafficking Legal Project:** <http://www.atlep.org.uk>

Other organisations which can help include:

- **Barnardos:** <http://www.barnardos.org.uk/cta.htm> Direct support for trafficked children and advice to those involved in their care. NRM First Responders.
- **The Children's Society RISE Project:** <http://www.childrenssociety.org.uk/what-we-do/helping-children/young-refugees/new-londoners/rise-project>
- **ECPAT UK:** <http://www.ecpat.org.uk/frontpage> Information and advice for professionals on child trafficking. Campaigning. Youth Programme.
- **NSPCC:** [https://www.nspcc.org.uk/Inform/research/ctail/ctail\\_wda84866.html](https://www.nspcc.org.uk/Inform/research/ctail/ctail_wda84866.html) Information and advice for professionals on child trafficking. NRM First Responders.
- **Refugee Council Children's Section:** [http://www.refugeecouncil.org.uk/what\\_we\\_do/childrens\\_services](http://www.refugeecouncil.org.uk/what_we_do/childrens_services) Direct support for trafficked children and advice to those involved in their care, and provision of appropriate adults for age assessments. NRM First Responders.

## C) Trauma and memory

Social workers undertaking age assessments are required to gather as much relevant information as they can about the young person and draw conclusions with regard to age. While social workers are professionally trained to undertake assessments and to analyse information to reach conclusions, this area of work is extremely challenging. The very fact that this young person is in front of you means that by definition they have undergone extraordinary, difficult and distressing experiences.

The Centre for the Study of Emotion and Law (<http://www.csel.org.uk>) seeks to provide high-quality applied research to inform legal decision making, and to bring a rigorous and transparent approach to their peer-reviewed research. It has produced a number of studies relevant to social work with unaccompanied children and young people. These include:

- Graham, Herlihy and Brewin (2014). *Overgeneral memory in asylum seekers and refugees*. Available at: <http://csel.org.uk/resources/graham-herlihy-brewin-2014-ibtep>. Asylum seekers and refugees with PTSD and depression are less able to retrieve specific memories of their personal past within a given time limit when prompted to do so. This can have serious consequences on their ability to respond to questioning in assessments and by the Home Office.
- Herlihy, Jobson and Turner (2012) *Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum*. Available at: <http://csel.org.uk/resources/herlihy-jobson-turner-2012-acp>. This research challenges common assumptions about the inability of some people seeking asylum to tell detailed and coherent stories, looking at the impact of trauma, culture and language.
- Herlihy, Jobson and Turner (2010) Turner, *What assumptions about human behaviour underlie asylum judgements?*. Available at: <http://csel.org.uk/resources/herlihy-gleeson-turner-2010-ijrl>. This research looks at potentially erroneous assumptions made about why people act the way they do, and what they remember about it. The report highlights concerns about how asylum judgements are reached and this provides a helpful prompt for social workers to question their own assumptions about what a child in this extraordinary situation might be expected to recall. 'Although there is a strong lay belief that 'keeping the story straight' is the hallmark of a truthful account, this is contrary to a growing empirical literature emphasising that memory for traumatic events is often inconsistent and ill-recalled.' (Herlihy, Jobson and Turner (2010, s. 5.2.1)

There is a large body of research which indicates that emotional disorder affects autobiographical memory specificity.<sup>23</sup> Young people who have arrived in the UK as unaccompanied asylum seekers are likely to have comparative difficulty in recalling specific autobiographical events. In addition, research conducted by Brennan et al (2010) showed that trauma exposure in childhood impairs the ability to recall specific autobiographical memories in late adolescence.<sup>24</sup> Assessing workers must be alert to their own assumptions about what they expect a young person to recall and to narrate.

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<sup>23</sup> A simple internet search will produce numerous examples, for example, this study <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2834574/>

<sup>24</sup> [http://www.researchgate.net/publication/43344038\\_Trauma\\_exposure\\_in\\_childhood\\_impairs\\_the\\_ability\\_to\\_recall\\_specific\\_autobiographical\\_memories\\_in\\_late\\_adolescence](http://www.researchgate.net/publication/43344038_Trauma_exposure_in_childhood_impairs_the_ability_to_recall_specific_autobiographical_memories_in_late_adolescence)



## D) Impact of the asylum claim

It is important that you know the immigration status of the young person you are assessing. You may need to take urgent action in relation to their asylum application if they have made one, and their status may dictate their options for support after your assessment.

### **If the young person has claimed asylum and is assessed to be a child:**

If the child has an outstanding claim, or if their claim has been refused, then urgent regard must be given to how they will be supported and advised; there are likely to be deadlines which must be met in relation to their claim. If the Home Office is treating the child as an 'age dispute' or as an adult, you must promptly inform them that you have assessed the young person to be a child. The Home Office is required to ensure that an age assessment is case-law compliant and therefore requires written evidence from the local authority to confirm this.<sup>25</sup>

### **If the young person has claimed asylum and is assessed to be an adult:**

If the assessed adult has an outstanding asylum claim they will be eligible for support from the Home Office.<sup>26</sup> They will need help to access this financial support to prevent them from becoming destitute. Local arrangements are in place for people to access adult support. It is important that they are provided with a letter stating clearly that the Local Authority has concluded a lawful Merton and subsequent case law compliant assessment which has assessed them to be over 18. See also [Chapter 6](#) and [Chapter 7](#) for further guidance on what information should be given to the young person and to the Home Office. The Home Office will not accommodate age-disputed assessed adults without written assurance that a lawful assessment has been undertaken and failure to provide this will risk leaving the person homeless.<sup>27</sup>

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<sup>25</sup> Association of Directors of Children's Services (2013), *Model Information Sharing Pro Forma – Outcome of Age Assessment*, available at: <http://adcs.org.uk/safeguarding/article/age-assessment-information-sharing-for-unaccompanied-asylum-seeking-children>

<sup>26</sup> A very small number of adult asylum applicants are refused support. In this instance specialist advice must be sought, for example from the Asylum Support Appeals Project <http://www.asaproject.org/>

<sup>27</sup> Your assessment needs to comply with case law established in Merton in 2003 and with all subsequent case law, i.e. 'Merton plus', but at the time of writing the Home Office policy is to require a statement from the Local Authority that the age assessment is Merton compliant.

If the adult has had their application refused and has no outstanding appeal, they will not be eligible for support as an asylum seeker, but may be eligible for support under Section 4 of the Immigration and Asylum Act 1999.<sup>28</sup>

For further advice, contact Migrant Help on 0808 8000 631 or the Refugee Council Children's Section on 020 7346 1134 or [children@refugeecouncil.org.uk](mailto:children@refugeecouncil.org.uk).

**If the young person has not claimed asylum and is assessed to be a child:**

If the child has not claimed asylum, then regard must be given to how they will be supported to get immigration advice before they make an application. This should be done in a timely manner, giving the child enough time to begin to recover from their experiences before arriving in the UK, but ensuring that they are not disadvantaged by missing any age-related milestones. The possible outcomes of an asylum application for a child under the age of 17.5 are different from those for a child over the age of 17.5, and unnecessary delay could be very prejudicial. The Home Office will pay grant money to the local authority to look after a child for up to 12 weeks before the child claims asylum (longer in exceptional circumstances),<sup>29</sup> though it will usually be in a child's interests to initiate their claim in a shorter timescale.

**If the young person has not claimed asylum and is assessed to be an adult:**

If the young person has not claimed asylum and is assessed to be an adult, then they must claim asylum before they can access adult asylum support. Regard must be given to practical arrangements to assist the adult to claim asylum, if this is what they would like to do. Almost all applicants will have to attend in person at Lunar House in Croydon CR9 2BY. An appointment can be made by calling 020 8196 4524, and planning should take place to ensure that this can happen as soon as possible and that the adult is not left destitute while waiting to make their application.<sup>30</sup> Additionally, it would be best practice to signpost the individual to immigration advice.

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<sup>28</sup> 'Section 4' support is provided by the Home Office to certain failed asylum seekers on the proviso that they meet certain criteria, and offers no cash and no choice of accommodation. Contact Migrant Help or see [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330528/Section\\_4\\_Support\\_EXTERNAL\\_-\\_v29.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330528/Section_4_Support_EXTERNAL_-_v29.pdf)

<sup>29</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/327067/uasc-funding.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327067/uasc-funding.pdf)

<sup>30</sup> The Home Office expects that those wishing to claim asylum do so as soon as possible.

## E) Accommodation and placements

### For those assessed as children:

Many children and young people will arrive at children's services in emergency circumstances and may require accommodation on the day of referral. Social workers need to give consideration to the particular needs and vulnerabilities of unaccompanied children, including those who have been trafficked. The following principles should guide decision-making on placements for unaccompanied children and young people:

The accommodation must be safe, both for the child or young person and any other children living in the placement (for example, children and young people should not be placed with unknown adults. Similarly, young people who may be adults, but have not yet been assessed should not be placed in foster placements with other children).

Special consideration should be given to children and young people who may be trafficked; they may need additional support and monitoring in placement. That may include moving them out of the area in which they were exploited, providing a foster placement or a placement with 24 hour staffing and developing a safety plan. The needs of the child or young person, as well as their views and wishes on possible placements should be considered.

Foster carers or support workers must be aware of the wide range of appointments that a child in these circumstance may have, including GPs, dentists, education, solicitors, Home Office and counsellors.

Unaccompanied children and young people will receive a lot of documentation about their immigration status; carers must ensure that this documentation is kept safe and shared promptly with the child's social worker.

Your area may have specialist fostering services, residential placements or semi-independent providers who are skilled and experienced in supporting unaccompanied children and/or trafficked children and young people. Placement staff and foster carers should receive training on meeting the specific needs and vulnerabilities of unaccompanied and trafficked children.

The 2014 statutory guidance on the care of unaccompanied and trafficked children provides further details in relation to planning, protection and placements.<sup>31</sup>

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<sup>31</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf)

### **For those assessed as adults and who have claimed asylum:**

If a person has an outstanding asylum claim they will be eligible for support from the Home Office.<sup>32</sup> They will need help to access this support to prevent them from becoming destitute. Local arrangements are in place for people to access adult support. It is important that the assessed adult is provided with a letter stating clearly that a lawful Merton compliant age assessment has been completed and that they have been assessed to be aged over 18 (see also [Chapter 6](#) and [Chapter 7](#) for further information on what should be given to the assessed adult, and to the Home Office). The Home Office will not accommodate age-disputed adults without written assurance that a lawful assessment has been undertaken; failure to provide that will risk leaving the adult homeless.<sup>33</sup>

If the assessed adult has had their application refused and has no outstanding appeal, they will not be eligible for support as an asylum seeker, but may be eligible for support under Section 4 of the Immigration and Asylum Act 1999.<sup>34</sup>

Asylum seekers who are given ‘asylum support’ will be offered accommodation on a ‘no choice’ basis, almost always outside London and the south-east of England. They will be offered a small amount of cash to live on. Alternatively, if an asylum seeker has somewhere where they can live legally, for example with friends or relatives, then they can claim ‘subsistence only’, and will be given cash only.

For further advice, contact Migrant Help on 0808 8000 631 or the Refugee Council Children’s Section on 020 7346 1134 or [children@refugeecouncil.org.uk](mailto:children@refugeecouncil.org.uk).

### **For those assessed as adults and who have not claimed asylum:**

If the assessed adult has not claimed asylum then they must claim asylum before they can access adult asylum support. Regard must be given to practical arrangements to assist assessed adults to claim asylum, if that is what they would like to do. Almost all applicants will have to attend in person at Lunar House in Croydon, CR9 2BY. An appointment can be made by calling 020 8196 4524, and planning should take place to ensure that this can

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<sup>32</sup> A very small number of adult asylum applicants are refused support, in this instance specialist advice must be sought, for example from the Asylum Support Appeals Project <http://www.asaproject.org/>

<sup>33</sup> Your assessment needs to comply with case law established in Merton in 2003 and with all subsequent case law, i.e. ‘Merton plus’, but at the time of writing the Home Office policy is to require a statement from the local authority that the age assessment is Merton compliant.

<sup>34</sup> ‘Section 4’ support is provided by the Home Office to certain failed asylum seekers on the proviso that they meet certain criteria, and offers no cash and no choice of accommodation. For further information contact Migrant Help or see: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330528/Section\\_4\\_Support\\_EXTERNAL\\_-\\_v29.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330528/Section_4_Support_EXTERNAL_-_v29.pdf)

happen as soon as possible and that the assessed adult is not left destitute while waiting to make their application.

If the assessed adult has not claimed asylum and does not wish to claim asylum, they are likely to become destitute. A person in this situation should be very strongly encouraged to seek legal advice about their immigration situation. However, immigration advice which is not related to asylum or to Article 3 of the European Convention on Human Rights<sup>35</sup> will not be funded through legal aid. There may be solicitors in your area who offer initial advice for free, for example through Law Centres<sup>36</sup> or organisations such as Joint Council for the Welfare of Immigrants (JCWI),<sup>37</sup> but it is not possible to list those here.

**Detention:** During 2014 more than 13,000 asylum seekers were detained, and a young person assessed to be an adult may be detained for immigration purposes.<sup>38</sup>

See [Appendix L](#) for further information on detention.

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<sup>35</sup> [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>36</sup> <http://www.lawcentres.org.uk/>

<sup>37</sup> <http://www.jcwi.org.uk/about/legal-advice>

<sup>38</sup> [http://www.refugeecouncil.org.uk/assets/0003/3990/Detention\\_in\\_the\\_Asylum\\_System\\_March\\_2015.pdf](http://www.refugeecouncil.org.uk/assets/0003/3990/Detention_in_the_Asylum_System_March_2015.pdf)

## F) The use of country of origin information and information from other sources

An holistic age assessment process must consider country of origin information and where relevant, information from other sources. Social workers should consider the views of other professional and support workers who know the child being assessed, for example foster carers, teachers and advocates.

Most social workers will not have direct experience of the country of origin for the children and young people being age assessed. Country of origin reports can provide social workers with helpful background information about schooling, religion, geography, gender issues, political events, human rights and the general history of a country. Country of origin information can assist social workers in preparing and tailoring interview questions and can assist in better decision-making. As with any research, social workers should be mindful of the limitations of country of origin reports, such as the currency and accuracy of information, as well as issues of bias, objectivity, reliability and data collection techniques. Social workers must also consider that there will always be variances in personal experiences and information should be considered in terms of the individual, family, community and political context.

Social workers should consider using a variety of sources from diverse types of country of origin producers, for example, government sources, specialist NGO reports and news articles.

Examples of country of origin sources include the following:

- Amnesty International Country Profiles (<https://www.amnesty.org/en/countries/>)
- European Country of Origin Information Network (<http://www.ecoi.net/>)
- Home Office Country Information and Guidance (<https://www.gov.uk/government/collections/country-information-and-guidance>)
- Human Rights Watch (<http://www.hrw.org/>)
- United Nations High Commission for Refugees (UNHCR) Refworld Country Information (<http://www.refworld.org/>)
- United States Department of State Country Reports (<http://www.state.gov/j/drl/rls/hrrpt/>)

**For further information, see:**

Immigration Advisory Service (IAS), *The Refugee Roulette: The Role of Country Information in Refugee Status Determination*, January 2010, available at:

<http://www.refworld.org/docid/4b62a6182.html>

## G) Age disputes in the criminal justice system

Children and young people may come to the attention of the criminal justice system, often because of activity they are forced to undertake by traffickers, such as work in the sex industry, the cultivation of cannabis plants or other forced labour. They may also be accused of immigration offences such as using a false passport. Different agencies working with children and young people in these circumstances have different guidelines in relation to decision making on age and the consequences which arise from it. The police have a role, the Crown Prosecution Service has a role, and judges may make decisions in court regarding age, based on very little information. Coram Children's Legal Centre has produced a helpful fact sheet with information about assessing age in criminal proceedings with reference to their respective roles and guidance.<sup>39</sup>

Unclear and sometimes conflicting guidance may lead to the wrongful prosecution of children resulting in severe and harmful outcomes. Solicitors are often unaware of legal defences available to young people, and frequently have no experiences of the potentially complex issues around age assessment, so may give poor advice to children and young people. Where a local authority becomes aware of the possibility that a child or young person is being treated as the wrong age within the criminal justice system, they must make every effort to protect that young person. They may wish to seek advice from organisations working in this area, particularly those organisations experienced at working with young people who are age disputed, and/or young people who are trafficked.

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<sup>39</sup> Coram Children's Legal Centre, Age disputes in the criminal justice system, April 2015  
<http://www.childrenslegalcentre.com/userfiles/Age%20disputes%20and%20the%20criminal%20justice%20system.pdf>

## H) Interpreters

Interpreters are used in a variety of different settings including public service, and there are a range of qualifications appropriate to different settings and needs. There are also a number of organisations offering training, registration and membership to interpreters (Chartered Institute of Linguists [www.iol.org.uk](http://www.iol.org.uk), the Institute of Translation and Interpreting [www.itl.org.uk](http://www.itl.org.uk), and the Register of Public Service Interpreters [www.nrpsi.org.uk](http://www.nrpsi.org.uk)). All of the organisations detailed operate to codes of practice that specify expectations about integrity, competence and confidentiality.

In identifying an interpreter to conduct an age assessment, it is best practice to use a public service interpreter who is registered with The Register of National Public Service Interpreters (NRPSI). The NRPSI is a voluntary regulator for interpreters specialising in public service. Specific qualifications and/or experience are required for interim status or full status membership and members must have a valid/current security clearance. Details of the requirements for interim or full status are outlined on the NRPSI website.

In addition to being appropriately qualified, interpreters need:

- To have good listening skills
- The ability to concentrate
- A clear speaking voice
- Clarity about the importance of confidentiality within their role

In working with children and young people undergoing an age assessment they also need to have:

- The ability to engage well with children and young people to facilitate their participation in the age assessment interview(s)
- Knowledge of and sensitivity to the potential needs and experiences of children and young people seeking asylum, including issues involved with trafficking, torture and sexual violence, and the emotional resilience to handle those discussions
- The ability to use words or discuss issues they may not feel comfortable with
- The confidence to ask assessing social workers to rephrase a question where it is necessary to do so



## I) Appropriate Adults

The appropriate adult plays an important role in supporting a child or young person through the age assessment process, and it is a legal requirement that a child or young person is offered this support. Their function during age assessment interviews is to:

Ensure the assessment interview(s) are conducted transparently and appropriately and comply with the principles outlined in case law.<sup>40</sup>

Ensure the purpose of the assessment/interviews and roles of participants are explained to the child or young person by assessing social workers and try to assist them in understanding this information where needed. They should also ensure that the assessment interview(s) are being conducted in an appropriate setting, and ensure that the interview(s) are conducted in a "... structured, fair, non-adversarial, non-stressful and informal manner."<sup>41</sup>

Ensure that the assessment interview(s) are conducted sensitively with the child or young person in accordance with his/her particular needs, paying attention to both verbal and non-verbal communication. This may include asking for a break where a child or young person seems stressed or upset, and ensuring, for example, that they are not thirsty, hungry or tired during the interview(s). It may also include interrupting the direction of questioning if it is not relevant to an assessment of age.

Ensure as far as possible that the child or young person understands the questions being asked of them. They should (where necessary) give support to clarify questions being asked of the child or young person, but may not coach or answer for them.

Take notes for the child or young person, which should include any relevant areas of discussion, and any observations of the child or young person's welfare or conduct of assessing social workers. These notes may be freely shared with the child or young person and the assessing social workers if requested, and may be shared with others with the written consent of the child or young person. If an age assessment is challenged in a court arena, the appropriate adult and their notes are likely to be involved in that process.

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<sup>40</sup> These are summarised in *R (AS) v London Borough of Croydon* (2011) EWHC 2091 at <http://www.independentageassessment.co.uk/caselaw/AS%20v%20Croydon%202011.pdf>.

<sup>41</sup> Ibid.

The Police and Criminal Evidence Act Code C, paragraph 11.17,<sup>42</sup> references several of these responsibilities, and was highlighted in *R (FZ) v London Borough of Croydon*.<sup>43</sup>

The appropriate adult should be independent of the local authority, and local authorities need to make arrangements for this service provision in their area. Whilst there are no formal qualifications for the appropriate adult role in the context of age assessments, they should have:

- Experience of working and engaging with children and young people, and an understanding of their needs and behaviours
- Experience of working with interpreters
- A clear understanding of their role and of the principles for conducting age assessments outlined in case law
- The ability to take accurate notes at reasonable speed
- The confidence and ability to be assertive and raise concerns or otherwise intervene where they feel the interview is not being conducted appropriately and is not mindful of the child or young person's welfare needs

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/364707/PaceCodeC2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364707/PaceCodeC2014.pdf)

<sup>43</sup> *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59, paragraph 23. Available at <http://www.bailii.org/ew/cases/EWCA/Civ/2011/59.html>

## J) Hillingdon and Croydon Guidelines

The Hillingdon and Croydon guidelines were drafted a number of years ago with the intention of developing a proforma which would be helpful in guiding social workers through the difficult task of age assessment. They were not designed to become a standalone tool for social workers, but have become widely accepted and used, partly because of endorsement in the *A and WK* case by Mr Justice Collins.<sup>44</sup> The guidelines can be very useful for social workers but should not be used as the basis for a script of questions, as each assessment will require an individual approach and the skills of the assessing social workers will determine which lines of enquiry are more relevant and helpful. You may wish to check with your local authority if it has a position on whether the domains covered by these guidelines are the ones that should be explored in an assessment.

One of the most important areas for social workers to consider in an age assessment will be the young person's own account of their age. This, however, this is not referred to in the Hillingdon and Croydon guidelines. Social workers should give appropriate regard and consideration to statements made by the child or young person about their age.

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<sup>44</sup> *A v LB of Croydon & Secretary of State for Home Department; WK v Secretary of State for Home Department & Kent CC* [2009] EWHC 939 (Admin). Available at <http://www.familylawweek.co.uk/site.aspx?i=ed35432>

## K) Confidentiality

Children and young people may struggle to understand the concept of confidentiality, and it is important that your explanation of confidentiality is tailored to their level of understanding. Confidentiality must be explained to all children and young people undergoing an age assessment. Unlike other interviews with children and young people, the outcome of the interviews will usually be shared with a third party, namely the Home Office. The child or young person should be advised that the Home Office will only be provided with a brief summary of the age assessment and the reasons for the decision. The Home Office will not generally be provided with the full written assessment without the consent of the child or young person. There may be instances in which a child or young person challenges the outcome of an age assessment; in these cases, the full age assessment may also be provided to the court and so will be available to the Home Office.

Children and young people should be advised that their full age assessment will not be shared with anyone else unless they give their consent. They should be advised that their solicitors can receive a full copy of the completed age assessment if they provide their written consent to share this information.

It may be helpful to remind young people to keep any copies they hold of their age assessment safe.

In addition to clarifying the issue of who will have access to the age assessment, it is important for social workers to explain the other limits to confidentiality. The limits of confidentiality regarding safety concerns should be explained; this includes situations where the social worker is concerned that the child or young person is at risk of harming themselves, harming someone else, or someone harming them. In these instances, the child or young person's personal information may be shared for safety reasons.

Finally, social workers should ensure that the other professionals present in the assessment interview (e.g. interpreters, appropriate adults) are aware of their duty to keep information shared in the assessment confidential.

## L) Detention

The UK's immigration policy is only to detain unaccompanied children in very limited circumstances. Adults subject to immigration control are sometimes detained and where the Home Office believes an unaccompanied child to be an adult, they will be subject to detention as an adult.

The deleterious effects of immigration detention are well documented.<sup>45</sup> In addition to the expected and well documented effects on individuals of the removal of liberty, immigration detention is likely to have additional harmful effects on children.<sup>46</sup> Their experience of authority and the misuse of power are likely to be different from that of children brought up in the UK. They may have previously experienced detention themselves in other countries, or have known friends or family members who have been detained, and be extremely frightened of what might happen to them. If they believe themselves to be a child, the effect of not being believed and being detained as a result can be overwhelming. Further, young people detained in this country under criminal legislation know the length of their sentence and know that they will be released back to their community at the end of their sentence; young people detained for immigration purposes have committed no crime, do not know how long they will be detained (unless served with a removal date) and fear that they will only be released back to the circumstances from which they have fled.

There are a variety of circumstances in which a young person who claims to be a child may be detained.

- The young person claims to be a child at all stages but is detained as an adult because the Home Office believes that it has clear and credible documentary evidence that the young person is 18 or over, or an immigration officer, with the agreement of a Chief Immigration Officer or Higher Executive Officer, believes that the young person's physical appearance / demeanour strongly suggests they are significantly over 18 and no credible evidence exists to the contrary.
- The young person appears not to have claimed to be a child until after they are detained. This may be for a variety of reasons. It may be because they are an adult. It may be because they are a child who was badly advised prior to detention to say that they are an adult (possibly by a trafficker for exploitation purposes). It may be that they claimed to be a child before detention but that this was never recorded properly, for example, where mistakes are made with interpreters or calendars. This

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<sup>45</sup> For example, see Medical Justice report 2013 <http://www.medicaljustice.org.uk/reports-a-intelligence/other-organisations-reports/about-detainee-health/2251-mental-health-in-immigration-detention-action-group-initial-report-17-12-13.html>

<sup>46</sup> See paper from the Royal College of Paediatrics and Child Health, the Royal College of General Practitioners, the Royal College of Psychiatrists and the Faculty of Child Health: <https://www.rcpsych.ac.uk/pdf/Significant%20Harm%20intercollegiate%20statement%20Dec09.pdf>

scenario could be classified under the bullet point above, but the Home Office records will show that they did not claim to be a child until after detention.

- The young person claims to be a child at all stages but a local authority has undertaken a lawful assessment and assessed them to be adult and the Home Office is acting on receipt of that information.
- The Home Office believes, usually because it has been told, that a lawful assessment has been conducted and has detained on that basis, when in fact the assessment has not met legal standards.

At the time of writing it is possible for young people to be detained at any Immigration Removal Centre (IRC), but most age-disputed young males are detained at Harmondsworth IRC, near Heathrow airport, and young females at Yarl's Wood in Bedfordshire. Local authorities might be requested to undertake age assessments of young people who have been detained as adults. This can happen in a variety of circumstances, including:

- a. Where a young person is detained without any local authority assessment of age having been undertaken.
- b. Where a young person is detained on the basis of a local authority assessment but that assessment is found to be unlawful.
- c. Where a young person is detained on the basis of a local authority assessment but new information comes to light which casts doubt on the conclusion of that assessment.

In circumstance 'a' it is likely to be the local authority within whose area the child is detained which is responsible for undertaking an assessment. A referral of a child in need in their area will necessitate the local authority assessing whether indeed this is a child. In most cases the young person is released into the care of the local authority for this assessment to be undertaken. In exceptional circumstances the Home Office might oppose this release, but it is extremely prejudicial to a young person to be detained while awaiting and undergoing assessment, and it is extremely difficult for social workers to undertake a lawful and properly considered assessment on a young person who is currently detained.

In circumstance 'b' the young person might be referred to the local authority in whose area they are currently detained but are more likely to be referred back to the authority whose assessment was found to be unlawful.

In circumstance 'c' it is likely that the young person will be referred to the local authority within which they are currently detained for them to undertake a new assessment taking into account the new information which is available to them.

Each case will be looked at individually but it is very important that a putative child is not left in detention while any ongoing discussion takes place between local authorities about

responsibility.<sup>47</sup> It is extremely damaging for a child to be held in adult immigration detention. If a young person in detention claims or maintains that they are a child, all professionals involved must make prompt and clear decisions, and record all decisions and actions. Any interested party can make a referral to a local authority for assessment, and sometimes issues can be resolved without recourse to further legal advice. However, it is sometimes necessary for a young person to get legal advice about matters relating to their age while in detention. In these circumstances it is usual and in almost all cases strongly advisable for the young person to instruct a community care solicitor who is expert in these issues, rather than their immigration representative.

Home Office policy and process in this area is set out in a range of documents, including:

Operational guidance in chapters 45 and 46-62 of the enforcement instructions and guidance:

<https://www.gov.uk/government/collections/enforcement-instructions-and-guidance>

Policy on detention including detained fast track:

<https://www.gov.uk/government/collections/detention-and-reporting-asylum-instructions>

All Detention Service Orders:

<https://www.gov.uk/government/collections/detention-service-orders>; in particular note Detention Services Order 14/2012 on the care and management of age dispute cases in the detention estate:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257718/age-dispute.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257718/age-dispute.pdf)

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<sup>47</sup> Refer also to the Joint Working Guidance - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/432724/Age\\_Assessment\\_Joint\\_Working\\_Guidance\\_April\\_2015\\_Final\\_agreed\\_v2\\_EXT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/432724/Age_Assessment_Joint_Working_Guidance_April_2015_Final_agreed_v2_EXT.pdf)

## M) Timescales

In many cases the need for an age assessment will be identified when a young person is newly arrived in the UK. In such cases the local authority should aim to complete the assessment within 28 days, and where they are unable to do so, need to notify the Home Office of reasons for any delay within 28 days.<sup>48</sup>

The *Merton* judgement notes that the level of assessment required can be appropriate to the needs of the case and that “...there may be cases where it is very obvious that a person is under or over 18. In such cases there is normally no need for prolonged inquiry.”<sup>49</sup>

However, in all circumstances the assessment must be conducted in an appropriate setting (i.e. should not be conducted in a police station), needs to comply with the principles established in relevant case law and should follow the relevant processes for notifying the person being assessed and the Home Office of the outcome of the assessment.

The issue of determining age can cause children and young people significant anxiety and stress, and also have an impact upon their ability to access services. Whilst it is important that an age assessment is conducted in a timely manner, it is also important that children and young people are able to participate to the best of their ability in the process, and the timing of the assessment interviews needs to support this.

Children and young people may have experienced long and traumatic journeys (in addition to the experiences that have led to them leaving their country of origin), with limited opportunities to manage even their basic physical health and self-care needs; the impact of this can be aging as well as exhausting. It is important (particularly for presenting borderline cases) that children and young people be provided with the time and support they need to recover from their journeys before they are required to participate in an age assessment. With good care and some recovery time, a child and young person’s physical appearance may change dramatically within a fairly short period of time after arriving in the UK. Being in a physically safe and supportive environment and having adequate sleep and food will also contribute to a young person’s emotional well-being and ability to engage in the assessment process.

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<sup>48</sup> The Home Office will provide grant funding to local authorities to look after a child or young person for up to 28 days while they undertake an age assessment, even if the outcome is that the young person is assessed to be an adult.

Refer to:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/327067/uasc-funding.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327067/uasc-funding.pdf)

<sup>49</sup> *R (B) v London Borough of Merton* [2003] EWHC 1689 (Admin), paragraph 27. Available at <http://www.bailii.org/ew/cases/EWHC/Admin/2003/1689.html>



## N) Legislation and case law

This Appendix sets out the guidance which has been provided in legislation and case law by the Supreme Court, the Court of Appeal, the Administrative Court and, more recently, the Upper Tribunal (Immigration and Asylum Chamber)<sup>50</sup> up until the date of this publication. Social workers should also ensure that they keep up to date with further case law and any policy developments.

### The United National Convention on the Rights of the Child<sup>51</sup>

The UN Convention on the Rights of the Child (UNCRC), which the UK has ratified, clearly states that the rights within the Convention should be respected for all children within the State Party's jurisdiction, 'without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'.<sup>52</sup>

Article 3 of the UNCRC states that in all actions undertaken by public social welfare institutions, such as local authorities, the best interests of the child shall be a primary consideration.

In *ZH (Tanzania) v Secretary of State for the Home Department*<sup>53</sup> Lady Hale held that Article 3 of the UNCRC was a binding obligation in international law and that the spirit, if not the precise language, of this Article had been translated into national law by Section 11 of the Children Act 2004<sup>54</sup> and Section 55 of the Borders, Citizenship and Immigration Act 2009.<sup>55</sup>

In 2013 the UN Committee on the Rights of the Child issued General Comment No. 14 *on the right of the child to have his or her best interests taken as a primary consideration*.

Paragraph 4 of General Comment No. 14 states that "the concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognised in the Convention and the holistic development of the child".<sup>56</sup>

Article 8 of the UNCRC obliges the local authority to respect "the right of a child to preserve his or her identity" and it should note that this will include their age and date of birth.

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<sup>50</sup> All references to the Upper Tribunal in this chapter refer to the Immigration and Asylum Chamber.

<sup>51</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>52</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, Article 2

<sup>53</sup> *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4. Available at <http://www.bailii.org/uk/cases/UKSC/2011/4.html>

<sup>54</sup> <http://www.legislation.gov.uk/ukpga/2004/31/section/11>

<sup>55</sup> <http://www.legislation.gov.uk/ukpga/2009/11/section/55>

<sup>56</sup> [http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf)

Article 12 of the UNCRC states that “State Parties shall assure to the child who is capable of forming his or her own views the right to express those views in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”. This means that the child or young person’s own view of his or her own age and his or her account of his or her past experiences should be given appropriate weight and consideration.

Article 20 of the UNCRC also states that “a child temporarily or permanently deprived of his or her family environment.....shall be entitled to special protection and assistance provided by the State”. Therefore, a local authority should take into account the potential risks posed to a child or young person if a presumption in favour of him or her being a child is not applied and a lawful age assessment is not carried out and he or she is placed on his or her own in adult accommodation, is detained in an adult immigration removal centre or prison or goes missing.

Article 22 of the UNCRC also obliges local authorities to take appropriate measures to ensure that asylum-seeking children receive appropriate protection and humanitarian assistance.

Article 39 of the UNCRC states that all appropriate measures should be taken to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation or abuse. An unlawfully conducted age assessment, which leads to protracted judicial review proceedings, will delay any such recovery and reintegration and is likely to traumatise the child further.

In all cases, a local authority should provide a migrant child with the same protection that it would afford any other child in their local area, taking the child’s best interests as a primary consideration, making sure that the child can participate in the decision-making process and ensuring that he or she receives the appropriate coordinated support to promote their well-being, health and development.

### **The Children Act 1989<sup>57</sup> and 2004<sup>58</sup>**

The statutory framework of the Children Act 1989 imposes the following duties on a local authority:

- a. A duty to safeguard and promote the welfare of children in their area who are in need (section 17)

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<sup>57</sup> <http://www.legislation.gov.uk/ukpga/1989/41>

<sup>58</sup> <http://www.legislation.gov.uk/ukpga/2004/31/contents>

- b. A duty to accommodate a child in need within their area where there is no person with parental responsibility for them or they have been lost or abandoned (section 20).

If there is 'significant reason' to doubt that a child or young person is the age they claim to be, a local authority is under a statutory duty to conduct their own assessment as a 'gateway' assessment to determining whether a child or young person is a 'child in need' under section 17 of the Children Act 1989.

Section 20 of the Children Act 1989 obliges local authorities to provide accommodation to children and young people in their geographic area when there is no-one in England and Wales with parental responsibility for them. Accommodation should be provided under Section 20 of the Children Act 1989 while any age assessment is being completed. If an age assessment is subject to judicial review, the Administrative Court and/or the Upper Tribunal may grant a child or young person, whose age has been disputed, an order requiring the local authority to provide such accommodation until a final decision is reached in the case.

Section 11 of the Children Act 2004 also obliges the local authority to ensure that its functions are discharged having regard to the need to safeguard and promote the welfare of children. These functions include any age assessment relating to an unaccompanied or separated migrant child or young person.

### **The Modern Slavery Act 2015<sup>59</sup>**

Section 51 of the Modern Slavery Act 2015 states that when a public authority<sup>60</sup> is not certain about the age of a person who may have been trafficked into or within the United Kingdom but has reasonable grounds to believe<sup>61</sup> that the person may be under 18, it must assume for the purposes of its functions under relevant arrangements<sup>62</sup> that the person is under 18. Sub-section 51(2) of the Act also states that "until an assessment of the person's age is carried out by a local authority or the person's age is otherwise determined, the public authority must assume for the purposes of its functions under relevant arrangements that the person is under 18".

A local authority will fall within the definition of a "public authority" for the purposes of Section 51. It is also important to note that the identification of a child or young person who

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<sup>59</sup> <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

<sup>60</sup> The Modern Slavery Act 2015 gives the term "public authority" the same definition as that contained in Section 6 of the Human Rights Act 1998, which is "any person certain of whose functions are functions of a public nature"

<sup>61</sup> This is a very low standard of proof and is said to be when a person "suspects but cannot prove"

<sup>62</sup> Section 51(3) of the Modern Slavery Act 2015 states that this means arrangements for providing assistance and support to persons who are, or where there are reasonable grounds to believe, may be victims of human trafficking

may have been trafficked is a complex procedure. This is because, if a child or young person has been trafficked, their ability to disclose any details of their experiences is likely to be compromised by trauma, cultural loyalty to parents or community, fear of their traffickers and the effects of debt bondage or any ritual ceremony performed before the child or young person is brought to the UK. Therefore, it is suggested that it is good practice and in the best interests of individual children and young people to apply the provisions of Section 51 of the Act to all separated children where on the evidence in his or her particular case there is a possibility that he or she is a trafficked child.

Where a child or young person has been assigned an independent child trafficking advocate<sup>63</sup> the local authority should pay due regard to their views of the child's age.<sup>64</sup> Sub-section 48(e)(i) of the Modern Slavery Act 2015 requires a local authority to pay due regard to the advocate's functions and sub-section 48(4) states that an advocate must promote a child's well-being and act in the child's best interests – therefore the advocate will be obliged to promote the child's or young person's best interests by giving relevant information in an age assessment determination and the local authority will have to pay due regard to this part of the advocate's functions.

### **Case law – guidance from the court regarding age assessments**

There are a number of basic public law principles which used to form the sole basis upon which age assessments were challenged in the court. The first significant case to deal with the issue of local authority duties and processes when undertaking age assessments was *The Queen on the application of B v London Borough of Merton*.<sup>65</sup> The judge in *Merton* detailed a number of issues to be considered in order to make assessments lawful. These included:

- Local authorities should not simply accept an age assessment made by the Home Office but should undertake an independent assessment of its own.
- At the outset of the age assessment, the social workers should explain the nature and purpose of the assessment. The roles of those present should also be explained.
- “...(W)here an interpreter is required, it is obviously greatly preferable for him or her to be present during the interview.”

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<sup>63</sup> At the time of writing, Barnardo's were conducting a trial of child trafficking advocates on behalf of the Home Office. Section 48 of the Modern Slavery Act 2015 provides the Government with the power to extend the trial throughout England and Wales if the evaluation shows that independent child trafficking advocates are necessary to meet the needs of trafficked children.

<sup>64</sup> Modern Slavery Act 2015 Sub-sections 48(e)(i) and 48(4)

<sup>65</sup> *R (B) v London Borough of Merton* [2003] EWHC 1689 (Admin). Available at <http://www.bailii.org/ew/cases/EWHC/Admin/2003/1689.html>

- Physical appearance is a notoriously unreliable indicator of age. Social workers should have regard to a range of factors (e.g. culture, life experience, journey, etc.) and not rely on appearance to make a decision.
- Before the social workers have reached a final decision about the child's or young person's age, they should put any adverse findings they are minded to make to the child to enable him or her to provide any appropriate explanation or additional facts, which might counter or modify such findings.<sup>66</sup>
- "...(A)n untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for reasons unconnected with the applicant's case as to his age, for example to avoid his return to his country of origin."
- "Cases will vary from those in which the answer is obvious to those in which it is far from being so, and the level of inquiry unnecessary in one type of case will be necessary in another."
- Local authorities, as decision makers, have a duty to give adequate, cogent and relevant reasons for any decision.

Subsequent case law elaborated on the requirements of social workers completing age assessments. Some of the requirements are clearly detailed in the referenced case law, whereas other requirements have become accepted case law over time and single references to particular cases are not readily available. A lawful assessment will now have regard to the following:

- Local authority decisions were likely to be found to be more cogent if they were as holistic as possible and assessors had drawn together multi-agency information from others who had contact with the child or young person, such as teachers, advisors and key-workers and where social workers had considered personally observing the child interact with his or her peers.<sup>67</sup>
- The assessment should be undertaken by two qualified social workers, who have received appropriate training and have experience of interviewing young vulnerable children,<sup>68</sup>

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<sup>66</sup> Reinforced in *R (NA) v Croydon* [2009] EWHC 2357 (Admin) at paragraph 52, at <http://www.familylawweek.co.uk/site.aspx?i=ed40521>, and *R (FZ) v London Borough of Croydon*, [2011] EWCA Civ 59, paragraph 20, at <http://www.bailii.org/ew/cases/EWCA/Civ/2011/59.html>

<sup>67</sup> *R (C) v London Borough of Enfield* [2004] EWHC 2297 (Admin), at <http://www.independentageassessment.co.uk/caselaw/C%20v%20Enfield%202004.pdf>

<sup>68</sup> *AW (A Child) (R, on the application of) v London Borough of Croydon* [2009] EWHC 3090 (Admin), at <http://www.familylawweek.co.uk/site.aspx?i=ed46492>

- An appropriate adult who is independent of the local authority should attend age assessment interviews<sup>69</sup> and should be made aware that they are there to support and assist the child being interviewed and not merely as a passive observer;<sup>70</sup>
- Social workers should pay attention to the level of tiredness, trauma, bewilderment and/or anxiety of the child and provide appropriate breaks as necessary. If the child is ill then the interview should be rearranged;<sup>71</sup>
- Social workers should seek to establish a rapport with the child and should ask open-ended questions;<sup>72</sup>
- Social workers may hear from children who have been “coached” and others who have already been asked to recount their story several times, thereby unwittingly blurring the possible accuracy of their answers. In these situations social workers should bear in mind that even where a child may have received coaching in relation to some aspect of his or her account, this does not necessarily mean that he or she is lying about being a child.<sup>73</sup>
- If an adverse decision is made then the local authority has an obligation to explain the reasons for it. It is best practice for these reasons to be provided in writing, with an explanation of how the child can challenge the decision.
- The reasons for a social worker’s decision should be internally consistent and should not exhibit any obvious error or inadequate explanation for not accepting any apparently credible and consistent answers of the child.<sup>74</sup>
- The age assessment process should be inquisitorial (not adversarial)<sup>75</sup> and non-hostile,<sup>76</sup> allowing for the difficulties children might face giving evidence. In particular “due allowance should be made for the fact that a child might have a different way of recounting narratives and that proper regard should be paid to the fact that it was a child who was the subject of the age assessment process”.<sup>77</sup>

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<sup>69</sup> *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59, at <http://www.bailii.org/ew/cases/EWCA/Civ/2011/59.html> and also see *R (NA) v Croydon* [2009] EWHC 2357 (Admin) at paragraphs 16 and 50, at <http://www.familylawweek.co.uk/site.aspx?i=ed40521>

<sup>70</sup> See the *Guidance for Appropriate Adults* produced for the criminal justice system in England and Wales, available online at: <https://www.gov.uk/government/publications/guidance-for-appropriate-adults>.

<sup>71</sup> *Durani v SSHD* [2013] EWHC 284 (Admin), at paragraphs 82-83. <http://www.independentageassessment.co.uk/caselaw.htm>

<sup>72</sup> *R (AS) v London Borough of Croydon* [2011] EWHC 2091 at paragraphs 18 – 19, at <http://www.familylawweek.co.uk/site.aspx?i=ed89977>

<sup>73</sup> *R (AS) v LB of Croydon* [2011] EWHC 2091 (Admin), at <http://www.familylawweek.co.uk/site.aspx?i=ed89977>

<sup>74</sup> *Ibid*, para 19

<sup>75</sup> *C.f. R (CJ) v Cardiff City Council* [2011] EWCA Civ 1590, at <http://www.familylawweek.co.uk/site.aspx?i=ed95168>

<sup>76</sup> *R (C) v LB Enfield* [2004] EWHC 2297 (Admin), at <http://www.independentageassessment.co.uk/caselaw.htm>

<sup>77</sup> *R (ES) v Hounslow* (AAJR) [2012] UKUT 00138 (IAC), paragraph 43, at <http://webcache.googleusercontent.com/search?q=cache:StyTZVSTZh0J:www.independentageassessment.co.uk/caselaw/ES%2520v%2520Hounslow%25202012.pdf+%&cd=1&hl=en&ct=clnk&gl=uk>

- The court was likely to find that a decision was unlawful if it failed to take into account the fact that a child’s cultural and social background would have had a significant effect on his or her ability to provide documentary evidence of his or her age or a clear chronology of his or her previous experiences.

### **Decision making by the Court**

Until November 2009, if an age assessment was successfully challenged by way of judicial review, then the same local authority would have to conduct a re-assessment. However, the judgment of the Supreme Court in *R (on the application of A) (FC) (Appellant) v London Borough of Croydon*<sup>78</sup> held that, although age assessments remained the responsibility of local authorities, in the event of a challenge by judicial review, it would be for the Court itself to determine, as a matter of judicial fact, whether the person is a child and how old he or she is.

As a consequence, when a local authority’s age assessment is judicially reviewed, the central question is no longer whether its decision was rational. Instead, the Administrative Court or Upper Tribunal steps in as a primary decision maker in relation to the child’s age. It will conduct a fact-finding hearing and review all the evidence, including the assessment reached by any social worker. Local authorities must still conduct lawful assessments, but can no longer rely on merely establishing that they have done so, as if the case goes to Court the local authority’s assessment will be just one of a number of pieces of evidence which the Administrative Court and the Upper Tribunal will ultimately have to consider.

However, the better the quality of the local authority age assessment, the less likely it is that the court will depart from its conclusion.<sup>79</sup>

### **Referrals from the High Court to the Upper Tribunal**

The Administrative Court hears applications for permission to bring a claim for judicial review where a child’s age has been disputed by a local authority. When they do so, the test to be applied is a low one, as was explained by the Court of Appeal in *R (FZ) v London Borough of Croydon*,<sup>80</sup> where it was said that “the court should ask whether the material before the court raises a factual case which, taken at its highest, could not properly succeed

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<sup>78</sup> *R (on the application of A) (FC) (Appellant) v London Borough of Croydon* [2009] UKSC 8, at <http://www.familylawweek.co.uk/site.aspx?i=ed46085>

<sup>79</sup> See, for example, *R (A) v LB Croydon* [2009] UKSC 8, paragraph 33, at <http://www.familylawweek.co.uk/site.aspx?i=ed46085>

<sup>80</sup> *R (FZ) v London Borough of Croydon* [2011] EWCA Civ 59, at <http://www.familylawweek.co.uk/site.aspx?i=ed79599>

in a contested factual hearing. If so, permission should be refused; if not, permission should normally be granted, subject to other discretionary factors”.<sup>81</sup>

If permission is granted by the Administrative Court the case is then transferred to the Upper Tribunal which hears the evidence and reaches a decision in relation to the age of the child.

In *R (CD) v Cardiff City Council*<sup>82</sup> the Court of Appeal considered which, if any, party bore the burden of proof in an age dispute case and at paragraph 23 of the decision, Pitchford LJ held that “The application of a legal burden of proof is not the correct approach. There is not a hurdle which the claimant must overcome. The court will decide whether, on a balance of probability, the claimant was or was not at the material time a child. The court will not ask whether the local authority has established on a balance of probabilities that the claimant is an adult; nor will it ask whether the claimant has established on a balance of probabilities that he is a child”.

### **Evidence before the Court**

The court will review the assessment(s) conducted by the local authority, as well as any other information about the child or young person held by the local authority. Social services records are expected to be disclosed to the young person for consideration in advance of the hearing together with the assessing social workers’ handwritten notes of the age assessment. Notes taken by the appropriate adult will also be requested.

The child’s own evidence about his or her own age and his or her own history will also be part of the evidence that the Administrative Court or Upper Tribunal will take into account and there is a general expectation that a young person will give oral evidence to the court. Whether or not a young person should give evidence orally will be a matter for the judge.

The child’s solicitor or barrister may also seek further expert evidence from an independent social worker or a country expert, as well as evidence from other relevant sources, such as foster carers, advocates and others who have worked with/cared for the young person. It is for the judge to accord what weight s/he wishes to give to that evidence.

The child may also be able to produce documentation such as a birth certificate, passport or identity card. However, the Administrative Court or Upper Tribunal may take into account the fact that it may be difficult to authenticate such documents when they have been obtained from countries where bureaucratic processes are undeveloped or corruption is

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<sup>81</sup> As judicial review is a discretionary remedy, permission may not be given if the decision on age has become merely academic.

<sup>82</sup> *R (CD) v Cardiff City Council* [2011] EWCA Civ 1590, at <http://www.familylawweek.co.uk/site.aspx?i=ed79599>



widespread. In such cases an independent country expert may be called on the child's behalf and his or her evidence is likely to be given weight by the court as long as the expert has the necessary experience and knowledge of that country and its processes.

It will also take into account the fact that a passport or other document may have been issued by an official authority but as the result of a bribe. It should also remind itself that authentic documents issued abroad may be on poor quality paper and contain spelling and other errors.

A local authority should also take into account that the reliable authentication of identity documents can only be undertaken by someone with the necessary expertise and experience of assessing foreign documents and that it is not sufficient to rely on employees charged with checking the authenticity of documents generated in the United Kingdom. In addition, a document should not be doubted merely because some other parts of a child's account have not been found to be credible.<sup>83</sup>

In some cases the local authority may be assisted by a Home Office Country of Origin Report or reports provided by organisations such as UNICEF, the UN Committee on the Rights of the Child or Human Rights Watch, but these reports are unlikely to provide more than very general information about the availability of certain documents in the country in question.

## Medical Evidence

*The Health of Refugee Children – Guidelines for Paediatricians*<sup>84</sup> considered the role of physical characteristics in the process of age assessment. It concluded that “age determination is extremely difficult to do with certainty, and no single approach to this can be relied on. 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 5 years either side”.

In addition, in the case of *A v London Borough of Croydon and Secretary of State for the Home Department (as an interested party)*<sup>85</sup> Dr. Stern gave evidence which was accepted by the Court. In particular, he advised the court that “height is particularly difficult to use as a reliable indication of age since much will depend on the height of each parent”. He also said that in his view there was “no reliable scientific basis for the estimation of age” and “all the factors relied on to assess age in reality can only assess maturity and maturity and

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<sup>83</sup> <https://tribunalsdecisions.service.gov.uk/utiac/2015-ukut-429>

<sup>84</sup> The Royal College of Paediatrics and Child Health, 1999 - [berks.proceduresonline.com/pdfs/health\\_refugee\\_children.pdf](https://berks.proceduresonline.com/pdfs/health_refugee_children.pdf)

<sup>85</sup> *A v London Borough of Croydon & SSHD; WK v SSHD & Kent County Council* [2009] EWHC 939, at <http://www.familylawweek.co.uk/site.aspx?i=ed35432>

chronological age are two different things". He added that many asylum seekers from developing countries have been subjected to deprivation and some to severe psychological stresses. Therefore he would expect that they would have both younger psychological profiles and/or earlier measures of physical maturity than their true chronological age".

The Royal College of Paediatrics and Child Health and the British Dental Association have advised their members that x-rays, including dental x-rays, should not be used to assess a migrant child's age unless the x-ray has been taken for a therapeutic or medical reason.

Local authority social workers should take into account the fact that any weight they place on physical characteristics of a child is also likely to be subject to the same wide margin of error. Evidence of a child's physical development recorded over a period of months or years may be useful, but is unlikely to be available to social workers at the point of assessment.

### **Disputes between local authorities**

Disputes have arisen between local authorities about who is responsible for assessing the age of a child when he or she has been moved between two or more local authority areas. In the case of *R (on the application of Liverpool City Council) v London Borough of Hillingdon & another*<sup>86</sup> the Court of Appeal held that after the young person had been released from Harmondsworth Immigration Removal Centre, the London Borough of Hillingdon should have conducted an age assessment and also a full assessment of his needs for the purposes of Section 20 of the Children Act 2004, even though the young person had previously been assessed by Liverpool.

However in *R (on the application of A) v Leicester City Council and the London Borough of Hillingdon*<sup>87</sup>, a case in which the claimant child had moved from one authority's area to the other and there was no dispute about her age, HHJ Farmer QC held that concurrent duties were owed. The possibility that this could be the case in age assessment cases was raised but not resolved in *R (on the application of Liverpool City Council)* and also in the later case of *The Queen on the application of HA v London Borough of Hillingdon and Secretary of State for the Home Department*<sup>88</sup>. Therefore, a local authority should conduct an age assessment for any child who comes to their attention where there is significant reason to doubt the age claimed even if the child has moved from another local authority area before an age assessment is conducted.

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<sup>86</sup> *R (on the application of Liverpool City Council) v London Borough of Hillingdon & another* [2009] EWCA Civ 43, at <http://www.familylawweek.co.uk/site.aspx?i=ed32527>

<sup>87</sup> *R (on the application of A) v Leicester City Council and the London Borough of Hillingdon* [2009] EWHC 2351

<sup>88</sup> *The Queen on the application of HA v London Borough of Hillingdon and Secretary of State for the Home Department* [2012] EWHC 291 (Admin), at <http://www.independentageassessment.co.uk/caselaw/HA%20v%20Hillingdon%20and%20SSHD%202012.pdf>

The Age Assessment Joint Working Guidance published by the Association of Directors of Children Services and the Home Office in April 2015 offers a process to follow when there is a dispute between local authorities.<sup>89</sup> Local authorities may find it useful to consult this and agree between them which body will take responsibility, but this guidance is not statutory or case law and the courts may make a decision around responsibility for an assessment which does not fit within this guidance.

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<sup>89</sup> ADCS and Home Office Age Assessment Joint Working Guidance:  
[http://adcs.org.uk/assets/documentation/age\\_assessment\\_joint\\_working\\_guidance\\_april\\_2015.pdf](http://adcs.org.uk/assets/documentation/age_assessment_joint_working_guidance_april_2015.pdf)