

# Refugee and Migrant Children's Consortium

## Age assessment proposals in the New Plan for Immigration June 2021

### Introduction

The age of a child or young person is not only a fundamental aspect of their identity but also determines how they are able to participate and develop as members of society. As well as being a means of marking growth and maturity, chronological age in the UK is intrinsically linked to their legal rights.

However, the concept of childhood differs across the world, as does the importance placed on chronological age in general, and the means of recording it. In some countries births are not always registered and age may not be celebrated or marked in the same way across the globe nor is it allocated the same degree of importance as it is in the West, with different measures used in certain communities to mark different life stages and transitions.<sup>1</sup>

This divergence of approaches to registration and celebration of birthdays has given rise to a problem specific to children subject to immigration control who come to the UK on their own from countries such as Afghanistan, Sudan and Eritrea. Many children and young people claiming asylum or making other immigration applications in the UK are unable to prove their date of birth with official identity documents, such as a passport or birth certificate, because they have either never had them in the first place, or have had to destroy them en route. Some may have had to travel using false documentation as the only means of leaving their countries, or some may have used false documentation provided by smugglers and traffickers. This documentation may suggest that a child is an adult even when they are not, particularly as smugglers and traffickers may consider that a child is more likely to attract attention from immigration officials. Disputes over age can also arise because of a lack of understanding of the way in which dates of birth and calendars are calculated in other countries and cultures, and associated confusion and misunderstandings over what is being said by a child about his or her age.

In the absence of documentation, it is extremely difficult to determine a child's age accurately, especially on appearance alone, and this is all the more so where children from different countries are concerned. Even those from similar ethnic backgrounds who have grown up in the same social and economic environment may display significant physical, emotional and developmental differences. These differences can be exacerbated by experiences of adversity, conflict, violence and the migration process.

Despite the widely recognised difficulties in assessing age, many children are subject to age assessment procedures. Why? Because the question of age for children in the immigration system in the UK is of great importance to those working with them, determining how an individual is to be treated both in the immigration and asylum process and also with regards to their social care. Not only does age go to the heart of a young person's identity, it determines how or whether they are supported by children's services; their access to education; whether they are provided with asylum support by the Home Office and dispersed to a different part of the UK; and whether they are accommodated or detained with adults. Age also determines how their asylum or immigration application is processed and decided and forms a key part of how their credibility is perceived in this context. In the consideration of asylum claims from persons seeking protection from persecution and other forms of human rights violations, international law and guidance recognises the particular vulnerabilities of children.<sup>2</sup> For unaccompanied children in the immigration system, age is fundamental to their receiving the support and protection they need.

Successive UK governments have framed the need to carry out age assessments as an issue of safeguarding, emphasising concerns that adults may be incorrectly placed in accommodation with vulnerable children to whom they may pose a danger. Safeguarding is indeed a key issue – but the greater risk is to children being treated incorrectly as adults. While it may be undesirable for someone in their early twenties to be placed in accommodation with teenagers, the risk of this must be weighed against the risk of having individual children as young as 14 placed in immigration detention, or alone in accommodation with adults of all ages.<sup>3</sup> Occasionally there may be young adults treated as children, but given the supervision and care provided in children's placements, that is a lower risk and far safer than children being treated as adults and placed in places where there are no safeguarding measures or supervision because in these circumstances the authorities deny that there is any doubt about their age.

Furthermore, a significant number of disputes are not over whether the individual is a child or an adult, but over the exact age of the child, for example, whether they are 15 or 17. The significance of age in this context relates to whether the child is under or over 16, an age which often has implications for the level and type of care a child receives under the Children Act 1989. Placement decisions should be based on need, however many children seeking asylum over the age of 16 will be placed in unregulated semi-independent accommodation with more limited support rather than in family based foster care. It will also have an impact on leaving care support – particularly for those young people who do not meet the 13 week criteria. Years can be spent in dispute over the question of a year or two, while all the time the child potentially receives an inadequate form of support, and instead has to battle with the very people tasked to look after them.

The age assessment process itself can also cause a lot of anxiety, confusion and frustration to many vulnerable children and young people, and have a negative impact to their already poor mental health. It can prevent them from accessing school or college whilst their age is disputed, and isolate them from peers and prevent them from integrating and accessing educational opportunities. Many young people RMCC members work with do not understand the process, and feel humiliated and damaged by it. The process itself has the potential to be quite re-traumatising, and impact children and young people's sense of identity.

There are around 5,000 unaccompanied children looked after by local authorities in England – most (85%) are aged 16 and 17.<sup>4</sup> In 2020 and 2019, there were 2,291 and 3,775 asylum applications from unaccompanied children respectively.<sup>5</sup> In that period, 1,530 individuals had their ages challenged and, of those where an assessment was concluded, 50% were found to be children at the initial social work assessment. Statistics are not available to show how many of these decisions were later overturned, following advocacy and/or finding of fact reviews by judges.<sup>6</sup>

Government statistics on age disputed cases do not include those applicants who claim to be children but who are treated as adults under Home Office policy. This used to state an individual could be treated as an adult if in the opinion of an Immigration Officer “their physical appearance and/or general demeanour very strongly indicates that they are significantly over 18 years and no other credible evidence exists to the contrary”. The wording was changed in May 2019 to “very strongly suggests that they are 25 years or over”.<sup>7</sup> Since no statistics exist to count the number of young people to whom this policy is applied, it is also not known how many of these initial decisions are overturned by social workers following assessments. With the increase of ‘short form’ assessments being undertaken, there has been a worrying trend of young people deemed adult on the basis that they are over 18,<sup>8</sup> as the social workers are not bound by the ‘over 25’ policy, despite conducting abbreviated assessments which, according to case law, should also allow for a margin of error.<sup>9</sup> These ‘short form’ assessments are also contrary to the Association of Directors of Children’s Services guidance<sup>10</sup> which clearly states that the process must be holistic involving agencies beyond the local authority.

Age assessments can be controversial, and subject to much discussion over best practice in the UK and across countries that face the issue of protecting lone undocumented children. It may be necessary (though it not obligatory – see page 9 below) for social workers to conduct age assessments 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 assessments, with evidence and input from other agencies. While for age assessments to be truly holistic other professionals must be involved,<sup>11</sup> it remains the case that they are a function of the child protection/safeguarding system. Any changes to the current system must consider (a) the devolution settlements in Northern Ireland and Scotland; and (b) the local authorities’ obligations to act in the best interests of the child.

There is still much work needed to ensure that the age assessment process is fair, holistic and works in the best interests of children. Exceptional cases should not shape the whole system for children who do not have proof of their age, and should not excuse a process that does not adequately consider the needs and rights of children within it.

**Any age assessment proposal should have the following principles (taken from existing international and domestic law and guidance)<sup>12</sup> at their core:**

1. Age assessment procedures are only to be undertaken as a **measure of last resort** when there are grounds for serious doubts and where other approaches have failed to establish the individual's age.
2. Where conducted age assessments should only be undertaken taking the **best interests of the child as a primary consideration**.
3. **A holistic assessment of capacity, vulnerability and needs** that reflect the actual situation of the young person is **preferred to reliance on procedures aimed at estimating chronological age**.
4. When an age assessment is conducted, a process must be developed that allows for a **holistic, impartial multi-agency approach**, conducted over an adequate period of time, drawing on the expertise of those who play a role in the child's life, including health professionals, psychologists, teachers, foster parents, youth workers, advocates, guardians and social workers.
5. Where doubts remain about the child's age after an assessment, the asylum-seeker is to be given **the benefit of the doubt** and assumed to be a child. This should include cases where the margin of error allows for the possibility that the individual is under 18 years old.
6. Age assessment must be carried out in a **safe, child- and gender-sensitive manner with due respect for human dignity**. The **least invasive option** should be followed which balances physical, developmental, psychological, environmental and cultural factors.
7. Age assessments also need to take into account the **ethnic and cultural background** of the child.
8. A person claiming to be under the age of 18 should be **treated as a child** and benefit from the rights of a child unless this would be clearly unreasonable.
9. Procedures on age assessment need to be clear and transparent.
10. Age assessment should **not be carried out immediately upon arrival** of separated or unaccompanied children in border areas and/or on the territory since time is crucial in building trust and allows for proper recollection and sharing of information about the child's own story which is useful in establishing his or her age.
11. No method can determine age definitively. Hence, **there will always be a margin of error**.
12. Medical age assessment methods are highly contested and are subject to a high margin of error. UNHCR does not support the use of medical age assessment methods in its own operations.
13. Assessments are **overseen by an independent guardian** who is present if requested to attend by the individual concerned.
14. There must be a **procedure to appeal** against the decision as well as the necessary support to do so. This should include access to legal assistance and assistance for a child to understand their rights.
15. Should the age assessment conclude that the young person is not a child, the applicant should be **provided assistance and protection based on a comprehensive assessment of their protection needs and vulnerabilities**.

## Comments on specific proposals in the New Plan for Immigration

### 1. The role and functioning of a National Age Assessment Board (NAAB)

The Home Office is proposing the development of a new Age Assessment board, the functions of which would include “carrying out direct age assessments itself where required or where invited to do so by a local authority” and “acting as a first point of review for any local authority age assessment decision”. The intention would be that any assessment carried out by the NAAB would be binding on both the Home Office and local authority. The Home Office’s hope is that the NAAB could increase the quality of age assessments conducted and provide support to local authorities.

The NAAB would be made up of social workers skilled in undertaking age assessments, and would be as ‘independent as possible’<sup>13</sup> but would be located in the Home Office. The RMCC has significant concerns about this board not being truly independent and not being hosted by a body able to provide professional supervision and oversight. It is not clear how the decisions of the NAAB can be binding without amending key child protection legislation such as the Children Act 1989, and the RMCC remains very concerned about any measures that would put children seeking asylum outside of the child protection system. It also remains unclear how the NAAB would operate in devolved jurisdictions given that children’s social care is devolved and how, on a very practical level, it would conduct age assessments that were truly holistic across the country.

### 2. Criteria, process and requirements for assessing age

The government is proposing that the NAAB would “set out the criteria, process and requirements to be followed to assess age, including using the most up to date scientific technology.” These criteria would then be set out in secondary legislation.

Currently the criteria, process and requirements to be followed by local authorities when assessing age are already set out in the Association of Directors of Children’s Services (ADCS) Age Assessment Guidance<sup>14</sup> and in age assessment practice guidance written by a multi-agency working group and published by the Scottish government in March 2018.<sup>15</sup> There is a Welsh age assessment toolkit published by the Wales Strategic Migration Partnership.<sup>16</sup>

It is unclear what problem the government is trying to solve with its proposal to set out new criteria. We are concerned by the suggestion that current variation in age assessment practice between local authorities can be addressed by merely ‘simplifying’ the process. The guidance around age assessments is detailed because the process is complicated and nuanced<sup>17</sup> – this complexity cannot simply be written away in legislation. For example, the ADCS guidance was written over a number of months by a group of specialist social workers and practitioners from local authorities and non-governmental refugee and legal sectors and was overseen by a group that included representatives from the Home Office, Department for Education, Department of Health, Office of the Children’s Commissioner for England, Royal College of Paediatrics and Child Health, United Nations High Commissioner for Refugees, National Policing, Refugee Children’s Consortium and Refugee Council. The guidance could usefully be updated to reflect any developments in case law since 2015, but, in light of recent movements towards more

single-agency short-form assessments, it is vital that the guidance's multi-disciplinary approach is maintained and any developments uphold the 15 principles noted above.

We are also extremely concerned about any changes to age assessment criteria being introduced via secondary legislation. Concerns have repeatedly been raised about the use of delegated powers and statutory instruments (SI) by government to amend laws without first facing detailed parliamentary scrutiny<sup>18</sup> – while SIs have the 'technical approval' of parliament, scrutiny is often perfunctory, particularly for those passed under the negative resolution procedure.

Rather than aiming to actually help local authorities understand the process and improve their practice (which could be achieved through improved multi-agency working and better support and training for all involved) this proposal appears to be a vehicle for the government to legislate on issues in which there is controversy and which have been challenged in the past – for example, on the use of 'shortened' (visual) age assessments (see below for more on this).

### **3. Using scientific methods to assess age**

The new age assessment criteria set out by the NAAB would include, according to the NPI, "using the most up to date scientific technology". The question of whether to use scientific methods to assess age is periodically revisited by Ministers often with little or no references to debates that have been had previously on this issue.<sup>19</sup> Professional medical bodies are unequivocal in their rejection of the use of scientific methods to assess age. The British Dental Association has voiced its opposition to the use of dental x-rays<sup>20</sup> and the Royal College of Paediatrics and Child Health's current guidance states:

*"The use of radiological assessment is extremely imprecise and can only give an estimate of within two years in either direction, and the use of ionising radiation for this purpose is inappropriate. The British Society for Paediatric Endocrinology and Diabetes are clear that it is not possible to accurately assess a child's age based on physical examination or bone age assessment... dental x-rays, bone age and genital examination will currently not add any further information to the assessment process."<sup>21</sup>*

The use of dental x-rays as part of an age assessment process has also been considered in a number of legal judgments in the Upper Tribunal which found that the use of dental X-rays in assessing age is unreliable and of no assistance to judges or social workers in determining age (save in unusual circumstances involving a very young child).

While it is true that scientific methods are used in some European countries, there are an increasing number of decisions in Europe that scientific methodology is not sufficiently sound to be relied upon.<sup>22</sup> Furthermore, the Council of Europe has made clear that:

*"There is a broad consensus that physical and medical age assessment methods are not backed up by empirically sound medical science and that they cannot be assumed to result in a reliable determination of chronological age. Experts agree that physical and medical age assessment methods enable, at best, an educated guess. In addition*

*to the scientific weaknesses and inaccuracy of age assessment methods, several methods have been evidenced to have a harmful impact on the physical and mental health and wellbeing of the person undergoing age assessment ... the use of invasive medical exams should be reduced to a minimum and has to remain a measure of last resort.*<sup>23</sup>

The report notes that the use of potentially harmful ionising radiation for the purpose of age assessment, involving exposure to radiation for non-medical purposes for no therapeutic benefit, is in conflict with medical ethics and potentially unlawful, and that examination of genital maturity should never be used as “this may amount to inhuman and degrading treatment”<sup>24</sup>

It has long been clear that scientific methods are not a ‘silver bullet’ for solving the question of age. In the European context, the UK’s approach has been seen as a gold standard and it is unclear why the government wishes to depart from this in the absence of any new scientific techniques that could be used safely and accurately as part of a holistic, multi-agency age assessment. In light of the long standing evidence and positions held by professional bodies against the use of scientific techniques to assess age in the UK, it is unclear how this proposal would be taken forward. We welcome though the Home Office’s commitment that if any new method was identified it would need to “go through processes to ensure that it was accurate, reliable and received any necessary ethical clearance”.<sup>25</sup>

#### **4. Legislating on front-line immigration officers making initial assessments of age**

Charities supporting young refugees have worked for over two decades on this issue, including through various stakeholder groups with the Home Office through which it has been urged to amend its Asylum Instruction to emphasise that a person’s age cannot be assessed based solely on their physical appearance and to highlight to operational staff the serious safeguarding implications of using the policy to treat a putative child as an adult. Long-standing concerns have also been raised about the Home Office not collecting or publishing statistical information on the number of persons claiming to be children whom the Home Office treated as adults.

Home Office policy falls far short of what would be deemed a lawful assessment in the social care context, as it only involves examining appearance and demeanour. It is widely recognised that physical appearance is not an accurate basis for the assessment of a person’s age. Within different ethnic and national groups there are wide variations in young people’s growth and ages of puberty, and young people may look and act older than they are because of their experiences in their country of origin, or difficult journey to the UK.

The UN Committee on the Rights of the Child has stressed that age assessments ‘should not only take into account the physical appearance of the individual, but also his or her psychological maturity’.<sup>26</sup> The UN High Commissioner for Refugees (UNHCR) *Guidelines for Unaccompanied Children Seeking Asylum* emphasise that age assessment needs to be part of a comprehensive assessment that takes into account both the physical appearance and the

psychological maturity of the individual.<sup>27</sup> Unicef's *Age Assessment: A Technical Note*<sup>28</sup> includes the following standard: 'Age assessments should only be undertaken by independent and appropriately skilled practitioners'. It states:

*"Age assessment outcomes are not exact but this does not mean that the procedures are not technically detailed or that they do not need to be applied without skill and sensitivity. To this end age assessment procedures must only be undertaken by professionals with an appropriate specialist training, knowledge and expertise in a relevant field. It is not appropriate for officials involved in the decision-making or lacking expertise, amongst others, the police, immigration officials, prison officers, judges or other lay personnel etc. to undertake assessments."*

On 16 March 2021 the Supreme Court heard the Secretary of State's appeal in *BF (Eritrea) v Secretary of State for the Home Department*. The case concerns the lawfulness of the Secretary of State's initial age assessment policy<sup>29</sup> which provided that where an individual's "*physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age and no other credible evidence exists to the contrary*"<sup>30</sup> they could be treated as an adult.

This case involved a young Eritrean who arrived in the UK in March 2014 and said he was 16. Immigration officers believed that he was substantially over 18 and he was held in immigration detention until September 2014, and again from January to March 2015. In September 2015 an assessment carried out by two independent social workers found his date of birth to be as claimed by him on arrival.

The Court of Appeal highlighted the damaging effects of children being detained and that the detention of a child is 'positively unlawful'. It found that the original policy at the time of detention, as well as the amended policy, regarding the assessment of the age of young asylum-seekers who claim to be under 18, as expressed in paragraph 55.9.3.1 of the Enforcement Instructions and Guidance and the relevant parts of Asylum Instruction Assessing Age "does not properly identify the margin of error inherent in the conduct of initial [age] assessments... [and] creates a significantly greater risk than would otherwise arise of children being unlawfully detained as adults."

As we await the Supreme Court decision in *BF (Eritrea)* and in light of the well documented difficulties of trying to assess whether someone is under or over 18 based on appearance, we can see no value to legislating on this issue. It will not, and cannot, make the process any more reliable and simply creates unnecessary risk. The fact that the government is considering simply ignoring the forthcoming Supreme Court decision, and legislating so that lower courts will have to ignore it too, given that it knowingly incurred the cost of appealing that case raises significant questions about the rule of law and wasting public funds.

Furthermore, no quantitative evidence has been provided to back up the government's argument that the current 'over 25 years of age' policy is resulting in individuals who are adults being referred to children's services and putting children at risk.

## **5. A duty on local authorities to undertake full age assessments**

Statutory guidance currently makes clear that:

*“Where an age assessment is required, local authorities must adhere to standards established within case law. Age assessments should only be carried out where there is reason to doubt that the individual is the age they claim. Age assessments should not be a routine part of a local authority’s assessment of unaccompanied or trafficked children. Further advice and practice guidance can be found in the Age Assessment Guidance, published by the Association of Directors of Children’s Services (ADCS) in October 2015”<sup>31</sup>*

RMCC members report that their local authority partners regularly expressed frustration over having to conduct age assessments when Home Office caseworkers challenge their view that they see no reason to doubt a young person’s age. Introducing a requirement undermines the specialist knowledge and experience needed by social work professionals, whilst tying them up in unnecessary age assessment processes at the expense of their stretched resources.

We understand that the Home Office proposal to create a “requirement on Local Authorities to either undertake full age assessments or refer people to the NAAB for assessment where they have reason to believe that someone’s age is being incorrectly given” would essentially aim to bring the existing duty into legislation. We cannot see the benefit of legislating on this issue, and it could give rise to issues in the devolved nations, but if the government goes ahead it is vital that legislation reflects the current thresholds in statutory guidance.

It is also important to remember that section 51 of Modern Slavery Act 2015<sup>32</sup> (and section 12 of the Human Trafficking and Exploitation Act (Scotland) 2015) makes clear that where the age of a person is uncertain and there are reasons to believe they are a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection. The RMCC believes this should apply to all children in this position.

## **6. A statutory appeal right against age assessment decisions**

In the absence of any process of mediation or arbitration by which disputes about age can be resolved, the only recourse is legal challenge by way of judicial review. This can be expensive for local authorities. It is stressful for children and young people, whose lives are left in limbo as they wait for a final decision, which in some cases can take years.

Since the 2009 Supreme Court judgment, *A v Croydon*,<sup>33</sup> it ultimately falls to the court to make its own finding as to the fact of a young person’s age. This judgment appeared to offer a means by which age disputes could be resolved without the need for repeated age assessments by social services and was also intended to run alongside improvements in local authority age assessment processes. The Supreme Court stated that it would not inevitably result in an inappropriate judicialisation of the age assessment process because it was hoped that ‘the fact the final decision rests with the court will assist in reducing the number of challenges’.<sup>34</sup> However, the experiences of those who have had to take part in a fact-finding hearing illustrates that the process can still be prolonged and harmful for those involved, and that also some

judicial age assessments will inevitably not be any more accurate or reliable than those carried out by local authorities.<sup>35</sup>

The government is now looking to address the fact that the only challenge to an age assessment is by way of judicial review and is looking at a statutory right of appeal to the First Tier Tribunal (Immigration and Asylum) (FTT) as a means by which all age assessments conducted by local authorities or the NAAB could be challenged (including short form assessments and a refusal by the local authority to age assess) on the grounds that the outcome of the age assessment resulted in the denial of services under the Children Act 1989. We understand it is the Home Office's intention that this would be coupled with the possibility of applying for interim relief (through which support and accommodation would be provided to the young person pending the hearing) and bringing an appeal would be within the scope of legal aid. The FTT would still be making a finding of fact, the standard of proof ('balance of probabilities') would remain the same and if the FTT makes an error of law the case would go to Upper Tribunal.

One of the aims of introducing this right of appeal would be to ensure access to justice in a more child-friendly timeframe.

The RMCC urges the Home Office to consider the following issues when working with the Ministry of Justice and judiciary on these proposals:

- The right of appeal would not apply to age assessments decisions made by immigration officers. The Home Office proposals are based on the young person subsequently requesting an assessment from the local authority and then appealing if it refused. This places a significant additional burden on local authorities. It also will struggle to work in practice. What happens if the local authority refuses to engage, either verbally or in writing? Is that subject to the statutory appeal? Furthermore, the government wants to divert away from judicial review but if Home Office officials will be doing initial assessments these will still be challengeable via judicial review, and will often be the only remedy if the local authority refuses to engage.
- Our experience of these cases in the Upper Tribunal suggests that judges may be uncomfortable with these cases. Judges will need broader support and training.
- There are broader issues about how this interacts with detention, inadmissibility policies, and the substantive asylum claim. Will young people be released from detention if they appeal the age assessment, or only if they seek interim relief? Will the asylum claim be paused pending the outcome of the appeal, so that young people do not lose out on the child-friendly safeguards of the asylum process? Will asylum decisions be put on hold pending the appeal outcome to ensure that the correct law is applied to their case?
- The above concerns would indicate that any statutory appeal would require priority in terms of the tribunal procedure to ensure that it does not unduly delay the processing of asylum claims.
- Appeal deadline – currently, a judicial review can be lodged within 3 months of the decision (although should be lodged as soon as possible), while the asylum appeal limit is 14 days. We would suggest that much longer than 14 days is appropriate. Age

assessments, particularly short-form assessments, usually happen when the young person has recently arrived in the country, had no recovery time, is bewildered by the situation, and has not accessed a lawyer or any independent advocacy. They may have a fleeting interaction with social work services. After a negative age assessment, they are often then dispersed to another part of the UK where they have no connections. A short appeal period would be almost impossible to comply with in practice.

- The matter of jurisdiction requires consideration. For example, if a young person is age assessed in England by a local authority, and then dispersed to Scotland where they access legal advice, the appeal would presumably be heard at the FTT in Scotland. This isn't a problem from the FTT procedure rules perspective. However, local authorities would be required to understand that they may be defending appeals across the four nations.
- Related to the above, will there be provision for a permission to appeal test to be applied from the Upper Tribunal to the Court of Appeal and Court of Session?
- Where interim relief is sought, and a young person has been dispersed or moved elsewhere following a negative age assessment, it would be helpful to clarify which local authority provides the looked after and accommodated service.

## Case studies

### **T (supported by South London Refugee Association (SLRA) in 2020 – present)**

T is 16 years old and arrived in the UK in June 2020. He told the Home Office that he was 16, however, he was deemed 'significantly over 25' by the Home Office. He was placed in asylum accommodation, in a hotel amongst much older adults.

He came to SLRA in September, brought by an older Afghan man who he had met in the Mosque. He was timid, scared and had no idea what to do to resolve his situation. SLRA immediately made a safeguarding referral to the local authority (LA) requesting that a full and proper age assessment be carried out. When the LA refused, they found him a community care solicitor in order to put pressure on the LA to fulfil their legal duty and do an age assessment.

However, whilst this was happening, T was transported to Napier Barracks. Some of the other people refused to get off the bus when they arrived at the Barracks, but police officers were called to physically escort them off the bus. T was terrified, and was sharing bathroom and toilet facilities with many people much older than him. The barracks were totally unsuitable for a child. He had no access to a key worker, social services and was at risk of mistreatment.

Eventually the local authority agreed to conduct a full age assessment and to treat him as a looked after child in the interim period. They brought him back from Napier Barracks and moved him to accommodation which was suitable for a 16 year old, and he now had the necessary support from a key worker and social worker.

Once the full age assessment was eventually completed, T was found to be 16 which meant that he could continue to access the full local authority support he was entitled to.

**S (supported by the British Red Cross since November 2019)**

S, a young woman from Eritrea, arrived in the UK in September 2019. She informed the Home Office that she was 16 years old and she was referred to a local authority in London who completed a 'short age enquiry' instead of a full age assessment. They concluded that she was 23 years old and she was then dispersed to asylum support accommodation in the North of England.

Whilst S was accommodated in initial accommodation, she came into contact with the British Red Cross. S was confused and did not know whether an age assessment had ever been completed and whereabouts she had been in the UK. S was finding it very hard living in the adult accommodation and was sharing a room with an older woman. She found it hard to eat or sleep and was regularly having nightmares.

The British Red Cross contacted the local authority where she was being accommodated by the Home Office. S was then suddenly moved to different asylum support accommodation in the North in another town. After several unsuccessful attempts to obtain a copy of the original age enquiry form, a community care solicitor became involved. This resulted in S being accommodated by the original local authority in London in March 2020 and being placed in foster care while a full age assessment was completed.

Due to Covid-19, that age assessment was delayed for 15 months and was finally completed in June 2021. The age assessment concluded that S was 16 at the time of the initial age enquiry and therefore she is now receiving ongoing support as a care leaver. S is so relieved that the age assessment has finally been completed and her age has been believed. However the lengthy process, delay and disruption has been very difficult for and she has often been anxious about what would happen. Since moving in with her foster carer she has felt so much more supported, she said she is a 'really good woman who guides me like a mum, makes me feel comfortable and helps me with everything like my GP, school and anything I need'.

**F (supported by Greater Manchester Immigration Aid Unit and Social Workers Without Borders)**

F arrived in the UK in a lorry in November 2020 was held in Home Office Kent Intake Unit for two days. Whilst there he placed in adult accommodation after an age assessment at Kent Intake Unit and then placed in Yarl's Wood detention centre before being moved to adult accommodation in a hotel, before he was finally age-assessed again by the local authority and placed in foster care, following an intervention from GMIAU and SWWB. He described his experience as follows:

*"Whilst I was here [in Home Office Kent Intake Unit] I remember being asked some questions about my age and how I had got to the UK. There were two ladies at one point who came and looked at me and seemed to be looking at my height and body. It was just me, the two ladies and a telephone interpreter. They weren't with me for very long – I'm sure it was only about 10*

to 15 minutes but I have been told that the assessment document states it was longer (about an hour).

I tried to answer the questions they asked me but I didn't understand what was happening and I didn't know all of the answers. It was very confusing and I was really tired. I hadn't slept for a long time and was also very hungry. It had been a long time since I had had a shower and they didn't allow me to take any rest before asking me lots of questions. I am told they have said I didn't provide information but I answered whatever I could. These two ladies told me that they didn't believe I was 15 years old and that they were going to say I was 22 years old. They didn't explain to me why they didn't believe my age and they didn't give me any paperwork.

I was then taken to a camp [Yarl's Wood]. I didn't know what this place was or why I was there but it was very scary. It was a very unpleasant place, I was very scared. We were not allowed to go out and the police officer would open the door to check on us and count us all... I think I was in this camp for about four days before I was then taken in a taxi to a hotel in Liverpool. No one explained to me what was happening and I didn't know where I was going or why. It was a big hotel with lots of people in there. They were all much older than me. There was no one else my age.

I was all alone and I spent most of my time in my room. I didn't know where to go or what to do. I was too scared to go outside. I was struggling to sleep whilst I was there because I was so scared of the older people who were there and anxious about being there. There was also a lot of noise, banging and loud music playing which also stopped me from sleeping and made me more anxious.

I tried to get help from the manager of the hotel if he could help me and maybe get me some games as I was very bored, alone and scared but he didn't. I often asked him to get an interpreter so I could try to explain to him why I needed help but he never did. I didn't have a mobile phone and I had begged him to let me use his just for half an hour but he wouldn't.

One day I was called by the hotel manager and told I was going to be moved... I was really scared because I didn't know where they were trying to send me. He called the police. The police came and told me that I had to go. I told them that I was scared and they said that I had to go and took me by force to this other accommodation. I was moved to a hostel nearby and I stayed there until my solicitor helped me to get my age accepted by Liverpool City Council.

I now live with a foster family and I am much happier. They have registered me for school and I am just waiting to start because of the difficulties with coronavirus but on a daily basis this foster carer is sitting with me and trying to teach me some English. I feel well looked after and safe now.

I have agreed to provide this statement because I don't want anyone else to go through what I had to go through. It was a horrible experience to have my age disbelieved, being sent to detention and then having to live in loud and scary hotel accommodation with lots of people."

### **K (supported by the British Red Cross from January 2021)**

K arrived in the UK in November 2020 from Iran and was held in a police station in Kent. He knew that he was 16 years old when he left Iran and told staff at the police station his date of birth. They explained that based on the date of birth he would have been 17 at that time. Some people believed him but there was one staff member who didn't. A woman then came to ask him questions about his age, he thinks she was from social services but he wasn't sure. The woman didn't believe he was 17 and thought he looked older. K had been living in 'the jungle' in Calais, had not properly washed for a long time and had grown a beard. After the lady left, he was questioned by staff and put under pressure to accept he was 18. He was very confused about what was happening and didn't understand what this would mean. The Home Office recorded his date of birth as 18, he was not referred to a local authority for a full age assessment and was dispersed into adult asylum support accommodation in a hotel.

Whilst in asylum support accommodation, K tried to get help and was finally given a number for the British Red Cross who referred him to one of their local young refugee projects. He was very scared as he was the only child in the hotel and was worried about the other people staying there who were all adults, some of them were taking drugs and were not 'good people' and he couldn't eat the food. He was relieved to finally speak to someone who was willing to support him and he asked for help to be urgently moved out of the hotel.

The young refugee project made a safeguarding referral to the relevant local authority regarding the young person and explained his situation. The local authority promptly arranged to visit the young person and during an initial 'brief enquiry', two social workers agreed that it was highly likely that K was the age he was claiming to be. In line with guidance they did not feel it was necessary to subject him to a lengthy and intrusive full age assessment process. K was immediately moved into semi-independent accommodation and provided with support under section 20 of the Children Act 1989. The local authority completed a full needs assessment and quickly took action to refer him to a GP, dentist, optician, immigration solicitor and supported him to enrol in college. He had also been suffering from asthma and had not received any medical support since arriving in the UK.

### **Case study of child seeking asylum (subsequently assessed to be 16) taken from UNCHR report '[A Refugee and Then](#)', 2019**

*"They put me in handcuffs, and took me to the police station. I was not well, I had a stomach bag [urine drainage bag]. I wasn't feeling well at all. They took me to the hospital. After that I was taken to prison. I stayed there for two days and on the third day a lady came and took me to the Home Office.*

[Q: You mentioned being taken to 'prison?' How were the conditions?]

*I have phobia of very small places. I was in a terrible state. They treated me well, but because I've got that fear, that was the main problem. [The cell was] very small. I was being asked a few*

*questions. People from the social services kept asking me, ‘why did I come?’ ‘How did I come?’ They ask me my age. I felt very angry because every time I talked about it [my journey] I remembered the whole experience. Everything from beginning to the end.*

[Q: Did they dispute your age at all?]

*Yes when I said 16 they said no you are over 18 and they started creating like little problems. And then they took me to the Home Office, and gave me a card to say that I was over 18 by a couple of months- they said I was born in 1998... I was very angry because they didn’t believe me, my real age.”*

The Refugee and Migrant Children’s Consortium (RMCC) is a group of over 60 NGOs working collaboratively to ensure that the rights and needs of refugee and migrant children are promoted, respected and met in accordance with the relevant domestic, regional and international human rights and welfare standards. For more information and a list of members, please contact Maya Pritchard, Co-Chair at [maya@slr-a.org.uk](mailto:maya@slr-a.org.uk)

For more information on the issues raised in this briefing, please contact Kamena Dorling at [kamena.dorling@article39.org.uk](mailto:kamena.dorling@article39.org.uk)

## Endnotes

<sup>1</sup> L. Brownlees & T. Smith, *Age assessment practices: a literature review & annotated bibliography*, UNICEF, 2011

<sup>2</sup> See UNCRC Articles 22 and 37(1); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; CRC General Comment Number 6 on the Treatment of Unaccompanied and Separated Children Outside their Countries of Origin; UNHCR Guidelines on International Protection Number 8: Child asylum claims under articles 1(a)2 and 1(f) of the 1951 convention and/or 1967 protocol relating to the status of refugees.

<sup>3</sup> See Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, p 13.

<sup>4</sup> <https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions/2020>

<sup>5</sup> <https://media.refugeecouncil.org.uk/wp-content/uploads/2021/03/22121107/Children-in-the-Asylum-System-Mar-2021.pdf>

<sup>6</sup> Home Office *Quarterly Immigration Statistics Year Ending December 2020*, Table Asy\_D05: Age disputes raised and outcomes of age disputes

<sup>7</sup> <https://media.refugeecouncil.org.uk/wp-content/uploads/2021/03/22121107/Children-in-the-Asylum-System-Mar-2021.pdf>

<sup>8</sup> [https://www.duncanlewis.co.uk/news/Judicial\\_Review\\_issued\\_challenging\\_Age\\_Assessments\\_at\\_Kent\\_Intake\\_Unit\\_\(12\\_February\\_2021\).html](https://www.duncanlewis.co.uk/news/Judicial_Review_issued_challenging_Age_Assessments_at_Kent_Intake_Unit_(12_February_2021).html)

<sup>9</sup> See *AB v Kent County Council 2020* <https://www.bailii.org/ew/cases/EWHC/Admin/2019/109.html>

<sup>10</sup> [https://adcs.org.uk/assets/documentation/Age\\_Assessment\\_Guidance\\_2015\\_Final.pdf](https://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf)

<sup>11</sup> As highlighted by BASW (British Association of Social Workers) and IFSW (International Federation of Social Workers)

<sup>12</sup> UNHCR, *Guidelines on Assessing and Determining the Best Interests of the Child*, 2018; UNHCR, *A Refugee and Then, Participatory Assessment of the Reception and Early Integration of Unaccompanied Refugee Children in the UK*, 2019; UN Committee on the Rights of the Child, *General Comment No 6. Treatment of Unaccompanied and*

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Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6; UNHCR and UNICEF, Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, October 2014; UNHCR, Observations on the use of age assessments in the identification of separated or unaccompanied children seeking asylum – Case No. CIK-1938/2014 – Lithuanian Supreme Court. See also N.B.F. v Spain, No. 11/2017

<sup>13</sup> Taken from further discussion between the Home Office and National Asylum Stakeholder Forum Children's Subgroup on 28<sup>th</sup> April 2021

<sup>14</sup> [https://adcs.org.uk/assets/documentation/Age\\_Assessment\\_Guidance\\_2015\\_Final.pdf](https://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf)

<sup>15</sup> <https://www.gov.scot/publications/age-assessment-practice-guidance-scotland-good-practice-guidance-support-social/>.

<sup>16</sup> <https://www.wlga.wales/wales-strategic-migration-partnership>. There is currently no age assessment guidance in Northern Ireland.

<sup>17</sup> And in England local authorities already need a cogent reason for departing from the ADCS guidance

<sup>18</sup> See, for example, Brexit and Children Coalition, Making Brexit work for children - The impact of Brexit on children and young people, November 2017, p 5-7 and Public Law Project's SIFT project findings, October 2020.

<sup>19</sup> In 2007, the Home Office consulted on a proposal for an automatic adverse inference to be drawn from an individual's refusal to submit to a dental age assessment (Planning better outcomes and support for unaccompanied asylum seeking children, Home Office, February 2007; the Home Office subsequently proposed, in September of that year, a new rule 352 of the Immigration Rules). In response to the consultation, multiple medical and professional bodies voiced strong opposition to the use of dental X-rays. On 28 March 2012, the Home Office announced its intention to pilot a trial with Croydon LBC to offer age-disputed young people the opportunity to undergo a DAA conducted by Professor Graham Roberts. This pilot proposal was later abandoned. In October 2016, the Home Office publicly ruled out the use of dental X-rays to assess the age of children arriving in the UK from Calais, criticising this approach as 'inaccurate, inappropriate and unethical' (Alan Travis, 'Home Office rules out "unethical" dental checks for Calais refugees', Guardian, 19 October 2016). See Legal Action Group, The end of dental x-rays in age assessments. <https://www.lag.org.uk/article/203643/the-end-of-dental-x-rays-in-age-assessments>

<sup>20</sup> [https://www.refugeecouncil.org.uk/latest/news/4482\\_dentists\\_warned\\_not\\_to\\_use\\_x-rays\\_to\\_attempt\\_to\\_judge\\_age\\_of\\_young\\_asylum\\_seekers/](https://www.refugeecouncil.org.uk/latest/news/4482_dentists_warned_not_to_use_x-rays_to_attempt_to_judge_age_of_young_asylum_seekers/)

<sup>21</sup> Royal College of Paediatrics and Child Health, Refugee and unaccompanied asylum seeking children and young people - guidance for paediatricians, 2018

<sup>22</sup> See, for example, OCHRRCR, Spain's age assessment procedures violate migrant children's rights, UN committee finds

<sup>23</sup> Council of Europe Children's Rights Division, Age assessment: Council of Europe members states' policies, procedures and practices respectful of children's rights in the context of immigration, 2017, para 129

<sup>24</sup> *Ibid*, paras 130 and 131

<sup>25</sup> Provided during further discussion between the Home Office and National Asylum Stakeholder Forum Children's Subgroup on 28<sup>th</sup> April 2021

<sup>26</sup> UN Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.unhcr.org/refworld/docid/42dd174b4.html>, para 31. See also UN Committee on the Rights of the Child, General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, available at: <http://www.unhcr.org/refworld/docid/4670fca12.html>, para 39.

<sup>27</sup> UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html> para 75

<sup>28</sup> Unicef, Age Assessment: A Technical Note, January 2013, available at: <http://www.refworld.org/docid/5130659f2.html>

<sup>29</sup> under Chapter 55.9.3.1 of the Enforcement Instructions and Guidance ("EIG").

<sup>30</sup> By the time the matter was before the Court of Appeal, the criterion had changed to include a requirement that two Home Office members of staff had separately assessed the person claiming to be a child. In the previous version, this was stated in a later paragraph. Substantively there were no material changes.

<sup>31</sup> Department for Education, Care of unaccompanied migrant children and child victims of modern slavery, 2017

<sup>32</sup> As UK has ratified the Council of Europe Convention on Action against Trafficking in Human Beings, the UK would be in breach of Article 10 of that Convention if they tried to amend section 51

<sup>33</sup> *R (A) v Croydon LBC* [2009] 1 WLR 2556

<sup>34</sup> *Ibid*, para 54

<sup>35</sup> Coram Children's Legal Centre, Happy Birthday? Disputing the age of children in the immigration system, 2013