

# Assessing age

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# 1. Introduction

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## 1.1 Purpose of instruction

This instruction sets out the policy and procedures to follow when an asylum applicant claims to be a child with little or no evidence, and their claim to be a child is doubted by the Agency.

Specifically, this instruction provides guidance on when it is appropriate to dispute an applicant's age; how age assessments should be conducted; sharing information with local authorities and handling age dispute issues during the end to end process, including substantive asylum interviews, refusal letters and appeals.

This instruction should be read in conjunction with the asylum instruction (AI) [Processing an asylum application from a child](#).

## 1.2 Intended audience

This instruction is intended for officers responsible for screening asylum seekers, case owners, presenting officers and senior caseworkers.

## 1.3 Definitions

**Child** - is defined as a person under the age of 18 years (this is in line with the UN Convention on the Rights of the Child and section 55 of the Borders, Citizenship and Immigration Act 2009).

**Unaccompanied Asylum Seeking Child** – is a child who is:

- applying for asylum in their own right; and
- is separated from both parents and is not being cared for by an adult who by law has responsibility to do so.

**Claimed date of birth** – the applicant's claimed date of birth.

**Estimated date of birth** – the UK Border Agency's assessed date of birth.

## 2. Assessing age - general policy

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As many asylum applicants who claim to be children do not have any definitive documentary evidence to support their claimed age, a decision on their age needs to be made. Many are clearly children whilst some are very clearly adults. In other cases the position is more doubtful and a careful assessment of the applicant's age is required. All available sources of relevant information and evidence should be considered, since no single assessment technique, or combination of techniques, is likely to determine the applicant's age with precision.

### 2.1 Initial age assessment

Where there is little or no evidence to support the applicant's claimed age and their claim to be a child is doubted, the following policy should be applied:

1. The applicant should be treated as an adult if their physical appearance / demeanour **very strongly suggests that they are significantly over 18 years of age**.

Careful consideration must be given to assessing whether an applicant falls into this category as they would be considered under adult processes, and could be liable for detention.

Before a decision is taken to assess an applicant as significantly over 18, the assessing officer's countersigning officer (who is at least a Chief Immigration Officer (CIO)/Higher Executive Officer (HEO)) must be consulted to act as a 'second pair of eyes.' They must make their own assessment of the applicant's age. If the countersigning officer also agrees to assess the applicant as significantly over 18, the applicant should be informed that their claimed age is not accepted and that their asylum claim will be processed under adult procedures. Form IS.97M should be completed, served, **and signed by the countersigning officer (CIO/HEO grade or above)**.

In general, the rest of this instruction does not apply to these applicants, since they fall to be considered under adult processes. Case owners should nonetheless review decisions to treat applicants as adults, if they receive relevant new evidence.

2. **All other applicants should be afforded the benefit of the doubt and treated as children, in accordance with the '[Processing an asylum application from a child](#) AI, until a careful assessment of their age has been completed.** This policy is designed to safeguard the welfare of children. It does not indicate final acceptance of the applicant's claimed age, which will be considered in the round when all relevant evidence has been considered, including the view of the local authority to whom unaccompanied children, or applicants who we are giving the benefit of the doubt and temporarily treating as unaccompanied children, should be referred.

The asylum process should not normally be delayed whilst a full decision on an applicant's age remains outstanding. This instruction sets out the safeguards in place to ensure applicants and their asylum claims are processed fairly throughout.

## **2.2 Section 55 of the Borders, Citizenship and Immigration Act 2009**

Section 55 of the Borders, Citizen and Immigration Act 2009 (named 'section 55 duty' hereafter) introduced a statutory duty to make arrangements to ensure that Agency functions (and services carried out by third parties on the Agency's behalf) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.

This statutory duty extends to all Agency staff and those acting on behalf of the Agency when carrying out immigration functions in relation to children within the UK. Therefore those dealing with asylum applications from children or from those who we temporarily treat as children should ensure they are familiar with the separate statutory guidance made pursuant to section 55 - ["Every child matters – change for children. Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children"](#). This amplifies what is required to discharge the section 55 duty and sets that duty in a broader context.

More particularly, it sets out the key arrangements for safeguarding and promoting the welfare of children as they apply both generally to public bodies who deal with children (Part 1) and specifically to the Agency (Part 2). Any person exercising immigration, asylum, nationality and customs functions are required to have regard to this guidance. The guidance states the Agency must act in accordance with the following principles:

- Every child matters, even if they are subject to immigration control.
- The best interests of the child will be a primary consideration, but not the only consideration, when making decisions affecting children.
- Ethnic identity, language, religion, faith, gender and disability are taken into account when working with a child and their family.
- Children should be consulted and the wishes and feelings of children taken into account, wherever practicable, when decisions affecting them are made. Where parents and carers are present, they will have primary responsibility for the children's concerns.
- Children should have their applications dealt with in a way that minimises the uncertainty that they may experience.

The detailed guidance that follows in this instruction reflects the section 55 duty and the requirement to consider the best interests of the child. Being familiar with and applying the detailed guidance within this instruction and the [Processing an asylum application from a child](#) AI will enable immigration officers, case owners and other Agency staff to demonstrate that the welfare

of applicant's whose age remains doubtful have been taken account of in the processing of their case.

### 2.2.1 Section 55 duty and the assessing age policy

The assessing age policy has in-built safeguards to ensure it is compliant with the new duty, for example, applicants whose age has not been accepted by the Agency, will initially be afforded the benefit of the doubt and treated as children unless their physical appearance / demeanour very strongly suggests they are significantly over 18. It is appropriate to give these applicants the benefit of the doubt until a further assessment of their age has been made, because it ensures that such applicants are not exposed to risks which might compromise their safety or welfare in the meantime. In particular, they will be provided with a responsible adult for the substantive interview, and will not be accommodated with adults. This is a safeguard to allow for the possibility that these applicant's may produce evidence showing that they are a child or a local authority age assessment, according to *Merton* guidelines, later assesses them to be a child.

The policy applied to applicants whose physical appearance / demeanour very strongly suggests they are significantly over 18 is consistent with the new duty because the Agency has had regard to the need to safeguard and promote the welfare of children when making the initial age assessment. Having given the applicant the benefit of the doubt, they have found them to be an adult. The duty does not compel the Agency to treat these applicants as children. Thus, the same safeguards are not necessary.

Furthermore, the Agency's policy to rely on Merton compliant age assessments when making a decision on an applicant's disputed age, is consistent with the section 55 duty because the *Merton* guidelines ensure that proper safeguards and standards of enquiry and fairness are adhered to. Local authorities who are bound by section 11 of the Children Act 1989 (upon which the section 55 duty is based) also rely on their own Merton compliant age assessments unless and until they receive further evidence indicating that the applicant is a child.

### 3. Screening

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All applicants who claim to be a child should be asked for documentary evidence to help establish their age. If an applicant's claim to be a child is doubted and there is no evidence to support their claim, the screening officer should conduct an initial age assessment.

If the screening officer considers an applicant's physical appearance / demeanour very strongly suggests that they are significantly over 18 years of age a CIO/HEO (or higher grade) must be consulted. The CIO/HEO (or higher grade) should then make their own assessment of the applicant's age. If their assessment agrees with that of the screening officer the applicant should be informed that their claimed age is not accepted and that their asylum claim will be processed under adult procedures. Form IS.97M should be completed, served, **and signed by the CIO/HEO (or higher grade)**.

In all other cases where the claimed age has not been accepted, the applicant should be informed, in a sensitive way, that because there is insufficient information at this stage on which to make a final decision, they will be given the benefit of the doubt and will be treated as a child, until all available information is collected and a decision on their age has been made. In these situations the most pressing need will usually be to arrange accommodation. Applicants should be informed that a referral will be made to the appropriate local authority to collect them and that the local authority will make an assessment of their age and communicate that information to the Agency, at which time a final decision will be made about their age (on-site social workers are available during normal working hours at Croydon asylum screening unit). For further guidance on referring an applicant to a local authority see section 6 of the [Processing an asylum application from a child AI](#)).

#### 3.1 Applicant believed to be a child, but not the age claimed

In cases where we believe the applicant is a child but not the age they claim, they should be advised of this and issued with an IS.97M. An age assessment with the relevant local authority should also be arranged.

#### 3.2 Documentation for initial age assessment

Screening officers must complete forms **IS.97M** and **BP7** (ASL.3596 - Disputed Age Contention) **as soon as possible**. The IS.97M must be served on the applicant and its contents sensitively explained (a copy must also be placed on file) and a BP7, which sets out the reasons why the applicant's claimed age cannot at this stage be accepted, should be completed and held on file.

##### 3.2.1 Application registration card (ARC) – date of birth

A decision on whether to accept the applicant's claimed date of birth needs to be made before the ARC is issued.

In disputed age cases where the applicant's claimed age has not been accepted, but it is not considered that their age very strongly suggests that

they are significantly over 18, the word 'disputed' must be displayed on the visible part of the ARC next to the **estimated** date of birth.

In cases where the applicant's physical appearance/ demeanour very strongly suggests they are significantly over 18, or there is credible evidence that shows them to be over 18, the Agency's **estimated** date of birth should be recorded on the ARC.

If the applicant's estimated date of birth changes, the ARC should be amended.

### 3.3 Updating the applicant's case file and CID

**Case file** - The screening officer must minute the case file to note the applicant's age is in doubt, and why.

If the applicant is assessed as significantly over 18 and therefore being treated as an adult, a minute on file must confirm why this decision was taken and confirm that it was agreed by a CIO/HEO (or higher grade).

**CID** - Follow the steps below to record the applicant's estimated and claimed date of birth on CID:

1. Create a CID record;
2. The estimated date of birth should be recorded on Person Details;
3. Select the 'Special Conditions' icon (indicated by a blue flag on the left hand side of the screen);
4. In the 'Special Conditions' field select the 'Age Dispute' option from the static data drop down list;
5. In the 'Lodged Date' field, enter the date that the applicant's age was disputed;
6. Additional information can be inserted in the 'Additional Information' field (this must include which box or section of the IS.97M applied);
7. The claimed date of birth should also be entered in the 'Additional Information' field;
8. Do not enter any data into the 'Closed Date' field. This is for use when the special conditions no longer apply;
9. Save the changes and exit CID.

### 3.4 Recording age assessment details on asylum correspondence

In any letter to an applicant whose age is in doubt (e.g. in the reasons for refusal letter) the Agency's **estimated** date of birth must be cited, not the applicant's **claimed** date of birth. It should be accompanied by a note that states that the applicant's age is in doubt. See below for an example:

Name: Name

Nationality: Nationality

Date of Birth: 10 April 1992 (disputed)

## 4. Routing and accommodation

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Following completion of screening procedures, applicants whose age is in doubt should be referred to the Asylum Routing and Initial Accommodation Team (ARIAT) with clear instructions that the applicant's age is in doubt and that they are being treated as a child. ARIAT must then route the applicant to an asylum case owner who has been trained to interview asylum seeking children.

Where a local authority has declined to accommodate an applicant referred to them as a child or a possible child, there could be various reasons for this decision, one of which may be that the applicant has been assessed as an adult. Clarification should be sought from the local authority and if completed, a copy of the age assessment report should be obtained.

If the local authority has assessed the applicant as an adult and the local authority's decision on age is accepted by the Agency it is likely that the applicant will need to be transferred to the adult asylum support system administered by the Agency. In such cases liaison between the Agency and the local authority on the arrangements will usually be necessary and the ARIAT should be informed by email.

**CID notes should be updated to show that ARIAT has been informed of the outcome of the age assessment.**

For further guidance refer to the [Routing asylum applicants to regional asylum teams](#) AI.

### 4.1 New evidence shows a supported applicant is a child

Where an applicant is accommodated under the adult asylum support system and new evidence is accepted that shows they are a child, arrangements should be made with the local authority promptly to transfer the child to its care and steps taken to stop their asylum support.

There may be occasions where the local authority does not agree with the Agency's view that an applicant is a child and therefore declines to accept them into its children's services. Case owners **must** not terminate the applicant's support without seeking guidance from a senior caseworker and after discussions with the local authority to resolve the disagreement have taken place.

## 5. Local authority age assessments

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Local authorities will often have a duty to provide accommodation and support to an unaccompanied asylum seeking child under provisions of the Children Act 1989, therefore all applicants who are being treated as unaccompanied children should be referred to the relevant local authority.

As part of its duties, the local authority will normally conduct an assessment of the applicant's age in order to determine eligibility for children's services, and in some cases, the level of the applicant's needs.

### 5.1 Merton judgment

There is no prescribed way in which local authorities are obliged to carry out age assessments; the courts have, however, provided some general guidance to local authorities in a case involving Merton Council (B v London Borough of Merton [2003] EWHC 1689 (Admin)), in which judgement was handed down by Stanley Burnton, J in the High Court on 14 July 2003. Some of the key points noted by the court were:

- The decision maker must explain to an applicant the purpose of the interview.
- Except in clear cases, the decision maker cannot determine age solely on the basis of the appearance of the applicant.
- **In general**, the decision maker must seek to elicit the general background of the applicant, including the applicant's family circumstances and history, educational background, and the applicant's activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the applicant's statement as to their age, the decision maker will have to make an assessment of the applicant's credibility, and he will have to ask questions designed to test the applicant's credibility.
- If the decision maker forms the provisional view that the applicant is lying, the applicant must be given the opportunity to address the matters that have led to that view.
- Adequate reasons must be given for a decision that an applicant claiming to be a child is not a child (though these need not be long or elaborate).
- Cases vary, and the level of inquiry required in one case may not be necessary in another.
- A local authority may take into account information obtained by the Home Office, but it must make its own decision, and for that reason must have adequate information available to it.

### 5.2 Considering local authority age assessments

Case owners should give considerable weight to the findings of age made by local authorities, recognising the particular expertise they have through working with children. In cases where the local authority's assessment is the only source of information about the applicant's age – their assessment will normally be accepted as decisive evidence.

Nevertheless, case owners should carefully consider the findings of the local authority and discuss the matter with them in appropriate circumstances, such as where the findings are unclear; or do not seem to be supported by evidence; or it appears that the case is finely balanced and the applicant has not been given the benefit of the doubt; or that it appears the general principles set out in the Merton judgement were not adhered to.

The case of [R \(T\) v Enfield \[2004\] EWHC 2297 \(Admin\)](#) highlights the importance of ensuring the age assessment has been carefully considered. In this case the local authority was instructed to carry out a fresh age assessment after it was found that the manner of the interview was unfair and unduly hostile in light of the applicant's vulnerable condition and state of mental health. It was also determined that the local authority had failed to take into account relevant considerations and matters relating to the applicant.

### 5.2.1 Asylum credibility issues raised in the age assessment report

The Agency does not request local authority age assessments to assess the credibility of an applicant's asylum claim. However, case owners must consider all evidence provided when making a decision on the asylum claim, including information contained within an age assessment. It is important to note that an age assessment report is based on notes, rather than a verbatim record.

If information contained within an age assessment raises credibility issues around the applicant's claim for asylum, before any further action is taken case owners should consider if the potential credibility issue goes to the core of the claim or could alter the outcome. Minor discrepancies between the age assessment and information submitted to the Agency should, generally, not be investigated further, nor relied upon.

If it is considered appropriate to raise a credibility issue identified within an age assessment, **before a finding is made, it must be put to the applicant (if in person, in the presence of a responsible adult) and they must be given the opportunity to explain or clarify the discrepancy in question.**

### 5.3 Obtaining the local authority's age assessment

Case owners should request a full copy of the local authority's age assessment and confirmation from the local authority that it has been carried out in compliance with the guidelines in the Merton case. In some instances local authorities may still feel unable to share their full age assessment with the Agency citing data protection and/or confidentiality concerns. Whilst accepting that the information contains sensitive personal data, it should be pointed out to the local authority that there is provision for sharing such information with the Agency within the Data Protection Act 2008.

This approach reflects the findings of the judge in [A & WK Vs SSHD & Kent County Council \[2009\] EWHC 939 \(Admin\)](#), where it was considered that, *"since it [the local authority assessment] is being obtained for the benefit of the Home Office as well as the authority, it is in my judgement entirely reasonable that it should be disclosed to the Home Office. Only if the full*

*report is available can it be seen whether there are any apparent flaws in it and whether it is truly Merton compliant. And sight of the full report will be essential if there is any challenge raised to the decision by the Home Office.”*

Case owners should discuss with the relevant local authority and obtain in writing, **at the very least** their assessment conclusion, the reasons on which their conclusion is based and an assurance that their assessment complies with the local authority’s assessment policy and the guidelines in the Merton case.

Where applicants have been assessed as adults by the local authority, but maintain they are children, it is important to establish the local authority’s reasons for their decision on age. The applicant should be asked to provide the age assessment or provide permission for the local authority to disclose it (where the local authority is reluctant to do so). If an applicant refuses to disclose the age assessment, this should be taken into consideration when assessing all evidence in the round, and if appropriate raised in the substantive decision and at any appeal. In particular, if the applicant has refused to provide the full age assessment before the appeal hearing, the caseworker should consider writing to the tribunal asking for an order that the claimant discloses the assessment and, if necessary, this application should be pursued further at the Case Management Review (CMR) or appeal hearing.

Finally, if evidence relating to an applicant’s age conflict, a judge may want to compare the experience and qualifications of those completing the evidence (often medical evidence submitted by a paediatrician and a local authority age assessment). In order to defend the local authority age assessment at appeal, case owners should ask local authorities to include with the age assessment report, the social workers’ age assessment experience (including length of practise) and qualifications.

### 5.3.1 Recording attempts to obtain age assessments

Case owners must document on file and CID **all** attempts to obtain a local authority age assessment, including telephone calls. All responses from the applicant, local authorities or legal representatives must be noted and retained on file, since these may have a bearing on future appeal hearings.

### 5.3.2 Making the asylum decision without an age assessment

The asylum decision should not be delayed pending an age assessment, but the case owner should first make every attempt to contact the local authority to obtain the age assessment.

If the asylum decision has been made without receipt of the age assessment and the asylum and Humanitarian Protection applications fall to be refused, the case owner **MUST NOT** at this stage grant DL under the UASC policy.

### 5.3.3 Actions to take on receipt of a local authority age assessment

If a local authority age assessment has been received, the case owner should complete the following actions:

- Clearly minute the case file to say what evidence has been received (e.g. a full age assessment or a signed declaration stating the applicant's age and that the assessment was Merton compliant), when, and from whom.
- Update the applicant's CID record.

### 5.4 'Accompanied' doubtful age cases

In some doubtful age cases, the applicant will not be 'unaccompanied' - for example because he/she is living with relatives. If the applicant has been referred to the local authority because the relationship with the adult constitutes a private fostering arrangement (refer to section 4.1 within the [Processing an asylum application from a child AI](#)), they should also be made aware of the age dispute and asked to conduct a full age assessment. Where it is not possible to obtain a local authority age assessment a decision on the age of the applicant should be made on the basis of all other sources of information available, with the benefit of the doubt applied in the applicant's favour.

## 6. Other evidence of age

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This section provides guidance on different types of evidence that may be submitted in support of an applicant's claimed age. This evidence should be considered alongside a local authority age assessment.

If an applicant submits a document to a local authority in support of their claimed age, Agency staff should provide assistance to the local authority where possible to help determine the likely veracity of these documents. Where possible, this should be completed before the local authority conducts their age assessment.

### 6.1 Travel and identity documents

An original and genuine passport, travel document, or national identity card in the applicant's name, which the officer can verify as genuine, and which shows that an applicant is under 18 years of age at the time of the application, will usually be sufficient proof of age. However, caution must be exercised in accepting passports or other identity documents from countries where there is evidence they can be obtained improperly or through ways that provide little evidence the information is accurate. Photocopies or faxed copies of these documents will carry considerably less weight as evidence of age.

### 6.2 Birth certificates

An original and genuine birth certificate in the applicant's name will normally be acceptable proof of the applicant's age, provided that it is accompanied by other genuine official documentation bearing a photograph of the holder, e.g. a military card, identity card, government pass, etc. However, caution must be exercised in accepting birth certificates and other official documents from some countries where there is evidence they can be obtained improperly or through ways that provide little evidence the information is accurate. Where there is no other genuine official documentation to support the birth certificate, it should still be considered alongside all the other evidence, but will not necessarily be considered determinative.

If screening officers or case owners are in any doubt, they must seek guidance from a senior caseworker. For country specific guidance on birth certificates refer to the relevant country report on the *country information and guidance* page on Horizon.

### 6.3 Evidence of age from visa applications or biometric data

Where there is evidence of age based on a biometric visa match, it should be dealt with on a case-by-case basis. Photocopies of visa applications are acceptable. The visa application should be considered 'in the round', especially where there is other evidence of age. Local authorities should be made aware of the visa application, prior to completing their age assessment.

Evidence based on a Eurodac hit or other biometric evidence does not, by itself, amount to conclusive evidence of age but should be considered on a case-by-case basis. Where, for example, an applicant claims to be a child but has clearly claimed to be an adult when encountered in a different country en

route to the UK, an assessment will need to be made of the credibility of the reasons given for doing so.

#### 6.4 Authenticity of documents

An applicant may state that documentary evidence showing them to be an adult is in error, or was obtained fraudulently through the use of forged documents, bribery or other means. Officers should also take into account the possibility that an applicant has been provided with documents, including travel documents, by an agent or trafficker. For instance applicants may have given incorrect information about their age on visa applications in order to facilitate their exit (for further guidance refer to the [Victims of Trafficking: guidance for frontline staff](#) AI).

In this event, the applicant should be questioned with regard to the following, **non-exhaustive** list of considerations:

- When was the document issued and by whom?
- What evidence was needed to obtain the document? (e.g. birth certificate needed for a passport?);
- Was the applicant required to sign a declaration confirming correct details?
- Has the applicant reported the error to the issuing authority? (When and with what outcome?);
- Has the applicant used the document? (e.g. by travelling on a passport containing an error, travelling through a third country, or using a birth certificate to obtain other documents/benefits?);
- Were any officials bribed to obtain the document?
- The country situation, objective evidence of strict procedures, and the consequent likelihood of the applicant's claims being true.

The above considerations are only a starting point for screening officers and case owners when attempting to establish the likely veracity of documents. Where officers have concerns regarding the reliability of a document, they should first seek guidance from their supervising officer, senior caseworker or, if available, a document fraud expert within their Local Immigration Team (LIT). If further concerns remain, documents may be referred, by a senior caseworker, to the National Document Fraud Unit (NDFU) where appropriate.

In the course of these enquiries, further consideration should be given to whether:

- any new relevant evidence has been provided that sheds light on the applicant's age;
- whether the local authority was aware of this documentation in arriving at its conclusion on age.

#### 6.5 Paediatrician reports

If an applicant submits a report written by a practising consultant paediatrician that concludes the applicant is or may be under 18 years of age at the time of the application, this **must** be fully considered alongside any other relevant evidence and given appropriate weight. However, care must be taken with

such reports as the margin of error can be considerable and the reasons for the paediatrician's conclusion on age may not always be clear.

The Royal College of Paediatricians, in their guidance on age assessment, have said that in practice, age determination is extremely difficult to do with certainty because it is **an inexact science where the margin of error can sometimes be as much as 5 years either side**. [‘The health of refugee children: guidelines for paediatricians’](#), Royal College of Paediatrics, chapter 5.6, November 1999).

Any reports from paediatricians that purport to give an assessment of age within a narrower margin of error than the one set out in the Royal College's guidelines should be treated with caution.

Additionally, in assessing the relative weight to be given to reports by paediatricians, case owners should note the comments of judge Collins J in the case of [A v London Borough of Croydon & SSHD; WK v SSHD & Kent County Council \[2009\] EWHC 939](#), in particular at paragraphs 33, 34 and 80. He explains that ‘there are no reliable means whereby an exact conclusion can be reached’ on age. Therefore, whilst reports from paediatricians must be considered and given appropriate weight, they do not generally attract any greater weight than a Merton compliant age assessment carried out by an experienced social worker. The judgment concludes by saying that ‘the crucial point is not whether either assessment is or is not in fact correct; that can rarely if ever be ascertained with complete accuracy. The point is whether the authority or the Secretary of State, is entitled in law to prefer the social workers’ assessment to that of Dr Birch or another paediatrician. Generally speaking, they are and no error of law is shown if they do (this case was later appealed and remitted back to the Administrative Court by consent in light of the Supreme Court judgment in [R \(A\) & R \(M\) \[2009\] UKSC 8](#). However, these comments are still of value and can be relied upon).

Furthermore, judge Parker K's comments in [R v London Borough of Croydon \[2011\] EWHC 1473](#) are particularly critical of the age assessment methods employed by paediatrician Dr Birch. At paragraph 50 judge Parker K states “...my concern is that Dr Birch, on the basis of the evidence that she gave to the Court, has in my judgement an erroneous confidence in the accuracy and reliability of the statistical methods that she has employed. That misplaced confidence undermines the other evidence that she has given. It appears to me that that confidence leads her to rely primarily upon her statistical methods. Therefore she is very likely to be biased in her assessment of age by reason of that misplaced confidence. Therefore it seems to be that I must approach with very great caution the conclusions that she has reached. In short, I do not believe that Dr Birch's assessment of the age of the Claimant is any more reliable than that of a social worker. Indeed, her assessment, in my judgment, is likely to be less reliable because she places such considerable confidence in her statistical methods that I conclude, on the basis of Dr Stern's essentially unchallenged evidence, to be **not scientifically established and unreliable** [emphasis added].”

## 6.6 Dental age assessments or x-ray reports

In some instances, applicants will submit reports from dental consultants based on a detailed assessment of dental development. The margin of error in determining age through this process is approximately plus or minus 2 years or less, for 95% of the population ([‘The health of refugee children: guidelines for paediatricians’](#), Royal College of Paediatrics and Child Health, chapter 5.6.3, November 1999). This means there will be cases where such reports should be given considerable weight – for example because the applicant’s claimed age is within the possible range. If the case owner is unsure about how to proceed or is considering rejecting the dental age assessment, they must seek guidance from a senior caseworker. If a decision is taken to reject the dental age assessment the case owner must state clearly their reasons for doing so, and the applicant must be informed in writing.

Similar care is required when considering assessments of bone-age involving x-rays (most likely, of the hand) where variations may be due to differences in the timing of the onset of puberty and the whole process of skeletal maturation, which may themselves be affected by illness, nutrition and ethnic variations. The child’s medical, family and social history will therefore need to have been taken into account in any such assessments.

([‘The health of refugee children: guidelines for paediatricians’](#), Royal College of Paediatrics and Child Health, chapter 5.6.1, November 1999).

## 7. Sharing evidence of age with local authorities

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Case owners are reminded that they **must** liaise closely and share information relevant to the applicant's age with local authorities.

The Agency is required to make decisions on age for immigration purposes; local authorities make similar decisions for the purposes of assessing eligibility to children's support services. It is therefore possible the two agencies may make different decisions on age. Close liaison with local authorities, appropriate data sharing (e.g. sharing the screening form or statement of evidence form (SEF) in appropriate circumstances) and reference to the joint working protocol agreed between the Agency and the Association of Directors of Children's Services (ADCS) on behalf of local authorities, should keep such cases to a minimum. The current protocol (embedded below) was agreed in November 2005 and is in the process of being revised.



Age assessment -  
joint working protocol

If a local authority requests a SEF or screening interview for the purposes of conducting an age assessment, it should generally be disclosed. Explicit consent from the applicant is not required because they have previously been informed that the information they provide to the UK Border Agency could be shared with other government organisations and the data is necessary for the local authority to carry out one of its functions. However, prior to disclosure local authorities should confirm that they will only use the information in the SEF / screening interview for the purposes of conducting an age assessment and will only retain the SEF / screening interview and any information derived from it for as long as necessary for the purposes of the age assessment. They should also confirm that if they wish to use the SEF / screening interview or the information contained in it for any other purpose, they will obtain the permission of UKBA before doing so.

When sharing information with local authorities, case owners must ensure they comply with the Data Protection Act 1998 and the Agency's policy on information management. For guidance refer to the *Information management and freedom of information* page on Horizon.

### 7.1 Discussing evidence of age with the local authority

Where the Agency is minded to accept that an asylum applicant is a child or an adult (e.g. an immigration judge has found that an applicant is a child or there is reliable documentary evidence pointing to a particular conclusion), case owners must ensure the local authority is promptly made fully aware of all available evidence of age and that the Agency is aware of their expected decision in light of this additional information. The consequences of failing to disclose such information may be that the local authority, through no fault of its own, inappropriately refuses support under the Children Act 1989.

If the local authority and the Agency do not agree on the applicant's age, the reasons for this disagreement should be explored through further discussion. For example, if the Agency considers that the local authority has not properly considered contrary evidence this should be pointed out to them. If following discussion, either party is unable to persuade the other as to the correctness of their age determination, the relevant senior caseworker should refer the case to NAM+ Register and Children for further guidance.

### **7.2 Local authority bases its decision on age on documentation**

Local authorities may sometimes base their assessment of age, or amend an age assessment, in the light of documentary evidence from the applicant's country of origin, or from documentation originating in another country. Local authorities should endeavour to refer documents to the Agency to assess prior to conducting their age assessment. Staff should check the verification of the document undertaken by the local authority is satisfactory. It will usually be necessary for case owners to make their own enquiries about the veracity of the documentation (which may affect the Agency's decision on the applicant's age) and relay the findings back to the local authority.

## 8. Weighing up conflicting evidence of age

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It is Agency policy to give prominence to a Merton compliant age assessment by a local authority, and it is likely that in most cases that authority's decision will be decisive. However, all sources of information should be considered and an overall decision made in the round. Account may be taken of the overall credibility of the applicant, established for example through the asylum interview, though care should be taken in doing so (further guidance on assessing a child's credibility is provided in section 16.4 of the [Processing an asylum application from a child AI](#)).

### 8.1 Multiple local authority age assessments

Where a local authority has provided an age assessment, but subsequently submits a revised age assessment with a differing conclusion on age, the new assessment must be fully considered and, if appropriate, the decision on age reviewed.

#### 8.1.1 Receipt of another age assessment from a different local authority

Sometimes applicants may undergo age assessments by more than one local authority, resulting in conflicting outcomes on age. This situation generally occurs when one local authority decides the applicant is an adult and the applicant then moves address and approaches another local authority in that area for support.

In these circumstances, the second local authority should be asked to confirm whether it has considered the findings of the first local authority. Deciding whether to accept the second local authority's assessment depends on all the evidence in the case and, in particular, the reasons why the second local authority has departed from the first assessment (e.g. if new evidence has come to light which was not known by the other local authority when it carried out the first assessment). The reasons should be recorded and detailed in any decision letter.

### 8.2 New relevant evidence received post age decision

Case owners will normally need to review a decision on age if they later receive relevant new evidence (including in the grounds of an appeal). Where the original decision on the applicant's age was based on a local authority assessment, the local authority should normally be made aware of the new evidence and be invited to review their earlier decision. The local authority's view should be considered by the case owner before they reconsider the decision on age.

If appropriate, the original decision should be administratively withdrawn, and a fresh decision issued to the applicant's legal representative or, if the applicant is not represented, to the applicant.

If it has been found that the applicant is a child, and it is appropriate, they should be granted DL under the UASC policy. For further guidance refer to section '17.7 Discretionary Leave under UASC Policy' of the [Processing an asylum application from a child AI](#).

## 9. Implementing the decision on age

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### 9.1 Applicant is found to be child

The case owner should complete and issue a 'Confirm accepted as a child' letter (ASL.2382). This should be served on the local authority, on the applicant's legal representative or, if the applicant is not represented, on the applicant, and one copy placed on file.

If the applicant was previously interviewed as an adult, ASL.2382 provides the applicant with the option of withdrawing their original interview record with the effect that the Agency will not use it as part of the asylum consideration. This is because paragraphs 352 and 352ZA of the Immigration Rules state that children (over 12) who are interviewed about the substance of their asylum claim must have a responsible adult present. If the applicant opts for their original interview record to be withdrawn, a new substantive interview should be arranged with a case owner trained in interviewing children and with a responsible adult present.

If the applicant chooses to withdraw the first interview record it should not form part of the asylum consideration. However, if the case owner notices discrepancies between what the child said in the first interview and what is stated during the second interview, it is, if appropriate, possible to explore these discrepancies further. However, the child must be allowed to explain the discrepancy (if this occurs during the second interview, this must of course be in the presence of a responsible adult). The case owner must then consider very carefully what weight should be attached in light of the applicant's explanation and the circumstances in which the information was provided during the first interview.

In addition, the Refugee Council's Panel of Advisers **must** be informed that the applicant is now accepted to be a child (for further guidance on the Refugee Council's Panel of Advisers refer to the [Processing an asylum application from a child](#) AI). A copy of these letters must be placed on file.

### 9.2 Applicant is found to be an adult

When a decision is taken to treat an applicant as 18 years of age or over, the application will be handled from then onwards according to the general policy and processes for adult applicants, and the applicant may be allocated to a non-children trained case owner.

#### 9.2.1 Statement of evidence form (SEF)

If the applicant is subsequently found to be an adult, but the SEF has already been received prior to a decision being made on the asylum claim, the SEF should be considered together with the evidence obtained at interview.

**Please note:** Before the Agency accepts the applicant as a child or adult, the processes outlined in section '7.1 Discussing evidence of age with the local authority' should be followed.

### 9.3 Updating CID

It is important that any changes to the applicant's date of birth are accurately recorded on CID, as this will affect not only how the claim is processed but also has implications for any local authority grant payable for support.

Every time the date of birth is amended the following details **must** be recorded on CID:

- previous date of birth allocated to applicant;
- current date of birth;
- date of decision;
- reasons for the change.

Once the applicant's age is no longer in doubt, complete the following actions on CID:

1. Search for the applicant's details on A-CID;
2. Select the special conditions icon;
3. In the 'closed date' field, enter the date that the applicant's age was no longer in doubt, i.e. when the evidence was received;
4. In the 'additional information' field, state what evidence was received (if a local authority Merton-compliant age assessment was received, include the name of the local authority);
5. The estimated date of birth on the personal details screen should be replaced with the assessed date of birth;
6. A note should be made of this on the notes screen including details of what birth date was previously being used and when;
7. If the age assessment shows the applicant to be a child, the special conditions screen should be updated to show that the applicant is an unaccompanied / accompanied child;
8. Save all changes and exit.

## 10. Appeals

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### 10.1 Submitting evidence of age at appeal

All available evidence of age should be submitted to the First-tier Tribunal (FTT) in the appeal bundle, for consideration by the immigration judge at the appeal hearing. The immigration judge will often make a determination in respect of the appellant's age, which will form part of the overall appeal determination.

If, prior to the case management review (CMR), the Agency does not have a copy of the local authority's age assessment, the case owner / presenting officer should request the assessment from the applicant and/or local authority. If the request is refused or remains unanswered, the case owner/presenting officer should ask the immigration judge to direct the applicant or local authority to disclose the full age assessment in time for the first-tier tribunal.

For further guidance on appeal preparation refer to the Presenting Officer's (PO) Manual (which can be accessed via Indigo on the appeals research unit online library) and the [Appeals bundling](#) and [Substantive appeal hearings](#) Als.

### 10.2 Conducting the appeal hearing

In addition to the guidance below, case owners / presenting officers should refer to the PO Manual, section '5. Local authority age assessments' and section '8. Weighing up conflicting evidence of age'.

At the appeal hearing it should be highlighted that asylum decisions made on applicant's whose age is in doubt will have been made under the same procedures used for children, and that the appellant was interviewed in line with child guidelines. The court should also be made aware if, in a material respect, appropriate child procedures were not followed.

A full age assessment should have been obtained by the date of hearing. Where it cannot be obtained, this should be drawn to the attention of the judge, its absence fully explained and if necessary, the applicant's account of why the assessment has not been submitted should be investigated through sensitive cross-examination. This applies particularly where the appellant is seeking to persuade the Tribunal that he/she is a child, perhaps on the basis of a paediatric age assessment. It is important that the judge can assess the local authority's reasoning and can therefore see the full report.

In making submissions about the weight to be given to an appellant's claim to be a child, in circumstances **where he/she has not disclosed the local authority's age assessment**, case owners / presenting officers may find it useful to note the comments of the judge in the case of [The Queen on the application of \(1\)M \(2\) A and \(1\) London Borough of Lambeth and \(2\) London Borough of Croydon in 2008](#), particularly at paragraphs 156 and 157 where the judge states that the fact the AIT were kept in ignorance of the age assessment was concerning:

157. *In my judgment it is necessary, first, to look at the decision of the AIT and the decision of Lambeth of 12 September 2007. The AIT decision was in relation to the SSHD's refusal to treat M as a minor. Dr. Michie's report, favourable to M, was before the Immigration Judge, who found that the SSHD had no sound basis for challenging the conclusion of Dr. Michie (paragraph 21), that no social services assessment had been conducted in respect of M's age (paragraph 24), that Dr. Michie was correct in his assessment of M's age (paragraph 26), that as a lay person he (the Immigration Judge) had no regard to M's physical appearance and that he was not qualified to assess a person's age simply in his experience (paragraph 26).*

158. *Thus it is apparent that the AIT was kept in ignorance of the two hour assessment of M by Lambeth social workers in which they, well versed in assessing the ages of young persons, came to an opposite conclusion. I find this omission concerning. The SSHD may well not have known of Lambeth's assessment done on 14 December 2006. But M did, and so must his solicitors acting for him in the judicial review proceedings begun on 13 March 2007. Whether M's solicitors acting for him in his immigration appeal knew of Lambeth's age assessment is unknown. But M knew. Whether he told his immigration solicitors is unknown. I have no doubt that if Mr. Adler, M's counsel before the Immigration Judge, had known of it, he would have so informed the AIT. However, the fact remains that the Immigration Judge put some, possibly critical, reliance upon the absence of a social services assessment.*

### **10.3 Applicant found to be a child when asylum claim was registered (AA Afghanistan)**

If presenting officers come across a case at an appeal hearing where the immigration judge finds that at the date of making their asylum application the appellant was a child, however at the date of the appeal hearing the appellant is an adult, they should refer the case back to the case owner (for further guidance on the application of [AA \(Afghanistan\) v Secretary of State \[2007\] EWCA Civ 12](#), refer to Section 3.1 'Children' of the PO's Manual (which can be accessed via Indigo on the appeals research unit online library).

## 11. Immigration judge findings on age

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If during the determination of an asylum appeal the immigration judge finds the appellant to be a child, the Agency will accept this outcome in most cases, and proceed to treat the applicant as a child.

Case owners cannot normally expect to depart from the immigration judge's determination on age unless that decision is appealed. However, where there is no appeal, there may be limited circumstances when the Agency is not inevitably bound by such a finding. So, if there are outstanding decisions which depend on age but on which the immigration judge has not directly adjudicated, the Agency must give appropriate weight to the immigration judge's consideration of age, and must have a **sound and rational** reason to depart from it. For example, where it is established that the immigration judge did not have before him a full and detailed local authority age assessment that concludes the appellant to be an adult, it may be possible to adopt the assessment.

Before a decision is made to depart from the immigration judge's finding on age, case owners **must** consider section '7.1 Discussing evidence of age with the local authority' and liaise with their senior caseworker. If appropriate, advice can also be sought from NAM+ Register and Children.

### 11.1 Discussing the immigration judge's findings with the local authority

Where an immigration judge finds the applicant is a child and, on the particular facts of the case, the Agency intends to give effect to the decision, it is essential that the matter is first discussed with the local authority (the Agency's reasoning for accepting the immigration judge's decision should be put in writing to the local authority). This gives the local authority the chance to provide any new, relevant evidence to the case owner, ensures that the local authority is made aware of the tribunal's finding on age and gives the local authority the opportunity to re-consider the assessment. The local authority should be asked to confirm **in writing** whether or not in light of the immigration judge's finding, it proposes to accept the applicant as a child and its reasoning.

The local authority is not bound by a finding of fact by the FTT as to the age of an applicant (see R (on the application of [PM v Hertfordshire County Council \[2010\] EWHC 2056 \(Admin\)](#)). However, in light of the tribunal's determination the local authority should reassess the applicant, ensuring they:

- take into account any new evidence (including evidence presented at the tribunal that was not previously before them); and
- give due respect to the basis and reasoning of the immigration judge's finding.

If the local authority has good reason not to accept the immigration judge's decision on age, consideration should be given to appealing the tribunal's decision.

Whilst these discussions with the local authority are taking place, case owners should notify the applicant and their legal representative that the local authority is currently considering the immigration judge's findings and whether or not to amend their decision on age.

## 12. Detention

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For general guidance on detention, refer to section [‘55.9.3.1 Persons claiming to be under 18’](#) of the Enforcement and Instructions Guidance.

For guidance on *Detained Fast Track (DFT) and Detained Non-Suspensive Appeals (DNSA)* refer to section ‘2.3.1 Age dispute cases’ of the [‘DFT & DNSA intake selection’](#) AI.

## Document Control

### Change Record

Version	Authors	Date	Change Reference
1.0	E. Gomez	30/03/07	New web format implemented
2.0	A. Juneja	20/08/07	New arrangements for screening children.
3.0	P. Roberts	02/11/09	Revised UASC guidance and s55 duty
4.0	P. Roberts	03/11/09	Minor amendments
5.0	P. Roberts	05/11/09	Amendment to section 11
6.0	B. Nicholson and HM. Fraher	17/06/11	Amendments to structure and content.

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### Issue Control

Approved for Publication by Name	Date	Role
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