



Happy Birthday?

Disputing the age of children in the immigration system

EXECUTIVE SUMMARY

May 2013

Introduction

Ten years since the first court judgment outlined the criteria to follow when conducting age assessments,¹ children are still being regularly disbelieved about how old they are and facing harmful, protracted disputes, during which they frequently do not receive the support and protection to which they are entitled. They might be housed with adults, denied access to education or college, or detained as an adult in Immigration Removal Centres and forcibly removed from the United Kingdom.

While the need to establish an individual's identity, including their age where appropriate, is clear, the current process in the UK is often confused and flawed. Over the past decade, a culture of disbelief has developed whereby the default position taken by immigration officials and social care professionals is that the young person either does not know, or is lying about, their age. Furthermore, in the absence of any process of mediation or arbitration to try to resolve disputes about age, the only recourse is legal challenge by way of judicial review. The courts have seen a 'burgeoning volume of cases which turn on the determination of the age of a young person in relation to the provision of services and support'.² This is expensive for local authorities and stressful for children and young people, whose lives are left in limbo as they wait for a decision.

This report examines the age assessment process and the practical and emotional impact of age disputes on young people in the immigration system; the human cost of a process that can be too long, too adversarial and fail to adequately consider the needs of the individuals involved. It

also studies the impact on local authorities and the courts, and the financial cost of a system in which litigation is so often the only means of resolution. The report explores ideas for improving the current process and alternative ways to address the issue of age that work in the interests of children and young people.

The importance of age

As well as being a means of marking growth and maturity and forming a key part of any child's identity, chronological age is intrinsically linked to their legal rights and responsibilities, and governs the relationship between a child and the state.

In 1989, the UN Convention on the Rights of the Child (UNCRC), now ratified by all countries in the world except the United States and Somalia,³ established a common, international definition of a child as a 'person below the age of 18 years',⁴ thus solidifying the 'legally constructed model of childhood'.⁵ The UNCRC outlines all those universal benefits, safeguards and rights 'associated with childhood'. Under the Convention, states have a duty to grant special protection and assistance to separated children, those who have been separated from both parents, or from their previous legal or customary care-giver.⁶

In contrast, anthropological and sociological research on the concept of childhood emphasises that it is a 'social construction' and there exist continuing national differences regarding the perception of childhood and the treatment of children, often at odds with international law.⁷ Just as the concept of childhood differs across the world, so too does the

1 *R (B) v London Borough of Merton* [2003] EWHC 1689 (Admin)

2 *Rawofi v Secretary of State for the Home Department* [2012] UKUT 00197 (IAC)

3 UN Treaty Collection: Status of treaties: Convention on the Rights of the Child, at http://treaties.un.org/Pages/ViewDetails.aspx?s-rc=TREATY&mtdsg_no=IV-11&chapter=4&lang=en [accessed 28/04/13]

4 Convention on the Rights of the Child, adopted by United Nations General Assembly Resolution 44/25 of 20 November 1989 and entered into force 2 September 1990, Article 1

5 L. Brownlees & T. Smith, *Age assessment practices: a literature review & annotated bibliography*, UNICEF, 2011, at http://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf

6 UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6

7 L. Brownlees & T. Smith, *Age assessment practices: a literature review & annotated bibliography*, UNICEF, 2011

importance placed on chronological age in general, and the means of recording it.

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, Iraq, Somalia 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 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.

It is extremely difficult to determine a child's age accurately, especially on appearance alone, and all the more so where children from different countries are concerned. However, despite the recognised difficulties in assessing age, many children are subject to age assessment procedures, because the question of age for children in the immigration system is of great importance, determining how an individual is to be treated both in the immigration and asylum process and also with regards to their social care. Age determines how or whether they are supported by children's services; their access to education; whether they are provided with asylum support by the UK Border Agency 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.⁸

A key reason why the process is so fraught with difficulty and contention is that, despite evidence of children being assessed incorrectly to be adults, thinking still appears to be

guided by the 'entrenched belief that the majority of age-disputed young people are adults posing as children'.⁹ While it may be undesirable for someone in their early twenties to be placed in accommodation with teenagers, the risk of this happening must be weighed against the risk of having individual children as young as 14 placed in detention, or independent and less carefully regulated accommodation, with adults of all ages.¹⁰ There may be occasional cases of people claiming to be younger than they are but these 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.

Guidance on assessing age

It is widely accepted that there is no single and sure method for assessing a person's age.¹¹ The - so far fruitless - quest in recent years to find a 'magic bullet' that will tell us the exact age of a young person through a single reliable and consistent medical measure has resulted in much focus on the use of X-rays and other invasive and questionable medical procedures.¹² Many NGOs, medical bodies and statutory agencies have raised their concerns regarding the accuracy, legality and ethical justification of such measures.¹³ What domestic and international guidance does exist emphasises the need for a holistic multi-agency assessment that is conducted in a fair and child sensitive manner, and that gives the individual the benefit of the doubt. Age assessments 'should be initiated with the genuine and primary aim of ensuring protection to separated children' rather than for the purpose of immigration control.¹⁴

8 Home Office guidance outlines that when assessing credibility 'the benefit of the doubt will need to be applied more generously when dealing with a child' – see Home Office Asylum Process Guidance, *Processing an asylum application from a child*

9 S. Clarke, *Young Lives in Limbo: the protection of age-disputed young people in Wales*, Welsh Refugee Council, 2011, p 12

10 See Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, p 13 for echo of this

11 L. Brownlees & T. Smith, *Age assessment practices: a literature review & annotated bibliography*, UNICEF, 2011

12 L. Brownless & Z. Yazdani, *The Fact of Age: Review of case law and local authority practice since the Supreme Court judgment on R(A) v Croydon LBC [2009]*, Office of the Children's Commissioner, 2012

13 See, for example, T.J Cole, *Dental age assessment- a statistical critique*; Australian Human Rights Commission, *An age of uncertainty: Inquiry into the treatment of individuals suspected of people smuggling offences who say that they are children*, 2012; A. Aynsley-Green, T.J. Cole, H. Crawley, N. Lessof, L.R. Boag, & R.M.M. Wallace, 'Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control', *British Medical Bulletin* 2012; 102: 17-42, Oxford University Press, May 14 2012

14 Guidance on age assessments provided in UN Committee on the Rights of the Child (CRC), CRC General Comment No. 6 (2005); 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, at: <http://www.refworld.org/docid/4b2f4f6d2.html>; Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, Fourth edition, March 2010, at: <http://www.unhcr.org/refworld/docid/415450694.html>

Age disputes in the UK

In England and Wales, a local authority has a duty to support a separated migrant child under the Children Act 1989 as a 'child in need'.¹⁵ The child's age determines the type of support and accommodation the local authority should provide and whether they will be eligible for leaving care support on turning 18.¹⁶

Age assessment is of vital significance in both immigration and social care contexts, and at present both immigration officials and social workers will make decisions about a child's age, sometimes with conflicting views being taken. Often a dispute initiated by the Home Office will prompt a local authority dispute, and vice versa.

Overall, nearly a quarter of all those applying for asylum as children have their ages disputed, according to Home Office statistics. This figure does not reflect the full extent of the problem, as it does not include those who claim to be children but are not officially recorded as 'age disputed' and instead are simply treated by the Home Office as adults.

However, data on age disputes involving local authorities is much harder to evaluate in the absence of any centrally held statistics on their numbers and outcomes. The CCLC sent a Freedom of Information request to 27 local authorities asking for the numbers of separated children seeking asylum referred to their care, how many of these had their ages disputed, and the outcomes of the assessments. The responses revealed wide variations in the practice of both assessing age and record-keeping with regards to separated children. Of the 22 that provided figures, between them they had conducted 697 age assessments over two years. The statistics revealed wide variation in local authority practice - for example, while three local authorities assessing all of those referred to them as separated children, the majority assessed fewer than half. Most of those that assessed in higher numbers then went on to find over half to be over 18, compared to the local authority average of 70% of individuals being assessed to be children.

Social work age assessments

There is currently no statutory procedure or guidance issued to local authorities on how to conduct an age assessment. Instead the current approach has evolved in an ad hoc fashion through practice developed by local authorities, the emergence of practice guidelines and developing case law. This has resulted in much confusion within both local authorities and the Home Office as to what constitutes a lawful assessment.

Most age assessments require specific knowledge of different countries of origin, their cultures and religions. Practitioners have identified a need for further information about festivals, local calendars, cultural expectations of children's roles and responsibilities and child development. While it has been presumed that social workers will have the necessary expertise to undertake age assessments, for many this is a new, specialist task for which they do not feel sufficiently prepared.¹⁷

In addition to these difficulties, it is arguable that local authorities that dispute the age of a child have a conflict of interest with that child, to whom they owe statutory welfare and safeguarding duties, and a vested interest in the outcome of age assessments. This, in certain cases, can have an impact on their objectivity. Furthermore, in CCLC's experience of training and advising voluntary sector workers, legal representatives and social workers, it has become apparent that in some cases social workers may feel under pressure to either find a child to be an adult, or to decide that they are over 16.

While many social workers are capable of carrying out good assessments, and for some the threat of legal challenge has sharpened their awareness of legal requirements and proper practice, the extent to which UKBA's much-criticised 'culture of disbelief'¹⁸ appears to have crossed over into some social work departments is striking. Conscious and unconscious attitudes to asylum, immigration and race, as well as organisational culture and wider societal attitudes can all influence how an assessment is conducted, but this is not always acknowledged.¹⁹ In many of the cases studies for this report, the conclusions drawn were irrational, with too much emphasis still placed on physical appearance and demeanour, rather than all information gathered as part of a holistic assessment. There is a clear lack of consistency

15 The statutory framework of the Children Act 1989 imposes a duty on a local authority to safeguard and promote the welfare of children in their area who are in need (section 17) and to accommodate a child in need within their area who does not have parent/s or someone with legal responsibility who is able to care for them (section 20)

16 Under section 23C of the Children Act 1989 - this support would include help with education and training, assessment of needs, and the provision of a personal adviser until the age of 21, or 25 if the young person is still in education.

17 L. Brownlees & Z. Yazdani, *The Fact of Age: Review of case law and local authority practice since the Supreme Court judgment on R(A) v Croydon LBC [2009]*, Office of the Children's Commissioner, 2012

18 See, for example, The Children's Society, *Into the Unknown: Children's journeys through the asylum process*, 2012 at <http://www.childrensociety.org.uk/sites/default/files/tcs/into-the-unknown--childrens-journeys-through-the-asylum-process--the-childrens-society.pdf>

19 Scottish Refugee Council & Glasgow City Council, *An Age Assessment Pathway for Social Workers in Scotland*, 2012

within and between local authorities in their approach to, and conduct of, assessments.

Training and guidance, including a focus on how best to gather and analyse the information needed in order to conduct a comprehensive assessment, would be a welcome step forward in improving the process. All age assessments should be grounded in good social work principles, which include liaising with other agencies and individuals as appropriate.

Any statutory guidance should draw on existing documents on children in need assessments²⁰ and age assessments specifically, such as that produced in Scotland.²¹ In addition, *Achieving Best Evidence*, published by the Crown Prosecution Service, provides useful guidance, techniques and tips for interviewing children, acknowledging that children's minds can operate differently to those of adults and that it is not appropriate to approach interviews in the same way.²² This guidance and training would be useful for anyone conducting an age assessment given the similarities in what they are trying to achieve.

While the courts have helped to clarify the weight that can be given to the views of other professionals and carers when deciding the age of a child, the input in the earlier stages of a local authority assessment of those such as doctors, advocates, teachers, care and support staff and foster carers is limited. A truly multi-agency approach is required and a system should be developed whereby the social worker retains the statutory lead role for assessment under the Children Act 1989 but has a duty to, wherever possible, obtain the views of other professionals and carers, who should have clearly defined opportunities to contribute their views and opinions.

The judgment of *R (FZ) v LB of Croydon* held that the child in that case should have had the opportunity to have an appropriate adult present in the age assessment. They can have a vital role in ensuring that the young person fully understands the process. However, the cases studied for this report indicate that the level of engagement between the young person and their appropriate adult varies. In some circumstances it appears that appropriate adults are merely

passive observers, and that the young people being assessed were not fully clear about their role or purpose. Some local authorities use in-house staff to act as appropriate adults, which may create a conflict of interest as the appropriate adult's role is to observe whether the assessors are acting properly and fairly and to intervene if not.

Home Office policy

If an asylum-seeker claims to be a child and 'there is little or no documentary evidence to prove their age', the Home Office will come to a view on their age based solely on appearance and demeanour. This approach falls far short of what would be deemed a lawful assessment in the social care context, and is based on a 'socially constructed understanding' of how a child should look and behave.²³ Furthermore, it serves to make the disputing of age the default position, increasing the number of cases that are disputed when there may be no need.

The Home Office should move away from its practice of disputing the age of such a high number of children in the first instance. This requires addressing the entrenched culture of disbelief and, in the absence of documentation, placing greater reliance on the testimony of children and young people as evidence in and of itself. The agency should be aware that its officials lack the training required in order to assess someone's age and of the difficulties in making judgements on a person's age based on their appearance, as well as the safeguarding implications of using their policy to treat someone as an adult.

As a result of this policy, many children end up being treated as adults, accommodated with adults, or (worse still) detained with adults in Immigration Removal Centres. Some are unable to secure support and legal representation following dispersal. In these circumstances they will be unable to challenge the assessment of their age and will continue to be treated as adults.

The Home Office does not provide data on the number of individuals claiming to be children who are subsequently treated as adults because it is contended by an immigration

20 The Department for Education's 2013 *Working together to safeguard children* guidance streamlines previous guidance documents and replaces: *Working together to safeguard children* (2010), *Framework for the assessment of children in need and their families* (2000), and *Statutory guidance on making arrangements to safeguard and promote the welfare of children under section 11 of the Children Act 2004* (2007).

21 Scottish Refugee Council & Glasgow City Council, *An Age Assessment Pathway for Social Workers in Scotland*, 2012

22 Ministry of Justice, *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures*, March 2011

23 H. Crawley, *When is a child not a child? Asylum, age disputes and the process of age assessment*, Immigration Law Practitioners' Association, 2007, p 49

24 In both category (a) and category (b) cases, the asylum-seeker should also be given an IS.97M form stating that their age is disputed. Home Office Asylum Process Guidance, *Assessing Age*, section 3.

officer that their appearance/demeanour ‘very strongly suggests that they are significantly over 18 years of age’.²⁴ While the Home Office has started a pilot to investigate collecting this data, at the time of writing nothing was publicly available. If the Home Office is to have a policy intended to cover what it perceives to be obvious cases then it must be accountable, subject to the appropriate scrutiny, and must provide data to demonstrate that its policy is not being routinely misused.

The immigration detention of children who are being held to be adults remains an ongoing concern. Many of Coram Children’s Legal Centre’s cases involved children who have been detained, and every year the Refugee Council works with over 20 individuals wrongly detained as adults.²⁵ Home Office policy states that ‘unaccompanied children must only ever be detained in the most exceptional circumstances, and then only overnight, with appropriate care, whilst alternative arrangements for their safety are made’²⁶. The current coalition government has made much of having ended the detention of children and the harm this causes.²⁷ Yet its own policy in relation to separated children continues to be breached in practice.

In light of strong evidence that Home Office policy in practice is resulting in the unlawful detention of children, it is clear that in the current process there can rarely be certainty that an age-disputed individual is not a child. The Home Office should exercise far more caution and address the use of its Enforcement Instructions and Guidance so that if there is any doubt whatsoever regarding an individual’s age, even if they are being treated as an adult, they are not placed in immigration detention. Detaining a putative child is simply a risk that is not worth taking: it has serious implications for the child’s safety and it could also lead to the government having to pay substantial compensation payments due to their mistakes.

The court process

The only way to challenge an age assessment is to apply for permission to the Administrative Court to bring a judicial review as a challenge to the local authority for failing to undertake its statutory duties fully and correctly. Therefore the only solution for children wishing to be recognised as the age they claim to be is to find a lawyer and threaten to take the case to court.

Age assessment hearings involve detailed live evidence given by a number of witnesses, with lengthy examination and cross-examination, which means they can last three days or more, and the preparation for such cases is time-consuming and expensive. For the young person involved in each case, months or years may have passed since they arrived in the UK, and the hearing may be the fourth or fifth time that they have had to give an account of their life.

According to Ministry of Justice figures, there were 73 applications to the Administrative Court for judicial review of age assessments in the financial year 2011-12, and 23 in 2012-13. Yet, there were only nine full age dispute judicial review hearings in the Upper Tribunal in 2012-13. Many cases will be settled before getting to court, or the local authority will concede. For example, of the CCLC cases examined, a third of them involved either the local authority settling the case, accepting the young person’s claimed age, or agreeing to undertake a reassessment.

The age assessment process is in theory an inquisitorial one, with no burden on either the young person nor the local authority to prove their case and the court aiming to come to the best decision it can on the basis of the evidence presented.²⁸ However, the judgments available to date indicate that young people ‘have a high hurdle to overcome in order for the court’s assessment to agree with their stated age’.²⁹

When giving evidence during these trials, children are being expected to ‘recall the minutiae of their lives’³⁰ and past experiences, in some cases many years after having left their

25 See J. Dennis, *Not a minor offence: unaccompanied children locked up as part of the asylum system*, Refugee Council, 2012, at and Refugee Council contribution to the Detention Forum submission to the Home Affairs Select Committee Asylum Inquiry, April 2013

26 Chapter 26 of the Home Office Enforcement Instructions and Guidance states that ‘unaccompanied children must only ever be detained in the most exceptional circumstances, and then only overnight, with appropriate care, whilst alternative arrangements for their safety are made.’ – see <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/chapter26?view=Binary>

27 C. Hope. ‘Nick Clegg: children will no longer be locked up in immigration detention centres’, *The Telegraph*, 16 December 2010, <http://www.telegraph.co.uk/news/uknews/immigration/8204528/Nick-Clegg-children-will-no-longer-be-locked-up-in-immigration-detention-centres.html>; Nick Clegg N. Clegg & B. Nalumu, ‘We are proud of having ended child detention’, *The Guardian*, 29 October 2012, <http://www.guardian.co.uk/commentisfree/2012/oct/29/proud-ending-child-detention>

28 The general rule in court proceedings is that the party that is asking for a benefit (such as services under the Children Act 1989) has to prove his case. In civil cases the evidential standard is on the balance of probabilities, i.e. more than 50%. In *CJ v Cardiff* in the Administrative Court, Ouseley J took the view that it was ultimately for the Claimant to prove his case. The Claimant appealed Ouseley J’s decision in *CJ v Cardiff* and the case was heard by the Court of Appeal in December 2011 which held that there have been an incorrect application of the burden of proof. The nature of the court’s inquiry under the Children Act was reaffirmed as being inquisitorial and the application of a legal burden was not the correct approach.

29 L. Brownlees & Z. Yazdani, *The Fact of Age: Review of case law and local authority practice since the Supreme Court judgment on R(A) v Croydon LBC* [2009], Office of the Children’s Commissioner, 2012.

30 *ibid*

country of origin. They are expected to recall experiences that happened to them as very young children. Minor discrepancies between what the child said in their asylum screening interview or full asylum interview and what they said in their age assessment interview are given substantial weight.

The relationship between the young person's asylum or immigration claim and age assessment is problematic. Much weight has been placed to date on the young person's immigration history as a proxy for determining credibility at the permission stage. UNHCR has expressed concern that information gathered in an age assessment interview has been used inappropriately to discredit a child's credibility in their asylum claim.³¹

An examination of all recent jurisprudence suggests that both the young people and the relevant local authorities have struggled to identify independent experts who can effectively assist the court in a way that is perceived as truly independent of the interests of either party. Further useful work could be done to train and prepare professionals and carers in how to provide evidence to the court.

Given the time, cost and impact of full age assessment hearings, the introduction of a form of alternative dispute resolution (ADR) should be explored in order to reduce the contentiousness and enable faster resolution. This could be used following an initial decision as a preliminary stage in the commencement of legal proceedings and would be a necessary step for both sides to engage in before continuing proceedings more formally. Judicial review would remain as a final remedy for a child, but this would be the last resort. Judicial review is a critical safeguard for children and it is critically important that legal aid and access to the court is retained for children as this is often the only means of ensuring they receive the support and protection to which they are entitled.

The cost and impact of the age assessment process

Many young people going through the immigration process have undergone traumatic experiences, including torture, imprisonment, abuse and dangerous overland journeys. Key problems once in the UK can include depression, isolation, health issues, lack of self-care skills, lack of education and inadequate support (including short-term homelessness), all of which serve to exacerbate each other. In many cases, sensible and considered analysis of **the impact of traumatic experiences on a young person is being lost to a dispassionate focus on defining their chronological age.**

Young people can be left bewildered and angry by the age dispute process and by the antagonism and hostility some

face from social workers. In extreme cases, young people end up absconding from the care system as a result of **not being believed** and because of having to face a protracted dispute. When there is no other evidence available, it might be helpful for practitioners to move away from seeing age assessment as a quest for the 'truth', and instead recognise that it is not an issue of whether the young person is reliable or not, but rather a means of deciding on a likely age. The suggestion that the child is lying would be less relevant if the emphasis were shifted from an arbitrary definition of precise chronological age, towards a measured assessment of an appropriate age to work to, based on a holistic appreciation of all relevant factors. Social workers who have been given this unenviable task need to stop grasping the impossible and accept the inevitable uncertainty.

For those who remain in the process, a key problem is the length of time that challenging an age assessment can take, during which **children can be left in limbo and without access to appropriate services, education and healthcare**, including child and adolescence mental health services. Delays can halt the normal process of settling young people and their engagement and integration into society. In the 35 cases reviewed for this report, the length of time taken to resolve the issue of the young person's age ranged from 10 months to over four years.

When judicial review proceedings are initiated, an application can be made to the court for an interim relief order obligating the local authority to provide support and accommodation to the young person under the Children Act 1989 until the end of the hearing. However, a requirement on the local authority to support the child imposed under an interim relief order is often provided reluctantly. Even if granted interim relief, children can be left without the pastoral support they need, and it is not uncommon for them to be left without access to education for many months, even years. In the current system that still feels adversarial, the relationship between the young person and their social worker can be severely undermined during the course of a challenge.

The delay involved in age dispute cases, and incorrect assessments of age, can also have a significant **impact on a young person's immigration status.** Those treated as adults are excluded from the safeguards and child-specific considerations that would apply if their asylum claim were processed as a child. Many have to wait months or years for a decision while their age is still in question. This can lead to them 'ageing out' and as a result not being granted refugee status or being denied a grant of limited leave where they would have received one had their age not been disputed.

In contrast, some may be granted refugee status and be fearful of pursuing a challenge of their age assessment for fear of losing this security – in one case, the Home Office revoked the young person's refugee status while the age

31 UNHCR Quality Initiative Project, Sixth Report to the Minister, April 2009, section 3.4.10

assessment was being disputed.³² Inconsistencies between what is said in an age assessment interview and what is said in a Home Office substantive interview are often used to undermine a young person's credibility, despite the frequency with which minor inconsistencies can result from miscommunication, poor interpretation or inadequate record keeping. UNHCR has expressed concern that information gathered in an age assessment interview has been used inappropriately to discredit a child's credibility in their asylum claim.³³

Not all children and young people understand the purpose of their age assessment, nor its significance. If they are being treated as a child, but one who is three years older than they claim to be, they may not realise the need to have their age reassessed until it becomes urgent. Nor are all fully aware of their right to challenge the assessment, and it may only be if their immigration solicitor or advocate takes the necessary steps that they are assisted to do this. Those treated as adults by the Home Office will usually be dispersed, which may also affect their ability to access legal advice and support.

There is much research evidencing the harmful impact of detention, especially on children,³⁴ and this has been acknowledged by the current coalition government who pledged to end the detention of children for immigration purposes. Yet, **a significant proportion of age dispute cases still involve children who have been detained as adults, with extremely damaging consequences.** While all detention can be damaging for children, for those who are being treated as adults, with no parent/s accompanying them and able to provide support and protection, this is even more the case.

Litigation is undesirable for a number of reasons. It is lengthy and can be stressful for all involved. **Just as children may find the process of cross-examination highly traumatic, social workers who have had to go to court have reportedly found the experience stressful and ethically difficult,** as they were having to stand against a young person for whom they carried out the role of corporate parent.

Furthermore, **the legal costs and the impact on local authority resources of going to court are considerable.** Freedom of Information requests received by CCLC placed the cost of a legal challenge at between £15,000 and

£75,000 - one local authority 'estimated that a case they had taken to court had cost in excess of fifty thousand pounds', not including the additional costs in terms of time and resources.³⁵

In certain areas of the UK, there are clearly huge financial savings to be made through improving the age assessment process. In 2009/2010, for example, the local authority of Croydon spent £827,000 in legal costs on court cases related to age assessments.³⁶ In 2011/12 and 2012/13 it spent £852,709.82 and £765,188.43 respectively (the latter figure only covers the period March 2012 to the end of 2012).³⁷ Of these costs in the past two years, over £500,000 each year went on costs awarded against the local authority, as opposed to legal costs.³⁸

Financial costs are not limited to local authorities, nor to the conduct of the case. In 2012 it was revealed that over £2 million had been paid in an earlier court settlement to 40 child asylum-seekers who had been wrongly detained as adults by the Home Office due to the flawed age assessment process.³⁹

Conclusion

It is important for an effective system of protection and support in the UK that children are recognised as children as early as possible. Where there is good reason to doubt a child's stated age, there is a need for a process to exist that can, as accurately as possible and with the least harm and disruption, assign the most appropriate age to the child.

Both international law and domestic law and policy place great weight on chronological age, and it is clear that wrongly identifying a child as an adult can have life-changing consequences. Yet in the development of the current process for determining a young person's age, it could be argued that many professionals have lost sight of the important question, which is not one of age, but one of need. The search for certainty regarding age can be the expense of a thorough assessment of the child's emotional and developmental well-being and their growth and development. Rather than focussing on assessing what help can be provided to a child (or even young adult) who is alone in the UK seeking

32 *R (AM) v Solihull BC* [2012] UKUT 00118

33 UNHCR *Quality Initiative Project, Sixth Report to the Minister, April 2009*: section 3.4.10

34 See, for example, Medical Justice, *'State Sponsored Cruelty': Children in immigration detention*, 2010

35 L. Brownless & Z. Yazdani, *The Fact of Age: Review of case law and local authority practice since the Supreme Court judgment on R(A) v Croydon-LBC [2009]*, Office of the Children's Commissioner, 2012, p 73

36 Asylum seeker funding fight could cost millions', *This is Croydon*, 14 January 2011, at www.thisiscroydontoday.co.uk/Asylum-seeker-funding-fight-cost-millions/story-11372371-detail/story.html

37 Information provided in FOI response to Coram Children's Legal Centre, 7th March 2013

38 In 2011/12, £546,955.05 went on costs awarded against the local authority. In 2012/13 this figure was £537,430.10

39 '£2m paid out over child asylum seekers illegally detained as adults', *The Guardian*, February 2012, at www.guardian.co.uk/uk/2012/feb/17/home-office-payout-child-asylum-seekers. In *R (J) v SSHD* [2011] EWHC 3073 (Admin) £10,000 damages awarded to the claimant unlawfully detained as a child

protection, the focus on chronological age and means of determining it as a gateway to services can lead to many young people being challenged, disbelieved, and abandoned. Many age dispute cases concern children and young people in complex situations, but too often their unique circumstances and characteristics are neglected, and their needs are not identified.

The needs and vulnerabilities of young refugees and migrants can often be forgotten in the race to prioritise immigration control over individual rights. This is all the more the case for those whose ages are disputed, who are often treated with suspicion and hostility simply because they come from a country that does not register all births, or because they had to destroy their documentation while fleeing to the UK.

Three important conclusions emerge from this report. First, the culture of disbelief remains a key issue both for immigration services and for social care professionals, and, as with the asylum process, this goes to the heart of many of the problems with the age assessment system. The Home Office and local authorities should not dispute age, and initiate an expensive and time-consuming process, where there is no reason to do so.

Second, where age assessments are necessary, there is still much room for improvement in the initial age assessment process carried out by local authorities. Despite repeated calls internationally and domestically for a multi-agency approach to assessment, with the need to front-load expertise at the start of the process, little action has been taken to formally expand the assessment process beyond that of social work assessment, which in practice often amounts to one of two 'interviews'. It is hoped that if a concerted effort is made to develop this, rather than search for a magic bullet in the form of X-rays, then more assessments will be carried out fairly and lawfully.

Third, the current process whereby a child can only receive a satisfactory finding on his or her age by embarking on a lengthy process of litigation is far from ideal. Judicial review is the only means by which it can be ensured that an age assessment was conducted in a way that is legal, rational and fair, but the current process often serves only to increase conflicts, inflate costs and prolong the time taken to resolve the dispute, and does not always result in outcomes that are any better and/or acceptable to all the parties involved. Judicial review is a vital safeguard, but before children are forced into a formal judicial review hearing, they should be given the chance to engage in a prior mediation process. A less contentious system for resolving disputes would be valuable for all concerned.

A final point to highlight is the extent to which some age-disputed children will not necessarily have access to legal representation or a legal remedy. It is vital that all putative children need to be referred to trained and experienced lawyers and advocates so that they are aware of their rights and entitlements, and assisted in ensuring these are upheld.

Many of the findings of this report are concerns that have been raised repeatedly by practitioners and academics over the past decade. While absolute numbers of children seeking asylum have fallen since 2009, the problem of age disputes has remained pressing in practice and still needs addressing. Whatever developments in migration flow are seen in the future, the government has a clear responsibility under international and domestic law to safeguard and promote the welfare of all separated migrant children, and ensure that the best interests of these children are upheld in all actions taken concerning them. The current system is not working for the Home Office, for local authorities, for the courts, for lawyers, or for advocates and support organisations. Most importantly, it is failing children and young people.

'When I first came in this country the first person I meet give me an age she think I might be. But I would say what she forgot is, I came from the sadness moment of my life where I have lost everything - my parents, siblings and friends. The only thing left with me was my identity but she denied it by giving me what she believes I am.

Since that moment my life never be the same. I could find no one to help me, everything was new for me. I have to live with constant sadness and stress. It was very difficult for me to find help because I am not use to ask for help everything I needed was given to me by my parents.

All I need is to be recognising for who I am.'

Young person

Recommendations

Home Office

- The Home Office must move away from disputing the age of all young people without documentation as a default setting. Its policy should be changed so that the absence of documentation is not on its own a reason to dispute a child's age. The account of the child is evidence of their age and the Home Office must refrain from initiating an age dispute, and beginning a long, distressing process, when there is no reason to.
- The Home Office should revise its 'Assessing Age' policy and revisit its policy of treating those whose 'physical appearance / demeanour very strongly suggests that they are significantly over 18 years of age' as adults. Given the difficulties in making judgements on a person's age based on their appearance and the safeguarding implications of using this policy to treat someone as an adult, this category must be used with extreme caution.
- The Home Office should revise its Enforcement Instructions and Guidance so that if there is any doubt whatsoever regarding an individual's age they are not placed in immigration detention, including the Detained Fast Track or Detained Non-Suspensive Appeals. Alternatives to detention and reporting requirements could be imposed as an alternative, if necessary
- Case law has highlighted that the current Joint Working Protocol between the UK Border Agency and Association of Directors of Social Services is inadequate for addressing situations where there are conflicting views held by the Home Office and a local authority regarding a young person's age. This protocol should be updated as a matter of urgency.
- Statistics concerning which young people have had their age disputed should be kept as a matter of course. The Home Office must record, and make publicly available, data on:
 - The number of cases in which the UK Border Agency treats an individual as an adult on the basis that their appearance/demeanour strongly suggests that they are significantly over the age of 18.
 - All cases where an individual who claims to be a child is placed in immigration detention.

Local authorities/ Department for Education

- Local authorities should not undertake an age assessment as a matter of course, but only when there is good reason to doubt the child's account of his or her age. A child's claimed age should be accepted unless there is a solid reason not to do so.

- An age assessment process should be developed that allows for a holistic multi-agency process, 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 and social workers. Paediatric and medical evidence should also be used where appropriate.
- Part of the multi agency approach should be increased focus on vulnerability and needs rather than just chronological age, with an acceptance that an assessment of age is not a search for the 'truth'. Often it will only be possible to find a workable, rather than exact, date of birth.
- Statutory guidance should be issued to ensure consistency and clarity in the process, without being too prescriptive of formulaic. This guidance should include the requirements for a holistic, multi-agency process.
- The benefit of the doubt principle should be applied when dealing with all young people who claim they are children so that they are treated as the age they claim to be until such time as a holistic, multi agency age assessment has been concluded and any dispute has been resolved.
- The consistent provision of 'appropriate adults' during age assessments should be used to help ensure procedural fairness, but those undertaking this role must be fully aware of their responsibilities. If possible, the appropriate adult should be chosen by the young person.
- An accredited training programme for social workers should be developed with input from a range of statutory and voluntary agencies.
- Guidance and training similar to Achieving Best Evidence should be provided to those undertaking age assessments.

General

- Further work should be undertaken to establish form of alternative dispute resolution prior to the appropriate judicial proceedings in order to reduce the contentiousness and costs involved in this issue, and enable faster resolution.
- Age assessments should not be undertaken at port, screening units or at police stations. The difficulties inherent in the assessment of age are exacerbated when a child or young person is assessed immediately upon arrival and in an immigration or criminal setting.
- All separated asylum seeking children – including those whose age is disputed – must be referred to the Refugee Council Children's Panel.
- Solicitors dealing with age disputed young people should receive more specialist training. Immigration solicitors must be aware of the importance of the child's age and of the need to refer to community care or other suitable solicitors if there is an age dispute.