



# **Age Assessment Practice Guidance for Scotland**

Good practice guidance to support social workers, their managers and others involved in undertaking and contributing to age assessments in Scotland.



**March 2018**

## **Acknowledgements**

This Guidance is a revised and updated version of the original *Age Assessment Practice Guidance: An Age Assessment Pathway for Social Workers in Scotland* produced in 2012 by Glasgow City Council and the Scottish Refugee Council with contributions from COSLA, Edinburgh City Council, UK Border Agency and Legal Services Agency amongst others.

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The partnership group would like to acknowledge the contribution of guidance published for [England](#) and [Wales](#) to the shaping of this document.

## **Important notice**

Throughout the document, the definition of a child is someone who has not yet reached the age of 18 years. This is reflective of the definition of a child in Section 40 of the [Human Trafficking and Exploitation \(Scotland\) Act 2015](#).

Age assessment sits within a framework of immigration and child welfare law and this continues to evolve. The case law referred to in this guidance is intended to illustrate cases that are relevant to age assessments at the time of drafting this guidance. This is a developing area of law, therefore, the case law is subject to change and the cases referred to in this guidance should be used for reference only. In using this guidance, consideration should be given as to how any new case law will have a bearing upon the practice that is suggested here. Should you encounter a similar legal issue, we would recommend that you seek up to date independent legal advice.

With respect to any comments made within the Guidance which relate to information sharing and retention, it is important to ensure that action is in line with the General Data Protection Regulation as well as relevant data protection and human rights legislation. At the time of writing, The Data Protection Act 1998 remains in force although is due to be repealed. The EU General Data Protection Regulation has already been passed and it is anticipated that a new Data Protection Bill will replace the existing legislation. We would recommend that you seek specialist advice with respect to data protection. The [Information Commissioners Office](#) can provide further information.

**The responsibility for ensuring that an age assessment is legally compliant remains with the relevant local authority. The Guidance is not statutory and should not be taken in any way as constituting, or as a substitute, for legal advice. In all undertakings, it is important that action is compliant with relevant data protection and human rights legislation, including children's rights as set out in the UN Convention on the Rights of the Child<sup>1</sup>.**

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<sup>1</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

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## **1. Introduction**

The prompt for a revision of the original guidance was to reflect the provision of giving young people the benefit of the doubt in circumstances of assessing age, which was made an explicit duty for trafficking victims within the Trafficking and Exploitation (Scotland) Act 2015. However, young people are increasingly being given the benefit of the doubt for the purposes of support during the age assessment process in cases where the young person isn't necessarily thought to be a victim of trafficking. Whilst this has not been explicitly legislated for, this position is supported by case law.

Age assessments are a controversial and complex task and there is no way to conclusively determine a person's age. We recognise that the necessity to undertake an age assessment stems from the differences in support provided to adults and children. There has been much debate as to whether social workers should undertake age assessments at all. There is no global or even European consensus as to how best to undertake an age assessment, with some favouring physical assessments based on a medical model of assessment over a social model.

However, whilst acknowledging concerns, for young people whose age is unknown or disputed, age assessments are important. Age determines what a person's rights and entitlements are and what duties and powers apply when local authorities are considering whether or how best to support a young asylum claimant. In the absence of statutory guidance, the court system has been instrumental in setting out the minimum legal standards for an age assessment. The original case which set out these standards was *R (B) v Merton* [2003] EWHC 1689 (Admin), giving rise to the term "Merton compliant" age assessment (**see Appendix 6**). There have been several leading cases in England & Wales and in Scotland since and whilst case law can be subject to change, we have compiled in **Appendix 7** what appears to us to be, at the time of writing, the most relevant.

A legally compliant age assessment carried out to professional standards will serve the interests of both the young person and the assessing local authority, not least because of the possibility of a challenge to a decision through judicial review. An assessment cannot be made solely on the basis of appearance and should be a holistic one, taking account of the young person's appearance, demeanour, background and interaction with others. Adopting assessment practices that are in line with the Getting It Right For Every Child (GIRFEC) national approach in Scotland which puts the rights and wellbeing of children and young people at the heart of the process will assist in avoiding unnecessary distress to the young person and cost later on.

Age assessments are triggered by uncertainty and their completion is frequently a difficult task. Much of this is due to the absence of easily verifiable information and a lack of straightforward physiological or cognitive tests which are not invasive and that can give a definitive answer with a narrow margin of error. Currently, best practice would appear to involve a blend of knowledge and experience, comprehensive information gathering and reasoned, evidenced judgement, safeguarded within a procedure which is transparent and meets the requirements of existing case law (**see Appendix 7**). By virtue of their unique blend of knowledge, skills and

experience, social workers are best placed to lead holistic assessments of this type. However, as with any other assessment, this should be supported as far as possible with multi agency contributions.

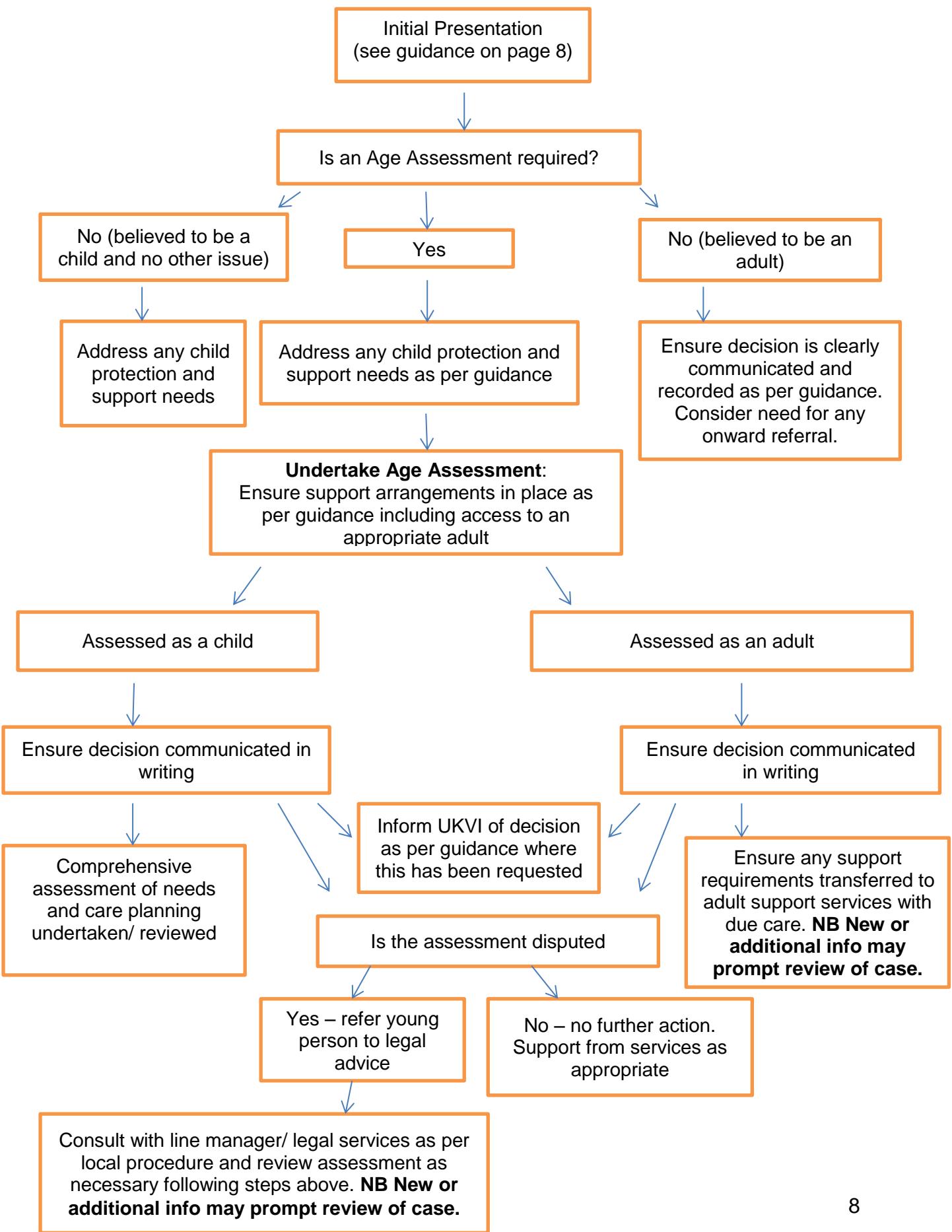
The responsibility for conducting age assessments sits with the local authority where the young person is residing. Since the publication of the original Age Assessment Guidance in 2012, information from local authorities indicates that there continues to be a highly uneven distribution between Scottish local authorities of cases requiring age assessment, with most concentrated in the major cities. This updated Guidance notes the challenge presented to authorities to meet what might (at the time of writing) be an infrequent or even rare requirement.

Whilst it is for local authorities to determine their approach to age assessment, the Guidance indicates the key principles and considerations that are relevant. It is intended to assist managers, social workers and other involved professionals by offering a framework that can be adapted to suit the particular situation of both the young person and the relevant local authority. Decisions about whether and how to apply the Guidance will rest with the assessing local authority and as each local authority (and individual social worker) will be required to account for their practice in the event of a legal challenge, it is hoped that this Guidance will give a sound foundation for developing good practice and decision making.

The process for carrying out age assessments should sit within a wider local framework of general procedures relating to children and young people. This includes for example child protection, looked after children and data protection considerations. This Guidance is intended to contribute to local arrangements to support practice in conducting age assessments which might include:

- A training and support strategy for social workers and others regarding working with young asylum seekers and refugees
- Arrangements to provide access to a suitable pool of staff who have experience in conducting age assessments and/or considering how staff can develop such experience before assuming responsibility for their production
- Opportunities for: job shadowing; continuous professional development through access to research; practice sharing though professional networks that include statutory and voluntary sector agencies; the provision of inter-professional advice
- Supervision arrangements that allow for reflection regarding assessment content and analysis and fit with assessment timescales
- The development of good practice arrangements concerning the identification, accreditation, use and support of interpreters
- Effective joint working arrangements, including data sharing agreements, between involved agencies, (particularly between health, educational and social work agencies) that allow for multi-agency involvement and timely responses
- Quality assurance arrangements to support continuous evaluation

## 2. Flowchart : The Age Assessment Process



### **3. Initial Presentation**

This section is designed to assist social workers in determining whether they need to undertake an age assessment.

#### **Key questions for practice:**

- ✓ Is it necessary to undertake an age assessment?
- ✓ Are there circumstances in which you wouldn't ordinarily undertake an age assessment?
- ✓ What about recording and sharing information?

#### **Whether to undertake an age assessment**

Asylum seeking children and adults arrive in Scotland in many different ways. Frequently, local authorities are notified (often out of hours) of the presence of an asylum seeking person by one of the following sources:

- Solicitors
- Non-governmental organisations who support asylum seekers
- Police Scotland
- The Home Office United Kingdom Visas & Immigration (UKVI)

The key task at this stage is to decide whether an age assessment is required, as quickly as possible, to enable the individual to be transferred to the most appropriate accommodation and care arrangements based on their likely status as an adult or child.

The decision as to whether it is necessary to undertake an age assessment is a professional judgement based on the individual's initial presentation and circumstances, physical appearance and demeanour. In making this decision, social workers should be alert to any unconscious bias (how our own experiences of family, society and culture etc. have shaped our views) and ensure that decision making is reasoned and robust.

Normally, there will be no need for a prolonged inquiry into a person's age, if it is very obvious that the person is over the age of eighteen years. As such, if the physical appearance or demeanour of that person strongly suggests that they are significantly over the age of eighteen years, under this guidance, it is suggested that no prolonged inquiry into the person's age is necessary. If the person is obviously a child, normally, no inquiry at all is called for.

In the great majority of cases, age assessment will apply to those persons who are considered borderline as to whether they are an adult or a child and their age is in doubt. In undertaking an assessment there should be no assumption that the individual is an adult or a child.

If the notification received by the local authority indicates that the individual is, or states that they are under the age of 18, then the local authority social work service must respond and arrange to meet the young person, with an interpreter where this is practical. Whilst an interpreter might not be available at short notice, the timing of the meeting may need to be balanced with the fact that the young person is likely to be in a police station or other temporary setting.

In considering how to respond, the following scenarios are given as guidance.

- The individual states they are under 18, but is so clearly and obviously an adult that, unless there is compelling evidence to the contrary, they would be most appropriately supported by an adult service provider. In this case, a full age assessment under this guidance is unlikely to be necessary and they should be referred to an adult service. In practice, it is rare that social workers encounter a case where it is this clear or this obvious, but it can happen from time to time.
- The individual states they are under 18 and there is reasonable grounds to believe that they have been trafficked. In this case, the Human Trafficking & Exploitation (Scotland) Act 2015 emphasises the duty of local authorities to give the benefit of the doubt to the young person. Section 12 of the Act applies where a Health Board or Local Authority has reasonable grounds to believe that a person is a victim of human trafficking and, while not certain of their age, there are reasonable grounds to think the persons may be under 18. In these circumstances, the Board or Authority has to treat that person as a child in relation to certain statutory powers and obligations. They are required to do so unless the person is proven or assessed to be 18 or over. In these cases, a children's service must be provided pending an age assessment being carried out.
- The individual states they are under 18, but there is some doubt in the minds of the social work staff or others that he or she may be a 'borderline' case. In this case, social workers should give the individual the benefit of the doubt and err on the side of caution, providing a children's service in the interim, pending an age assessment.

Where a children's service has been provided pending the completion of an age assessment, it will be for the local authority to determine the most appropriate care arrangements based on the young person's presenting needs (see ***Additional issues and Potential Vulnerabilities*** section on **Page 12** for further information).

Age assessments should only be undertaken where they are absolutely necessary. Where a young person has been provided with a children's service, staff supporting and managing the young person's care will be forming views about the young person. If the subsequent consensus is that local authority staff are happy to accept the stated age, then it may not be necessary to continue with an age assessment. The exceptions to this would be where an age assessment is required to support a young person's care for example to provide a date of birth to enable access to services (and of course in recognition of the importance of this to a young person's sense of identity).

There may be occasions where the Home Office UKVI disagree with this approach and request a full age assessment to assist with immigration decision making. In these circumstances, to best support the young person, negotiations may need to take place to determine what existing information can be provided to the Home Office and what (if any) further assessment is required. The legislation, case law and guidance governing data protection and human rights law must be adhered to at all times.

#### **Recording decision making, sharing information**

In all cases, it is important to ensure that decision making and rationale is clearly communicated to the young person (and their legal representative) and recorded. This is to ensure transparency should there be any subsequent questions or challenges to initial decision making going forward. A sample recording is attached at **Appendix 1** to help social workers in thinking about what to record.

## **4. Additional Issues and Potential Vulnerabilities**

This section is designed to help social workers think about the wider issues which may impact on the age assessment process and which they need to account for as well as the practical issues which need to be addressed before an age assessment takes place.

### **Key questions for practice:**

- ✓ Is it possible that the young person has been trafficked or experienced another form of abuse? If so, child protection procedures should be followed.
- ✓ How do I take a trauma informed approach to age assessment?
- ✓ Has appropriate accommodation been put in place for the young person for the duration of the assessment?
- ✓ Are there specific communication needs?
- ✓ Are there specific health needs eg. pregnancy?
- ✓ Does the young person have any other additional needs beyond being unaccompanied eg. learning disability and are there arrangements in place to take account of these during the assessment?
- ✓ Are there any other issues which may impact on the young person's ability to participate fully in the assessment and which need to be taken account of?
- ✓ What is the young person's immigration status?
- ✓ Are additional supports required?

### **Voice of a young person:**

"The most important thing is to know I am safe"

### **Child protection**

Workers should be mindful that there is research as early as 2001 which points to the involvement of traffickers in a significant minority of child asylum cases<sup>2</sup>. More recently, surveys have indicated the risks to women and children travelling across countries to seek asylum<sup>3</sup>. Child trafficking is child abuse and local Child Protection Committees should have in place policies and procedures to support workers. Additionally, it is incumbent upon workers to ensure practice is compliant with Article 22 of the UN Convention of the Rights of the Child states that a child who is seeking refugee status or who is considered a refugee should "receive appropriate protection"<sup>4</sup>.

The Human Trafficking and Exploitation (Scotland) Act 2015 specifically requires relevant authorities to presume that a victim of human trafficking is a child in circumstances where the age of a victim is uncertain, but there are reasonable grounds to believe that the victim is a child under 18 years of age.

<sup>2</sup> <https://research.hks.harvard.edu/publications/getFile.aspx?Id=116>

<sup>3</sup> <https://www.unicef.org.uk/publications/deadly-journey-children-central-mediterranean-migration-route/>

<sup>4</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Where concerns exist that a young person has been trafficked (or experienced any other form of child abuse) this is a child protection matter and will have priority over the age assessment task. It should be noted however that there may be information collated in the process of a child protection investigation which may be relevant to determining the issue of age.

Trafficked young people are likely to have experienced other forms of abuse and exploitation. How victims will experience trafficking and exploitation will differ and may be impacted on by their gender. Figures indicate for example that more female than male victims will experience sexual exploitation<sup>5</sup>. Victims may have been forced to learn a story to tell the authorities and been given documents which are false or belong to someone else. They may have been told to state that they are older than they actually are. Traffickers may have gone to great lengths to control and secure the young person's silence about what has really happened to them, including threats to their own or their family's lives. Culture and religion can be used erroneously against young people to control them, such as being told that a curse will be placed on their family if they do not comply.

Social workers should remain alert to the impact of trafficking or any other child abuse and any continuing threat on the young person's ability to participate in an assessment. Additional needs including specific health issues/ pregnancy need to be taken into account. Depending on their experiences, in some instances the young person's need for care and protection may impact on the timescale of any subsequent age assessment.

Whilst all unaccompanied young people will require appropriate accommodation and support, this is of heightened concern for trafficked young people. In other parts of the UK there is a significant issue concerning trafficked young people going missing shortly after being accommodated. Scotland to date has not had the same experience, although practitioners should remain cognisant of the risk.

Where a young person is suspected of having been trafficked and they are subsequently assessed as being a child, this should be considered a child protection matter and a referral should be made to the National Referral Mechanism (NRM) available at: [National Referral Mechanism](#). The Human Trafficking and Exploitation (Scotland) Act 2015 has in addition placed a duty (when enacted) on **relevant authorities** to notify the Chief Constable of Police Scotland where a child is suspected of having been trafficked.

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<sup>5</sup> <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/788-national-referral-mechanism-statistics-end-of-year-summary-2016/file>

## **Referral to the Children's Reporter**

In discharging their statutory duties, local authorities must give consideration as to whether a child might require to be made subject to a Compulsory Supervision Order (CSO) and therefore whether a referral to the Children's Reporter is necessary<sup>6</sup>.

Anyone can refer a child to the Children's Reporter and a referral must be made when it is considered that a child is in need of protection, guidance, treatment or control and that a CSO might be necessary. The consideration of a referral to the Children's Reporter should not be delayed as a result of an age assessment being planned or carried out.

## **Trauma**

Asylum seeking young people may have experienced significant trauma during their migration journey. Their experiences may include direct experience of beatings, rape or torture and they may have been witness to the beating, rape, torture and killing of others including family members. Some may have been 'child soldiers' or fleeing from attempts to enlist them as 'child soldiers'. Their journeys to the UK may have been as a result of child trafficking and fraught with danger and uncertainty.<sup>7</sup>

Depending on their background and previous experiences, arrival in the UK may be an isolating experience. Language, food, culture, religious observance etc. may be very different and even objectionable to the young person. Previous experiences of authority and state officials means that border agency staff, police, social workers etc. could be mistrusted and even feared.

Research has indicated a correlation between post migration stresses and psychological distress including post traumatic stress disorder (PTSD) and depression<sup>8</sup>. Evidence suggests that psychological problems such as these are more prevalent in unaccompanied asylum-seeking children than in accompanied children<sup>9</sup>. A 2012 study found that about one-third of asylum-seeking Afghan children who arrive in the UK without their parents are likely to experience symptoms associated with post-traumatic stress disorder<sup>10</sup>.

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<sup>6</sup> In considering whether to refer a child to the Children's Reporter, reference should be made to "Guidance on Referral to the Reporter – Information for Partners" produced by the Children's Hearings Improvement Partnership: <http://www.scra.gov.uk/wp-content/uploads/2016/03/Guidance-on-Referral-to-Reporter.pdf>

<sup>7</sup> <https://www.nice.org.uk/guidance/ph28/resources/looked-after-children-ep23-unaccompanied-asylum-seeking-children-john-simmonds-and-florence-merredew2>

<sup>8</sup> Bronstein, I. and Montgomery, P. (2011) 'Psychological Distress in Refugee Children: A Systematic Review' in *Clinical Child and Family Psychology Review* Volume 14, Number 1 (2011) pp. 44-56

<sup>9</sup> E. Sanchez-Cao, E., Kramer, T., and Hodes, M. (2012) 'Psychological distress and mental health service contact of unaccompanied asylum-seeking children' in *Child: Care, Health and Development*

<sup>10</sup> Bronstein, I., Montgomery, P., & Dobrowolski, S. (2012), 'PTSD in Asylum-Seeking Male Adolescents From Afghanistan', *Journal of Traumatic Stress*, 25(5), p551-557

Being trauma informed means understanding the potential effects of trauma on the age assessment process:

- The process can be re-traumatising
- Trauma related difficulties may interfere with a young person's ability to answer questions
- Trauma related difficulties mean that assessors have to be very careful about how they understand and interpret a young person's response

Workers should be sensitive to the possibility of the presence of trauma and ensure that this is considered in the undertaking of any assessment and the subsequent analysis of responses. An approach which is sensitive to the young person's needs is likely to convey a sense that their views are being taken seriously and that they are being treated fairly which could help mitigate and manage feelings of powerlessness and trauma. Where there is concern about a young person's emotional state, assistance should be sought from an appropriate health professional. Guidance to support social workers to take a trauma informed approach to undertaking age assessments is provided in **Appendix 4**.

**Voice of a young person:**

"Take time to build trust...negative body language makes you feel uncomfortable"

**Immigration status**

The young person's immigration status will have implications for their options for support post assessment, particularly where they are subsequently assessed to be an adult.

It will be important to understand the young person's immigration status and whether they have made an asylum application etc. Whilst the asylum process is completely separate from the assessment of age, the Home Office may use the age assessment outcome to inform their own decision making (see **Action Following Assessment** section on **Page 32** and **Appendix 8** for further information).

**Looked After Children status**

The very fact of an age assessment being undertaken affirms the possibility of the person being a 'child'. Asylum seeking young people whose age is in dispute are generally provided with care and support under Section 25 of the Children (Scotland) Act 1995 which affords them Looked After Children status. It is suggested that local authorities should be mindful of the potential complexity concerning both the short and long term implications that arise from looking after young people whose ages are in doubt. The age assessment and placement and support planning processes should work closely together to manage these.

**Provision of accommodation**

It is important that as far as possible, planning takes place to ensure the most appropriate accommodation is in place before the age assessment commences. Recently arrived unaccompanied children and young people may require a high level of support to ensure that they are safe and their needs appropriately provided for. As

with any child or young person's placement, presenting information and any background information will need to be taken into account when deciding which type of placement would be most appropriate. Whilst some may benefit from being in a fostering or family type placement, others may benefit from shared or group accommodation with other young people with cultural similarities or experiences. Working with the young person themselves to develop an initial assessment will likely be the best way of ascertaining what best meets their needs.

It will be important that appropriate accommodation is in place for the young person for the duration of the assessment. Case law cautions against using adult services provision whilst carrying out an age assessment as the assessment is in itself an admission that the local authority is in some doubt:

"By agreeing to carry out an age assessment in the Claimant's case, the Defendant has accepted that the Claimant is someone who may be a child. " (S, R (on the application of) v London Borough of Croydon & Anor[2017] EWHC 265 (Admin) (24 February 2017).

Where it is subsequently assessed that the person is not a child, workers should be mindful of the fact that the individual may still be in need and ensure that they are transferred to appropriate adult supports with due care.

### **Communication**

Communication across cultures and across languages can be challenging. Social workers will have the understanding and appreciation of the complexities of working in this field and should ensure that anti-discriminatory and anti-oppressive principles underline their practice. At all stages of the age assessment, social workers should be aware that cultural norms and individual experience will impact on a young person's communication, both verbal and non-verbal.

Children and young people may experience numerous issues that impact upon their ability to communicate. This includes learning disabilities, mental health problems, the impact of trauma, and an inability to speak, read or write English. This needs to be considered throughout the age assessment process. It is possible that a specialist opinion may in some cases be required with regard to matters concerning the young person's ability to provide information and to meaningfully respond to questions. This would be the case where there were reasons to suggest that a young person may have a learning impairment, be suffering from a condition that affects their memory or have a psychological or psychiatric condition that affects their ability to properly participate in the assessment. Whilst experienced social workers may recognise indicators that raise such a concern it will be for an appropriate professional to provide an expert opinion on the matter if that is thought necessary.

Social workers are however well versed in considering the different ways in which children and young people communicate and it is important in undertaking any assessment to consider what the range of interactions and observations of the person (either experienced directly or through feedback from other professionals) is communicating and how the worker's own non verbal communication contributes to the understanding of the young person.

It is important to be aware that a young person may have been interviewed on a number of occasions by a number of different agencies, potentially for different purposes. This may include Home Office staff, police and solicitors. Children and young people are likely to find this whole process confusing and distressing, and may struggle to understand the differences between agencies. The impact of trauma as well as the numerous professionals that may be involved will likely affect their ability to take on board information given to them. Therefore, children and young people need to be given clear information about the reasons for conducting an age assessment, and it is important that this is reiterated on more than one occasion, and put into writing where possible.

Many of the children and young people arriving in the UK and claiming asylum come from countries in which the role of 'social worker' either may not exist or may be very different to that of the social work role in Scotland. Their experiences of authority figures may also be negative or abusive, and some may have fled their country of origin to avoid persecution by their national authority. In addition, trafficked children and young people may also have been given false information about what might happen if they come to the attention of the authority.

#### Key considerations for communication:

- Consider the basics: as with any other interview, greeting the young person with respect and consideration can help to mitigate some of the fears the young person is likely to have
- Identify the young person's communication needs
- Consider the young person's ability to give consent, which must be unambiguous and by a statement or by clear affirmative action, compliant with data protection and human rights legislation
- Arrange appropriate interpreting and translation services and wherever possible arrange for the interpreter to be physically present during interviews
- Identify and anticipate any other issues that may affect communication – see **Appendix 4** for guidance on taking a trauma informed approach to assessment
- Prepare an explanation of the purpose to be given to the young person verbally and in writing (with any necessary supplementary explanations)

## 5. Preparing to Assess

### **Key questions for practice:**

- ✓ Who should undertake an age assessment?
- ✓ Is an “appropriate adult” required?
- ✓ Is the young person aware of their rights and do they have access to legal representation?
- ✓ Do I need an interpreter?
- ✓ What should the timescales be?
- ✓ Where should I undertake interviews?

### **Voice of a young person:**

“Be honest about why you are doing an age assessment. Explain the possible outcomes and consequences of the results. Go there with an open mind. Don’t make up your mind before the assessment starts”

### **Assessment: Getting It Right For Every Child**

A key purpose of establishing a young person’s age is to determine what type and level of support they may be entitled to. Determination of age is also important with regards to both safeguarding the young person and those with whom they are in contact. Factors that are relevant to determining age will also be relevant in a wider assessment of need. As such there is value in considering the age assessment in the wider context of an assessment of need and risk. This is consistent with the underlying values of Getting It Right For Every Child (GIRFEC), namely those relating to being child-focused, considering overall wellbeing and working in a joined-up manner.

The principles of GIRFEC are as applicable to young asylum seekers as they are to any other group of young people although it would be important to be mindful of cultural translation. However, the potential vulnerabilities of this group, coupled with their very particular additional needs and the consequential challenge for professional practice, make certain aspects of GIRFEC especially relevant:

1. Using the GIRFEC tools and materials in assessing need will also support the improvement of assessments of age. Previous judgements have indicated that it is hard to see how an asylum seeking child cannot be a ‘child in need’.
2. Adopting a ‘whole child’ approach across statutory and voluntary agencies will increase the quantity and quality of information and analysis that can be used in age assessments. The common set of terminology and indicators within GIRFEC allows for more effective communication across agencies.
3. Use of the My Word Triangle at every stage encourages the consideration of the young person in their widest context, and supports the need to gather information from other sources.

Whilst an age assessment is separate from a more comprehensive needs assessment, some of the information required to assess age will also contribute to assessing need. Assessors should keep this in mind in order to minimise any duplication of processes. The primary task is that of assessing age but this can help

inform assessments of need. The same knowledge, skills and understanding, which underpins good assessment practice with young people in need, is also required when working with young asylum seekers. This should however be supplemented with additional knowledge relating to:

- country and culture of origin
- ethnicity
- trafficking
- effects of trauma
- the experiences of refugees

### **Who should undertake an age assessment**

Local authorities will wish to ensure that the staff members allocated the task of conducting an age assessment have the appropriate knowledge and experience that equips them to carry out a competent and defensible assessment. Age assessments should be carried out by **two workers** acting together. A conclusion based on the assessment and views of one individual would be unlikely to be considered robust nor survive scrutiny.

It is the responsibility of the local authority to ensure that the assessors have the relevant knowledge, experience and skills for the task. **At least one worker should be a qualified social worker registered with the Scottish Social Services**

**Council** who should assume the lead role in planning the overall assessment. Both workers should have experience of working with children and young people and undertaking needs assessments. Best practice would suggest that at least one should have experience and training relating to age assessment / working with asylum seekers. Where this proves difficult, local authorities should consider what arrangements can be put in place to support workers such as linking with another local authority with more practice experience. Selection of staff should also take account of gender and other issues which may be important to the young person (and potentially of heightened concern for young people who have previously experienced violence and/or sexual exploitation).

As with any other social work led assessment, roles in planning and undertaking the age assessment, including interviews should be agreed with the relevant manager. The roles and tasks of the two assessors can be divided and there should be flexibility in matching task to individual (for example the importance of the gender of the interviewer may not be immediately apparent) and assessors will be required to exercise judgement when deciding how to agree responsibilities. It may be useful to record the agreed roles and tasks of the two assessors in an assessment plan.

Some issues relating to staff selection may require balancing a range of competing factors. Such weighting is likely to involve considering the importance of staff selection in producing a robust assessment alongside practical matters of staff availability and time.

Both assessors should be present during interviews with the young person and when analysing the information gathered. The lead worker has responsibility for ensuring that the assessment is suitably planned. Both assessors have equal responsibility with regard to stating an opinion concerning the assessed age of the young person.

Where there is disagreement between workers this should be noted in the assessment. If assessors disagree about the assessed age or experience a significant difficulty in conducting the assessment then they should draw this to the attention of the relevant manager and seek advice.

**Voice of a young person:**

“I was told at the start that I should have two social workers and someone independent. The social worker just showed up the second time without telling me they were coming.”

**Appropriate adult**

Case law indicates that it is best practice to offer an appropriate adult to sit in with the young person during any interviews with assessors. If the young person chooses to have an appropriate adult present, then an appropriate adult should be present at all interviews with the young person.

This Guidance, consistent with the original version produced in 2012, defines an appropriate adult as a person, independent of the assessment process, that is able to:

- Observe the interview
- Ensure that the young person understands the key processes
- Ensure that the young person has an opportunity to respond to any information or opinions that may be incompatible with their own account

A person proposed to act as an appropriate adult must be deemed acceptable to the local authority and the young person and their legal representative. The local authority should consider whether it would be good practice to provide an outline description of the role and responsibilities of the appropriate adult to the young person and their legal representative. There may be benefit in preparing written material that can be given to the young person and explained through an interpreter if required. Assessors should ensure there is proper discussion about the role of the appropriate adult. Where an appropriate adult has agreed to take notes for the young person during the meeting, there should be an agreement that these are shared with the assessors for the purposes of contributing to the overall assessment.

If a young person declines to have an appropriate adult present then this and their stated reasons for their decision should be recorded.

**Providing information to the young person and their rights and access to legal representation**

Once a decision has been made that the young person is a child or that an age assessment requires to be undertaken, it is important to ensure that the young person is given information about their situation.

The young person should be made aware of their rights and in particular their right to access legal representation at the outset of the age assessment process. Good practice would be that this is considered in any verbal or written information given to the young person.

In terms of communicating with children and child friendly materials, the Guardianship Service (**see Appendix 9**) may be a source of support. ECPAT have also produced child friendly information materials through their ReACT project (**see Appendix 10**). Further consideration of what the young person should be told specifically about the age assessment process can be found in the **Planning the Assessment** section on **page 23**.

### **Interpreters**

Age dispute cases will regularly involve young people who do not speak English or, where English is a second language, it is poorly understood and spoken. The quality of the assessment will therefore be significantly affected by how well interpretation and translation services are used. The Guidance assumes that local authorities will make proper advance arrangements concerning interpreters (including requirements relating to their suitability and selection) and support staff in their use.

It is possible that there will be exceptional circumstances where it proves very difficult to identify an interpreter fluent in the young person's language and in these cases it may be necessary to extend the assessment period so that all reasonable steps to obtain appropriate support can be taken.

Assessors should explicitly check whether an interpreter is required and that the young person understands that an interpreter can be provided. Both the offer and the response should be recorded.

It is important to be clear about the role of the interpreter. They are there to provide a translation service between the assessors and the young person. They should not provide any views or opinions regarding the information being provided by the young person. It is important to recognise the potential for an interpreter to be affected by interpreting for a young person who may have experienced highly traumatic events and which can impact on how they are translating.

Assessors should ensure that the interpreter has a proper understanding of the requirement for confidentiality and objectivity.

#### **Voice of a young person:**

**"If you really understand an interpreter, that makes a big difference"**

### **Timescales**

Assessments should include **a minimum of two interviews**, staged several days apart. Interviews should be planned to take account of the young person's needs and capabilities at these times. Consideration needs to be given to any religious or cultural issues which could impact on the timing of interviews eg. if the young person is fasting.

The assessment should aim to be conducted over a period of **28 days** to allow the young person time to become accustomed to their surroundings and to develop some trust and sense of security. There may also be circumstances that require a longer assessment period. Reasons for this might include the ill health of a young

person, trafficking enquiries, unexpected or unusually difficult communication problems or the possible existence of learning difficulties. Assessors should record the process and duration of interviews. Breaks will need to be factored into any interview.

The timescales involved in age assessments, coupled with very limited resources, present significant challenges. However for many local authorities it may be a relatively infrequent requirement and given the significance of age assessment for the young person at the centre it is important enough to justify high priority.

**Voice of a young person:**

“Give regular breaks (in an interview) and not just 5 minutes. Social worker should say, take a break and when you feel ready come back in. I got told that I only had a 5 minute break and this was not helpful.”

**Considering a venue**

Whilst workers will likely be restricted in their choice of venue for undertaking interviews, consideration should be given to the requirements of the location. The venue should be reasonably comfortable, with enough space and seating and access to toilet and drinks facilities. As with any interview which deals with personal information, the space should afford an appropriate level of privacy. Consideration should also be given to what arrangements could be made in the event that the young person needs to take a break during any interview.

A police station would not usually be considered an appropriate venue for undertaking an age assessment. Where it is accepted that there is an age dispute, arrangements should be made for the young person to be provided with appropriate accommodation whilst an age assessment is undertaken.

## **6. Planning the Assessment**

### **Key questions for practice:**

- ✓ Does the young person know the purpose of the assessment?
- ✓ How to manage new information?
- ✓ Consideration of the young person's vulnerability?
- ✓ What if the young person chooses not to participate?
- ✓ How do I undertake interviews?

### **Purpose of the assessment and the role of the social workers**

The young person, any legal representative on behalf of the young person and the involved 'appropriate adult' should be made aware of the purpose of the assessment at the outset. Workers should record whether and how the young person has indicated that they have understood this. It would be useful to prepare a statement of purpose to be given to the young person verbally and in writing (with any necessary supplementary explanations). The aim is to give the young person as much information as they need to support them to participate as fully in the process as possible.

How the process is explained to the young person will be determined by their particular needs. As a basic guide, workers should cover:

- The role of each worker (and anyone else who is anticipated to be in the room during interviews eg. interpreter)
- What will happen in the age assessment process (eg. interviews, speaking to others, gathering information) and how long you anticipate the process to take
- That the process is to determine whether their needs should be met within children's or adult support services
- That the process is separate from the decision making about any claim for asylum, but the outcome could be considered by the Home Office in making their decision
- That they will be asked to give consent to participate in the process (in compliance with relevant human rights and data protection legislation) and that they can change their mind at any time
- They can seek legal advice
- If they wish to have an appropriate adult present during interviews they can
- That they can ask to take a break, get a drink of water etc. (particularly if they feel upset) or ask for clarification if they don't understand anything at any time during interviews
- What will happen once the assessment is complete (including that decision making will be explained giving them an opportunity to comment)
- That they can appeal with the help of a solicitor if they don't agree with the outcome

### **Managing new or revised information during the course of the assessment**

In planning any assessment, arrangements for carrying out age assessments should include how to manage new information that comes to light after the assessment interviews have been concluded and how this would be reviewed. It should be possible to take new information into account and for opinions about assessed age to be revised. It is important to give the young person an opportunity to discuss provisional findings prior to finalising any assessment to give them the opportunity to clarify any information.

### **Vulnerability**

The potential vulnerability of young asylum seekers (due to communication issues, possible trauma, absence of familial supports, loss of identity and the general effects of dislocation) means that they depend particularly upon having a fair and effective assessment process. It should be ensured that there are safeguards and independent supports built into each assessment to make certain that young people's rights are understood and protected. It should be noted that a high level of vulnerability in a young person does not necessarily equate to them being a child but it does mean particular care should be taken so as to ensure that a fair and defensible assessment is conducted which recognises the impact on the young person's identity and circumstances. It is also important to take this approach given that until the assessment is complete, the possibility remains that the young person is a child and action needs to be in line with Article 8 of the UN Convention of the Rights of the Child<sup>11</sup>. A trauma informed approach to assessment is recommended – guidance on this is provided in **Appendix 4**.

### **The young person decides not to participate in the assessment**

If a young person decides not to participate in the age assessment process then the assessors will be expected to continue to undertake the assessment, albeit noting the constraints and limitations that result. The young person should be supported to understand they will not be forced to participate in any interview and consent (which must be in accordance with data protection legislation in force at the time) would still be sought from them to seek information from other agencies as necessary. They should be made aware that information will still be gathered from existing social work records and from observations assessors/those directly caring for the young person have been able to make. Attempts should be made to ensure the young person is given the opportunity to comment on the contents and outcome of any such assessment and any feedback recorded.

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<sup>11</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

## **Planning interviews**

Similar to principles and techniques used in undertaking other interviews with children and young people, workers should seek to establish a rapport at the outset of the interview process and use open rather than closed questions to support the young person to contribute as fully as possible to the assessment.

Assessors may wish to prepare a set of ‘core’ questions in advance based upon the individual case. Core questions might include tailored ‘open’ questions that encourage fuller answers such as descriptions or narratives. The aim is to build as full a picture as possible about the young person’s background and experiences which can support an assessment of their age.

Suggested areas of enquiry are outlined in the suggested assessment headings to be considered in any report appended to this Guidance (**Appendix 3**). A key question is to specifically ask the young person what their age and date of birth is to support a fuller exploration of the contextual information which supports their view, eg. rites of passage, comments from their parents about their season of birth etc.

Interviews should be recorded and it may be best to decide in advance how this will be undertaken. Detailed written notes should be undertaken to ensure that the significant points covered are recorded (unless the interview is being recorded by another means). It is important to remember that if an age assessment is disputed in court, all original records may be required to be provided (even where notes have been subsequently typed).

### **Voice of a young person:**

“Sometimes it is difficult to know if everything is understood between me, the interpreter and the social worker, so it is good to write things down so they can be checked out”

## **7. Assessment: Gathering Information and Analysis**

### **Key questions for practice:**

- ✓ Will documentation be available/reliable?
- ✓ What information should be gathered?
- ✓ Getting information from other professionals in writing?
- ✓ The provision and use of medical information?
- ✓ What needs to be recorded?
- ✓ The potential for bias?
- ✓ What needs to be considered in interpreting the information?
- ✓ What support and review arrangements are in place to ensure the assessment is robust and will withstand scrutiny?

### **Documentation**

Many of the young people arriving in the UK and claiming asylum come from countries with very different practices regarding official documentation and the recording of age and identity and may not have any documentation. In some age is considered to be relatively unimportant and in others conflicts or persecution mean that it is irrelevant to the struggles of everyday life.

Documentation can be stolen or lost on the journey to this country and in order to survive it may be necessary to deceive or mislead through using false documentation. Sources of information therefore will be limited and, in the absence of reliable and relevant documentation, there will be greater reliance upon information directly obtained from the young person themselves. This emphasises the point noted previously concerning the importance of communication. Assessments will be dependent upon accurate interpretation which picks up the nuance and detail of what is said as well as the basic 'factual' content.

### **Gathering information**

As much information as possible should be gathered prior to interviews taking place to make best use of the interview time and not subject the young person to questioning for longer than necessary. Assessors should have access to and use relevant information concerning the young person's country and culture of origin, religious background and ethnicity to help them in deciding what information to seek and in its analysis. As previously noted, this guidance reaffirms the ecological approach underpinning the GIRFEC framework.

Unless in a specialist team (or they have a personal connection), most social workers are unlikely to have detailed knowledge of the country of origin of the young person being assessed. This knowledge can help support social workers in both understanding and interpreting information as well as assist in framing questions during the interview process. Sources such as the Home Office (**Appendix 8**), Scottish Guardianship Service (**Appendix 9**), Scottish Refugee Council and Amnesty International can assist but it is important to remember that there will be limitations both in terms of the reliability and the currency of any information. A list of possible sources can be found at **Appendix 10**.

As with any other social work led assessment, impressions should not be formed solely on physical appearance. Beyond understanding the cultural, societal and religious experiences of the young person, a pen picture of the young person is required alongside observations regarding their interactions, responses to care etc to contextualise information and contribute to an analysis of the young person's particular situation and what that might mean for assessing their age. Use of a Genogram and Ecomap can help both gather information and support organisation and analysis of the same. Templates can be found in the National Risk Framework<sup>12</sup>.

### **Information from the young person**

#### **Voice of a young person:**

"It would help if the interviewer says to ask if I want to change the way something is asked, especially when you come from a country where you cannot risk to say anything."

The young person themselves is likely to be the primary source of information. Whilst many unaccompanied young people will present without any documentation, some may have this or are subsequently able to access this. Workers should consider whether there is any need for expert authentication of any documents. However, workers would need to exercise caution in how this is done. Where any state responsibility or systemic persecution/ lack of protection isn't fully understood, contacting an embassy or an organisation in the young person's country of origin (or even in the UK) could put the young person at serious risk. However, it might be possible to confirm information from the young person in ways which would not put them at risk such as internet searches regarding school information etc.

During the course of the interviews, the young person should be supported to provide their own narrative of their life and given the opportunity to comment on information gathered from themselves and other sources. Where gaps or inconsistencies are identified in the course of the interviews or any other part of the information gathering process, this should be discussed with the young person and their views recorded. We know from experience young persons' accounts will change as they develop trust in those supporting them. It is important that no assumptions are made as to the reasons for any inconsistencies etc. and all questioning should be on an inquisitorial rather than adversarial basis.

There may be special issues in cases where siblings or other relatives are being age assessed (both in terms of their assessment and the nature of their support). Each young person should be assessed in their own right but there may be benefit in considering how information about one relates to another. The potential benefits and problems that can arise in such situations however will require specific and extra consideration. As part of any age assessment assessors should ask where and when the young person last had contact with family members and whether there are any family members living in the United Kingdom.

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<sup>12</sup> <http://www.gov.scot/Publications/2012/11/7143/downloads#res-1>

**Voice of a young person:**

“Make the young person feel relaxed and make sure that they know it’s not like a police interview. Reassure them. Explain what (you) are going to do. If you are going to ask the young person about (their) ‘story’ then they need to give the young person plenty of time to explain as it is difficult to talk”

**Information from other sources**

The assessment should aim to be holistic and multi-agency in order to gather information from all relevant sources. It should utilise the information and views of agencies that have a relevant involvement with the young person or are able to provide a specialist opinion. This might include health professionals, educational psychologists, teachers, care and support staff, foster carers or others who have some relevant knowledge. It is particularly helpful to include information that is drawn from contacts in different types of setting. The assessors should consider who else might be sources of information to contribute to the assessment when they are planning and reviewing the progress of the assessment. The young person themselves may be able to assist in identifying sources.

Medical information may play an important part in contributing to age assessments but physiological assessments have wide margins of error and so there are caveats around what weight medical evidence should have in an overall assessment. Coupled with this there are ethical considerations which will have a bearing upon how and when medical experts, such as paediatricians, may become involved. A medical assessment is only likely to be available where this was required to meet a young person’s health needs. Medical information, where available, is best used by being taken into account as one part of a ‘Merton’ (**Appendix 6**) compliant social work age assessment. It is important to note that a medical report is different from general information / opinion which may be provided by a health professional as a contribution to an age assessment. Where a medical practitioner has had involvement with the young person and may be able to contribute, irrespective of whether any relevant medical assessment has been undertaken, it may be reasonable to seek their views regarding their observations of the young person relevant to the age assessment task.

Specialist information and opinion may play a part in an assessment. Social workers should aim to include this where possible and local authorities may wish to consider developing suitable arrangements to support this. In deciding what specialist involvement might be necessary there is value in considering a tiered intervention approach based upon the presenting situation and statements from the young person. Such interventions should be reasonable and proportionate and based upon an indicated need. It is understood that accessing specialist services may extend the timescales of the assessment. Decisions concerning this should aim to strike a balance between ensuring that the evidence underpinning an age assessment is ‘good enough’ while avoiding undue delay.

Where assessors wish to seek information from other agencies as part of the assessment they should ascertain if those agencies require the young person’s specific consent for this and if so request it. It should be noted that highlighting that

an age assessment is taking place is likely to be sharing confidential information and it is therefore likely that consent will be required. At all times, action must be compliant with the relevant human rights and data protection legislation. Where possible, information from other sources should be gathered prior to undertaking interviews with the young person to inform the interview process and minimise the number of interviews. Information requested from other professionals should be provided in **written format** to the assessors, detailing their involvement with the child and any interaction and observations of the child relevant to the assessment.

Where any conclusion is being drawn as to the age of the young person, this should detail the reasons for the opinion and any evidence which supports the conclusion. It should be noted that opinions can change over time and any changes in views should be communicated to the assessors in writing. Assessors should also seek to have access to any relevant records that may assist them as well as noting the opinions that other professionals may have drawn from these records. Assessors will need to consider and weight the information provided by other sources and how that contributes to the overall assessment. A sample request has been attached at **Appendix 2** to help social workers in drafting requests for information.

### **Recording**

There should be explicit agreement between the assessors and the relevant manager about managing recording arrangements for both the gathering of information and interviews. Records do not have to be verbatim but should be sufficiently full to include all significant points. In particular there should be detailed notes taken of the interviews. Issues concerning accuracy or veracity regarding interview notes should be raised as close to the time as possible so that clarification can be sought and noted by the assessing workers and the appropriate adult.

Written contributions from other professionals and assessor's notes of interviews constitute part of the young person's case file and access to the file is governed by legislation and local authority policies relating to the management of information. Arrangements should be in place for the processing of sensitive personal data and understood by the young person. All action must be compliant with the relevant human rights and data protection legislation, remembering that where consent has been given this can subsequently be withdrawn.

Whilst there is no immediate requirement for notes to be shared it should be understood that a request for information under data protection legislation may be made by the young person (and their legal representative if applicable), also that records may be examined as part of any later judicial review process.

### **Supervision, oversight and addressing the potential for “bias”**

‘Bias’ is an issue to be aware of in all assessments and this is particularly true in relation to age assessments. Conscious and unconscious attitudes concerning asylum and race, organisational cultures and wider societal attitudes towards immigrants and asylum seekers can all influence how information is collated and understood. As previously noted, there may sometimes be inconsistencies in a person’s account and workers must test their interpretations to understand their significance and ensure that a culture of disbelief does not develop. Acknowledging the potential for bias may not prevent it but it at least allows it to be considered. The use of supervision and the adoption of a ‘questioning of assumptions’ approach may assist. Local authorities should ensure that internal oversight arrangements allow supervisors the opportunity to review and confirm the assessment before it is signed off by the agency.

#### **Voice of a young person:**

“Reading into body language too much is not helpful. I was nervous in my interview and was scratching my hand and not giving any eye contact. Social worker said that this made me look older. This had nothing to do with my age”

### **Analysis and robustness of assessment**

Assessors should be confident about making judgements within their own sphere of expertise but should also understand where a different professional opinion would be helpful. Similarly where information is provided by other parties the assessors should be aware of the basis of that information, including how experienced or qualified that contributor might be, as this would affect the weight accorded to it.

It is unlikely that any one piece of information will point to a conclusive assessment of age. As with any other social work led assessment, assessors will need to consider each piece of information on its own, the detail, evidence and source in order to decide what weight is attributed to it in forming the overall assessment. Age assessments are unlikely to be able to be concluded with absolute certainty as there is currently no definitive test. In reaching any conclusion, consideration should be given to case law, ensuring that any decision has the young person’s best interest as a primary consideration,<sup>13</sup> and where there is reasonable grounds to believe that the young person has been trafficked, ensuring that decision making is compliant with Section 12 of the [Human Trafficking and Exploitation \(Scotland\) Act 2015](#).

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<sup>13</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

**Illustrative example:**

S is located at a city train station by British Transport Police. He has no passport or any other document which could confirm his age. He states he is 15 years old and social work services are contacted. Two workers visit and in consultation with their manager agree to accommodate S and undertake an age assessment. Having subsequently taken the assessment as far as they reasonably can, the social workers conclude that they are unable to make a judgement beyond identifying that there is reasonable information to conclude that S is between the ages of 17 and 18. On this basis, in consultation with their line manager, they decide that S should continue to be supported as a child because there remains reasonable grounds to believe that he is a child. S is subsequently given a date of birth which would identify him as being age 17.

It is important that assessors are able to evidence and account for their conclusions. This should involve identifying relevant information, indicating how it is interpreted, what weight is given to it and what conclusion is drawn. Whilst it is difficult to conclude a definitive age, assessors should be mindful of the importance of having a definitive age and date of birth, both in terms of the young person's ability to access services and their identity. Whilst the fundamental task of the age assessment is to determine whether the individual is an adult or a child based on the information available, it is important that any conclusions about a young person's date of birth are as exact as they can be and made in consultation with them.

Given the evolving body of social work practice, case law in this field and the potentially adversarial nature of the subject it is quite possible that at some point the assessment process used and its conclusions will come under legal challenge and scrutiny. In addition to any managerial review and internal oversight arrangements, local authorities may wish to consider whether there is a role for their legal services.

**Support for workers/debrief**

Managers should be mindful of the possibility of the presence of trauma for the young person and any subsequent impact on the workers undertaking the assessment. It will be important to consider any debriefing and support for workers arrangements as necessary.

## **8. Action Following Assessment**

### **Key questions for practice:**

- ✓ Communicating the assessment outcome to the young person
- ✓ Sharing information with others, including the Home Office UKVI
- ✓ What happens after the assessment?
- ✓ What if new information comes to light?

### **Sharing decision making**

The assessment findings should be discussed with the young person to give them an opportunity to comment prior to concluding the assessment report. Seeking the views of the young person is enshrined in Article 12 of the UN Convention of the Rights of the Child<sup>14</sup>.

Once the assessment is concluded, the assessment report produced by the assessors should be provided to the young person and their legal representative. The response of the young person and their representative to the report should be recorded, along with any agreed amendments to the report. As previously noted, a sample headings format for this report is appended to this guidance (**Appendix 3**).

Unless instructed by the court, a young person must give consent (which must be in accordance with the data protection legislation in force at the time) prior to workers sharing their information with any other agency or person. Consent must be unambiguous and by a statement or by clear affirmative action and it should be remembered that consent can be withdrawn.

Where the Home Office UKVI has disputed the young person's age they will require information regarding the outcome of the age assessment and the reasons for this. It is also likely that they would require information to evidence the robustness of the assessment process. The Home Office have advised that as a minimum, where age assessment information is requested, they require:

- The assessment conclusion
- The reasons on which the conclusion is based
- Evidence that the assessment complies with the general principles set out in the Merton judgment and further case law
- Confirmation from the local authority that the age assessment has been carried out in compliance with the guidelines in the Merton case and further case law

Where information is to be disclosed in these circumstances, it may be that, in accordance with data protection legislation, consent of the individual is not required. However, in other circumstances, consent may be needed in order to comply with data protection legislation. Please note that, in all circumstances, sharing of information must be fully compliant with data protection and other relevant legislation.

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<sup>14</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

The outcome of an assessment of age will have important effects upon how an asylum claim will be managed. The assessment of age is a separate process from that of determining an asylum claim and so safeguards need to be in place to ensure that the young person's rights are not prejudiced by the sharing of the age assessment report between key agencies. When sharing any information, action must be compliant with the relevant human rights and data protection legislation must be adhered to. It will be important to seek advice from the relevant data protection manager/ legal service.

### **Next steps**

If the young person has been assessed as being under the age of 18, then their care and support should continue to be provided by the local authority children's services. Where a person has been assessed as an adult, workers will need to ensure that they are transferred with due care to appropriate adults services, including the relevant immigration service.

#### **Voice of a young person:**

"Think about how they might react to the news. I remember not being able to listen to the reasons for decisions, and I switched off once I learned that my age was not believed. It would have been better for me to meet another time when I was not upset and could listen and understand the decision"

### **Managing new or revised information post assessment**

It is possible that following an assessment, new information not previously considered challenges the conclusions of the assessment. In these circumstances, where it is believed that the new information could significantly change the outcome of the existing assessment, a further assessment should be undertaken.

However, it may not be appropriate to subject the young person to a further full assessment. In these circumstances, workers should discuss and agree with the relevant manager the degree to which the existing assessment needs to be revised in light of the new information. Given the potential implications for the young person, the decision making and rationale should be recorded and shared with the young person and their representative.

There may also be situations in which new information does not substantively change the conclusion of the age assessment, but which it is important to formally record and amend the assessment. An example would be where a young person was assessed as being under the age of 16 years and subsequent information comes to light which provides an accurate date of birth. Given the importance of this information in relation to identity<sup>15</sup> and age appropriate access to services etc. it would be important to amend the assessment and communicate this to the relevant statutory services bodies (ensuring that any action is in accordance with relevant data protection and human rights legislation).

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<sup>15</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

## **APPENDIX 1: SAMPLE Initial Presentation Decision Recording**

**Please note: in recording any information for the purposes of initial decision making, action must be compliant with the General Data Protection Regulation and relevant human rights and data protection legislation**

Name of young person:

Stated age:

Stated country of origin:

Circumstances:

Record:

- Young person's narrative and their reasoning for their stated age

Presenting information:

Record:

- Appearance
- Demeanour
- Interaction during initial discussion
- Information from other sources if applicable (eg. police if they are initial contact)

Decision(s) based on presenting information:

Record:

- Does the young person appear significantly over the age of 18 years, possibly under the age of 18 years or possibly under the age of 16 years?
- Are there any indications that the young person has been trafficked?
- Is an age assessment required?
- Has the decision regarding the need for an age assessment been communicated to the young person?

Further action required:

## **APPENDIX 2: SAMPLE Request for Information**

**Please note: in adopting this template or similar wording, discussion should take place with the relevant data protection manager/ legal services. Action relating to information sharing must be compliant with the relevant data protection and human rights legislation. Where consent is required, this should be clearly acknowledged and addressed.**

Dear

I am undertaking an age assessment in respect of X (insert young person's name) and have been made aware that you/ your service currently has or has had previous contact with X. Age assessments are important in determining how best to support a young person.

As part of this assessment and to help me form as complete a picture as possible of X, I am requesting that you provide me with written information detailing your involvement with X and any interaction and observations of him/ her relevant to the age assessment. It would be helpful in your response to include:

- Brief details of your role and your years of experience including any relevant qualifications you hold;
- The nature and frequency of your contact with X;
- Your observations as to how X behaves and interacts with others; and
- Any contextual/ background information shared by X and any records relevant to the age assessment.

Should you feel that you are in a position to draw any conclusions as to the age of X, please detail the reasons for your opinion and any evidence which supports your conclusion.

Your information will be used as part of our assessment and decision-making process in conjunction with other information, reports and interviews with X. The information you provide will not be used in isolation but will be contribute to the wider consideration of information in reaching a robust assessment of X's age.

It is important that X is aware that you will be providing information about them in relation to their age assessment as this information may be contained or reflected in the final age assessment report.

Should you have any queries please do not hesitate to contact me.

Many thanks for your assistance.

## **APPENDIX 3: SAMPLE Age Assessment Report Headings**

**Please note: in compiling information for the assessment, action must be compliant with the relevant data protection and human rights legislation**

**Young person's name:**

**Reported age:**

**Current address:**

**Type of accommodation:**

**Former address in country of origin:**

**Current legal status:**

**Dates of expected legal or procedural hearings/events:**

**Assessment initiated by:**

- Name
- Agency
- Date
- Reason

**Details of workers undertaking assessment:**

**Other contributors:**

- Name Agency Position Qualifications (if relevant)

**Process of events leading to assessment request:**

**Consent from the young person to engage in the process and/ or contact other agencies:**

**Documentation:**

- Official documentation relating to identity, nationality and age (comment upon credibility if appropriate); personal documentation relating to family and social identity (eg. letters, photographs)
- If absent – why? It may be relevant to refer to country information and/or (if lost or stolen) to note the young person's account of how this happened

**Significant personal possessions:**

- Articles, including clothing or jewellery that might signify an age or social status or mark of a rite of passage

**Current placement:**

**Immediate issues:**

**Young person's understanding of the present situation:**

**Basis of assessment:**

- Summary of assessment process
- Sources of information

**Young person's communication needs:**

**Communication methods used:**

**Pen picture:**

- Brief physical description/visual impression but also noting personality, emotional state, concerns and likes and dislikes; note of any particular immediate concerns concerning self and/or others; general health and wellbeing

**Identity :**

- Talents; successes; external or internal attribution; personality; values/conscience; ethnicity; cultural identity; sexual identity; religion (Issues arising from these)

**Summary of young person's description of journey:**

- Young person's narrative, include reason for leaving, timescales etc

**Personal chronology:**

- Key events/markers and memories; Young person's grasp of the concept of time and how expressed

**Note of any child protection, vulnerability or trafficking concerns:**

- Any presenting information that suggests the young person has particular vulnerabilities, is at risk or may have been trafficked; if appropriate comment upon how this might relate to the age assessment (eg. whether this could affect the young person's attitudes, behaviour or presentation)

**Health:**

- History of/ current significant health matters eg. illnesses, accidents, treatments, operations; FGM and circumcision; significant stress and nutritional factors; menarche and time since onset

### **Physical development and appearance:**

- Facial characteristics: Hair; skin lines, tone, folds and weathering; Prominence of 'Adam's apple' in males; facial hair/shaving
- Growth: Height, build
- Well or poorly nourished appearance
- Voice: Tone; pitch; expression
- Identifying marks: Marks or scarring and accounts for these; tattoos
- Sexual development: Only if available: the assessors **will not** undertake or request any examination themselves they may be able to source information from elsewhere
- Optical; aural; dental; sexual; general (consider circumcision/mutilation issues if appropriate) NB. social workers are not expected to offer an opinion outwith their professional competence but may highlight a presenting concern and, with the young person's consent, refer him/her to a health professional

### **Social and emotional development and appearance:**

- Trauma; depression; self harm; eating; sleeping; emotional control; flashbacks; nightmares; dissociation
- Demeanour and interaction: Attitude towards assessing social worker and other authority figures; eye contact;
- Response to choice, if there has been a choice, of clothing and how worn; mannerisms; body posture/language
- Interaction with others: e.g. adults, young people and children; formal and informal situations; with people in or perceived to be in authority; males and females; types of relationships observed and described; ability to make friends; social roles; language skills (including vocabulary and congruence with other information presented)
- Confidence and identity: Sense of self and knowing their own mind; also consider possible factors such as: deference; assertiveness; social skills; maturity and pseudo-maturity; watchfulness/hyper vigilance; naivety
- Gender, sexual relationships and identity: Gender role; sexual orientation and its cultural significance; marital/relationship status (note any significant issues about marriage practices e.g. forced); cultural expectations; circumcision
- Preferred activities: Related to age and stage
- Expressed feelings: About self, key others; current and past situations; vocabulary; conceptual content; introversion/extroversion
- Type and level of expression: Withheld, vocalised, acted out; level of emotional control
- Separation and loss issues: Grief; cultural dislocation; thought patterns; physical signs; behavioural signs
- Leisure: Preferences; opportunities; who was involved
- Peers: Who; ages; relationships; contexts; how would they describe the young person (please note it is anticipated that this information would be provided by the young person and/ or their care provider – peers should not be approached)
- Autonomy: Degree of independence and self-direction; personal authority and decision making; ability to manage money; self-care; domestic skills; work with agencies/others; recognise danger; stay safe

- Key events, rituals and rights of passage: Possibly linked to chronological age, sexual development, changes within family structure
- Hopes for the future: Ambitions; sense of personal potential; priorities; ability to think into the future; abstract thought
- Identity: Likes/dislikes; achievements; pride/regrets

### **Family History:**

- Role(s) in family: Provider; carer, level of authority/responsibility; have they lived alone/outwith the family
- Household composition: Who lives/lived there; family or other; note use of mother, father, aunt, uncle may not denote relatives by blood or marriage
- A typical day at home: What would it look like? Has this changed over time?
- Family history narrative and meaning of key events: either one off, eg. marriages, births, or recurring annual events such as religious festivals; family origin stories or meaning of family names
- Personal and Family role in community: Status; relationship to others
- Personal and family political activity: Views; membership of organisations; roles and activities; consequences of these (past, present, future)
- Location: Types of accommodation; moves from to where; neighbourhood/community description; wider environment issues

### **Education/ Work:**

- Where educated (names and addresses if possible); age started; subjects studied and stages reached; qualifications and awards; certification and recognition; gaps in education; number of years in total; formal or informal education
- Relevant contextual information (from an independent source) about the education system in the country of origin (if school years are being considered as age markers check first about how children progress through year groups)
- Employment history; duration and location; paid and unpaid; location and type; choice or forced

### **Country and Cultural Information:**

- Key cultural factors: Religious beliefs, values systems, community expectations; caste, tribe, sect, gender, age or class issues; ritualistic or rites practices that may be relevant
- Concept of 'age' in young person's country and culture of origin: Recording/administrative practices in country of origin and variations in practice; Different calendar systems; legal requirements and arrangements relating to age in country of origin; Cultural practices relating to age; demographic issues relevant to the stated country of origin/ethnic group

### **Queries concerning information:**

- Are there gaps in the young person's account that are unexpected or incongruous?
- How does the young person respond to this being noted? Are there possible explanations?

- Are there aspects of the account which stand out as being highly unlikely or otherwise implausible? Are there possible explanations for this?
- Queries regarding documentation; If the young person is considered to have deliberately lied, how do they respond to this being noted? Are there possible explanations for any untruths other than a wish to deceive regarding their age?  
These should be noted (NB. It is important to raise and allow the young person an opportunity to respond to any concerns about inconsistencies or doubts about veracity. This should be done in the presence of any 'appropriate adult' involved). It is also important to be aware of possible areas of miscommunication)
- Feedback: ensure initial findings fed back to the young person and contributing agencies for comment and clarification if necessary

#### **Analysis of information:**

- Key evidential points: key patterns or items of information that are regarded as significant in indicating the young person's age; include contradictory indicators; include a note of any documentation that is relied upon. A chronology is key.
- Key interpretations: Active consideration of how to analyse the available information and how the above have been interpreted and understood so as to lead to a particular conclusion; include how contradictory indicators have been considered and weighed
- Bias: Workers should be aware of the potential for bias in the assessment and through the adoption of a questioning approach and the use of supervision consider how to manage any points
- Triangulation: Where possible assessments should aim to use multiple sources of information to triangulate key points and opinions
- Supervision: Findings should be jointly reviewed by the workers and their supervisor. Workers may wish to consider using a process of 'challenging and proving' to help develop conclusions.

**Conclusion:**

- Conclusion in respect of age assessment: Statement of the indicated parameters of likely age. This should indicate whether the young person is over eighteen, under eighteen, under sixteen. Where a young person has given a stated date of birth and this is consistent with the assessment then it should be accepted as their true date of birth. Where an exact date has not been stated but a season or other period in the year is indicated (and is not inconsistent with the assessment) this should be used to state a date of birth.
- Issues of significant need arising from the assessment: Note of any significant areas of general welfare need that have been identified as a result of the assessment (irrespective of the young person's indicated likely age)

**Confirmation assessment outcome discussed with young person:**

- Outcome: note date of discussion; any issues/disagreements/ further information put forward/ amendments etc.

**Assessed date of birth:****Signatures:**

- Lead Worker/Date
- Second Worker/Date
- Supervisor/Date

## **Appendix 4: Trauma- informed Age Assessments**

### **Background to trauma informed practice**

Trauma –informed practice<sup>16</sup> is a framework for making sure the workforce is skilled and equipped to understand the incidence of trauma, recognise the potential effects of this trauma, minimise re-traumatisation and make sure the person who has experienced trauma is supported and helped to recover. What follows will use the trauma informed framework to explore how it can apply to the needs of unaccompanied asylum seeking children particularly in relation to the age assessment process. Undertaking age assessments is very difficult. Sometimes it can feel for the young person that they are being carried out for immigration purposes rather than for the needs of the young person. Moreover, as previously highlighted, there are no reliable ways of determining age. Age assessments have significant implications not only for a young person's care and their future safety, but also can have far-reaching implications for a young person's health and well-being. In such a difficult process where there is potential for the young person to feel that all aspects of their identity and experiences are being disbelieved, it is perhaps more important than ever for the process to be as trauma informed as possible.

### **Being trauma informed means knowing the incidence of trauma for unaccompanied asylum seeking children**

We know that unaccompanied asylum seeking children have very high rates of traumatic experiences in their countries of origin<sup>17</sup>. They also have experienced very significant and multiple losses including the loss of caregivers and family members. Journeys to the UK are often fraught with danger and further trauma. Sometimes unaccompanied young people have also experienced trafficking for labour exploitation or sexual exploitation.

“As a group, unaccompanied asylum seeking children are unified by their separation not only from their family of origin, but from their community and country of origin and are seeking refuge from political, cultural, religious or other forms of persecution including armed conflict and war. Their experiences may include direct experience of beatings, rape or torture and they may have been witness to the beating, rape, torture and killing of others including family members. Some may have been ‘child soldiers’ or fleeing from attempts to enlist them as ‘child soldiers’. Their journeys to the U.K may include the payment and the involvement of human traffickers and those journeys may have been lengthy and fraught with danger and uncertainty. For some, the death of companions may have accompanied the journey and the possibility of death may never be far away.”<sup>18</sup>

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<sup>16</sup> TRANSFORMING - NHS Education for Scotland

<http://www.nes.scot.nhs.uk/media/3971582/nationaltraumatrainingframework.pdf>. PDF file

<sup>17</sup> Hodes M, Jagdev D, Chandra N, Cunniff A. *Risk and resilience for psychological distress amongst unaccompanied asylum seeking adolescents*. J Child Psych Psychiatry 2008; **49**: 723–32.

<sup>18</sup> *health needs of unaccompanied asylum seeking children ...*  
<https://www.nice.org.uk/guidance/ph28/resources/looked-after> John Simmonds and Florence Merredew

When they arrive in the UK they often have to navigate what can be a harsh and sometimes re-traumatising asylum process. This process may make them feel that all aspects of their identity and history are being questioned and challenged in a hostile environment. Being age disputed or a negative experience of an age assessment process can have an impact on mental health and effects on young people's identity and self esteem that go beyond the serious implications for their asylum claim and their future safety. It is hard for them to feel they belong in Scotland because their future is uncertain. They are often preoccupied with not knowing whether family members are alive or dead. They fear being returned to situations of further trauma and danger.

The years of adolescence can be hard for all young people. But unaccompanied young people are likely to have faced multiple traumas including physical and sexual violence, sometimes exploitation through trafficking, and critically they are "**unaccompanied**". This means they are without anyone who is looking after them who can buffer the effects of trauma. They therefore have to face these multiple challenges without any safety or certainty about what the future holds, and who will be there to face it with them. Their situation is thus extremely precarious and the memories of the past, the stress of the present and the fear of the future often feel overwhelming to them. The combination of high rates of traumatic experiences at the same time as a loss of social support and a loss of other protective factors can be toxic to mental health.

### **Being trauma informed means knowing the effects of trauma on unaccompanied asylum seeking children**

#### **Incidence of mental health difficulties**

It is not surprising therefore that studies have shown that unaccompanied asylum seeking children have a high rate of mental illness<sup>19</sup> and are at significantly higher risk of developing mental health difficulties than for example asylum seeking children who are accompanied.<sup>20</sup> Mental health difficulties can include PTSD, complex PTSD (PTSD symptoms, along with other difficulties including emotional regulation difficulties, relationships difficulties and changes to their view of themselves and the world) anxiety, depression, sleep disturbance including nightmares, self harm, suicidal ideation, eating difficulties etc.

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<sup>19</sup> Huemer J., karnik N., Steiner H. *Unaccompanied refugee children* Lancet 2009 Feb. 21;373(9664): 612-614

<sup>20</sup> Michelson D., Sclare I., *Psychological needs, service utilisation and provision of care in a specialist mental health clinic for young refugees: a comparative study*, Clin. Child Psychol psychiatry 2009 apr; 14 (2): 273-296

## **How Post migration factors can exacerbate mental health difficulties.**

There is an increasing literature that shows how levels of support and inclusion in host countries, post migration, can affect the incidence of mental health difficulties for unaccompanied asylum seeking children. In the following quote from the review article “Mental health of displaced and refugee children resettled in high-income countries: risk and protective factors” (Fazel M, Reed R., Panter-Brick C., Stein A.,<sup>21</sup>) it is clear that the circumstances in host countries can exacerbate or ameliorate the difficulties faced by unaccompanied asylum seeking children and affect their levels of well-being and mental health difficulties.

“Cumulative adversities usually worsen health outcomes, exerting more powerful effects than any factor alone. The most harmful pathways are those that involve exposure to violence—whether individually experienced, witnessed, or feared—and the loss of family support by death or violence, for both behavioural and emotional mental health outcomes. As emphasised by the WHO framework, risks cannot be simply added up, but the inter-related pathways that lead to the outcomes need to be assessed. Thus, although distal or premigration factors contribute to childhood adversities, repeated exposure to violence and lack of safety soon after migration or displacement are of pivotal importance.”

It is therefore very important that all procedures involving unaccompanied asylum seeking children are carried out in a **safe and trauma- informed way**, that they are not **re-traumatising** and they do **not exacerbate or worsen mental health difficulties**

### **Being trauma informed means understanding the effects of trauma on the age assessment process**

#### **The process may be re-traumatising:**

- A process can be re-traumatising if aspects of the process, by their similarity to the original trauma, can evoke the same feelings in the young person. Thus for example being shut in a room and repeatedly questioned or challenged could be re-traumatising for a young person who has been tortured.
- Having to recall traumatic memories can trigger reliving and/or flashbacks whereby the young person believes that the trauma is happening again and experiences the same thoughts, feelings and/or behaviours as they did during the traumatic event .It may for example make the young person recall the same feelings of fear or terror. It may elicit similar responses in the young person as happened at the time of the trauma when they were trying to survive what was happening, for example, the young person may dissociate (cut off in some way from what is happening).

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<sup>21</sup> [www.thelancet.com](http://www.thelancet.com) Published online August 10, 2011 DOI:10.1016/S0140-6736(11)60051-2

**Trauma related difficulties may interfere with the young person's ability to answer questions:**

- If a young person's trust has been repeatedly abused they may find it hard to trust the worker and this can interfere with their ability to feel safe and comfortable and to go along with the process
- Fear, shame, guilt may interfere with their ability to recall aspects of what has happened to them for example if they experienced sexual violence.
- Depression and PTSD can interfere with memory. It may make it difficult to remember specific events. It may make it difficult to give a consistent or coherent autobiographical account.<sup>22</sup>
- Those who have been violent or abusive to young people may have told them not to give information to others or have threatened them or family members with violence if they disclose and this can contribute to the fear and difficulty of giving information. The feared consequences of giving information may terrify the young person into silence or denial.

**Trauma-related difficulties mean that workers have to be very careful about how they understand and interpret a young person's responses:**

- Avoidance of painful memories, dissociation and numbing, may mean that young people don't show the emotion the worker expects.
- Other mental health difficulties eg. irritability associated with depression or the effects of flashbacks may be erroneously viewed as a young person's unwillingness to cooperate.
- There may be cultural and gender differences in the meaning made of trauma and in how the young person responds

**Being trauma informed means operating according to the principles of trauma informed practice**

The following are agreed principles of trauma informed practice and should apply to the process of conducting age assessments. Trauma experiences undermine safety, take away an individual's control, demean and dis-empower. Principles of trauma informed practice do the opposite.

**Safety:**

- Before an age assessment is carried out a young person needs to be physically safe eg. safe from traffickers but also to feel safe e.g. that they have emotional support from others and that they have ways that they can soothe and comfort themselves if they become distressed
- A young person should not re-traumatised by having to repeat giving distressing information that they have already given in a different context
- A safe interview may mean practical things like helping the young person to be able to take breaks or stop interviews if they become distressed and by

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<sup>22</sup> See the Centre for the study of Emotion and Law <http://www.csel.org.uk/cselpublications.html> for very helpful summaries

attending to the physical layout of a room or building, the gender of the worker etc.

- This may mean making sure that all interactions with a young person are the opposite of traumatic and are conducted in a **context of care** where there is a commitment to making sure the young person is getting all the help they need.
- Ensuring young people are getting the mental health input they need if there are signs that the traumatic past is interfering with their current sense of safety or where there are other signs of distress or of dissociation.
- Taking advice from mental health professionals if relevant about whether and how to conduct an age assessment process where there are concerns about mental health

### **Trustworthiness:**

- This could mean that there should be a transparency and accountability about how the process is conducted, how the process is explained to young people and what information any judgment is based upon.
- Other people in the young person's life should not be asked to contribute without the young person's awareness and consent, unless consent is not required per exceptions in the law.
- It could mean making sure the young person understands what is happening and there isn't anything unpredictable about the process.
- It may mean keeping to all agreements and earning respect by the way the worker relates to the young person
- It means a commitment to acting according to the "best interests" principle at all times and to the principle that whatever the age these young people are estimated to be, they are likely to be **traumatised**, they are **vulnerable** and they are **alone** and **may be in need of care and protection**.
- It may mean being transparent about what is possible and what is not possible in the age assessment process for example it is not possible to *determine age* as there is no scientifically accurate or reliable way to do this, it is only possible to make a judgment about age.

### **Empowerment:**

- This means involving the young people in all aspects of the process and listening well to what the young person is communicating. It means involving them in responding to the preliminary decision, helping to explain to them how the decision was reached it and allowing them the opportunity to respond in ways that may affect the final outcome. The young person can then offer further information or explanation before a final decision is made.
- It may mean making sure they have a way of appealing any decisions they are not happy with
- It means acting in ways that respect children's rights
- It means operating in ways that give young people the benefit of any doubt
- It means a commitment to their ongoing safety and a life free of trauma so they can recover from what they have been through and flourish

**Choice:**

- This may mean giving genuine choices about how the process is conducted, for example gender of worker or interpreter.
- It may mean giving genuine choices about where and with whom the process is conducted so it is as safe and comfortable as possible.

**Collaboration:**

- This could involve a commitment to conducting the process in a spirit of joint inquiry, not as an adversarial process where the credibility of young people is being questioned
- It could mean making sure there are no interpretations of the young person's behaviour made that cannot be shared and talked through with the young person so that they always have a chance to explain or to get another worker to help them explain

**Help to recover**

The goal of all trauma informed practice is to help the person recover from the effects of their trauma experiences. The age assessment process fits within other tasks that social work has to do in order to ensure the needs of this vulnerable group are met. This can include helping the young person to heal or recover from the potential effects of trauma and helping those who have physical or mental health difficulties as a result of their trauma to get the help they need. It is important therefore to consider:

- How unaccompanied asylum seeking children are screened to pick up physical and mental health difficulties when they arrive and ensuring that they get timely, accessible and appropriate help, using an understanding of any difficulties to inform the age assessment process.<sup>23</sup>
- Making sure that any concerns picked up during age assessment process and any needs identified are acted upon
- Making sure there is multiagency collaboration over the process and conclusions of the age assessment process to make sure they are as trauma informed as possible
- Having knowledge of evidence-based psychological therapies and the access pathways to make sure young people who have mental health difficulties linked to their trauma experiences can access timely and appropriate help

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<sup>23</sup> *Health Needs Assessment-Unaccompanied children seeking asylum March 2016. Kent Public Health Observatory*

## **Appendix 5: Relevant Legislation and Guidance**

The requirement for conducting an age assessment is derived from Section 55 of the [Borders, Citizenship and Immigration Act 2009 which details the duties regarding the welfare of children](#). Responsibility for carrying out assessments, where there is uncertainty or disputes about age, sits with the relevant local authority. How local authorities carry out this will be shaped by both the body of case law which determines the parameters and minimum standards that should apply and by agency expectations of assessment practice.

In delivering services professionals need to ensure that practice is compliant with children's rights and legislation.

In 1991 the UK ratified the [United Nations Convention on the Rights of the Child](#) which details the Articles on children's rights including the right to protection and to have their best interests a primary consideration in all state interventions (under 18s). A migrant child should be afforded the same levels of protection as an indigenous child.

In Scotland the relevant statutes that refer to the safeguarding and support of children and young people are  
the [Children \(Scotland\) Act 1995](#);  
the [Protection of Children \(Scotland\) Act 2003](#);  
the [Children's Hearing \(Scotland\) Act 2011](#);  
the [Children and Young People \(Scotland\) Act 2014](#) ;and  
the [Human Trafficking and Exploitation \(Scotland\) Act 2015](#) .

Where an asylum seeking young person is believed to be a victim of trafficking, Section 12 of the Human Trafficking and Exploitation (Scotland) Act 2015 must be adhered to. Section 12 stipulates that, where a relevant authority (including a local authority) has reasonable grounds to believe that a person may be a victim of an offence of human trafficking and the authority is not certain of the person's age but has reasonable grounds to believe that the person may be a child, the authority must assume that the person is a child for the purposes of exercising its functions under the relevant enactments until an assessment of the person's age is carried out by a local authority, or the person's age is otherwise determined.

With regard to guidance which has a general relevance for social workers undertaking work with asylum seeking children, the following should be noted: The '[National Guidance for Child Protection in Scotland' \(2014\)](#) describes the additional risks and vulnerabilities experienced by young asylum seekers and provides practice guidance in relation to their treatment by statutory and voluntary agencies.

The Scottish Government previously published in 2013 [Inter-agency Guidance for Child Trafficking](#), which provides information and guidance to all members of the children's workforce so that professionals and others are able to identify trafficked children and make appropriate referrals so that victims can receive protection and support.

## **Appendix 6: Merton Note**

**Please note that the case law referred to in this guidance is intended to illustrate cases that are relevant to age assessments at the time of drafting this guidance. This is a developing area of law, therefore, the case law is subject to change. The cases referred to in this guidance should be used for reference only. Should you encounter a similar legal issue, we would recommend that you seek up to date independent legal advice.**

There is no statutory guidance on how to conduct an age assessment. Instead, a body of case law has developed which gives guidance on the process required. Until 2009 with the case of *R(A) v Croydon, R(M) v Lambeth [2009] UKSC 8*, the leading case in this area was the case of *R (B) v Merton [2003] EWHC 1689 (Admin)*. The Merton case remains important from the perspective of setting out an assessment approach. In the ‘Merton’ case, the judge set down broad guidelines of how age ought to be assessed in respect of unaccompanied minors who arrive in the UK without documentary evidence to prove their age<sup>24</sup>. The judge confirmed that the local authority “cannot simply adopt a decision made by the Home Office” and outlined the following points, many of which have been reiterated in subsequent cases:

- An assessment cannot be made solely on the basis of appearance, and should be a holistic one taking account of the young person’s appearance, demeanour, background and credibility.
- Any assessment should take into account relevant factors from the child’s medical, family and social history, and the decision maker should seek to elicit the general background of the application, including his family circumstances and history, his educational background and his activities during the previous few years. Ethnic and cultural information may also be important.
- There was a duty on the decision makers to give reasons for a decision that an applicant claiming to be a child is not a child.
- The young person should be given an opportunity during the assessment to answer any adverse points the decision maker was minded to hold against him.
- Age assessments must be conducted by experienced trained assessors and that all the safeguards to ensure fairness are in place.
- If the decision maker is left in doubt, the claimant should receive the benefit of that doubt.

A ‘Merton compliant’ assessment will be in accordance both with the Merton judgment and subsequent case law addressing age disputes. Subsequent case law has also established that a young person has a right to be accompanied during the assessment by an appropriate adult and that a local authority cannot simply rely on the decision of the First Tier Tribunal (Immigration and Asylum), or solely on the conclusion on a paediatric or other medical assessment. A list of leading cases is found in **Appendix 7** which local authorities may find useful to consult.

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<sup>24</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2003/1689.html>

## Appendix 7: List of Relevant Case Law

**Please note that the case law referred to in this guidance is intended to illustrate cases that are relevant to age assessments at the time of drafting this guidance. This is a developing area of law, therefore, the case law is subject to change. The cases referred to in this guidance should be used for reference only. Should you encounter a similar legal issue, we would recommend that you seek up to date independent legal advice.**

Case Name	Issue	Outcomes
AU v Glasgow City Council (Opinion of Lord Woolman)  [2017] CSOH 122	Approach of Courts	<ul style="list-style-type: none"> <li>• AU held that individuals seeking to challenge an age assessment in Scotland can do so by Declarator OR Judicial Review in its fact-finding sense as set out in <i>R(A) v London Borough of Croydon [2009] UKSC 8</i>.</li> <li>• Held that Declarator is a competent remedy and Judicial Review is the recommended procedure.</li> </ul>
R(S) v London Borough of Croydon  [2017] EWHC 265 (Admin)	Presumption of Age	<ul style="list-style-type: none"> <li>• A local authority is exercising its social services functions towards children not merely when actually providing support to children, but also when carrying out ancillary functions such as determining which individuals are and are not children.</li> <li>• It was arguable that the local authority should treat young people whose age had not yet been determined as children in order to comply with its duties under section 11 of the Children Act 2004 (c.f. s.17 Children (Scotland) Act 1995).</li> <li>• Adult hostel accommodation pending the outcome of the age assessment was unsuitable for the young person in the circumstances.</li> <li>• The local authority had acted unlawfully in refusing to support and accommodate the young person pending age assessment.</li> </ul>
R (AS, Francesco Jeff) v Kent County Council  [2017] UKUT 00446 (IAC)	Benefit of the Doubt	<ul style="list-style-type: none"> <li>• The proper application of the 'benefit of the doubt' in age assessment cases is that where, having considered the evidence, the decision maker concludes there is doubt as to whether an individual is over 18 or not, the decision-maker should conclude that the applicant is under 18.</li> <li>• When establishing a specific date of birth, the 'benefit of the doubt' requires a sympathetic assessment of the evidence.</li> </ul>

		<ul style="list-style-type: none"> <li>• How, and to what extent, the stages of dental development are indicative of age (and the extent to which it can be assessed by a dental examination) is a matter of significant debate.</li> <li>• Dental assessment techniques – Mandibular Maturity Markers (MMMs) – Root Pulp Visibility (RPV) and Periodontal Ligament Visibility (PLV) are unreliable.</li> </ul>
R(ZM and SK) v London Borough Of Croydon  [2016] UKUT 559 (IAC)	Dental Assessments	<ul style="list-style-type: none"> <li>• The <i>Croydon v Y</i> case should not be read as an absolute prohibition on a person from refusing to undergo a dental examination.</li> <li>• X-rays for the purpose of age assessments are deemed inaccurate and unethical by the British Dental Association, but that information from dental x-rays may provide some assistance in age assessments.</li> <li>• Judges should be prepared to question the basis of opinions in a report and should be wary of accepting age assessments that rely on the reputation of the author rather than the detail, consistency and currency of the data.</li> </ul>
London Borough of Croydon v Y  [2016] EWCA Civ 398	Dental Assessments	<ul style="list-style-type: none"> <li>• In order to continue his claim against the LA, claimant would have to agree to an age assessment by means of a dental X-ray</li> <li>• Accepted that dental x-rays are controversial but it was not for the court to decide whether this was the case or not and this cannot be the reason for refusing an order.</li> </ul>
R(GB, Francesco Jeff) v Oxfordshire County Council  [2015] UKUT 429 (IAC)	Documentary Evidence	<ul style="list-style-type: none"> <li>• It is possible for age to be proved on the basis of documents alone which <i>prima facie</i> confirm the individual's stated age.</li> <li>• Such documents must be considered as evidence and weighed accordingly, even if the manner by which they were obtained seems implausible.</li> </ul>

Home office v VS [2015] EWCA Civ 1142	Home Office Reliance Detention	<ul style="list-style-type: none"> <li>• Where there is a dispute over the child's date of birth and there is a local authority age assessment, the Home Office is required to make reasonable inquiries in order to arrive at an informed decision on the issue of the child's age.</li> <li>• The Home Office is required to obtain the reasons on which the conclusion (of age) was based.</li> <li>• The Home Office unlawfully detained the child and ought not to have relied on a mere superficial explanation of the local authority's age assessment.</li> </ul>
ZS (Afghanistan) V Secretary of State for the Home Department  [2015] EWCA Civ 1137	Merton Compliance	<ul style="list-style-type: none"> <li>• "<i>Merton compliant</i>" means compliant with the requirements set out by Merton AND subsequent case law. However, the law at the time of the assessment applies.</li> </ul>
AS v London Borough of Croydon  [2011] EWHC 2091 (Admin)	Assessment Approach	<ul style="list-style-type: none"> <li>• Most appropriate age assessment approach is "<i>to use a holistic evaluation, incorporating narrative accounts, physical assessment of puberty and growth, and cognitive and behavioural and emotional assessments</i>" undertaken by social workers with relevant training.</li> </ul>
R(FZ) v London Borough Council of Croydon  [2011] EWCA Civ 59	Assessment Approach	<ul style="list-style-type: none"> <li>• Young person should be given a proper opportunity, as part of the interview process, to respond to any points which the interviewers considered adverse to the young person's case prior to a decision being given.</li> <li>• A young person should have the opportunity to have a responsible adult present at the interview with them.</li> </ul>
R(PM) v Hertfordshire Council  [2010] EWHC 2056 (Admin)	First-Tier Tribunal Assessments	<ul style="list-style-type: none"> <li>• If the First-Tier Tribunal (Immigration &amp; Asylum Chamber) assess a young person at a different age to the local authority, the local authority is not bound by this assessment.</li> <li>• It is instead for the local authority to conduct a reassessment taking into account the Tribunal's findings and evidence before it.</li> </ul>

MC v Liverpool City Council [2010] EWHC 2211 (Admin)	Approach of Courts	<ul style="list-style-type: none"> <li>When deciding a young person's age, the court may reach its own conclusion as to the young person's age, different to the age given by both the young person and the local authority.</li> </ul>
R(A) v London Borough of Croydon; R(M) v Lambeth [2009] UKSC 8	Approach of Courts	<ul style="list-style-type: none"> <li>The local authority may decide if a young person is taken to be a child for eligibility for support under Children Act 1989</li> <li>If the above is disputed, the question of whether someone is a child for the purposes of s.20(1) of the Children Act 1989 is a decision for the court as a matter of established fact</li> </ul>
A v London Borough of Croydon & SSHD; WK v Kent County Council & SSHD [2009] EWHC 939 (Admin)	Benefit of Doubt  Home Office Reliance  Medical Reports	<ul style="list-style-type: none"> <li>A young person should receive benefit of the doubt if the LA has doubt about his/ her age.</li> <li>Unless satisfied that the local authority's assessment is flawed, the Secretary of State will rely on that assessment</li> <li>Local authorities cannot completely disregard medical reports from paediatricians, but they decide how much weight to attach to them and are entitled to prefer the view of the assessor.</li> </ul>
R(B) v Merton London Borough Council [2003] 4AER 280	Assessment Approach	<ul style="list-style-type: none"> <li>Except in clear cases, age should not be determined solely on basis of physical appearance.</li> <li>Background of the young person should be sought, e.g. family history, education etc.</li> <li>Local authority should not simply adopt decision of Home Office, but may take information obtained by the Home Office into account.</li> <li>Interpreter should be present at interviews.</li> <li>Detailed note of interviews should be kept.</li> <li>Young person should have inconsistencies or doubts put to her to allow her to respond.</li> <li>Local authority has obligation to give adequate reasons for its decision</li> </ul>

## **Appendix 8: Home Office Publications**

Local authorities working with young asylum seekers will need to coordinate their arrangements with UKVI practices relating to age disputes and the processing of asylum claims. Below are the relevant Home Office publications at the time of writing.

**Assessing age:**

<https://www.gov.uk/government/publications/assessing-age-instruction>

**Processing an asylum application from a child and understanding assessment outcomes:**

<https://www.gov.uk/government/publications/processing-an-asylum-application-from-a-child-instruction>

**General guidance setting out UKVI practice relating to asylum support:**

<https://www.gov.uk/asylum-support>

### **Appendix 9: The Scottish Guardianship Service**

The Scottish Guardianship Service is an additional national support service funded by the Scottish Government and delivered in a partnership between the Scottish Refugee Council and Aberlour. The service works with children and young people who arrive in Scotland unaccompanied and separated from their families, providing support to unaccompanied asylum seeking and trafficked children and young people.

Guardians support young people by helping them navigate the immigration and welfare processes, and feel supported and empowered throughout the asylum process, assisting them to access help when they need it and make informed decisions about their future.

Local authorities have statutory responsibilities for the provisions of care and support to Looked After Children and the Guardianship Service can work in partnership with local authorities to provide additional support to unaccompanied young people (age does not require to be assessed prior to referral and engagement). The service may also be able to assist social workers in identifying country specific information such as cultural practices etc which could contribute to age assessments. Further information about the current services can be accessed here:

<http://www.aberlour.org.uk/services/scottish-guardianship-service/>

## **Appendix 10: Additional Sources of Information**

### **Possible sources of country of origin information:**

Scottish Guardianship Service (see also Appendix 9)

<http://www.aberlour.org.uk/services/scottish-guardianship-service/>

Amnesty International

<https://www.amnesty.org/en/countries/>

Home Office

<https://www.gov.uk/government/collections/country-policy-and-information-notes>

Scottish Refugee Council

<http://www.scottishrefugeecouncil.org.uk/>

United Nations High Commission for Refugees

<http://www.refworld.org/>

Every Child Protected Against Trafficking (ECPAT)

<https://www.ecpat.org.uk/useful-tools>

United Nations International Children's Emergency Fund (UNICEF)

<https://www.unicef.org/reports>

### **Additional reading/ information:**

The Children's Legal Centre Age Assessment Fact Sheet

[http://www.childrenslegalcentre.com/wp-content/uploads/2017/03/Age-assessment-process.march\\_.2017.pdf](http://www.childrenslegalcentre.com/wp-content/uploads/2017/03/Age-assessment-process.march_.2017.pdf)



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