

GUIDANCE FOR SCHOOLS WITH REGARD TO UNACCOMPANIED ASYLUM-SEEKING STUDENTS AND AGE ASSESSMENTS

Legal Matrix

The term 'Unaccompanied Asylum Seeker' is used to describe a person who has made a claim for asylum within the meaning of *S16(3) of the National Immigration Asylum Act 2002* and is awaiting decision from the Home Office. Refugee status is awarded to someone the Home Office recognises as a refugee as described in the Refugee Convention, a person with refugee status is usually granted leave to remain.

The term 'Unaccompanied Asylum-Seeking Children' is used to describe children who enter the country, apply for asylum and meet the following criteria:

- is, or (if there is no proof) appears to be, under eighteen
- is applying for asylum in his or her own right
- has no adult relative or guardian in this country
- Or those young people who enter the UK accompanied but become unaccompanied during their stay in the UK and subsequently claim Asylum in their own right.

Age Assessments

Some individuals arrive in the UK whose age may be unclear, unknown or disputed. The duty to undertake an age assessment arises from *Section 17 of the Children Act 1989*. Under *s17(1)* of the Act it states:

"It shall be the general duty of every Local Authority to safeguard and promote the welfare of children within their area who are in need ".

A Local Authority is therefore under a duty to assess whether any child in their area is in need. This applies equally to those children from the UK and those who have just arrived in the country and may not have any status. An Age Assessment should be undertaken to establish whether the person is a child (under 18 years of Age) and if so to then assess any needs they may have. An Age Assessment is therefore undertaken to establish any duties that may be required under *s17*.

A Local Authority should carry out an Age Assessment in the following circumstances:

- a. The young person is registered with the Home Office and is referred via UKBA or the YP's legal representative.
- b. The young person has been trafficked and there is an Age dispute issue.
- c. Re-assessment if new information is presented.
- d. Private fostering arrangements that come to the attention of Local Authority.
- e. If the young person is placed in the community with a responsible adult.
- f. If an educational provider raises concerns

Placement of a child or young person whilst an Age Assessment is being undertaken should be addressed on a case-by-case basis. A person should be given the benefit of the doubt and so therefore should be treated as their alleged age, unless there is evidence to the contrary. However, the Local Authority will need to decide which form of accommodation is appropriate for the person in the circumstances of the case, taking into account any safeguarding issues they may have about that particular individual.

If there is a dispute in respect of an individual's age, local Authorities conduct their initial enquiries into someone's age. This is in the form of an in-person interview asking a series of questions and reviewing a person's physical appearance to make a determination. If there is still some dispute or there isn't a clear distinction as to whether someone is aged 17 or 18, a Merton compliant age assessment should be carried out. This is a comprehensive assessment, which is compliant with the findings in *R (B) v Merton LBC [2003]*.

Age Assessment Timescales

The UASC Grant provides that Local Authorities can claim up to a maximum of 21 days in Age Assessment cases. The Assessment should take no longer than 21 days from the date when the asylum claim was made. Local Authorities must ensure enough time is allowed to conduct an Age Assessment, complete checks, follow ups and piece together a young person's story.

If the Local Authority has conducted a lawful assessment, then they can refer the young person to Refugee Council to access asylum support. In most cases any appeal will have to proceed from wherever the young person is placed. There may be several interviews with the young person before a decision is made.

Illegal Migration Act 2023

The Illegal Migration Act, which was introduced on 7th March 2023, has outlined a series of measures to strengthen the immigration decision making process, and clamp down on abuse of the system. Although the update largely focusses on strengthening the governments processes in respect of credibility of claims, the distinction between legal and illegal routes and periods of detention, what the new Illegal Migration Act does is highlight the importance of age assessments as an important process, in helping prevent asylum seeking adults pose as children in order to access support they are not entitled to. Such changes will all be relevant for Local Authorities when conducting their Merton Compliant assessments as the measures they will be able to use to test age have been increased. Legislation will be laid by the Home Office which will specify that x-rays of teeth and bones of hands and wrists and MRIs of knees and collar bones can be used as part of the age assessment process, to increase the accuracy within the Merton Compliant assessments.

This statutory instrument forms part of the legal framework which will allow for the policy and operational development of this new approach, with rollout expected in 2024. These methods are widely used across Europe in many countries including Denmark, Norway and Sweden, and are considered effective. These changes will take a robust approach to deter adults from claiming to be children and minimise the risk of safeguarding dangers. The approach will in turn prevent any delay to their removal as well as allow more Unaccompanied Asylum Seeking Young People to seek the appropriate support from care services.

Procedure for Schools

In circumstances where a governmental organisation, such as a school, raises concerns that a claimant is not the age the Home Office has accepted them to be, the authority should be encouraged to immediately explain why they doubt the claimant's age.

If the organisation is a local authority, the Home Office should request that they undertake a Merton compliant age assessment or request the National Age Assessment Board to undertake one. Upon receipt of the assessment, Home Office immigration or asylum decision making unit must promptly consider it in accordance with the guidance within the asylum instruction. Local Authorities do not

need the Home Office to dispute a claimant's age before undertaking an age assessment under the Nationality and Borders Act 2022, if they themselves think one is required.

If the school is concerned, they are encouraged to immediately raise their concerns with their local authority, Peterborough City Council (PCC) and request that a Merton compliant age assessment is conducted as soon as possible. Alternatively, if the local authority does not need to decide whether or how to exercise any of its functions under relevant Children's legislation, consideration should be made to whether it is appropriate for Home Office to make a referral to the National Age Assessment Board (NAAB) for an age assessment to be conducted. While it is expected that most age assessments undertaken by the NAAB will be conducted upon referral from a local authority, in certain situations age assessments can be conducted under section 51 of the 2022 act without a referral by a local authority being made, for the purposes of deciding whether or how the Home Office should exercise any immigration functions in relation to those young people.

In addition, pending the commencement of section 56 of the Nationality and Borders Act 2022, which sets out the framework for consideration of new evidence following an age assessment decision by the local authority or NAAB, if new relevant evidence is provided to the local authority, Merton caselaw requires local authorities to consider it and review the assessed age. You must consider the local authority's view before you reconsider the decision on age.

However, in the interim, whilst age assessments are being conducted the school should bear in mind that individuals are treated as children first before they are asylum seekers, and as such the necessary safeguarding measures should still be implemented.

Response from Social Care

Should there be any concerns as to an individual's age, the school should immediately alert PCC of this concern and request that an age assessment is completed. If it is determined that an individual is a child, PCC may accommodate the individual under Section 20 of the Children Act 1989 if necessary.

Local Authorities are under a duty to safeguard and promote the welfare of all children in need, the duties that Children's social care has can depend on the circumstances and type of support being provided. *Section 17 of the Children Act 1989* places a general duty on local authorities to safeguard and promote the welfare of children in need. Such needs can include financial support, guidance and counselling.

In addition, local authorities are also able to accommodate under *Section 20*. Children who have no responsible adult to care for them are almost invariably in need. There is a presumption for UASC to be accommodated under *Section 20 of the Children Act 1989* as looked after children (LAC). In difference to Section 20, there are circumstances where a care order under *Section 31 of the Children Act 1989* would be more appropriate. Children's social care may undertake child protection procedures if they have reasonable cause to believe that a child is living in their area has suffered or is likely to suffer significant harm.

UASC are entitled to care and protection under the provisions of the *Children Act 1989* and *2004*, and the Children (Leaving Care) Act 2000. The Home Office cannot send anyone back to their country when they are under 18 years old. When they are still a child, the Home Office gives them a visa until they are 17.5 years old.

Should an age assessment be ongoing and still undetermined, children's social care is under a duty to continue to accommodate the individual under the provision of *Section 20* until formal determination is provided. If, following an age assessment, it is decided that the individual is an adult, children's social care will cease assisting and such duty would pass to the adult social care team. In order to determine whether *Section 20* can be applied, PCC should ensure that age assessments are completed wherever there is a concern.

If UASC pupils were accommodated under *Section 20*, the local authority would not have parental responsibility. However, due to the nature of the provision, they would be accommodated in a local authority approved placement and be under supervision, to ensure the UASC safeguarding and care needs are being met whilst in their accommodation.

UASC and Post-16 Education

Due to the pressures on the educational sector, it is likely that the majority of UASC will experience interruptions to their education once they have arrived in the UK. In some cases, UASC who are deemed to be of statutory school age, are not placed in suitable education placements because there are no school places, or schools are reluctant to offer any place. In addition, UASC may not receive the post-16 education they are entitled to, because providers are unsure about their entitlements and often do not have adequate mechanisms in place to support them.

In some educational settings, UASC who are deemed as being under 18 years old, access post-16 education, meaning they will access the same educational setting as UASC and other pupils who are over 16 years old. There are no statutory provisions or guidance which govern this overlap, of under 16-year-old UASC accessing post-16 provisions. However, local authorities should be encouraged to ensure that the importance of education is championed, whilst also ensuring that the appropriate safeguarding provisions are implemented where necessary. Should there be any safeguarding concerns, education should ensure that social care is immediately informed so they may implement their own protective measures. Where appropriate, education should look at other forms of educational provision whilst any age assessments or further due diligence in respect of a person's age is being carried out.