



# **AGE ASSESSMENT JOINT WORKING GUIDANCE**

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# AGE ASSESSMENT JOINT WORKING GUIDANCE

## 1. Introduction and purpose

This guidance replaces the original Joint Working Protocol drafted in 2005. It sets out the agreed arrangements between the Home Office and Local Authorities (LAs), **in England**, where either disputes the age of a person claiming to be a child. This guidance has been agreed between the Home Office and the Association of Directors of Children's Services (ADCS), which acts on behalf of and in consultation with LAs and local government associations.

**This guidance is for front line officers, practitioners and managers in the Home Office and LAs.** It may also be of interest or use to others who are involved in the age assessment process. This guidance is intended to help the relevant agencies to work together to provide an age assessment process which is efficient, effective and enables them to comply with their statutory duties (please refer to the [glossary](#) for details of statutory duties). It is important that timely decisions are made in order to minimise levels of distress and uncertainty for those going through the age assessment process.

The Home Office and LAs are subject to a legal duty to safeguard children who are in the UK and to promote their welfare (see [glossary](#)). An LA age assessment may be required when there is significant reason to doubt an individual's claimed age in order to be sure they are treated age-appropriately and that they receive the necessary services and support. In many cases, this will be in the context of an asylum claim from an individual claiming to be an unaccompanied child, but could also be relevant in other circumstances for example a trafficked young person who has not claimed asylum.

### 1.1 What does this guidance cover?

This document does not replace LA practice guidance or Home Office age assessment guidance. This guidance focuses on the joint working and information sharing aspects of age assessment and is designed to work alongside other age assessment procedures and instructions (links to relevant Home Office and LA guidance are provided at the end of this document in [Annex A](#)).

**This document sets out the requirements and standards in the following sections:**

- [section 2](#) - contact and referral points
- [section 3](#) - information sharing
- [section 4](#) - where age assessments can be conducted
- [section 5](#) - reviewing and amending age
- [section 6](#) - resolving disputes

## 2. Who are the contact and referral points in the Home Office and local authorities?

It is not possible to be fully prescriptive about contact arrangements because of the variety of circumstances where age disputes may arise along with the variation in local organisational arrangements in both the Home Office and in individual LAs. However, the **minimum standards** that should be adhered to are:

- contact between the Home Office and LA should usually be between the Home Office member of staff and social worker managing the case
- as well as reaching agreement on cases, the points of contact in each case will be responsible for ensuring that safeguarding, best interests and data protection responsibilities are fully complied with
- verbal communication must be followed up with written confirmation; this can be done by email where no specific forms apply - relevant records must also be noted for audit purposes (including who spoke to whom, when the conversation occurred and the outcome of the discussion) and to provide evidence should it be required - for example at an appeal hearing or as a result of judicial review proceedings
- each LA and Home Office business area should put in place arrangements which allow for the escalation of disputes between the parties, should they occur, up the management chain (see [section 6](#) below)
- in cases where agreement cannot be reached either at Home Office member of staff/social worker level or at manager level, each Home Office business area and LA should identify a named senior manager who will resolve the issue with his or her counterpart - in the Home Office this individual would usually be the Assistant Director responsible for asylum in the area concerned - in the LA it would usually be the Head of Service or equivalent level

When an individual approaches the LA before the Home Office, the LA must make it clear to those who wish to claim asylum that they must contact the Home Office as soon as possible.

## 3. What are the information sharing requirements (Home Office and local authority responsibilities)?

### Home Office refers an individual to the LA for age assessment:

This referral can initially be made by telephone but must be **promptly followed up in writing**. The referral must explain, in as much detail as possible, the concerns of the Home Office about the claimed age. The Home Office must give the LA the information it has in relation to the individual's age. This includes what the young person has said about their age. For example, has the individual given an approximate age or exact date of birth, has this been consistently maintained or changed, and any information the individual has provided in support of their claimed age.

The Home Office/LA must establish that the individual has been told the information they provide to them could be shared with other government organisations to enable it to carry out its functions. The Home Office can then disclose information to LAs on the basis that the LA will only use the information provided by the Home Office for the purposes of providing appropriate services to young people. This includes for the purpose of care planning/support, safeguarding/child protection, where trafficking is suspected, and conducting an age assessment. The LA can then disclose information to the Home Office for it to discharge its immigration and safeguarding responsibilities.

#### **LA requests information from the Home Office:**

LAs may request information from the Home Office for a number of reasons, including to:

- help with an age assessment
- to carry out its statutory duties (please refer to the [glossary](#) for details of statutory duties)
- check the immigration status of the individual
- establish whether the individual is accompanied or unaccompanied

#### **LA to verify documents with the Home Office:**

LAs may base their assessment of age, or an amendment to an age assessment, on documentary evidence of the date of birth from the individual's country of origin, or on documentation which originates in another country. LAs must aim to **refer documents** (for example travel, identity documents or birth certificates) to the Home Office contact to be verified before the LA conducts their age assessment.

When the LA does this it should forward original documents to the Home Office by recorded delivery having first taken a copy of the original. Home Office staff should look to establish the reliability of the documentation, as soon as possible, and relay the findings back to the LA. (This can include referral to internal document fraud experts. The authorities of the individual's country of origin will not be contacted in cases in which an asylum applicant may be at risk of persecution - this means if the country of origin state is the alleged actor of persecution and the asylum claim has not been fully determined or the individual's appeal rights have not been exhausted).

When an individual is granted leave the Home Office must be sure that genuine documentation is returned to the individual. (The Home Office has the power to retain documentation before this in case it is required to facilitate removal from the UK.)

#### **LA to notify the Home Office of the age assessment outcome:**

When the LA has completed the assessment it must let the Home Office know the outcome. The minimum they must do is to complete the [age assessment information sharing proforma](#) to confirm that the age assessment **complies with case law** (Merton judgement and following case law - refer to the practice guidance and Asylum Instruction (see [Annex A](#) for links) for information on relevant case law.). If an individual's legal representative requires a copy of the full age assessment, they must request this, with the individual's permission, from the LA.

Where there is an age dispute and the Home Office has made a referral to the LA, the LA will aim to assess the age of the individual **within 28 days** and provide the Home Office with **the outcome of the age assessment via the age assessment information sharing proforma** (see LA Practice Guidance for informing the individual of the outcome). The LA must ensure age assessments are conducted in line with case law and guidance. Where more time is needed to complete the assessment, for example if the LA is waiting for relevant outstanding information or specialist assessments, the LA must let the Home Office know the reasons within 28 days.

#### **Home Office action following receipt of the age assessment proforma:**

When the Home Office receives the age assessment proforma, **the member of staff responsible for the case must carefully consider the findings and whether the processes which have led to the findings appear compliant with case law** (see Assessing Age Asylum Instruction (AI) and Practice Guidance for further information on this, at [Annex A](#)).

The Home Office must discuss the age assessment with the local authority when they have concerns. For example, where it appears from the age assessment proforma that the age assessment may not have been carried out in line with case law, because information is unclear or does not seem to be supported by available evidence. It is important that, where necessary to clarify the findings or lawfulness of the assessment, all credible, available information is shared between the Home Office and the LA.

The Home Office and LA will agree the accepted age and 'effective date from' to facilitate transfers to services which have an age qualification and will ensure that those who are found to be adults are told by the LA that they can apply for asylum support. The LA and Home Office must amend all records and relevant documents with the accepted date of birth and forward these to the other organisation and individual as appropriate.

#### **LA and Home Office action when new information emerges:**

If new information emerges which requires changes to be made to the other party's records, **all reasonable steps must be taken to ensure that the other party is quickly notified** of the required changes and that the individual concerned is made aware that this information will be shared. If the information means the existing age assessment should be reconsidered this must be discussed with the other party. (See [section 5](#) for what actions should

be taken when information relevant to age emerges after a decision on age has been taken.)

### **Data Protection**

The sharing of information on individuals **must** comply with:

- the [Data Protection Act](#)
- the [Human Rights Act](#) (specifically Articles 3 and 8)
- internal policies on information management

Any potential breaches must be raised quickly and appropriately. The Department for Education has published information sharing guidance which gives advice for practitioners who provide safeguarding services to children, young people, parents and carers (see [Annex A](#)).

Any **concerns raised or complaints received** from individuals relating to the processing or sharing of their personal information must be dealt with promptly and in accordance with the internal complaints procedures of the organisations involved. The other party should be told that a complaint has been made about the information shared with them.

(The Gillick test and Fraser guidelines on competency are the LA standard for deciding whether a child is mature enough to make decisions, which may include whether or how to share their personal information.)

## **4. Where can age assessments be conducted?**

LAs must attend premises, other than their own, where an individual who claims to be a child is being held for their own safety. For example:

- police stations following lorry drops
- Immigration Removal Centres
- ports
- screening environments

The individual should be **released into the care of the LA** who then takes responsibility for the individual and for conducting the age assessment.

LA age assessments should be conducted at suitable facilities by qualified social workers. They must not be rushed (for example, not be undertaken by out of hours or emergency duty teams), the young person must understand the purpose of the interview and the process must be in line with Merton and following case law (see Practice Guidance for more information regarding conducting age assessments). On this basis facilities such as police stations are not considered appropriate venues for conducting age assessments and an age assessment interview carried out here is not case law compliant.

There may be occasions where someone who has previously been considered to be an adult may claim to be a child whilst in detention or under

escort. In these cases you must follow the process, below, which is detailed in Detention Service Order 14/2012 (DSO) (link provided in [Annex A](#)).

An individual who is defined as an age dispute case will **not** remain in detention pending a local authority age assessment (with the exception of individuals previously sentenced by the criminal courts as an adult). The Home Office is responsible for liaising with the LA so that they can assume their statutory responsibility and arrange a placement. Individuals should **not** be released into the community until a place of safety has been found by the LA.

Referrals must be made to the LA as soon as possible so they can arrange a suitable placement as quickly as possible. In the event that the LA placement is delayed by them, the relevant Immigration Removal Centre will make immediate arrangements to safeguard the individual within the centre whilst they await the response from the LA.

The LA must make appropriate arrangements to help the transfer of an age dispute case from the centre to LA care in discussion with the Immigration Removal Centre in question.

For the full guidance on handling cases of age dispute in detention or during escort see DSO 14/2012 (link provided in [Annex A](#)).

## 5. What actions must be taken when information relevant to age emerges after a decision on age has been taken?

The following table sets out potential scenarios and the actions to be taken in these circumstances:

Further Information	Actions to Take
<p>Pre immigration/Asylum decision</p> <p>The Home Office or the LA receives <b>new information</b> with a bearing on the age of an individual late in the process.</p>	<p>Where new information merits an assessment/reassessment of age, the agencies must notify each other and follow processes consistent with this guidance to avoid individuals being left without appropriate accommodation and support. <b>Arrangements must be made to ensure that individuals are safeguarded.</b></p>
<p>Pre immigration/Asylum decision</p> <p>Individual currently classified as an <b>adult</b> submits information to the Home Office which provides evidence that they may be a <b>child</b>.</p>	<p>The Home Office will liaise with the LA to decide whether the new evidence is enough in itself to determine that the individual is a <b>child</b> or whether it would be appropriate for an LA age assessment to be carried out.</p> <p>If an LA age assessment is carried out, the outcome must be notified to the Home Office via the information sharing proforma as quickly as possible.</p>

<p>Post immigration/Asylum decision</p> <p>The LA assumes responsibility for someone they assess to be a <b>child</b>, but who has been treated by the Home Office as an <b>adult</b>.</p>	<p>It is vital that the LA liaises <b>immediately</b> with the Home Office so that if the assessed age is accepted by the Home Office, decisions taken on the basis of adult status can be reconsidered and the individual treated as a <b>child</b>.</p> <p>If the Home Office is notified immediately it may, for example, prevent an unnecessary appeal regarding a disputed age or removal action.</p>
<p>Post immigration/Asylum decision</p> <p>The LA finds out that the Home Office has made legally binding decisions and grants of leave on the basis of the individual being a certain age, but the LA has information which indicates that they are a <b>different age</b> and may make a difference to that decision or grant of leave.</p>	<p>If an individual is currently classified as a <b>child</b> but information emerges which suggests they are a <b>different age or an adult</b>, the LA must take the following action as soon as possible:</p> <ul style="list-style-type: none"> <li>• inform the Home Office</li> <li>• conduct a re-assessment</li> <li>• send the information sharing proforma to inform the Home Office</li> </ul> <p>If a change to the recorded age is appropriate, a full written explanation is required from the LA. (This can be provided on the information sharing proforma.)</p> <p>When the <b>Home Office may need to accept a change</b> to the previously agreed age of an individual (for example where an immigration judge finds that the appellant is a child/adult or there is reliable documentary evidence which points to a particular conclusion), the Home Office must ensure that the LA is made fully aware of all available information on age as soon as possible. The LA must inform the Home Office of its decision in light of this additional information.</p> <p>The consequences of failing to disclose this information may result in the LA or Home Office taking inappropriate action. For example, they may inappropriately refuse support which could result in a child facing homelessness. Home Office documents must be updated to reflect the accepted age as soon as possible.</p> <p>See <a href="#">section 6.3</a> below.</p>

## **6. What must be done when there are conflicting age assessments/disputes or legal involvement?**

**Agencies must communicate disputes and decisions at the earliest possible opportunity. Delay in notifying changes of status can be extremely prejudicial to the welfare of the individual and could lead to incorrect decisions and/or loss of support.**

### **6.1 Between the Home Office and an LA**

In most cases the Home Office's opinion on age will be consistent with the LA's. There may be some cases where it will differ, for example if the Home Office believes that specific information has not been properly taken into account.

You can refer to Home Office and LA guidance for further information (see [Annex A](#)). Different pieces of information will carry different weight depending on the circumstances. You must explain the reasoning for giving greater weight to a particular piece of information. It may be necessary for the Home Office and LA to liaise further in some cases. For example where the individual claims to be an adult but other organisations have concerns that they may actually be a child. The **process for reaching agreement is outlined below:**

1. The Home Office must first discuss the case with the LA, pointing out contrary information they believe may not have been appropriately considered by the LA.
2. Where agreement can not be reached, the case must be escalated to Assistant Director level in the Home Office and Head of Service (or equivalent level) in the LA and a formal reconciliation reached between them as soon as possible. The Home Office must alert its local safeguarding lead.
3. If agreement is not possible at this level, the case must be escalated to Home Office Asylum Policy and to the Director of Children's Services (DCS) to reach agreement. Whilst agreement is being sought the individual must be supported in line with the LA assessment, if this is in line with case law, and safeguarding must be considered.
4. When consensus is reached the LA will formally notify the individual of the decision.

### **6.2 Conflicting LA age assessments**

LA responsibility is tied to geographical boundaries so it is possible that an age assessment may be sought from more than one LA. For example, where an asylum seeker moves to accommodation which is within a different LA boundary. In some cases the assessments may not be in agreement. **LAs must work together, and with other agencies, and be sure they prioritise safeguarding the individual and adhere to the [Children Act 1989](#) and [Children Act 2004](#).**

The following is intended to reduce unnecessary repetition of the assessment process:

### **Existing lawful age assessment**

LAs have a duty to assess whether someone is a child is in need and may require an age assessment. When an LA is approached for an age assessment/it appears one may be required, it should check with the Home Office whether any previous assessment has been carried out by another LA.

If an assessment has previously been completed, it must be established whether this was conducted lawfully (usually shown by completion of the information sharing proforma). The LA must contact the other LA to request a copy of any previous age assessments.

If the Home Office has an existing lawful LA age assessment it must inform the newly-involved LA:

- that there is an existing lawful age assessment
- which LA carried out the assessment
- when the assessment was carried out

### **Existing potentially unlawful age assessment**

If the documentation the Home Office has does not indicate the assessment has been completed in line with case law, the Home Office must:

- inform the newly-involved LA of this
- contact the original LA to get a completed age assessment proforma

If it becomes clear there is not enough evidence to show that an age assessment was completed in line with case law the Home Office must ask the LA for this information. If the LA cannot provide this, an age assessment which is in line with case law must be carried out. The LAs must collaborate and promptly agree which LA must take responsibility for conducting the age assessment.

### **Conflicting age assessments**

If the Home Office becomes aware of conflicting assessments of age from different LAs, it must notify the LAs concerned for them to agree which LA should take responsibility. The Home Office will continue to follow the case law compliant decision that had previously been notified to the Home Office unless and until new information is submitted as part of a properly conducted assessment.

If previous age assessments were not compliant or the Home Office had not yet accepted the assessment, the individual would continue to be given the benefit of the doubt and be treated as a child.

If a different age is agreed, the Home Office documents must be updated to show the revised age as soon as possible, and be sent to the LA and the individual concerned as appropriate.

### **New information**

In the event that **new** information is being brought forward, if the individual has moved location and LA, this should also be referred to the LA which conducted the previous age assessment and agreement reached, depending on the circumstances, as to which LA will reassess the age of the individual, taking full account of all sources of information. The Home Office must be kept updated.

### **6.3 Dispute between the young person and the LA, and determination of age by the courts**

In the event that **no new** information is brought forward that was not considered as part of the original assessment, the individual should be informed that they can make a formal complaint to the LA responsible for the age assessment to dispute the age assessment findings, and/or look to legally challenge the age assessment and be referred to independent advice.

A decision on age can be subject to judicial review if the individual concerned challenges that decision. [R \(A\) v London Borough of Croydon, R \(M\) v London Borough of Lambeth \[2009\] UKSC 8](#) addressed the lawfulness of the age assessment process for young people. If there is a dispute between the young person and the LA on the issue of whether the person is a child, then the courts – in exercising their judicial review function - make the final finding on age which is binding on all agencies, including the Home Office and the LA.

The LA is **not bound** by First-tier Tribunal decisions, in asylum appeals, on the age of an individual (see R (on the application of) [PM v Hertfordshire County Council \[2010\] EWHC 2056 \(Admin\)](#)). **However**, in light of the Tribunal's determination the LA must fully take this into account and consider whether it is appropriate to reassess the individual. The timescale for this must be agreed between the involved parties, as soon as possible, to avoid there being long periods of time before action is taken following an immigration judge allowing an appeal, and in order to ensure that there is no gap in support as a result.

The Assessing Age Asylum Instruction section 'Discussing the immigration judge's findings with the local authority' provides further information on this (see [Annex A](#)). If the LA decides not to accept the Tribunal's decision then it must explain its reasoning for this to the Home Office contacts and place a note in the LA records.

**Note:** The LA must provide the Home Office with the **full age assessment report**, if required, as a result of a legal challenge. This can be done via the young person's solicitor if they have one. The full age assessment may be required by the immigration judge a minimum of 5 working days before the hearing. Data protection concerns would not be reason to withhold sharing an age assessment; any discrepancies would be put to the individual to clarify.

(This approach reflects the comments of the judge in [A & WK Vs SSHD & Kent County Council \[2009\] EWHC 939 \(Admin\)](#), in which it was considered that, “since it [the Local Authority assessment] is being obtained for the benefit of the Home Office as well as the authority, it is in my judgement entirely reasonable that it should be disclosed to the Home Office. Only if the full report is available can it be seen whether there are any apparent flaws in it and whether it is truly Merton compliant. And sight of the full report will be essential if there is any challenge raised to the decision by the Home Office.”)

## Change Record

Version	Author	Date	Change References
2	Home Office/ADCS	April 2015	Full review and update of Version 1 from 2005.

## **Annex A - Home Office and local authority guidance**

### **Home Office guidance relevant to age assessment**

[Assessing Age Asylum Instruction](#)

[Detention Services Order 14/2012 - Care and management of age dispute cases in the detention estate](#)

### **Local authority guidance relevant to age assessment**

Practice guidance **Link to be inserted following publication of practice guidance.**

[Good practice](#) including the information sharing proforma.

### **Other relevant guidance**

[Information sharing](#) for safeguarding practitioners.

Links to statutory guidance can be found below, in the [glossary](#), under statutory duties.

## Glossary

The Home Office and LAs may use differing terminology. This glossary outlines how key terms have been used in this Joint Working Guidance:

**ADCS** - The Association of Directors of Children's Services Ltd (ADCS) is the national leadership association in England for statutory directors of children's services and their senior management teams. ADCS members hold leadership roles in children's services departments in local authorities in England. They specialise in developing, commissioning and leading the delivery of services to children, young people and their families, including education, health, youth, early years and social care services. Working in partnership with other public agencies our members work to achieve tailored and joined-up services for children, whatever their identified needs.

**Age Assessment** – refers to assessments carried out by LAs to determine an individual's age.

**Age Dispute** – age is disputed when the age claimed by an individual is not accepted by the authorities. This is relevant in cases in which there is doubt over whether an individual is an adult or a child, or where it is accepted that a young person is a child but the claimed age is in doubt.

**Merton-compliant** – this term is often used to describe whether an age assessment is case law compliant. There is no prescribed way in which local authorities are obliged to carry out age assessments; the courts, however, provided guidance to local authorities in a case involving Merton Council ([B v London Borough of Merton \[2003\] EWHC 1689 \(Admin\)](#)). All local authority age assessments must be compliant with the case law of Merton and following case law since this judgement.

**Proforma** – this refers to the age assessment information sharing proforma which is on the ADCS website, under good practice, and should be used for all LA age assessments (see [Annex A](#)).

**Statutory Duties** - [Section 55 of the Borders, Citizen and Immigration Act 2009](#) requires the Home Office to carry out its immigration, asylum, nationality and customs functions, and services carried out by third parties on the Home Office's behalf, having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.

The UK is a signatory to the [UN Convention on the Rights of the Child \(UNCRC\)](#). [Article 3 of the UNCRC](#) obligates both the Home Office and LAs to treat the best interests of the child as a primary consideration in all actions concerning the child. (More information can be found on the [GOV.UK](#) website).

Under the [Children Act 1989](#), local authorities are required to provide services for children in need for the purposes of safeguarding and promoting their

welfare. Local authorities undertake assessments of the needs of individual children to determine what services to provide and action to take. [Working together to safeguard children](#) provides further information.

The [Children Act 2004](#) addresses co-operation by Children's Services to improve well-being.

The Department of Education provides statutory guidance for local authorities on the [Care of unaccompanied and trafficked children](#). It states under 'Age Determination' that:

"Many unaccompanied and trafficked children arrive in the UK without documentation or with fake documents. Where the age of a person is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with [Article 10\(3\) of the European Convention on Action against Trafficking in Human Beings](#). Where an age assessment is required, local authorities must adhere to standards established within case law. Age assessments should only be carried out where there is significant reason to doubt that the claimant is a child. Age assessments should not be a routine part of a local authority's assessment of unaccompanied or trafficked children."