

Refugee and Migrant Children's Consortium

Age disputes

September 2024

Summary

In 2023, over 3,400 unaccompanied children sought asylum in the UK.¹ These are children who have faced atrocities, have had to flee war, persecution and human rights abuses, and have endured perilous journeys. Many of them, instead of receiving the support and protection they needed on arrival, had to fight for months or years to be recognised as children because they were disbelieved about their age. Hundreds more were excluded entirely because the Home Office decided they looked like adults. As the Home Office has taken increased control over the age determination process in recent years, flawed decision making has increased and hundreds of children have been put at risk.

- The Home Office too often incorrectly assesses children on arrival as adults based on appearance and demeanour, leading to their placement in adult accommodation or detention. Over 18 months (Jan 2022 - Jun 2023), at least 1,300 children were wrongly assessed as adults by the Home Office. Children incorrectly treated as adults face increased risks, including unsafe accommodation and wrongful criminal charges.
- The use of 'scientific methods' for age assessment are potentially expensive, ineffective and harmful and can only, at best, indicate whether an age is 'possible'. Children refusing scientific age assessments risk being automatically treated as adults.
- The National Age Assessment Board (NAAB) is hugely expensive, costing £1.7 million a year, and to date a third of its assessments have been ordered by the Home Office, despite local authorities already accepting the children's claimed ages.

The new government's focus should be on improving safeguards, enhancing local authority support, and ensuring accurate age assessments by trained social workers.

Key Recommendations

Reduce the risk of misclassification:

- Limit Home Office age determination and treat young people asserting they are children as adults on arrival only in exceptional cases (e.g. evidence they are in their late 20s).
- Notify relevant local authorities (LA) when a purported child is treated as an adult, and refer all cases where they are charged with illegal entry offences to the relevant LA.
- Publish and monitor statistics on age determination outcomes.

Ensure age assessments are local authority-led:

- Update social work guidance to support holistic, multi-disciplinary age assessments.
- Abandon the use of 'scientific' age assessment methods and repeal related legislation.
- Abolish the NAAB and redirect funds to country-wide training and support of local authority social workers.

Protect the right to challenge age decisions:

- Provide individuals with the right to appeal age determinations.
- Repeal non-suspensive judicial review provisions of the Illegal Migration Act 2023.

Challenges in demonstrating age

Many children who come to the UK on their own from countries such as Afghanistan, Sudan and Eritrea are unable to show official identity documents, such as passports or birth certificates, because they have either never had them; they've been destroyed, lost or taken; or the child has been forced to travel on false documentation. Without ID it is extremely difficult to determine a child's age and many will have their age 'assessed' by the Home Office and/or local authority children's services. Age determines the support an individual receives and how their asylum/immigration application is processed.²

Statutory guidance from the Department for Education³, Association of Directors of Children's Services guidance⁴ and international standards⁵ all make clear that age assessments should not be 'routine' and should only be carried out where there is 'reason to doubt' that the individual is the age they claim. This is to prevent children going through a traumatising process unnecessarily. Yet in 2023, there were *five times* the number of age disputes than in 2019. This is in part because since 2022 the figures have also included children who are being incorrectly treated as adults by the Home Office following a short visual 'assessment' by officials at the border.⁶

Where an individual is not accepted to be a child, the Home Office will come to a view on their age simply based on their 'appearance and demeanour' – deciding either to:

* Treat them as a child but 'dispute' their age and refer them to a local authority for further assessment; OR

* Treat them as an adult (if their "physical appearance and demeanour very strongly suggest they are significantly over 18") and move them straight to adult accommodation/detention.⁷

These assessments are for immigration purposes, which was never their original intention, and have found to be unreliable.⁸

Much more robust and holistic age assessments, known as 'Merton-compliant' assessments, are carried out by local authority social workers as part of their duty to support children under the Children Act 1989 (or equivalent in devolved administrations), supported by non-statutory guidance in England,⁹ Scotland¹⁰ and Wales.¹¹

Children wrongly treated as adults by the Home Office

Time and time again, RMCC members see unaccompanied children incorrectly assessed as adults upon their arrival in the UK by the Home Office and treated as such, only to be later accepted to be children after further assessment by social workers.

Data collected by the Helen Bamber Foundation found that over 18 months (January 2022 to June 2023), more than 1,300 children were wrongly assessed to be adults by the Home Office and sent to adult accommodation or detention before later (sometimes months later) being referred to local authority children's services.¹² These figures are likely to be an underestimate because not all local authorities collect the data and not all children are being referred to children's services. In the same period, Humans for Rights Network (HFRN) recorded 832 safeguarding episodes when there were strong reasons to believe that a child was sharing accommodation with an unrelated adult, nationwide.¹³ The Refugee Council assisted 185 children initially determined to be adults; over half of whom were taken into local authority care from an unsafe adult setting.¹⁴

The Independent Chief Inspector of Borders and Immigration has noted concerns at the quality of the age assessments being undertaken at the border and the failure by frontline staff to adequately record the age dispute process, as well as the “strong suspicion amongst some staff and stakeholders that migrants are noted as adults in order “to pass the problem of minors onto someone else””.¹⁵

Not only are these children put at risk in adult accommodation, including large sites where they are forced to share dormitories with much older men, they are now also at risk of being wrongly convicted for crimes of illegal entry or facilitating illegal entry under the Nationality and Borders Act 2022 (NABA).¹⁶ In the year to June 2023, 240 people arriving on ‘small boats’ were charged with ‘illegal arrival’, the vast majority young men travelling to seek safety in the UK.¹⁷ HFRN has identified 18 cases where children wrongly treated as adults have been charged with offences under NABA, with 14 spending periods of time held with adults in adult prisons – six of those cases were identified since April 2024.

Criminal courts can make a determination on the age of a defendant, taking ‘such evidence as may be forthcoming at the hearing of the case’. In practice, this results in the court accepting the Home Office decision that a child is an adult, which is often presented as fact with no acknowledgement that there was a dispute about age. Many judges believe that the dates of birth have been provided to the Home Office by the children themselves. They have little understanding of the flawed age determination process that takes place upon arrival and that immigration officers arbitrarily assign these dates.

While some adults may claim to be under 18, the answer cannot be a system designed to catch the more extreme cases at the cost of harming hundreds of children. Furthermore, in light of the supervision and safeguards provided in children’s placements, the risks associated with a young adult being placed temporarily in children’s accommodation can be managed much more effectively than the risks facing a child incorrectly treated as an adult and placed in unsupervised accommodation or detention, sharing a room with adults.

Placing hundreds of children each year in an adult asylum system is a national safeguarding scandal.

CASE STUDY

Abdul, aged 16, arrived by small boat in January 2023. Exhausted after seven hours at sea, he was not offered medical care and waited in a cold marquee for the ‘age interview’. This consisted of four immigration officials asking, without an interpreter, for Abdul and others to write their age on a piece of paper whilst in a line. No other questions were asked, and he did not know he had been given a date of birth making him 23 until he arrived at a large asylum hotel. Upon arrival at the hotel, he told a security guard who spoke his native language that he was under 18, but the guard informed Abdul that the Home Office had registered him as an adult. No referral to children’s services was made by hotel staff and it was a month before Abdul was able to contact the organisation Humans for Rights Network for support. Eventually (after three months) Abdul was taken into care, the local authority decided that he was 16.

Increased burden on local authorities

The RMCC has repeatedly raised concerns and evidence about children wrongly treated as adults. The previously government’s response simply referred to two new changes brought under the Nationality and Borders Act 2022 as offering a ‘fix it all’ solution: the introduction of the National Age Assessment Board (NAAB) and the power to use ‘scientific methods’ to

assess age. Neither solve the actual problem and instead increase the burden on local authorities.

The NAAB, run by the Home Office, can undertake age assessments on behalf of local authorities. Launched in March 2023, its stated intention is to “strengthen and improve processes” for assessing age.¹⁸ It now has 40 full time social workers (many of whom choose to work for the NAAB rather than a local authority because the pay is better, despite the ethical concerns raised by the British Association of Social Workers).¹⁹ In its first year of operation it cost £1.7 million²⁰ and by May 2024, it had accepted 74 referrals. However, *over a third (27)* of those had been made by the Home Office²¹ – meaning that, even though a local authority had accepted a child’s age (or assessed them to be under 18), the Home Office was still demanding that a NAAB assessment be undertaken. This is a shocking waste of time and resources and causes unnecessary harm. Recent clinical research has shown that the age assessment process has a profound negative impact on the mental health of unaccompanied children seeking asylum.²²

Professional medical bodies have been unequivocal in their rejection of the use of ‘scientific methods’, such as dental X-rays, as being unethical and extremely imprecise as methods for assessing age. Furthermore, the Home Office’s own Interim Age Estimation Science Advisory Committee made clear that biological age assessment can be used “to assess whether the age claimed by UASC is *possible*” (emphasis added) and only as part of wider lawful social work assessment.²³ Social work assessments should already include a wide range of evidence – it is very unclear what benefit adding another, costly and time-consuming, element to a system that is already lengthy and onerous would bring.

Alarmingly, children who refuse to undergo X-rays or MRIs will be threatened with being identified as over 18 by default. Section 52 of NABA outlines that if a child decides not to consent to the use of a scientific process, this should be seen as ‘damaging’ their credibility. Clause 58 of the Illegal Migration Act 2023 goes further, allowing for an automatic assumption of adulthood if a person refuses to consent.

Conclusion

There is no dispute that Border Force officials need to try to differentiate between adults and children when people cross our border to seek protection. However, visual assessments of age at the port of entry are deeply flawed. They result in hundreds of children being placed in the adult system with no safeguards and protection in place.

For years, the Home Office has need to improve the port procedure to tackle the problem at the source. Yet, instead, resources have been allocated to creating the National Age Assessment Board and developing scientific (biological) age assessment methods. Both of these fail to tackle the key problem and simply further complicate the age-determination process. Under the current system, a child could end up with as many as four determinations of age: an initial ‘assessment’ at the port of entry; a local authority assessment; a NAAB assessment; and a finding by the court. This means that a process that has already been found to be harmful and costly will be made even longer, delaying a child’s access to support and a decision on their asylum claim even further.

Rather than focussing on extreme ‘outlier’ cases and giving more and more control to the Home Office, ***it is time for the government to look at what actually works in age assessments and invest in supporting local authorities to carry them out using their expertise as child protection professionals.***

Recommendations

Reduce the risk of children being wrongly treated as adults

- **Limit Home Office age determinations** to those with relevant training and only treat someone claiming to be a child as an adult in exceptional circumstances, i.e. if there is evidence that they are in their late 20s or older.
- Where a person claiming to be a child is being treated as an adult and to be moved to adult accommodation/detention, the Home Office should **notify the relevant local authority** so that they are aware that there is a putative child in their area.
- **Publish separate statistics** on the number of people claiming to be children whom border officials have determined to be adults on the basis that their 'physical appearance and demeanour very strongly suggested that they were significantly over 18 years of age' and put in place independent monitoring processes so it can track the outcomes for those who are later determined to be children.
- **If charging an individual** who says they are under 18 with the offence of illegal entry, or facilitating illegal entry, the Home Office must **make a mandatory referral** to a local authority for an age assessment.

Ensure age assessments are local authority-led and the process causes as little harm as possible

- **Abandon plans for the Home Office-led codification of the age assessment process** under the Nationality and Borders Act 2022 (a future Immigration Bill should include the repeal of section 53 of the Act).
- **Publish an updated version of the Association of Directors of Children's Services (ADCS) guidance** in England to provide clear and consistent information for social workers on conducting age assessments. This guidance should reiterate support for age assessment as a holistic, multi-disciplinary process that is social work led.²⁴
- **End the failed exploration of inaccurate 'scientific' methods of assessing age. Repeal section 52 of NABA and section 58 of the Illegal Migration Act which would force children to undergo scientific tests or risk being treated as adults.**
- **Abolish the National Age Assessment Board.** Redirect its funding to providing direct training and support to local authorities to ensure that age assessments are conducted by *independent* social workers in local authorities, not Home Office employees.

Protect the right to challenge a decision on age

- **Give individuals a right of appeal** against the decision made on their age.
- **Repeal section 57 of the Illegal Migration Act²⁵** which provides that any application to judicially review an age determination is non-suspensive (i.e. the young person's removal can proceed even if they assert that the Home Office's initial assessment is wrong and take steps to legally challenge this assessment).

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The Refugee and Migrant Children's Consortium is a coalition of over 90 organisations working to promote and protect the rights of young refugees and migrants - see [our website](#) for more information.

Data on age disputes:²⁶

The previous government claimed that ‘[nearly half of those whose ages are disputed are adults posing as children](#)’. This claim (based on data for 2016-22) is false because, for many years, Home Office statistics did not include children wrongly treated as adults. Even now, we don’t know how many ‘age dispute’ cases are those who have been sent into the adult system after a flawed decision on age.

Even based on the data the Home Office *does* publish, the claim is still false – last year over 2/3 of ALL age dispute cases were found to be children (see table below).

	2019	2020	2021	2022	2023
Age disputes raised	798	853	2,539	4,675	4,698
Age disputes ‘resolved’	798	701	2,295	3,211	3,780
Found to be under 18	494 (62%)	337 (48%)	1,168 (51%)	1,629 (51%)	2,618 (69%)
Found to be 18 or over	304 (38%)	364 (52%)	1,127 (49%)	1,582 (49%)	1,162 (31%)

Endnotes

¹ Home Office [Immigration Statistics](#), June 2024

² Home Office, [Children’s Asylum Claims](#), December 2020

³ Department for Education, [Care of unaccompanied migrant children and child victims of modern slavery: Statutory guidance for local authorities](#), November 2017, p 13

⁴ Association of Directors of Children’s Services (ADCS), [Age Assessment Guidance](#), 2015

⁵ UNHCR, [Guidelines on Assessing and Determining the Best Interests of the Child](#), 2018; UN Committee on the Rights of the Child, [General Comment No 6. Treatment of Unaccompanied and 16 Separated Children Outside their Country of Origin](#), 1 September 2005, CRC/GC/2005/6

⁶ This is a return to previous policy following the Supreme Court decision in [BF \(Eritrea\) vs Secretary of State for the Home Department](#), [2021] UKSC 38. See Home Office, [Assessing age for asylum applicants](#)

⁷ Home Office, [Assessing age for asylum applicants](#)

⁸ Local Government Lawyers, [Asylum seeker wins age assessment case against London borough](#), June 27 2024

⁹ Association of Directors of Children’s Services (ADCS), [Age Assessment Guidance](#), 2015

¹⁰ Scottish Government, [Age Assessment Practice Guidance](#), 2018

¹¹ Welsh Government, [Unaccompanied asylum seeking children: age assessment toolkit](#), 2021

¹² See Helen Bamber Foundation, Humans for Rights Network, and Refugee Council, [Forced Adulthood: The Home Office’s incorrect determination of age and how this leaves child refugees at risk](#), January 2024, p. 9 and Helen Bamber Foundation, Asylum Aid and Humans for Rights Network, [“Disbelieved and Denied: Children seeking asylum wrongly treated as adults by the Home Office.”](#) April 2023, p. 4.

¹³ [Forced Adulthood](#), January 2024, p. 9.

¹⁴ See also Refugee Council, [Identity Crisis](#), September 2022. The Refugee Council found in 2021 that of the 233 young people determined by Home Office to ‘certainly’ be adults, 94% were later determined to be children.

¹⁵ Independent Chief Inspector of Borders and Immigration, [An inspection of the initial processing of migrants arriving via small boats at Tug Haven and Western Jet Foil, December 2021 – January 2022](#)

¹⁶ The Nationality and Borders Act 2022 (NABA) amended sections 24 and 25 of the Immigration Act 1971 so that now both arrival without entry clearance and entry without leave to enter are criminal offences.

¹⁷ [No such thing as justice here: The criminalisation of people arriving to the UK on small boats](#), February 2024 <https://careers.homeoffice.gov.uk/news/socialworker-oct23>

¹⁸ British Association of Social Workers, [UK Statement: National Age Assessment Board](#), March 2023

¹⁹ Freedom of Information request reference FOI2024/05630, answered by the Home Office on 16 July 2024

²⁰ Section 51, Nationality and Borders Act 2022. Figure shared in Home Office stakeholder meeting, 21 May 2024

²¹ Helen Bamber Foundation, [The psychological impact of the age dispute process on unaccompanied children seeking asylum in the UK](#), May 2024

²² Interim Age Estimation Science Advisory Committee, [Biological methods to assess unaccompanied asylum-seeking children’s age](#), January 2023

²³ This should also reference the British Association of Social Workers [Guide to best practice in age assessments](#)

²⁴ Section 57, [Illegal Migration Act 2023](#)

²⁵ Home Office, [Immigration Statistics](#), June 2024 <https://careers.homeoffice.gov.uk/news/socialworker-oct23>