

DEKA
CHAMBERS

Defending Age Assessment Challenges

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The Statutory Framework

A child is defined as a person under the age of 18 (**Section 105 of the Children Act 1989**).

It is a matter of objective fact (**R (A) v London Borough of Croydon [2009] 1 WLR 2557**).

Determines whether a person is owed duties under:

Section 17 of the Children Act 1989 (Child in Need)

Section 20 of the Children Act 1989 (Accommodation)

Section 11 of the Children Act 2004

Affects access to education, healthcare, and support services

ECPAT UK v Kent County Council [2023] EWHC 1953 (Admin):

"... It is also common ground that the duty is absolute. The local authority cannot impose eligibility criteria beyond those stipulated in the statute; and the duty applies irrespective of the local authority's resources or lack of them." [29]



Structure of an Age Assessment Claim

Must apply by way of judicial review: “raising a factual case which, taken at its highest, could properly succeed at a contested factual hearing”.

If it passes that threshold, then the claim will generally be transferred to the Upper Tribunal.

Basic Principles

R(B) v Merton London Borough Council [2003] EWHC 1689 (Admin)

AB v Kent County Council [2020] EWHC 109 (Admin)

1. The purpose of an age assessment is to establish the chronological age of a young person.
2. There should be no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child.
3. The decision needs to be based on particular facts concerning the particular person and is made on the balance of probabilities.
4. There is no burden of proof imposed on the applicant to prove his or her age.
5. The benefit of any doubt is always given to the unaccompanied asylum-seeking child since it is recognised that age assessment is not a scientific process.

Basic Principles

R(B) v Merton London Borough Council [2003] EWHC 1689 (Admin)

AB v Kent County Council [2020] EWHC 109 (Admin)

6. The decision-maker cannot determine age solely on the basis of the appearance of the applicant, except in clear cases.
7. Physical appearance is a notoriously unreliable basis for assessment of chronological age.
8. Demeanour can also be notoriously unreliable and by itself constitutes only “*somewhat fragile material*”. Demeanour will generally be viewed together with other things including inconsistencies in their account of how the applicant knew their age.
9. The finding that little weight can be attached to physical appearance applies even more so to photographs which are not three-dimensional and where the appearance of the subject can be significantly affected by how photographs are lit, the type of the exposure, the quality of the camera and other factors, not least including the clothing a person wears

Basic Principles

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10. The assessment must be done by two social workers who should be properly trained and experienced.
11. The applicant should be told the purpose of the assessment.
12. An interpreter must be provided if necessary.
13. The applicant should have an appropriate adult, and should be informed of the right to have one, with the purpose of having an appropriate adult also being explained to the applicant.
14. The approach of the assessors must involve trying to establish a rapport with the applicant and any questioning, while recognising the possibility of coaching, should be by means of open-ended and not leading questions. Assessors should be aware of the customs and practices and any particular difficulties faced by the applicant in his home society.

Basic Principles

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14. The interview must seek to obtain the general background of the applicant including his family circumstances and history, educational background and his activities during the previous few years.
15. An assessment of the applicant's credibility must be made if there is reason to doubt his/her statement as to his/her age.
16. The applicant should be given the opportunity to explain any inconsistencies in his/her account or anything which is likely to result in adverse credibility findings.
17. An applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant with their conclusions without first giving him the opportunity to deal with the adverse points.

Basic Principles

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18. An applicant should be given a fair and proper opportunity, at a stage when a possible adverse decision is no more than provisional, to deal with important points adverse to his age case which may weigh against him. It is not sufficient that the interviewing social workers withdraw to consider their decision, and then return to present the applicant with their conclusions without first giving him the opportunity to deal with the adverse points.
19. In coming to the conclusion the local authority must have adequate information to make a decision independent of the Home Office's decision
20. Adequate reasons must be given.
21. The interview must be written up promptly.

Short Form Age Assessments

Thought to be a ‘less stringent’ age assessment.

Now, distinction is not legally relevant re: *Merton*.

See *R (Ham) v Brent LBC* [2022] EWHC 1924 (Admin).

Physical Appearance

Should not be the sole basis of determining age.

However, that does not mean it is irrelevant.

See *R (on the application of GB) v Leeds City Council*
[2022] EWHC 465 (Admin)

R (on the application of GB) v Leeds City Council [2022] EWHC 465 (Admin)

Facts

1. Claimant was an Iranian national whose case was referred to the Defendant.
2. After a brief enquiry, it was suggested that the Claimant was likely over the age of 25.
3. A full age assessment process took place, in which it was concluded that his age was assessed at 20. The decision was challenged.

R (on the application of GB) v Leeds City Council [2022] EWHC 465 (Admin)

"In a case [where] the applicant does not produce any reliable documentary evidence of his date of birth or age ... the determination of the age of the applicant will depend on the history he gives, on his physical appearance and on his behaviour."

- Proper but not exclusive reliance on physical appearance and demeanour.
- Perfectly legitimate for it to be a factor.

Failure to have regard to other professionals

R (AM) v Solihull Metropolitan Borough Council (AJR)
[2012] UKUT IAC

Professionals who could point to “*consistent attitudes, and a number of supporting instances over a considerable period of time, is likely to carry weight*”.

Failure to have regard to other professionals

“The Defendant took into account the evidence of Ms Whitehead and Mr Souza but concluded it did not take matters much further forward. They were entitled to take that view.”

**R (F) v Manchester City Council [2019] EWHC 2998
(Admin)**

Fresh Evidence

Would a “*significantly different conclusion might be reached*”? *R (BM) v London Borough of Hackney* [2016] EWHC 3338

R (on the application of G) v London Borough of Greenwich [2021] EWHC 3348 (Admin)

- Further evidence was not compelling

Documentary Evidence

Distinction between a fabricated document and a document with erroneous information

“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.” (ACDS Guidance)

Documentary Evidence

R (F) v Manchester City Council [2019] EWHC 2998 (Admin)

“Because the Defendant does not take issue with the genuineness of the document, but disputes the reliability of the evidence on which it was issued (and who exactly obtained it), Mr Swirsky was right to say that asking the Home Office to verify it would have achieved little. I pressed Ms Benfield whether the Home Office would have been able to delve into its evidential foundations as part of the verification process but she was unable to say that it would”.

Benefit of the Doubt

AB v Kent County Council [2020] EWHC 109 (Admin)

If there is doubt, in those circumstances the decision-maker should conclude that the applicant is under the age of 18.

Home Office Age Assessments - Context

In addition to Local Authority Age Assessments, Age Assessment are also regularly undertaken by the Home Office. It is important for Local Authorities to understand the wider Age Assessment landscape and how this is developing.

Purpose:

- Ensure age-appropriate treatment

- Determine if detention restrictions apply (Schedule 2, Immigration Act 1971)

- Comply with Section 55 of Borders, Citizenship and Immigration Act 2009

Policy aimed at "guarding against the detention of children"

From *BF (Eritrea) v Secretary of State for the Home Department* [2021] UKSC 38:

"...the question of whether a person is a child is a matter of precedent fact, rather than a question of reasonable assessment by immigration officers..."[21]

Home Office Age Assessment Process

Initial assessment by two Home Office staff

One must be Chief Immigration Officer or Higher Executive Officer grade

Based on physical appearance and demeanor where these *"very strongly suggest"* person is *"significantly over 18"*

Second officer makes independent assessment

Declared lawful in *BF (Eritrea)* [2021] UKSC 38 as applicable *"at the initial stage when immigration officers first encounter immigrants"*

Distinct from local authority assessment

Not binding on local authorities

The Kent Intake Unit

Established summer 2020 due to unprecedented arrivals

Home Office contracted social workers to support Immigration Officers

R (MA) v Secretary of State for the Home Department [2022] EWCA Civ 1663:
"The social workers concerned were supervised by senior social workers in the Home Office Safeguarding Advice and Children's Champion team." [18]

Kent Intake Unit Guidance operates alongside "Assessing Age" policy

Court of Appeal held guidance was lawful as it directed compliance with Merton

Statutory Age Assessments - NAAB

Nationality and Borders Act 2022 introduced statutory system

National Age Assessment Board (NAAB):

Part of Home Office

Primarily social workers

Conducts assessments following referrals

Section 49

(1) In this Part, “age-disputed person” means a person—

(a) who requires leave to enter or remain in the United Kingdom (whether or not such leave has been given), and

(b) in relation to whom—

(i) a local authority,

(ii) a public authority specified in regulations under section 50(1)(b), or

(iii) the Secretary of State,

has insufficient evidence to be sure of their age.

The Referral Process to NAAB

Local authority options under Section 50(3):

- Refer to NAAB for statutory assessment

- Conduct own assessment and inform Home Office

- Accept claimed age without assessment and inform Home Office

NAAB assessment binding on both local authority and Home Office (Section 50(7))

Home Office may also refer under Section 51(1):

"...for the purposes of deciding whether or how the Secretary of State or an immigration officer should exercise any immigration functions in relation to the person."

Recent Case of *R(SS) v SSHD*

The very recent Upper Tribunal case of *R (SS) v Secretary of State for the Home Department* (JR-2025-LON-00432), handed down on 2 December 2025, represents of the first substantive challenges to a NAAB age assessment following a local authority referral.

- Young Afghan asylum seeker 'SS' challenged age assessment
- NAAB initially assessed as 19; evidence proved he was 16
- Medical evidence of PTSD and epilepsy crucial to case
- Upper Tribunal quashed NAAB's original assessment

Scientific Methods of Age Assessment

Section 52 allows regulations for scientific methods

Immigration (Age Assessments) Regulations 2024:

- X-rays

- MRIs

Controversial approach:

- Accuracy concerns

- Ethical issues

- Margin of error questions

Regulations recently approved despite criticism from House of Lords committee

Future Appeal Rights - Section 54

Not yet in force

Will allow appeals to First-tier Tribunal

Tribunal will:

- Determine appeal on balance of probabilities

- Assign date of birth

- Consider new evidence

Will become sole mechanism for challenging age assessments

Binding on both Home Office and local authorities

Current Age Assessment Challenges - England

Judicial review remains the process

R (A) v Croydon LBC [2009] [2009] UKSC 8 established court can determine age itself:

“...the question whether the applicant is or is not under eighteen is an objective fact which must ultimately be one for the court...” [56]

Local authority's assessment relevant but not determinative

Conceptual difficulties noted in *R (SB) v Kensington and Chelsea RLBC* [2023] EWCA Civ 924:

"The decision in A v Croydon has... reduced the importance of procedural challenges in a substantive judicial review of an age assessment."[85]

Procedural vs. Factual Challenges

Procedural challenges:

- Failure to follow Merton guidelines

- Inadequate reasons

- Procedural unfairness

Factual challenges:

- Court determines age itself

- Evidence-focused

Court of Appeal in *R (SB)* [2023]:

"In cases like these, the parties and the court should consider whether the overriding objective is best furthered by hiving off a procedural challenge from a decision on the merits." [85]

Evidence in Age Assessment Challenges

Key evidence types:

- Detailed statement explaining knowledge of birth date

- Third-party statements from those who have interacted with individual

- Documentary evidence from country of origin

- Expert reports from independent social workers

No formal burden of proof

Court makes determination on balance of probabilities

Credibility central to determination

Duty of candour in judicial review proceedings – Important and potentially onerous – diminishing judicial tolerance for failure to comply.

Challenging After Turning 18

GE (Eritrea) v Secretary of State for the Home Department [2014] EWCA Civ 1490:

“...the best that he could hope for would be that the council should treat him as if he was a former relevant child.” [53]

Local authority has discretionary power

R (HP) v Greenwich RLBC [2023] EWHC 744 (Admin):

"The degree of unfairness, blameworthiness, culpability or other serious maladministration may be what makes a favourable exercise of the discretionary power the sole justifiable outcome."
[23xi]

Relevant factors:

Delay in challenging

Whether interim relief sought

Degree to which assessment was flawed

Interim Accommodation - Importance

R (AB) v London Borough of Brent [2021] EWHC 2843 (Admin) :

"Accommodation is more than a room with a bed, and access to a toilet and shower. A child in need may have a roof over their head but still obviously require the provision of accommodation by the local authority. “ [46vii]

AB v Kent CC [2020] EWHC 109 (Admin):

"The benefit of any doubt is always given to the unaccompanied asylum-seeking child since it is recognised that age assessment is not a scientific process.” [21(5)]

Interim Relief - Legal Principles

Balance of convenience test applied

TL v Angus Council [2011] ScotCS CSOH_196 :

"While it is important to try and ensure that children are not treated as adults it is also important to try and ensure that adults are not treated as children."

MA v Liverpool City Council [2023] EWHC 359 (Admin) :

"...the wrongful accommodation of an adult with children by a Local Authority not only diverts resources from meeting the ends of children to meeting those of adults, it potentially jeopardises the welfare of looked after children..." [48]

Balancing Safeguarding Concerns

MO v London Borough of Newham [2022]:

"A local authority has to deal with safeguarding risks because one child of 17 may be as risky and streetwise as a 23-year-old, whereas another child of 17 may be extremely naïve and more akin to somebody of a younger chronological age."

R(S) v Croydon LBC [2017] EWHC 265 (Admin):

Generic safeguarding concerns insufficient to resist interim accommodation

NCH (Vietnam) v Sefton Metropolitan Borough Council [2023] EWHC 1033 (Admin):

Alternative suitable accommodation available may defeat interim relief



Best Practice Recommendations

Conduct holistic assessments

Give benefit of doubt in borderline cases

Ensure procedural fairness

Consider cultural and social factors

Document reasoning thoroughly

Maintain awareness of margin of error

Seek appropriate expertise

Keep informed of legal developments

Remember the consequences of incorrect assessments

Resources and Contact Information

Legislation:

Children Act 1989

Nationality and Borders Act 2022

Guidance:

Age Assessment Joint Working Guidance (March 2023)

Age Assessment Practice Guidance for Scotland (March 2018)

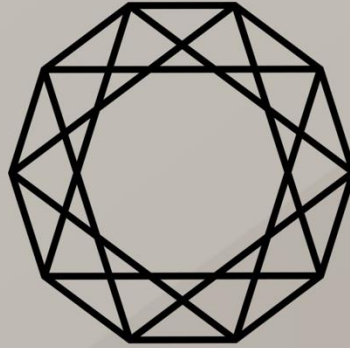
Support Organizations:

Refugee Council

Coram Children's Legal Centre

Scottish Refugee Council

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