

<b>6 March 2019</b>		<b>ITEM: 7</b>
<b>Corporate Parenting Committee</b>		
<b>Report on Merton Assessments</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> N/A	
<b>Report of:</b> Janet Simon, Strategic Lead of Children Looked After		
<b>Accountable Assistant Director:</b> Sheila Murphy, Assistant Director of Children and Families		
<b>Accountable Director:</b> Rory Patterson, Corporate Director of Children's Services		
<b>This report is Public</b>		

## **Executive Summary**

This report updates members of the Committee on Merton Age Assessments

### **1. Recommendation(s)**

#### **1.1 That the members of the Committee note and provide comment upon the work of officers in relation to Merton Age Assessments of Unaccompanied Asylum Seeking Children.**

### **2. Introduction and Background**

2.1 An unaccompanied asylum-seeking child (UASC) is a person below the age of 18 who arrives in the UK unaccompanied by an adult responsible for them and for as long as they are not effectively taken into the care of such a person. This includes minors who are left unaccompanied after they have entered the UK and is a person who:

- a) is under 18 years of age when the asylum application is submitted.
- b) is applying for asylum in their own right; and
- c) is separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so.

2.2 A child who is outside his/her country of origin and separated from their primary carer may:

- be on their own
- have come with a relative who abandons them
- have been sent away by parents for their own safety

- have been trafficked

2.3 Local Authorities across the country have the task of receiving the children, identifying who they are and their specific needs, ensuring that appropriate support is offered to keep them safe; solidify their legal and immigration status and help them to settle into their new circumstances, move on, achieve and reach their potential.

### **3. Brief enquiry to age:**

3.1 At point of entry all UASC individuals are subject to a brief enquiry to age. This is a brief assessment in accordance with the assessing age guidance. Anyone claiming to be a child but whose physical appearance and demeanour strongly suggests that they are significantly over 18 will be treated from that point onwards as an adult. This is subject to review should any further evidence become available to suggest otherwise. The brief enquiry to age is undertaken by two qualified social workers and with the use of an interpreter.

3.2 A young person's age will determine:

- How the asylum application is processed
- What support will be offered
- What accommodation will be provided
- Whether s17 or s20 Children Act (CA) 1989 applies
- Whether s23C CA 1989 applies
- Which immigration rules apply

### **4. Age assessments:**

4.1 When an unaccompanied minor child enters the UK seeking asylum, some will have their age disputed by the authorities, and will have to be subject to an age assessment.

4.2 Almost all of these children have no form of identification, having fled war torn countries. They have no way of proving their age with documentary evidence. In some cultures they don't celebrate birthdays and do not consider birthdays an important milestone, as we do here in the UK. It is important that social workers have considered the cultural background of the individual child and that the ordeals to which these children are subjected could 'age' them more than a child of their age not subjected to these circumstances.

4.3 In order for an age assessment to be valid, it must comply with what is commonly referred to as the age assessment being "Merton Compliant". These guidelines were devised by Judge Stanley Burnton in the case of B v Merton LBC which was subject to Judicial Review (JR) and relates to a case in which the local authority had determined that a young person claiming asylum was aged at least 18. On that basis, he was not a child and the local authority owed him no duty under the Children Act 1989. The guidelines state that in a case where age is not clear, and no reliable documentary evidence

exists, the credibility of the applicant, physical appearance and behaviour must be assessed. The assessment must also include general background of the applicant, including ethnic and cultural considerations, family circumstances, education and history over the past few years.

- 4.4 When making a decision to undertake an assessment of age, it is important to establish whether it is absolutely necessary to complete an assessment. Statutory guidance on the care of unaccompanied children states that an assessment should be carried out only where there is significant reason to doubt that the claimant is a child. An age assessment should not be a routine part of a Local Authority assessment of unaccompanied or trafficked children. Age assessment should be limited to the minimum necessary to ensure that the child/Young Person receives the appropriate services and educational support for their age and development
- 4.5 Local Authorities must treat the claimant as an adult if their physical appearance and demeanour very strongly suggests that they are significantly over 18 years of age. If this is the case, another officer must act as a 'second pair of eyes'
- 4.6 Home Office policy is to apply the age assessment policy in such a way as to guard against the detention of children generally including accidental detention of someone believed to be an adult but subsequently found to be a child. Detention can have a significant and negative impact on a child's mental or physical health and development and can be extremely frightening. The effect of not being believed and being detained can be very stressful and demoralising and there are serious safeguarding risks detaining UASC alongside adults

## **5. How Age is assessed**

- 5.1 Physical appearance: height, build, facial features, voice. The assessors need to bear in mind limitations on using these indicators; i.e. genetic background
- 5.2 Demeanour: mannerisms, body posture, choice of clothing and how worn; how they cope with assessment. The effects of Post-Traumatic Stress should be born in mind as well as the effects of culture on interaction.

## **6. Considerations when carrying out an age assessment**

- A clear work plan for preparing, conducting and concluding the age assessment and allocated time for the relevant tasks.
- Has the child/YP been told that an age assessment will be conducted and are arrangements in place to ensure they have been given the information they need about the process and the support available to them?
- Have arrangements been made for an appropriate adult and interpreter to assist with the interview?
- Has a suitable venue been arranged?

- Has the relevant country of origin and background information been collated and read by both assessing social workers?
- Have arrangements been made to gather any relevant information from other sources, including documentation.
- Are two registered social workers present (and the same for all interviews)?
- Has the social worker explained and recorded the purpose of the interview/s, possible outcomes, the different roles of the professionals and how the information will be shared?
- Has the child/YP had the role of the Appropriate Adult (AA) explained to them?
- Does the child/YP understand the interpreter, are they comfortable with them, and has that been recorded?
- Has the welfare and well-being of the child/YP been checked and are they fit to be interviewed?
- Are the assessors alert to possible vulnerabilities such as human trafficking, mental health concerns and/or other safeguarding issues?
- Has the child/YP been given an opportunity to think about and explain any inconsistencies in their account?

## **7. Judicial Review (JR)**

7.1 A decision of a public body is open to challenge by judicial review and may be quashed. There is no presumption that the Local Authority decision is correct.

- Burden of proof is not relevant factor
- Fairness of the assessment will affect the weight the court will place on the assessment
- Child should be given opportunity to deal with important adverse points
- The court will not necessarily reach the same conclusion as the social worker
- General credibility as assessed by others is not determinative

7.2 The question is not just, whether the person is a child, but also, how old he is. Therefore, a challenge can still be brought against a decision that a person is a child who is older than he claims. On an application for permission to apply for JR the case will go ahead if there is a realistic prospect that, at a Fact Finding hearing, the court will conclude that the person is younger than assessed by the local authority.

7.3 If paediatric evidence is used in an age dispute fact-finding hearing, it may be tested by cross-examination – meaning that social workers or doctors may be cross-examined. Whether the claimant should be subject to cross-examination, and whether any special measures (such as evidence by video link) should be put in place will be considered by the trial judge. Any challenge to an age assessment should be made 'promptly'.

## **8. Issues, Options and Analysis of Options**

- 8.1 The arrival of children is unpredictable in nature and children arrive in the area at short notice and require a rapid response in order to ensure that appropriate interventions are in place in a timely way. We have recently reassessed our duty system across the whole of the Looked After Children service to increase our capacity and flexibility in dealing with the fluctuations in demand.
- 8.2 Merton compliant age assessments are undertaken where there is a dispute about age. There are currently five Social Workers trained to lead on age assessments. A Merton compliant age assessment is a specialised piece of work that requires relevant training.
- 8.3 Age assessments can be open to challenge and cause delay for the child/young person.
- 8.4 We are in the process of utilising the expertise of the UASC Regional Co-ordinator in order educate our staff and ensure that there are consistent expectations in relation to this process. Training in Merton compliant assessments is being extended to staff across the service in February 2019. This will increase our capacity to carry out this work.

## **9. Reasons for Recommendation**

- 9.1 Members of the Committee to be informed on the issues and challenges in relation to Unaccompanied Asylum Seeking Children and assessing their ages.

## **10. Consultation (including Overview and Scrutiny, if applicable)**

N/A

## **11. Impact on corporate policies, priorities, performance and community impact**

N/A

## **12. Implications**

### **12.1 Financial**

Verified by: **Michelle Hall**  
**Management Accountant**

There are no financial implications at this stage; however any costs associated with the Merton compliant assessments need to be met from existing resources.

### **12.2 Legal**

Verified by:

**Lindsay Marks**

**Principal Solicitor Children's Safeguarding**

- A decision as to age by a Local Authority is open to challenge by Judicial Review (JR) and may be quashed
- Where there is a dispute about age and that impacts on e.g the provision of services to a claimant, s/he has 3 months from date of decision to apply for permission to make an application for judicial review of the decision
- If permission to proceed is granted the substantive hearing takes place at the Upper Tribunal
- A decision of the High Court (including Upper Tribunal making a JR decision) is binding on all public bodies

### 12.3 **Diversity and Equality**

Verified by:

**Rebecca Price**

**Community Development Officer**

#### **UN Convention on the Rights of the Child (CRC)**

The UK ratified the CRC in 1989 and on 18 November 2008 removed its reservation to Article 22. This demands that asylum seeking children, unaccompanied or accompanied, shall receive appropriate protection and humanitarian assistance in the enjoyment of all the rights under the CRC and shall be afforded the same protection as any other child permanently or temporarily deprived of his or her family environment. The UK must therefore ensure that the CRC rights of unaccompanied asylum children are upheld in exactly the same way as those of a UK born child.

### 12.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

None

### 13. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

None.

### 14. **Appendices to the report**

None.

**Report Author:**

Janet Simon

Strategic Lead – Children Looked After