

ILPA comments and responses on the Assessing Age AI (version 5)

The table below contains the comments you raised in your letter dated 15 January 2010. All comments have been fully considered. Some comments have been slightly edited or paraphrased to allow us to address each comment and reduce the length of the table. Where the same comment was repeated in the letter, only one example was included in the table.

#	AI Section	ILPA's comments	NAM+ Register and Children's Team responses
1	1.1	Reference the Royal College of Paediatrics and Child Health (RCPH) guidelines on the assessment of age in this section and throughout the guidance.	The RCPH guidelines are referenced in section 5.5 of the AI, it is not considered necessary to reference within the introductory section.
2	1.1	Some officers may have no role to play in securing an age assessment but need guidance on what to do if it is claimed that the person with whom they are dealing with is a child, or to assess what evidence is available to them to be aware that a person before them who is claiming to be an adult may be a child.	It is mandatory for all UKBA staff to complete the 'Keeping Children Safe' training course which includes a module on the requirements of Section 55 and how to apply it in practice.
3	1.1	Staff in the Asylum Screening Unit and frontline staff in enforcement may come across people in situations where those people would benefit from special protection at the outset if identified as a child.	This instruction makes reference to the Processing an Asylum Application from a Child asylum instruction, which provides staff with guidance on dealing with an asylum application from a child. However, we will amend the instruction to provide additional links to the guidance to ensure staff can easily access it.
4	2	Is there an update on the outcome of the age assessment working group?	A report following the working group was not produced as key issues relating to age assessments were subject to legal challenge and no consensus was reached on the best techniques for assessing age. We recognise that assessing age is a difficult issue and continue to seek ways to improve the process.
5	2.1	The second paragraph which states "be treated as is (sic 'if') they were children' should be rewritten to 'should be treated as children'.	We will make the suggested amendments to this section.
6	2.1/ 2.2	UKBA's "strongly suggests" test is reasonable on paper but does not always work in practice. If UKBA continues to adopt a policy contrary to the position we take, the wording in this paragraph must be changed and strengthened.	Please refer to our letter to you dated 29 September 2010.
7	2.1/ 2.2	The statement of the child is evidence of their age. UKBA should desist from launching into an age assessment where	Please refer to our letter to you dated 29 September 2010.

		there is no reason to dispute the age that the child says s/he is.	
8	2.2	Qualifying the statement with reference to 'significant additional evidence' is unhelpful and does not describe what happens when new evidence is received.	References to 'significant additional evidence' will be removed and replaced with 'relevant new evidence'.
9	2.2	The wording 'safeguards that have been put in place to ensure that the application is processed fairly until that happens' is unfortunate as it may give the impression that the application is not processed fairly thereafter.	This sentence will be amended by deleting "until that happens" and replacing it with "throughout".
10	2.3	This section is grudging in tone. This section is no more than a statement that the guidance is compliant with section 55. Making such an assertion does not make it true.	As stated in our letter to you dated 29 September 2010, this section outlines how disputed age policy is compliant with section 55. This section is not meant to be grudging in tone, but we will amend the language to make this clearer.
11	2.3	The instruction needs to be updated in the light of the recent decision of the Supreme Court in R(A) v Croydon; R(M) v Lambeth [2009] UKSC UKSC 8.	Please refer to our letter to you dated 29 September 2010.
12	2.3	The Merton judgment is only one judgment among the significant case law in this area and it would be more helpful to talk of a lawful assessment and note the judgments, including but not limited to Merton, that have set out the meaning of lawfulness in this area.	We will consider including references to other cases. Can you please specify what specific points, from the cases you have cited, you would like us to include?
13	3.3 / 3.4	It would be helpful to cross-refer to parts of the guidance on the substantive steps to be undertaken.	The processes outlined in these sections are clear and no reference to other sections of the AI is required.
14	4.1	Make reference to questions of consent and confidentiality at the outset of this section.	We will make reference to issues of consent and confidentiality in accordance with our views on these issues as outlined in our letter to you dated 29 September 2010.
15	4.1	The decision of the Supreme Court in R(A) v Croydon; R(M) v Lambeth [2009] has implications for the procedures outlined here since it holds out the prospect of the local authority and UKBA electing to allow the courts to determine whose assessment is correct.	Please refer to our letter to you dated 29 September 2010.
16	4.2	To leave a child in limbo is not acting in a way that safeguards them and promotes their welfare. If the UKBA forms its own	It is important that we continue to liaise with the relevant local authority at all stages of the child's asylum claim to ensure that we have

		independent view that the person is a child and there are no adequate reception arrangements available to them on return then to fail to apply its own discretionary leave policy because of the position of the local authority would be unlawful.	<p>all available information relevant to the decision on the claim.</p> <p>Alternatively, the local authority may have obtained new evidence which was not available at the tribunal hearing which continues to show that the applicant is in fact an adult. In any event, it is important to ascertain whether the local authority intends to treat the applicant as a child given that it is not bound by the tribunal ruling.</p>
17	4.2	It is essential if UKBA wishes to dispute the decision that a person is a child taken by a local authority, to put to the child the reasons for taking issue with the decision of the local authority.	We will consider adding this requirement to the AI.
18	4.4	This section should be reworded to indicate that it is necessary to determine whether the authentication of the document is satisfactory to UKBA.	This section will be amended when the AI is updated.
19	4.5	The reference to local authorities not feeling able to share the full copy of the age assessment should be retained. Local Authorities are bound by requirements of consent and confidentiality and it would not be helpful to write guidance that ignores these, as it will not work in practice besides risking being unlawful.	Please refer to our letter to you dated 29 September 2010.
20	5.1	It would be useful to identify that travel documents may show a person to be older than they are.	We will clarify section 5.2 of the AI to reflect this point.
21	5.2	If a child has a birth certificate, the UKBA is setting the bar too high by requesting other "genuine official documentation".	<p>As the policy states, when a birth certificate is submitted other genuine official documentation that bears a photograph of the holder is required before it will normally be accepted as proof of the applicant's age.</p> <p>As with all documentation which is presented as evidence, we must be confident that the document could not have been obtained improperly and is a reliable reflection of the applicant.</p> <p>Where there is no other genuine official documentation to support the birth certificate, we will still consider it alongside all other evidence, but it will not necessarily be determinative. We will make this clearer in the AI.</p>

22	5.5	Express reference should be made to the December 2009 guidance on assessing age produced by the Royal College of Paediatrics and Child Health.	<p>In addition to “The Health of Refugee Children: Guidelines for Paediatricians” (November 1999), we are aware that the RCPCH Advocacy Committee Annual Report of 2008/2009, published in January 2010, refers briefly to assessing age, but we are not aware of any further guidance that was published in 2009 by the RCPH.</p> <p>Please could you provide an internet hyperlink or send a copy of the guidance?</p>
23	5.5	The reference to A v London Borough of Croydon & SSHD; WK v SSHD & Kent County Council [2009] requires updating.	We will amend the wording in brackets at the end of section 5.5 to explain that although the case was appealed and then remitted back to the Administrative Court by consent in light of the Supreme Court judgment in M&A, the comments by Collins J are still of value and can be relied upon. Please also refer to our letter to you dated 29 September 2010.
24	5.6	The use of x-rays for non-therapeutic purposes is unlawful.	We do not request x-rays to determine an applicant’s age, but we must provide guidance to staff on how to handle and consider this evidence if it is submitted by the applicant. The use of such evidence is not unlawful. If we failed to consider relevant evidence submitted by an applicant, it is likely we would be subject to legal challenge.
25	6.3	It should be set out that where two conflicting local authority assessments, both of acceptable and equivalent quality are received, the person whose age is disputed should be treated as a child and the age that accords most nearly with the child’s account should be preferred, or, where s/he does not know how old s/he is, the lower age should be preferred.	It is UKBA’s policy to carefully consider both local authority assessments with all the other evidence in the round. UKBA’s policy, to give applicants the benefit of the doubt when considering age disputes, is considered a suitable safeguard.
26	7.1	We disagree strongly that all children and claimants should be asked for documentary evidence to help establish their age.	Please refer to our letter to you dated 29 September 2010.
27	7.1	The statement ‘Should be informed in a sensitive way’ leaves rather too much to chance.	UKBA Officers receive mandatory training in handling asylum applications from children; therefore it is considered that the wording in this section is reasonable.
28	7.1	All assessments should be carried out in accordance with the best interests of the child and where this cannot be done then the screening must not proceed. This should be made explicit on the face of the guidance.	As stated in our letter to you dated 29 September 2010, all officers are made aware of their obligations to safeguard and promote the welfare of children within this instruction, through other instructions and through mandatory training. It is not considered

			necessary to make further reference to the child's best interests within this section.
29	7.2	This section is not consistent with the terminology used within the IS.97M letter which is issued to applicant's whose age has been disputed.	The language used in this section, specifically "...because the person's physical appearance or demeanour appears inconsistent with his/her claimed age", should be made more consistent with the specific terminology used within the IS.97M and we will make the necessary changes. The IS.97M will also be amended to ensure it fully reflects our age assessment policy as outlined in section 2 of the AI.
30	7.6	All those whose age is in dispute should be accompanied by a responsible adult if UKBA wishes to proceed, pending resolution of the dispute.	Applicants who are assessed as appearing "significantly" over 18 years of age by two UKBA officers will be considered as adults. It is not appropriate for a responsible adult to accompany them during subsequent asylum procedures.
31	8.1	To reduce mistakes the UKBA should notify all officers dealing with the case that the applicant's age is in dispute.	UKBA staff are given specific instruction on recording the applicants claimed and estimated date of birth on the Case Information Database (CID) to ensure subsequent staff dealing with the applicant's case are fully aware of the age dispute issue. This policy is stated within section 7.4 of the internal version of the Assessing Age AI. Readers of the external version of the Assessing Age AI will be unaware of this policy as the text is part of a restricted section to protect the integrity of CID processes. A future update of the AI will consider referencing this policy, but continue to restrict CID processes.
32	8.2	The wording that begins with "Careful handling..." is unfortunate in that it suggests that discharge of the duty is a matter separate from protecting the child. The primary concern must always be to ensure that the child is safeguarded and their welfare promoted.	We will delete this sentence. Please also refer to the letter we sent you dated 29 September 2010.
33	9.1	The claimed date of birth should be displayed on Application Registration Cards.	It is our policy to record the believed age of the applicant on official asylum documentation. If an applicant's claimed age is disputed, it is not considered appropriate to record the claimed age on official documentation. However, we do note on the Card that the believed age is being disputed.

			To ensure applicants, who have been given the benefit of the doubt and are being treated as children, are processed appropriately, they are dealt with under the same procedures as children whose age is accepted.
34	9.1	Where the month of birth is known this should be indicated but it would be preferable, not least for the avoidance of mistakes by other agencies, to give the year only where this is all that is known.	This is a difficult issue which effects UKBA and other organisations. We will review how date of birth is recorded in age dispute cases when an applicant is unaware of the actual birthday.
35	10.1	The wording that begins with "While the policy contained..." is glib. We consider that relevant principles from section 55 should be cited throughout the guidance.	Please refer to our letter to you dated 29 September 2010.
36	10.2	Should read 'to the applicant's legal representative or, if the applicant is not represented, to the applicant'.	We shall amend the AI at 10.2, 10.4 and 15.1.
37	10.3	It should be set out clearly that the claim needs to be considered according to the instruction on processing claims from children.	Please refer to our response to comment 3 in this table.
38	10.3	In no other circumstances would it be acceptable to proceed to a decision while a Local Authority age assessment was pending.	It is important that we continue to process asylum applications in a timely manner. We will strengthen the guidance by stating that every attempt should be made by case owners to obtain the age assessment before making the asylum decision and that a decision should only be made if it has not been received by day 30.
39	12.1	We suggest that if a matter as fundamental as whether the applicant is an adult or a child is changed then a refusal decision should always be withdrawn. A grant need not as it may be clear that the person is a refugee or in need of humanitarian protection whether an adult or child.	Just as a grant need not change as it may be clear that the person is a refugee or in need of humanitarian protection whether an adult or a child, equally it will not always be appropriate to withdraw a refusal decision where our decision on age is not a relevant factor of the asylum decision.
40		In cases where a refusal is withdrawn and the person is now 18 a decision should be substituted that the person was a child at the time of the application and the assessment of the claim as at the original date (i.e. a claim as a child) should be made.	If a refusal decision is withdrawn in these circumstances, UKBA will take into account the fact that the person had previously been wrongly treated as an adult when making a new decision. But this does not mean that the person should be treated as a child when he is no longer under 18.
41	13.1	A cross-reference to the Asylum Instructions on Appeal Bundling, and Appeal Hearings is wholly inadequate.	The Presenting Officers Manual contains further guidance on how to present the appeal of a child. A reference to the Manual will be added to this section.

42	13.3	In ILPA members' experience children and young people are not always, or even routinely, given copies of their age assessments and this should be done.	We shall liaise with the Association of Directors of Children's Services (ADCS) on this matter and, if appropriate, consider revising this sentence.
43	13.3	This section should make reference to the circumstances in which it would be appropriate to seek an adjournment.	Please refer to our letter to you dated 29 September 2010.
44	13.3	The statement "These matters should usually be investigated through sensitive cross-examination." provides no guidance.	Please refer to comment 41 in this table.
45	13.3	This section should include a statement that those preparing and conducting appeal hearings should make sure that all policies and procedures applicable to children have been followed and be prepared to provide evidence of this in court. It should also include a statement that if any of the policies and procedures applicable to children have not been followed the extent of this should be brought to the attention of the tribunal or court.	Please refer to our letter to you dated 29 September 2010.
46	13.3	The wording in this section that " <i>If the appellant is not accommodated by a local authority the results of the assessment should of course be clear</i> " is inaccurate and misleading.	This sentence will be revised in due course to reflect the scenarios you have outlined.
47	13.4	A fuller explanation should be provided in this section.	We will update the AI to include further guidance on AA (Afghanistan).
48	13.5	Information requests must reflect obligations relating to consent and confidentiality. This section does not make this clear.	Please refer to our letter to you dated 29 September 2010.
49	14.1	An immigration judge's determination of a critical finding of fact such as age cannot lightly be second guessed by UKBA.	Please refer to our letter to you dated 29 September 2010.
50	14.2	The section fails to state what should be done.	Please refer to our letter to you dated 29 September 2010.