



Zilla Howell
Head of Asylum
UK Border Agency

By email to Zilla.Howell@homeoffice.gsi.gov.uk

29 March 2012

Dear Ms Howell

I write to express that it is unacceptable to members of the Immigration Law Practitioners' Association that the UK Border Agency is once again trying to use ionising radiation i.e. X-ray technologies on children and young people as part of attempts to resolve age disputes. I am also astonished that when Mr Symonds and I met with you on 23 February that you made no mention of this, nor brought it to our attention as "stakeholders" until the evening before these trials were introduced.

You state that

"The purpose of the trial is to establish whether dental X-rays are a useful tool in helping to establish people's ages when they have been assessed as an adult yet continue to maintain that they are a minor."

It has long been established that dental X-rays are not a useful tool in these circumstances and that nor can they properly, ethically and lawfully be used for such purposes.

You emphasised in your letter that the 'offer' of an X-ray will be an offer to do something that is 'completely voluntary.' That betrays a very profound failure to understand the power relationship between State authorities and claimants within the asylum process.

The language of 'completely voluntary' betrays confusion as to the relationships between the child, the local authority and the UK Border Agency which it will further confuse and damage. There is no one within the asylum process with parental responsibility for the child who can advise the child about their position because the UK has yet to give effect to its obligations to appoint guardians for separated children.

ILPA has very often had cause to bemoan the UK Border Agency's lack of any institutional memory but there can be few more striking instances of the lacuna than this.

ILPA has examined this topic in considerable detail over many years, including in our 2007 publication *When is a child not a child: Asylum, age disputes and the process of age assessment*.¹

In his preface to that publication, the then Children's Commissioner for England, Sir Al Aynsley-Green says:

“Of serious concern to me is the Home Office’s proposal that the assessment of skeletal maturity by x-rays of the teeth or skeleton be used routinely to determine ‘age’. I base my condemnation of this proposal on the fact that for 30 years I have been a full-time paediatric endocrinologist, that is, a specialist in the role of hormones in the mechanisms of growth and sexual maturation in children and young people. There is substantial normal variation in the speed with which young people attain sexual and skeletal maturity. The proposed x-rays demand specialist interpretation, and it is naïve to argue that they can determine the child’s chronological ‘age’ – all x-rays can do is indicate the degree of skeletal maturity that has taken place. Furthermore, there are serious ethical concerns over subjecting children to an investigation that is of no therapeutic benefit to them, particularly when the validity of consent is doubtful when obtained from extremely vulnerable and traumatized children most of whom speak or understand little English. Finally, it is deceitful and duplicitous to argue that such an x-ray would provide the opportunity to assess dental health. For all these reasons, I have expressed and will continue to express criticism and serious challenge over the flawed intellectual underpinning of this proposal.”

In 2007 the Children's Commissioner for England obtained a legal opinion from the then Nicholas Blake QC and from Charlotte Kilroy as to the legality of a proposal to use dental age assessment. They concluded that what the Home Office proposed to do contravened the law. The Home Office did not implement its proposals.

Nothing, in our view, has changed between 2007 and today to lead to any other legal conclusion being formed. To implement an experimental trial scheme to be tested on children raises additional legal, ethical and governance concerns.²

You may be aware that the then Minister for Immigration, Liam Byrne MP, convened a working group on age assessment³ which ultimately led nowhere as the Home Office could find no support among the Royal Colleges, among medical professionals other than Dr Roberts' team or among other professionals, for the use of X-rays in age assessment. The working group never reported publicly, but no doubt the Home Office has access to the minutes and to the presentations, including those of the May meeting where x-rays were discussed.

¹ <http://www.ilpa.org.uk/data/resources/13266/ILPA-Age-Dispute-Report.pdf>

² See the Royal College of Paediatrics and Child Health *Guidelines for the Ethical Conduct of Medical Research involving children*
<http://www.rcpch.ac.uk/sites/default/files/ethics%20of%20research%20in%20Children%20-%20ADC%202000.pdf>

³ First meeting 25 February 2008. The meeting of 19 May 2008.

I draw to your attention the very recent (9 March 2012) hearing by the Australian Human Rights Commission on the subject.⁴ The experts giving evidence are most critical of dental X-rays, for example Professor Cole states

“The general points I was making about bone age being uninformative, exactly the same argument can be applied to the dental age in terms of the likelihood ratio. It again comes back to the fact that the standard deviation of the difference between chronological age and age of attainment of stage H is about 1.3 years. It's fairly consistent whatever measure of developmental age you use. So I'm led to the conclusion that dental age is, like bone age, too variable to be informative to the court.”

There is considerable criticism of Dr Roberts' work in the transcript.

To subject a child to x-rays for no therapeutic purpose is unethical. There is a real question as to whether informed consent freely given can be obtained in circumstances where the child is the subject of an age dispute that will affect the handling of their claim for asylum. To x-ray the child in these circumstances may constitute an assault.

As Home Office representatives have repeatedly acknowledged, X-rays cannot tell you how a child is. The normative data is limited and even with good normative data the method cannot be used to pin an age on a particular child but only to compare the data on the particular child with the normative data. You will recall that since 1999 the Royal College of Radiologists' position is that X rays are inherently intrusive, carry a degree of risk and raise difficulties as to informed consent. They also draw attention to the lack of normative data.

Where the process of age assessment has gone wrong, and for far too long, as Sir Al Aynsley Green describes in his preface to *When is a Child Not a child?*,

“... is that the nub of the problem is that the official policy of giving the ‘benefit of the doubt’ to those claiming to be children is frequently not applied in practice by staff on the ground.”

Age is disputed with a frequency that gives rise to the most grave concerns, and despite official acknowledgment that you cannot date stamp a child the Home Office continues to pursue the chimera of certainty in this area, to the most grave detriment of children who are subjected to doubt, to disbelief, detention and denial of services and now, it is proposed, to irradiation.

ILPA made detailed proposals in *When is a Child not a child?* But, despite much favourable comment, these have never been taken up, by trial or otherwise.

ILPA urges that our proposals are now properly considered, that use of x-ray technology on children plays no part in your own or local authority decision-making procedures and that implementation of the new procedures be halted immediately.

⁴ Australian Human Rights Commission, *Inquiry into the treatment of individuals suspected of people smuggling offences who say that they are children* Transcript of public hearing for key medical experts, 9 March 2012, available at http://www.humanrights.gov.au/pdf/human_rights/20120326_medical_hearing_transcript.pdf

We request a meeting as a matter of urgency to discuss this most retrograde and unacceptable measure.

Yours sincerely

Alison Harvey
General Secretary
Immigration Law Practitioners' Association

Annex: Letter of 21 2008 from Sir Liam Donaldson, then Chief Medical Officer, to Liam Byrne, then Minister of State

Cc

Maggie Atkinson, Children's Commissioner for England and Wales
Tam Baillie Children's Commissioner for Scotland
Patricia Lewsley Mooney, Northern Ireland Commissioner for Children and Young People
Keith Towler, Children's Commissioner for Wales
Barry Cockcroft, CBE, Chief Dental Officer
Professor Dame Sally Davies, Chief Medical Officer
Thomas Hammarberg, Council of Europe Commissioner for Human Rights
Sir Al Aynsley Green
Dr Jane Barrett, President, Royal College of Radiologists
Dr John Chisholm, Deputy, British Medical Association Medical Ethics Committee
Dr Judith Husband, British Dental Association
Dr Nick Lessof, Chair, Royal College of Paediatrics and Child Health Advocacy Committee