



Unlocking Support: age disputed young people in Scotland

EXECUTIVE SUMMARY

The Context

In 2023, over 3,400 Unaccompanied Asylum-Seeking Children (UASC) travelled to the UK to seek safety, according to Home Office data¹.

This statistic, though, is incomplete. There is a group of unaccompanied children not included: those who are age assessed as adults at the UK border by the Home Office. They are therefore age disputed young people. This report is about these young people and their struggles to access statutory support in the UK.

Asylum-seeking young people have often suffered significant trauma and fled persecution, torture, abuse in their home countries. They arrive in the UK seeking safety alone, separated from their families. Many of these young people arrive in the UK without any form of identification. This can be for reasons including growing up in countries without a functional birth registration system, documents being destroyed during conflict, losing documents during unsafe journeys to the UK, as well as experiences of smuggling and trafficking to the UK.

Over the last three years, age disputes raised by the Home Office have increased by 450%²; from 853 in 2020 to a staggering 4,698 in 2023.

Evidence shows that these Home Office assessments at the UK border are routinely flawed³.

The result is that hundreds of unaccompanied children are sent across the UK to Home Office adult accommodation sites. The Home Office do not refer these age disputed young people to local authority Social Work teams, or any other support providers.

Local authorities in Scotland are responsible for looking after, supporting and accommodating UASCs under Section 25 of the Children (Scotland) Act 1995 ("the 1995 Act"). The right to be looked after applies to all children in Scotland who have no family able to look after them, regardless of their immigration status. Access to local authority care is crucial to ensure they are safe from trafficking and exploitation⁴, protected and able to recover from the trauma that they have faced.

When an age disputed young person presents in a local authority area and they are advising that they are under 18 years old, they should be referred to the local authority.

The local authority should then meet with the young person to establish whether they are, or could be, a child. If they are, or could be, a child then they require to be looked after and accommodated under section 25 of the 1995 Act. This meeting or assessment has numerous names, but in this report we call it a "brief enquiry".

Findings: Systemic Problems

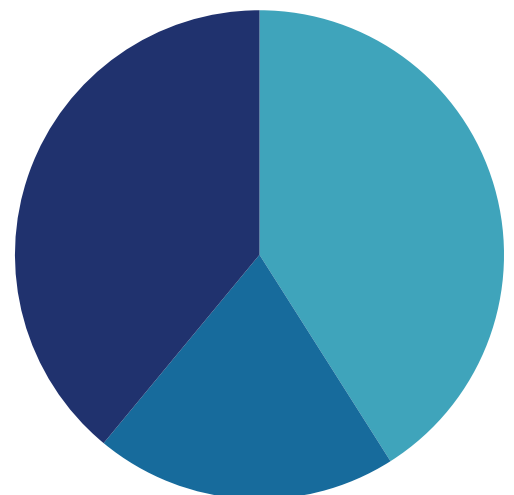
Two critical problems have become apparent through the data gathered for this report, and the casework of a wide variety of organisations from the third sector and the legal sector in Scotland.

The first issue is that there are significant **barriers to referral** to local authorities, which mean that the young people do not meet Social Work teams in a timely fashion, if at all. We have obtained a legal Opinion from a leading child law KC in Scotland, which finds that most of these barriers are examples of unlawful practice:

- Unlawful demands from local authorities that referrals come from Police Scotland after a "livescan" of their fingerprints;
- Challenges in ensuring that Police Scotland make the referrals;
- Delays, ranging from weeks to months after a referral, before the local authority workers meet with the young person;
- Unlawful refusals by local authorities to meet young people, relying solely on the date of birth attributed by the Home Office at the border; and
- Disputes between local authorities as to which authority has responsibility to engage with the young person under the 1995 Act.



The second issue is the quality, conduct and consistency of the **brief enquiries** themselves. Freedom of Information requests were submitted to all 32 Scottish local authorities⁵, and they revealed:

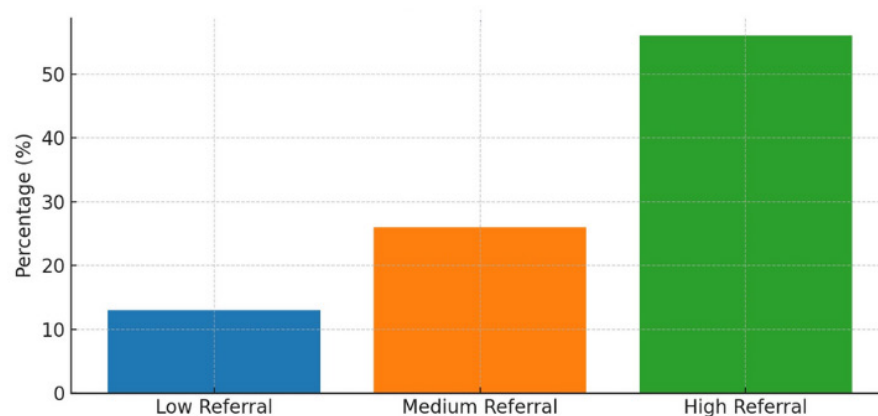


- That **39%** of young people are taken into care and their age accepted without further enquiries;
- That **20%** of young people are taken into care pending further assessments; and
- That **41%** of young people are found to be "clearly and obviously" over the age of 18. However, Glasgow City Council, Scotland's largest local authority, do not keep data on the young people they find to be obviously over 18.

The data also tells us that local authorities in Scotland with high referral rates are more likely to find young people "clearly and obviously" over 18 (**56%**), compared to low referral (**13%**) and medium referral (**26%**) local authorities.

Finally, the data revealed a wide inconsistency in local authority brief enquiry outcomes. In high referral local authorities, one local authority found **15%** to be "clearly and obviously" over 18, while another found **77%** to be over 18. Similarly, in medium referral areas, the gap ranged from **10%** to **61%**.

Percentage of young people found "clearly and obviously" over 18 by referral rate



Qualitative information gathered from a variety of third sector organisations supporting age disputed young found that brief enquiries often arguably fell below the standard of fairness required by law:



- Young people were interviewed by local authorities without **interpreters**;



- Young people were interviewed without **appropriate adults** present, when they were able and willing to attend;



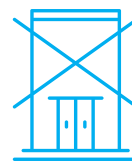
- There were occasions when assessing workers acknowledged that there was doubt as to age, but failed to give the **benefit of the doubt** as instructed to by guidance and caselaw;



- Some brief enquiries in practice resembled more **prolonged age assessments** without any 'Merton compliant' procedural safeguards; and



- The majority of **legal challenges** to brief enquiry assessments are successful.



Our report also found an emerging pattern of local authorities failing to provide **adequate accommodation** or a looked after service to young people whose ages are accepted pending further assessments. This practice leaves them in dangerous situations and inadequate, unsafe accommodation or street homeless, in breach of the statutory obligations set out in the 1995 Act.



Finally, based on evidence from the British Red Cross, it is apparent that advocacy support from specialist organisations means that it is more likely age disputed young people will have access to fairer assessments, and eventually be recognised as children. This shows that advocacy is crucial in these cases, yet it is often unavailable.



Home Office

Based on these findings, we make the following recommendations, in collaboration with our partners for the [Home Office](#) to:

1

Limit decisions to treat a young person as an adult only in exceptional circumstances (for instance, if officers are of the view that the young person is in their late 20s or older).

2

Notify the relevant local authority where someone who claims to be a child but is treated as an adult is moved to accommodation/detention, so that the local authority is aware that there is an age disputed young person in their area.

Scottish Government

Based on these findings, we make the following recommendations, in collaboration with our partners for the [Scottish Government](#) to:

1

Review the [Age Assessment Guidance](#) as a matter of urgency. The new guidance should address brief enquiries to help local authorities act lawfully when making these decisions. The new guidance should also include a template form and checklist to help workers follow best practice and are providing adequate reasons in support of their decisions;

2

Fund an advocacy service aimed at supporting age disputed young people who are struggling to access local authority care. This could be done by either extending the eligibility criteria for Guardianship Scotland to ensure age disputed young people can be supported, or creating a separate service;

3

Urgently ensure there is appropriate funding in place for local governments to respond to the needs of UASCs and age disputed young people in Scotland.

Police Scotland

Based on these findings, we make the following recommendations, in collaboration with our partners for the [Police Scotland](#) to:

1

Issue clear, transparent guidance on how officers should respond in these cases, ensuring that age disputed young people are consistently referred to Social Work Services when stating that they are under the age of 18.

Recommendations

Scottish Local Authorities

Based on these findings, we make the following recommendations, in collaboration with our partners for the [Scottish Local Authorities](#) to:

1

Keep a clear record of age disputed young people who are referred to their services and of those who are found to be adults;

3

Provide clarity on the young person's Looked After status as soon as practicable after a brief enquiry is conducted;

4

If a young person is found to be a putative child, accommodate them as quickly as possible under Section 25 of the 1995 Act. If suitable accommodation cannot be sourced immediately, carry out a risk assessment of the accommodation where the young person is living;

2

Review their internal policies to ensure workers are instructed:

- To respond to referrals made by third sector organisations promptly;
- To meet and engage with age disputed young people, carrying out the necessary assessments regardless of
 - o the Home Office initial age assessment decisions and recorded dates of birth;
 - o where the young person previously resided;
- To comply with the legal standard of fairness set out in case law and guidance, when carrying out brief enquiries;

5

Put in place an individual care plan tailored to the child's needs, as soon as practicable after a putative child is taken into care.

REFERENCES

- ¹ Home Office, How many people do we grant protection to?
<https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2023/how-many-people-do-we-grant-protection-to#:~:text=There%20were%203%2C412%20applications%20from,compared%20to%207%25%20in%202022>
- ² Ibid
- ³ Refugee Council, Helen Bamber Foundation and Humans for Rights Network, Forced Adulthood: The Home Office's incorrect determination of age and how this leaves child refugees at risk-
<https://www.refugeecouncil.org.uk/information/resources/forced-adulthood-the-home-offices-incorrect-determination-of-age-and-how-this-leaves-child-refugees-at-risk/>
- ⁴ ECPAT and UCL, Behind Closed Doors: A Storytelling Legal and Empirical Analysis of Human Trafficking Risks in Home Office Hotels Compared to Other Accommodation for Unaccompanied Children and Young People Seeking Asylum in the UK,
<https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=b6fe36f8-4e04-4d3a-81bc-990633b7067c>
- ⁵ In the Freedom of Information requests, the following questions were asked:
 1. Please confirm the number of unaccompanied asylum-seeking children who were accommodated by your local authority whose ages were accepted without further enquiries, excluding National Transfer Scheme (NTS) cases, in the following period: January 2023-present.
 2. Please confirm the number of unaccompanied asylum-seeking children that were accommodated by your local authority pending a full age assessment, excluding NTS cases, in the following period: January 2023-present.
 3. Please confirm the number of young asylum seekers claiming to be under the age of 18 who were referred to your local authority and were found to be clearly and obviously over the age of 18 and denied support following initial inquiries in the following period: January 2023-present. Please confirm, in how many of these cases, your local authority decided to accommodate the young people following legal challenges and/or reconsideration requests regarding the initial enquiries.

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PEOPLE'S RIGHTS**



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