

Unlocking Support: age disputed young people in Scotland

ACKNOWLEDGEMENTS

This report was written by Francesca Sella and Sabrina Galella for JustRight Scotland.

We are grateful to Andy Sirel for his support and guidance.

JustRight Scotland is a registered charity (SC047818) established in 2017 by a small team of human rights lawyers. We use the law to defend and extend people's rights, working collaboratively with partners and communities across Scotland towards the shared aims of increasing access to justice and reducing inequality. Age disputes and age assessments have been a priority area of work in our <u>Scottish Refugee and Migrant Centre</u> for many years.

The research behind this report was funded by a grant from the <u>Strategic Legal Fund ("SLF")</u> managed by the <u>Immigration Law Practitioners' Association ("ILPA")</u>, without which this work would not have been possible.

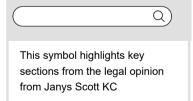
We are also grateful to all the organisations that contributed to this report by sharing their invaluable evidence, data and case studies.

These include:

- Asylum and Refugee Care
- British Red Cross (Young Refugee service in Glasgow)
- Care4Calais
- Clan ChildLaw
- Grampian Regional Equality Council
- Guardianship Scotland
- Humans for Rights Network
- Latta & Co
- Migrant Help Trafficking and Exploitation Survivors' Service
- Survivors of Human Trafficking in Scotland

Photograph credits

Cover © All images included in this report have been generated using Al and Adobe's asset library



Thank you to the local authorities who provided an input to this report.

Finally, we are grateful to Janys Scott KC for sharing her expertise and knowledge.



TABLE OF CONTENTS

1	Introduction	1
2	Becoming age disputed: the UK border	3
3	The context in Scotland	6
3.1	Children's rights in Scotland	
3.2	Local authorities in Scotland under increasing amount of pressure	
4	Barriers to referrals	10
4.1	Adult accommodation providers	
4.2	Issues in practice: experience from the third sector	
5	Brief enquiries	23
5.1	Legal Framework	
5.2	Postcode lottery: findings on local authorities, brief enquiries	
5.3	Issues in practice: experience from the third sector	
5.4	Successful legal challenges	
5.5	The importance of advocacy in reaching positive outcomes: the experience of British Red Cross	
6	Local authorities [,] needs	43
7	Conclusion and recommendations	45

- Appendix 1 Legal opinion by Janys Scott KC
- Appendix 2 Appendix B: Summary of Freedom of Information Requests and responses

Introduction

In 2023, over 3,400 UASCs travelled to the UK to seek safety⁶. These are some of the most vulnerable children living in the UK as they have often suffered significant abuse, trauma and were harmed and exploited in their home country as well as during their journey to the UK.

Those numbers do not include young people who, on arrival at the UK border, have been assessed by the Home Office as being adults. For the purpose of this report, we define unaccompanied young people who state their age to be under 18 but are found to be adults by the Home Office on entry, as "age disputed young people".

Local authorities in Scotland are responsible for looking after, supporting and accommodating UASCs under Section 25 of 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 for this particularly vulnerable cohort, to ensure they are safe, protected and able to recover from the trauma that they have faced. These protections are also key to minimise risk of trafficking or re-trafficking, as evidence has shown that UASCs who do not have access to local authority care are at a significantly increased risk of trafficking and exploitation in the UK⁷.

The Scottish Government and Scottish local authorities have recognised UASCs as a particularly vulnerable group and committed to ensure their safety and wellbeing is protected. As part of this commitment, UASCs in Scotland are also allocated an Independent Child Trafficking Guardian whose role is to assist them and advocate for them throughout their various legal processes.

These protections are, however, only available to UASCs who have been accepted by a local authority as being children or putative children (where the local authority agrees they could be a child, and presumes their age pending a more formal age assessment). Young people who are found to be adults by a local authority therefore do not have access to this safety net.

Over the last three years, age disputes raised by the Home Office have increased by 450%; from 853 in 2020 to a staggering 4,698 in 2023. This has resulted in a significantly higher number of age disputed young people arriving in Scotland. This increase in numbers, compounded with the change in asylum dispersal policy (whereby asylum seekers are now accommodated across Scotland) has meant that children and families Social Work teams across Scottish local authorities have been under a significant amount of pressure.

Over the same period of time, we have witnessed a sharp increase in age disputed young people struggling to access or being unfairly denied support from local authorities. With this report, we aim to shine some light on the issues affecting age disputed young people and the obstacles they face after arriving in Scotland.

The research behind this report was extensive and we sought to gather evidence from local authorities, as well as from organisations advocating for and supporting age disputed young people. This report also aims to bring some clarity around local authorities' obligations towards age disputed young people. For this reason, a legal opinion by Senior Counsel Janys Scott KC, a leading child law expert in Scotland, was obtained and is referred to throughout the report and enclosed at the end.

The report begins by considering the commitments made by the Scottish Government to defending and extending children's rights in Scotland, with a focus on UASCs as a particularly vulnerable group. These commitments are especially significant now, with the recent incorporation of the United Nations Convention on the Rights of the Child ("UNCRC") in Scotland. The report then looks at the current reality faced by local authorities, with a focus on the lack of resources and financial constraints which are adding significant pressure to an already overstretched statutory sector.

We then examine the journey of an age disputed young person who enters the UK and eventually arrives in Scotland. This analysis explores each step in the process of securing care from a local authority, highlighting the obstacles these young people face and the serious impact that poor decisions can have on their lives. We will also emphasise the legal obligations of Scottish local authorities in these cases, supported by Janys Scott KC's legal opinion.

Finally, this report concludes with a summary of our recommendations to the Home Office, Scottish Government, Police Scotland and Scottish local authorities.

2. Becoming age disputed: the UK border

Before considering what happens to an age disputed young person once they arrive in Scotland, we need to take a step back and consider how a young person becomes age disputed in the first place.

When an unaccompanied child enters the UK, they will normally encounter immigration officers. Often, these children will not hold any form of ID due to the circumstances in which they fled their home country and will therefore be unable to prove their age.

In these cases, immigration officers, under their operational guidance have a duty to carry out an initial age assessment to ascertain whether the young person is or could be a child. These initial assessments are based solely on the young person's presentation and demeanor.

When carrying out these assessments, immigration officers can reach three possible decisions:

- To accept the child's stated date of birth without further enquiries. When this happens, the child will be referred to a local authority through the National Transfer Scheme¹⁰ ("NTS"). If the child is referred to a local authority in Scotland, they will be accommodated and looked after under Section 25 of the 1995 Act;
- 2. To give the young person the benefit of doubt pending a further assessment of their age. In this scenario, the young person will, again, be referred and accommodated by a local authority under the NTS. After the young person is accommodated, the local authority will have the discretion to carry out a full "Merton-compliant" age assessment if deemed required;
- 3. To treat the young person as an **adult**. This conclusion, according to the relevant guidance¹¹ should only be reached in cases where two Home Office members of staff have independently assessed that the young person is an adult because their physical appearance and demeanor <u>very strongly suggests</u> that they are significantly over 18.

For the purpose of this report, we define age disputed young people as those who fall within the third category and are treated as adults by the Home Office upon entry. This is because, as it will be explored, this group faces significant obstacles in accessing local authority care in Scotland.

Home Office assessments as flawed and unreliable

For a number of years, organisations across the UK have been raising concerns about Home Office initial age assessments and their dangerous implications for young people¹². In 2022, Refugee Council reported that **94%** of age disputed young people they supported who were initially deemed adults by the Home Office, were later found to be children¹³.

Similar concerns were also raised by Great Manchester Immigration Aid Unit ("GMIAU") in 2022, who reported that most of their clients who were initially found to be adults, were later accepted to be children¹⁴.

In 2022, the Independent Chief Inspector of Borders and Immigration also raised concerns around Home Office initial age assessments, noting that "the age assessment process was perfunctory and engagement with the young people was minimal" on arrival to the UK.

In 2023, the United Nations High Commissioner for Refugees noted serious flaws around initial age assessments based on their audit of asylum screening in the UK. It was recommended for immigration officers to stop assessing age and for "a more comprehensive social work-led assessment" to be introduced ¹⁶.

More recently, in January 2024, Refugee Council, Helen Bamber Foundation and Humans for Rights Network published a report highlighting very serious, systematic flaws within the Home Office initial age assessment process¹⁷.

The report finds that between January 2022 and June 2023, over **1,300** children were wrongfully assessed as adults by the Home Office on arrival. The report also notes that, between January 2023 and June 2023, **57%** of young people who were initially assessed as adults by the Home Office were later found to be children by local authorities in England. Taken together, this evidence shows that the Home Office initial age assessments are often flawed, and decisions to treat a young person as an adult should only be taken in exceptional circumstances.

These flawed assessments have particularly dangerous consequences for the young people. When the Home Office makes the decision to treat a young person as an adult, they will assign them a date of birth, which will be recorded in their system. They will then be dispersed into adult Home Office accommodation and will be treated as adults from that point on; often in remote hotels sharing a room with another adult. They receive no specialist support, no access to school and crucially, no one to look after them. Importantly, the Home Office will not refer them to a local authority.

This means that young people who are wrongly assessed as adults by the Home Office on entry will only be able to access local authority care and support if they are encountered by a person or an agency, who then refers to a local authority, which then agrees to engage with them. There are simply too many hurdles.

We echo the recommendations made by Refugee Council, Helen Bamber Foundation and Humans for Rights Network in calling for the Home Office to:

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)¹⁸.

After the Home Office decides to treat a young person as an adult, the young person would usually be provided with a letter setting out the reasons why they were assessed as being adults and their new recorded date of birth. The letter will also normally advise the young person that the decision does not prevent them from approaching a local authority and, ultimately, if a local authority finds the young person to be a child, then the Home Office decision will be reviewed.

The burden is therefore on the young person and on supporting organisations to ensure that referrals are made. This inevitably leads to cases where children are not referred to local authorities and remain in Home Office adult accommodation. Evidence shows that these children are at heightened risk of trafficking, exploitation and physical and mental health deterioration ¹⁹.

We endorse the recommendation made by Refugee Council, Humans for Rights Network and Helen Bamber Foundation for the Home Office to:

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 area²⁰.

3. The context in Scotland

3.1 Children's rights in Scotland

The Scottish Government has stated that they are committed to making Scotland the best place in the world to grow up²¹. Legislation – such as the 1995 Act, The UNCRC (Incorporation) (Scotland) Act 2024, the Children and Young People (Scotland) Act 2014 and the Children (Scotland) Act 2020 – along with various policy frameworks including *Getting it right for every child* ²² and *The Promise* ²³ – are all part of the vision that children's rights are embedded and respected throughout all aspects of Scottish society.

The incorporation of the UNCRC is the next step in realising that vision. In particular, Part 2, Section 6 of the UNCRC Act places a duty on public authorities not to act incompatibly with the UNCRC with regard to devolved matters (in other words, in the context of functions conferred to them by Acts of the Scottish Parliament). What this means in practice is that public authorities must embed the "General Principles" and all other articles within the Convention when working with and for children and young people. If not, legal action could be taken against the public authority, and they may be found to have acted unlawfully.

9

When the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 does apply the child's best interests must be treated as a primary consideration in terms of article 3 of the Convention. The child should be afforded such protection and care as is necessary for his or her well-being. The institutions, services and facilities responsible for the care or protection of children should conform with the standards established of the competent national authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision.

In terms of domestic legislation, local authorities' obligations towards unaccompanied children are mainly set out in the 1995 Act. Under section 25 of the 1995 Act, all local authorities in Scotland have a duty to accommodate and look after unaccompanied children.

Q

If there is no-one with parental responsibility, the child is lost or abandoned, or the person caring for the child is prevented from doing so, then it falls to the local authority to provide accommodation. A "child" is a person under the age of 18 (see definition in section 93(2)(a) of the 1995 Act).

The legislation draws no distinction between a child born in the United Kingdom and a child born elsewhere. There is no special case for a refugee or asylum seeker. It does not matter how the child has come to the attention of the local authority. If the child is found in the local authority area and no-one has parental responsibility for him, or he is lost or abandoned, or the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care, then the local authority must accommodate that child.

Scotland has undoubtedly taken the right steps towards ensuring the rights of the child through policy framework and legislation; nevertheless, there are concerns of an "implementation gap" ²⁴ between what is set out in commitments, and the lived experience of children in Scotland.

As reflected in the findings of this report, this is arguably the case for age disputed young people. Children and young people that have arrived in Scotland – regardless of how they got here – should still be protected by human rights legislation. UASCs are entitled to the same rights and protections as all other children in Scotland, and this must be taken into account by local authorities every step of the way when engaging with and supporting age disputed young people.

3.2 Local authorities in Scotland under increasing amount of pressure

Local authorities across Scotland have been struggling for years in the face of ever-increasing service and workforce pressures, the Coronavirus pandemic and recurring budget cuts.

Indeed, the Accounts Commission has warned that "the financial outlook is extremely challenging with Scottish councils facing unprecedented financial and service demand pressures which present real risks for the future" ²⁵.

A report by the Local Government Information Unit shows how government finances in Scotland are in a critically poor state. In their State of Local Government Finance in Scotland, they highlight that adult social care and children's services are considered by local authorities as the greatest short-term pressures on council finances, with respondents from eight different councils saying that there is a risk that financial restrictions could leave them unable to fulfil their statutory duties, unable to put in place a balanced budget and effectively meaning their council would face bankruptcy.²⁶

A recent scoping exercise undertaken by the Scottish Government and COSLA's Unaccompanied Asylum-Seeking Children Short Life Working Group ("SLWG") assessed the current situation of UASCs and young people within Scotland's care services.

This exercise evaluated the types of support provided, as well as the resource and financial pressures those types of support place on local authorities.

The findings revealed a significant shortage of available placements, exacerbated by various factors, including the increasing number of arrivals, the impact of continuing care, a decline in the number of foster carers and a reduction in internal residential capacity. Additionally, growing pressures on already overburdened Social Work teams and a lack of suitable accommodation due to housing shortages further complicate the issue.

The report notes, for instance, that in the period October-December 2023, one local authority received **20** referrals concerning age disputed young people from the Home Office accommodation provider and, another local authority received **16** referrals in the same period. The report argues that no local authority in Scotland is likely to have the necessary infrastructure, including a skilled workforce, to handle this high number of referrals.

The report finds that the combination of all these factors significantly affects local authorities' ability to provide care for UASCs and care leavers. Some of the consequences highlighted include:



The use of emergency hotel and B&Bs to accommodate children;



In a limited number of cases, UASCs not being allocated a social worker on arrival due to workforce shortages;



Age disputed young people continuing to reside in adult asylum accommodation, pending further assessments.

The findings in the SLWG report are consistent with our findings, indicating that a lack of resources and pressure on local authorities are resulting in age disputed young people struggling to access care and adequate support.

We recommend the Scottish Government to:

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.

4. Barriers to referral

There are various ways in which age disputed young people are referred to local authorities in Scotland for assistance. Third-sector organisations that provide support to this cohort have raised concerns regarding these referral routes.

4.1 Adult accommodation providers

A. Mears

Once age disputed young people are found to be adults by the Home Office, they will be provided accommodation. Clearsprings, Mears and Serco are private companies contracted by the Home Office to provide housing and support for people seeking asylum, with Mears being the only one operating in Scotland.

Mears staff play a crucial role for age disputed young people because they are often the first professionals to become aware of the young person after being placed in adult accommodation. This typically occurs during welfare or health checks.

Nevertheless, it is understood that Mears staff are instructed to make referrals to local authorities in limited circumstances. A referral will only be made in cases where the Home Office did not carry out an initial assessment on entry and in cases where Mears staff have concerns in light of their interactions with the young person²⁷. Where staff have concerns, they are required to justify their decision and provide detailed reasons to the Home Office.

We are concerned that this internal policy may deter Mears staff from making referrals to local authorities where a Home Office initial age assessment has previously taken place.

As such, we support the recommendation set out by Refugee Council, Humans for Rights Network and Helen Bamber Foundation and re-iterate that:

Where an age disputed young person in adult accommodation was assessed as an adult by the Home Office, the accommodation provider should make a referral to the relevant local authority, irrespective of the Home Office's decisions, so that they are aware that there is an age disputed young person in their area and can meet the young person accordingly ²⁸.

B. Migrant Help Trafficking and Exploitation Survivors' Service

Adult survivors of trafficking and modern slavery are entitled to receive certain types of support in the UK. In Scotland, this support is provided by Migrant Help's Trafficking and Exploitation Survivors' Service ("TESS"), which provides, in most cases, a minimum of 90 days' support, accommodation and living expenses to adult victims of trafficking. This support is funded by the Scotlish Government, which has a duty to provide support to victims of trafficking under Section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015.

Between 2022-2024, TESS have witnessed a significant increase in age disputed young people being referred to their service. It is understood that up until early 2024, TESS' internal policy was to refer age disputed young people supported by their service to the relevant local authorities. TESS reported that in 2023, the service referred 33 age disputed young people to local authorities across Scotland. They expressed concerns about delays from local authorities in responding to referrals and the impact of negative decisions, which places pressure on their service to provide continued support in these cases.

TESS noted that:

- Out of 33 age disputed young people who were referred to local authorities, only 1 young person was taken into local authority care following initial referral;
- In 9 cases, the local authority accepted responsibility following legal challenges against initial negative decisions, and this resulted in the young people being accommodated;
- In 3 cases, the local authority agreed to carry out a full age assessment but declined to provide interim accommodation for the young people, which meant that the young people remained in TESS accommodation despite being accepted as potential children by the local authority;
- There were 7 cases where age disputes were ongoing at time of writing;
- In 1 case, a young person accepted their recorded adult date of birth;
- In 12 cases, young people exited the TESS service prior to a resolution of the age dispute (either due to a negative trafficking decision or to being moved to adult asylum accommodation).

The complexity of these cases and the fact that age disputed young people require much more intense support, resulted in the TESS service being significantly impacted. TESS advisers are not trained in supporting age disputed young people and the service is meant to support adult victims of trafficking only.

The increase in age disputed cases resulted in TESS, in early 2024, amending their internal guidance on responding to new referrals where the potential victim is presenting as a child. Now, the criteria for TESS accepting a potential child into support are more stringent. Where an individual presenting to the service as a child is not in Home Office Initial Accommodation, staff are required to establish whether the individual has already had contact with a local authority. If not, a referral is made to the local authority in which the potential child is presenting. If an individual presenting as a child holds official documentation stating that they are adult, TESS will accept the referral in the first instance.

Where an individual presenting as a child is in Home Office Initial Accommodation, TESS will generally accept the referral but will then contact the housing provider (Mears) to check whether a local authority referral has been made, and proceed from there.

Numerous complex situations can arise in relation to age disputed referrals into the service; the above is a brief overview of the most commonly applied processes under TESS' current approach.

4.2 Issues in practice: experience from the third sector

As part of this report, we have gathered evidence from various advocacy and support organisations who work with age disputed young people across Scotland. All organisations we consulted would, as a matter of practice, refer age disputed young people to local authorities where a referral is yet to be made. The evidence we obtained from third-sector organisations highlights inconsistencies across local authorities as to how referrals are responded to.

A. Unlawful requirement for a "livescan" or police referral

Two organisations highlighted that Glasgow City Council, in a number of cases, advised advocacy workers that referrals for age disputed young people would only be accepted if made by Police Scotland.

British Red Cross ("BRC") staff were advised in a number of cases that age disputed young people were required to attend a police station, provide biometrics (often called a "livescan") and be referred by Police Scotland before Social Work could engage with them. This practice creates significant obstacles for young people and for advocacy workers; we found that Police Scotland often refuses to refer cases to Social Work.



Jawid presented to BRC Glasgow offices advising he was street homeless and age disputed. He stated he was 16. BRC accompanied him to police station 1 requesting a livescan and referral to Social Work Services. Police station 1 refused to undertake the live scan as the client "had not committed a crime". Jawid remained street homeless that night. As BRC understood that Social Work would not engage with a referral until a livescan had been done, they accompanied Jawid to police station 2. They advised that whilst they could do the livescan, there was no availability for anyone to do it that day. Officers at police station 2 eventually undertook the livescan but when it came back with a date of birth showing the client to be older than 18, they refused to make a referral to Social Work and Jawid remained street homeless.



"Leo"

Leo presented to British Red Cross offices in Glasgow advising that he was street homeless and destitute. He told British Red Cross that he was 17 years old but that the Home Office had disputed this. Alongside an urgent referral to Social Work, British Red Cross arranged for him to attend the nearest police station for a livescan knowing that Social Work would request this (British Red Cross understands that this is required by Glasgow City Council). British Red Cross provided Leo with a letter to show the police; asking for a direct referral to Social Work from Police Scotland and advising that he was a vulnerable age disputed young person.

Leo contacted British Red Cross the following day and advised that the police took his photograph and fingerprints in one police station and then told him to call Migrant Help. After a couple of hours, they moved him to another police station within the same local authority area, but did not tell him why. British Red Cross contacted Leo again and were able to speak with an officer at the police station - at which point he had been with the police for 20 hours. The police officer advised that they did not make a referral to Social Work as requested because the Home Office information showed he was over 18, so they had no responsibility for him and he should instead call Migrant Help.

We note that for a local authority to refuse to engage with an age dispute young person in the absence of a referral from Police Scotland is potentially unlawful and a breach of statutory duties under the 1995 Act.

٩

The local authority owes its duties direct to a qualifying child or young person, regardless of who refers. All the child requires to do is to be found in the local authority area. A local authority cannot refuse to comply with its statutory duty in the absence of a police referral. No referral of any nature is required.

Police Scotland is often uniquely placed to assist age disputed young people. When an age disputed young person first arrives in Scotland, they will often seek help from the police. In our casework experience, this often happens in cases where young people flee situations of trafficking and exploitation.

It is understood that the Home Office has issued guidance to Police Scotland on how to respond to an age disputed young person seeking assistance. Information shared by Police Scotland with BRC confirmed that a protocol exists whereby if an age disputed young person presents at a police station stating that they are under the age of 18, police should contact Social Work Services who will be responsible to determine whether the young person is, or could be, a child.

However, police practice seems to be inconsistent. We note that in March 2024, BRC raised this concern with the Scottish Parliament's Social Justice and Social Security Committee ²⁹. We share these concerns and

Urgently ask Police Scotland to 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.

B. Delays in responding to referrals

Contributors to this report noted that, in some areas, local authorities took a significant amount of time to respond to referrals and engage with age disputed young people in need.

Humans for Rights Network noted that they referred 2 age disputed young people to a local authority in October 2023. Workers managed to meet the young people in the Home Office hotel quickly after the referrals were received but could not secure an interpreter, and therefore, were not able to speak to the young people. The local authority deferred the assessments as they had no trained workers who could complete this. In March 2024, Humans for Rights Network advised that an assessment was yet to be carried out by the local authority, and that the two age disputed young people were still living in the Home Office hotel, 5 months since the initial referral was made.

Asylum and Refugee Care ("AARC") noted that, whilst their relevant local authority would normally respond to referrals, it could take between 6-8 weeks for a social worker to meet an age disputed young person to conduct an initial, brief enquiry.

C. Reliance on Home Office recorded date of birth

Organisations have also reported that some local authorities refuse to respond to referrals and meet with age disputed young people due to their recorded Home Office date of birth.

Survivors of Human Trafficking in Scotland noted that a local authority has taken weeks to respond to referrals, often using the Home Office recorded date of birth as a reason to refuse to engage with the young person. In several cases, following initial referrals, they were advised by the local authority that they were not allowed to second-guess the Home Office age assessment.



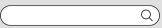
"Lan"

Lan was trafficked to the UK from Vietnam for the purposes of criminal exploitation at 15. She was found by authorities in England but was told by the Home Office that they believed she was much older than she was. As a result, she was placed in adult asylum accommodation and was very soon located by her exploiters and re-trafficked to Scotland, where she was made to work in a cannabis farm. She eventually managed to escape and was found by the Scottish authorities who brought her to a local homeless shelter. When we encountered her, she had been staying at the shelter for a few days. She was visibly very young looking and the Home Office age was clearly wrong. The shelter had contacted the local authority's children's services, but they refused to provide support to Lan because they did not believe they were able to make a different decision on Lan's age. After a number of weeks advocating with the local authority, they eventually agreed to carry out an age assessment. It took them several more weeks to meet with Lan and begin the process. In the interim, she remained in the homeless shelter with no support from the local authority despite being a potential victim of trafficking. During this time, shelter staff raised concerns that suspicious individuals were approaching Lan at the entrance that staff were concerned may be linked to her exploitation. Despite this, the local authority did not seek to source alternative, safer accommodation. The local authority also told us that Lan would be supported to access legal support after her age was determined.

BRC also reported this practice as being an issue across various local authorities they refer age disputed young people to.

BRC was working with an age disputed young person who was street homeless when he presented to their service. He stated he was 17 at the time but had been assessed as 23 years old on arrival. BRC referred the young person to the relevant local authority. In response to their referral, Social Work told BRC on the phone that because the young person had been assessed as an adult by the Home Office, they had no duty towards him. BRC explained that he had never been referred to a local authority. Social Work then contacted the young person over the phone, with no interpreter and advised that even if he was 17, they wouldn't normally provide children and families support to someone that age and he would go through adult homelessness services.

We note that a local authority's refusal to engage with an age disputed young person solely on the basis of their Home Office recorded date of birth is potentially a breach of duties under the 1995 Act.



The duty to accommodate under section 25 applies in the case of a "child", that is a person under the age of 18. The local authority has a responsibility to decide for itself whether a person is a "child". R (on the application of B) v Merton LBC [2003] EWHC 1689 (Admin) established that the local authority cannot simply adopt a Home Office decision on age. To rely on a Home Office assessment that a person is not a child is actually unlawful (see R (AF) v Milton Keynes Council [2023] EWHC 163 (Admin)). A local authority must assess age for itself.

D. Disputes between local authorities

Age disputed young people will often move between different local authority areas. This could happen, for instance, if a young person is trafficked between different places or moved by the adult accommodation provider. In our casework, we have witnessed some cases where local authorities refuse to meet and engage with age disputed young people on the basis that they previously resided in another local authority area, which they believe ought to be responsible for them. This creates difficult situations where young people are left in a vacuum, with no access to support on the basis of local authorities disputing who has responsibility under the 1995 Act.

BRC noted that this was an issue they witnessed in their casework.

An age disputed young person who was originally living in England left his adult accommodation and travelled to Glasgow as he was feeling intimated and scared of the adults in the hotel. He presented at BRC stating that he was a minor and homeless. A referral was made to Social Work, where BRC informed them that the client was disputing his age. Social Work stated that they could not meet with the client, or accommodate him, and advised that he should return to England. Social Work advised that they do not have a responsibility of care as he had previously resided in another local authority and therefore would not meet with him. The client was then street homeless.

We at JustRight Scotland have also witnessed this in our recent casework:



Joy was trafficked from her home country to the UK and was sexually exploited during her journey. She arrived in the UK aged 17 but was assessed by the Home Office as an adult on entry. She was then accommodated in a hotel but was traced by her traffickers who took her to Scotland. In Scotland, she was locked in a house and again sexually exploited. She then managed to escape and sought help at a police station. The police called Social Work who met with Joy and told her that they could not help her because she was an adult according to the Home Office. Social Work referred her to Migrant Help and she was taken to a hotel accommodating adult victims of trafficking. Her advocacy worker made a referral to the first local authority where Joy was found but they refused to engage due to the fact that Joy was now living in a different local authority. We then referred her to the local authority where she was accommodated and our referral was initially rejected as the second local authority believed the first local authority to be responsible. It took several weeks for the second local authority to engage and, meanwhile, Joy was left in inappropriate, unsafe adult accommodation.

Q)

It should be noted that the duty depends on presence. It falls on the local authority for the area where the child is residing or where the child is "found". If the child moves from one local authority area to another, then the duty shifts to the new authority. There cannot be a situation where no authority is responsible for accommodating a child who fulfils one or more of the conditions (a) to (c) set out in section 25(1). If a child does arrive in a new authority area but the original authority which has been accommodating the child is prepared to continue to accommodate, then provision by the new authority may not be required, but if the original authority are no longer providing accommodation or the child does not propose to return there, then the new authority must assume responsibility. (emphasis added)

We urge all local authorities to 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 assesment decisions and recorded dates of birth; o where the young person previously resided.



5. Brief enquiries

5.1 Legal Framework

As noted above, the duty to accommodate and look after, set out in Section 25 of the 1995 Act, applies to children under the age of 18. As such, once a local authority becomes aware of an age disputed young person in their area, they ought to meet with them and establish whether they are, or could be, a child. We define these assessments as "brief enquiries".

If a young person with a disputed age is assessed as an adult by a local authority, they will not be entitled to the safeguards and protections provided to looked after children in Scotland. This decision has serious consequences, affecting not only their access to accommodation but also their financial support, asylum applications, and education entitlements. Once assessed as an adult, the Home Office will process their asylum claim under adult procedures, which could result in detention and removal from the UK, depending on the outcome of their application.

A. Benefit of the doubt

At this initial stage, social workers need to establish whether the young person is, or could be, a child. They require to come to their own view; the Courts have found that it is unlawful for a local authority to solely rely on a Home Office decision to refuse support ³⁰.

When conducting this initial enquiry, social workers are required to apply the benefit of the doubt principle ³¹.

This means a young person should only be assessed as an adult — and therefore denied support — if there is **no doubt** that they clearly and obviously present as an adult. This approach recognises that physical appearance is an unreliable basis for assessment, and that there is a wide margin of error at this moment of engagement with the young person. It also acknowledges the impact that trauma, abuse as well as unmet medical and mental health needs might have on a young person's presentation and demeanour.

The Scottish Government's Age Assessment Guidance states: "in practice, it is rare that social workers encounter a case where it is this clear or this obvious, but it can happen from time to time³²".

It follows that support should not be refused in "border line" cases, but only where it is the workers' view that the young person presents as clearly and obviously over the age of 18. This was recently also emphasised in the age assessment practice guide published by the British Association of Social Workers³³.

Brief enquiries should also be prompt, as the name suggests. If doubt as to whether a young person is a child continues after they have been brought into care, case law states that the local authority should conduct a "Merton compliant" age assessment "Young people should not be kept in a state of uncertainty for a long period of time as regards their age: "age limbo" is to be avoided.

Local authorities also have a statutory obligation to presume a young person's age where there are grounds to believe that they could be a survivor of trafficking ³⁵.

9

Where a relevant authority (in this case a Health Board or local authority) has reasonable grounds to believe a person many be a victim of an offence of human trafficking and a relevant authority is not certain of the person's age but has reasonable grounds to believe that the person may be a child, section 12 requires an assumption that the person is a child for the purpose of carrying out its functions, until "an assessment of the person's age is carried out by a local authority, or the person's age is otherwise determined". This applies in relation to provision of accommodation under section 25 of the [1995] Act.

B. Procedural fairness

Case law is crystal clear that brief enquiries require to be fair. It is not in the interests of the young person or the local authority to overly complicate the brief enquiry. Recent trends tell us that local authorities require to carry out many of these enquiries, with decreasing resources. At the same time, brief enquiries which can be termed unfair expose the young people to harm and the local authority to liability. Particularly in cases where an interview is required, and therefore the local authority is taking substantive information, factors that in combination may render a brief enquiry unfair include ³⁶:

- No interpreter being available where the young person requires it;
- The young person not being given the opportunity to respond to adverse credibility concerns raised by the workers to inform the decision;
- The absence of an appropriate adult where this could have reasonably been arranged.

Importantly, this is not an exhaustive list, and other factors may render a brief enquiry unfair.

Q

A decision-maker is under a public law duty to make the necessary inquiries to arrive at an informed decision on the fact of the young person's age and to apply minimum standards of fairness.[..] When an interview or other enquiry was undertaken, it must be undertaken fairly. If a person's credibility was an issue that should be made clear and dealt with "head on" during the investigation process. If the authority was minded to conclude the person lying, that provisional view and the reasons for it should be explained and the person should have the opportunity to respond before a final decision was taken.

C. Looked after children and accommodation

Following a brief enquiry, a young person who is determined to be either a child or a putative child should be accommodated by the local authority under Section 25 of the 1995 Act as soon as practicable. Putative children should be treated as children, pending any further assessments.

Q

Age Assessment Practice Guidance for Scotland issued in March 2018 makes the point that appropriate accommodation should be in place for the duration of the assessment, and that "Case law cautions against using adult services provision whilst carrying out an age assessment ..." It refers to R (S) v Croydon LBC [2017] EWHC 265 (Admin) where Lavender J held that by agreeing to carry out an age assessment the local authority had accepted that the claimant might be a child. [..] Croydon had proffered no cogent reason justifying its departure from the guidance and the refusal to accommodate the claimant was held to be unlawful.



This decision has been followed in England on a number of occasions, including in the three cases decided by Poole J in R (AB) v Brent [2021] EWHC 2843 (Admin). It is likely to be followed in Scotland.

Once the criteria for accommodation (in Scotland under section 25) are met, then the duty to accommodate is immediate and unqualified. A local authority cannot resist the duty because it lacks resources ³⁷, nor can it resist because it considers that provision can or should be made under some other power ³⁸ or or because some other authority or body (such as the housing authority) can provide accommodation under a different legislative scheme ³⁹. If a young person qualifies for accommodation under section 25 of the 1995 Act, a local authority cannot therefore resist carrying out the duty to accommodate because the child may be accommodated by the Home Office.

The 1995 Act does not direct local authorities to provide looked after children with a specific type of accommodation and, under Section 26(1)(c), it gives local authorities discretion to "make arrangements as appears to them to be appropriate".

Q

Section 26 provides that a local authority may provide accommodation by placing the child with a family, a relative, or any other suitable person, or by maintaining the child in a residential establishment, or by making such arrangements as appear to them to be appropriate, including making use of such services as are referred to in section 17(1)(b). Those are services available for children cared for by their own parents as appear to the local authority reasonable in the case of this child. There is flexibility in the terminology, but the arrangements are to be "appropriate". [..] It can be argued that placing a child to fend for themselves in accommodation designed for adults would not generally meet the requirements of section 26.

Importantly, once a young person is taken into care under Section 25, they will automatically become "looked after" under Section 17(6). The local authority will have several obligations arising from this, including but not limited to:

- Safeguarding and promoting the welfare of the child (Section 17(1)(a));
- Providing advice and assistance with a view to preparing the child for when they are no longer looked after by a local authority (Section 17(2));
- Taking into account the child's views, religious beliefs, race, culture and language before making any decision in respect to the child's life (Section 17(3) and (4));
- Creating an individual care plan tailored to the child's needs and reviewing it regularly to reflect changes in the child's needs (see Looked After Children (Scotland) Regulations 2009).

D. Throughcare and aftercare

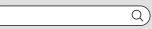
Local authorities' failure to accommodate putative children might impact their rights to throughcare and aftercare.

Section 26A of the 1995 Act sets out an obligation for local authorities to provide looked after young people continuing care until their 21st birthday. This means that, but for certain exceptions, a looked after young person should be able to continue living in their current placement until they turn 21.

Section 29 of the 1995 Act imposes further duties on local authorities to provide support and guidance to looked after young people after they turn 18⁴⁰.

This support can include financial support, accommodation, guidance and advice. It is mandatory until they are 19 and can be provided up until a young person's 26th birthday, depending on the circumstances.

As these duties apply to young people who were in local authority care prior to their 18th birthday, age disputed young people may be unable to access this support (including accommodation and access to after-care services) if the local authority fails to accommodate them and look after them prior to this. It is important to note that, whilst Section 29 will not automatically apply to a young person that was not looked after prior to their 18th birthday, local authorities in Scotland do have discretion to accommodate young people aged between 18 and 21, under Section 25(3).



Denial of looked after status as a result of a flawed age assessment would be an injustice, which may be aggravated by culpability on the part of the local authority. If there has been a prompt challenge and an application for interim relief by the claimant, that may be relevant. There may be circumstances where there were aggravating features that were so powerful that a local authority could not reasonably decline to exercise their discretionary power to make at least some services available.

5.2 Postcode lottery: findings on local authorities' brief enquiries

Historically, Glasgow was the only area in Scotland where people seeking asylum were dispersed and accommodated by the Home Office. Before the Coronavirus pandemic, Home Office accommodation in Glasgow was largely community based, in self-contained flats or houses.

However, as an emergency measure at the start of the pandemic, people seeking asylum were moved by the Home Office into hotels in Glasgow. In 2022, a new full dispersal policy was announced by the Home Office and all 32 Scottish local authorities agreed to receive asylum seekers⁴¹. Around this time Aberdeen and Aberdeenshire, together with three other locations in the central belt, started to accommodate people seeking asylum in hotels. Concerns were raised at the time by organisations supporting and working with asylum seekers about the fact that very little notice (if any) was given by the Home Office to local authorities. This resulted in asylum seekers struggling to access legal, health and housing support ⁴².

At time of writing, it is understood that there are approximately 16 hotels in use across Scotland, with capacity to accommodate over 2000 asylum seekers. As a result of the new dispersal policy, most local authorities across Scotland are now dealing with age disputed young people.

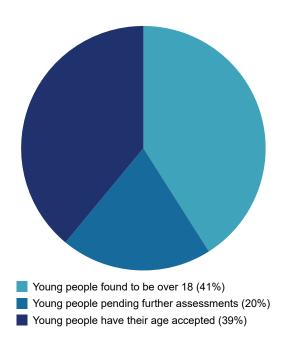
As part of the research for this report, in early 2024, we submitted Freedom of Information Requests to all 32 Scottish local authorities. We asked them to provide the total number of age disputed young people who presented in their area (including both young people who had no prior contact with the Home Office and young people accommodated in asylum hotels) in the calendar year 2023 with a breakdown of the outcomes in the following:

- 1. Cases where the young person was taken into care and their age accepted without further enquiries;
- 2. Cases where the young person was taken into care as a putative child pending further assessments;
- 3. Cases where the young person was found to be "clearly and obviously" over the age of 18 and refused support.

All local authorities responded to the requests and the data shows that:

- Glasgow City Council, the area with the highest asylum-seeking population in Scotland ⁴³, does not maintain a record of age disputed young people who are found to be clearly and obviously over 18 (category 3). This makes it impossible to establish the total numbers of age disputed young people referred to Glasgow City Council and those refused support because they are found to be clearly and obviously over the 18;
- Across the remaining local authorities, between 218 and 264⁴⁴ age disputed young people were recorded with a breakdown as follows:

o Between **82 and 106** age disputed young people were taken into care and had their age accepted without further enquiries (**39%**); o Between **40 and 54** age disputed young people were taken into care as putative children pending further assessments (**20%**); o Between **96 and 104** age disputed young people were found to be "clearly and obviously" over the age of 18 and refused support (**41%**).



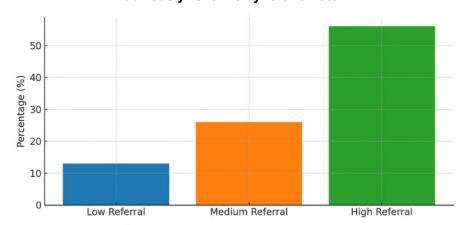
• From the data we have gathered, we are able to break down this 41% statistic and understand it more clearly. The data gathered across the local authorities also suggests a correlation between higher levels of referrals and higher numbers of age disputed young people being found to be adults. This becomes more apparent when comparing data from low-referral local authorities (1-5 referrals), medium-referral (6-20 referrals), high-referral local authorities (20+ referrals).

The data shows that:

o In low-referral local authorities, an average of **13%** age disputed young people are found to be adults;

o In medium-referral local authorities, **26%** age disputed young people are found to be adults; o In high-referral local authorities, **56%** age disputed young people are found to be adults.

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



This suggests that an age disputed young person is more likely to be found to be an adult if presenting in a local authority with a higher number of referrals.

The data also shows a high level of inconsistency across local authorities in Scotland. For example, in a high-referral local authority **15%** of young people referred were found to be adults, while in another high-referral local authority, **77%** of young people who presented were found to be adults. Another comparison between two medium-referral local authorities, shows one with **10%** of young people found to be adults, and another with **61%**.

5.3 Issues in practice: experience from the third sector

Organisations supporting age disputed young people have raised concerns around the quality and fairness of brief enquiries conducted by different local authorities in Scotland. It should be noted that this evidence covers multiple localities as the organisations contributing to this report work across various regions in Scotland.

A. Fairness of assessments

BRC reported a number of concerns based on their casework experience:

• Workers interviewing young people <u>without an interpreter</u>.

Social Work met with an age disputed client to complete a brief enquiry and did not arrange an interpreter. After interviewing the young person in the absence of an interpreter, Social Work informed BRC that they had found it tricky to communicate with the young person and another visit would be arranged. However, they did not arrange another visit. In an email sent to BRC about the outcome of the age assessment, they wrote "This was conducted without the use of an interpreter as we were advised that both the young person and her aunt would be able to engage without this. Basic questions were asked in relation to how young person and her aunt had entered the country, however, both were very vague in their answers and stated that they did not know and did not understand what was being asked." Social Work relied on the information obtained during the visit in the absence of an interpreter to refuse support and finding the young person to be an adult.

 Workers preparing to interview age disputed young people without arranging for an appropriate adult to be present. BRC reported local authorities would, in some cases, fail to inform them of an interview being arranged or invite the young person's caseworker to attend as an appropriate adult. Social Work met with an age disputed client and completed an interview as part of a brief enquiry without first informing their caseworker or the client's solicitor, therefore BRC were unable to support the young person. This happened despite the fact that the young person was referred to Social Work by both BRC and the young person's solicitor. The appropriate adult at the interview was a staff member from Mears who the client had never met, and they joined the assessment via Microsoft Teams.

Workers failing to give <u>benefit of the doubt</u>.

The BRC caseworker attended a brief enquiry carried out by Social Work. The workers went through the young person's story and arrival including his experience of trafficking. At the end of the assessment they told the young person that they 'have some doubt over your age,' but said they would not offer further support. In the decision sent to the young person's lawyer, it was stated that the workers assessed the young person to be significantly and clearly over 18.

AARC reported concerns around the consistency and timelessness of brief enquiries carried out by the relevant local authority. However, they noted that there has been an improvement in this recently, following the local authority increasing the number of trained workers able to carry out initial assessments.

Over the past three years, at **JustRight Scotland** we have challenged numerous brief enquiries due to procedural unfairness and failure to apply the benefit of the doubt. We have seen several cases where local authorities conducted what they called brief enquiries, that were actually <u>prolonged enquiries</u>. These prolonged enquiries, in our view, effectively amounted to full age assessments but without the procedural safeguards established by case law.



"Daisy"

Daisy is a 17 year old girl who is a survivor of sexual exploitation and was trafficked to the UK. Upon arrival to the UK, the Home Office conducted an initial age assessment and found her to be 23 years old. She was placed in adult accommodation and was then found by her traffickers and re-trafficked to Scotland. She managed to escape her exploitation and approached a police station seeking help. She was then referred to Social Work who accommodated her in an adult homeless shelter. Three months later, the local authority conducted an age assessment which they described as a brief enquiry. This was conducted by two social workers with no interpreter present. The assessment lasted over two hours and the client was asked in detail about her life in her country of origin, family and her experience of exploitation. The local authority then issued a decision stating that the client was clearly an adult and asked her to leave the accommodation.

B. Looked after children and accommodation

Third-sector stakeholders have also noted inconsistencies and potential safeguarding issues in how Scottish local authorities provide accommodation to children and putative children after carrying out brief enquiries.

Survivors of Human Trafficking in Scotland noted that a local authority advised them that they will not look after and accommodate putative children pending a full "Merton compliant" age assessment. The relevant local authority advised that they would only provide support to putative children under Section 22 of the 1995 Act. It is noted that this approach is potentially unlawful, as highlighted in Senior Counsel's opinion, but also in a 2014 report ⁴⁵.

Survivors of Human Trafficking in Scotland added that every age disputed young person they supported in 2023 (7 young people in total) was placed in unsuitable accommodation during the full age assessment process, and this exposed survivors of trafficking to serious risks of re-trafficking and exploitation. They noted that, at least on one occasion, they were notified by the accommodation staff that one of their young clients was being approached by suspicious individuals at the entrance of the accommodation, and that raised serious concerns for young person's safety.

BRC noted that only **9%** of the putative children they supported in 2023 (**32** young people in total) were accommodated by the relevant local authority, with the remaining **91%** being left in adult accommodation provided by either Mears or Migrant Help or street homeless due to fears of entering adult accommodation.

AARC noted that, in their experience, putative children are not immediately accommodated by the local authority in which they work. They reported that, in 2023, some putative children remained in Home Office hotels for over **6 months** following a brief enquiry.

Clan Childlaw reported that more than half of the putative children they supported were not accommodated by the local authority. They noted that these cases often required legal intervention and highlighted the lack of clarity regarding the legal basis on which the local authority was providing accommodation, with cases where a different section of the 1995 Act – Section 29 – was referred to and used. Again, this approach is arguably unlawful and susceptible to legal challenge, as the local authority's duties under Section 25 of the 1995 Act are immediate and unqualified.

Guardianship Scotland noted that only 7% of cases referred to their service in 2023 saw putative children still housed in adult hotel accommodation in May 2024. These cases differ slightly from other reported cases, as Guardianship Scotland only supports putative children who are already in local authority care and that are referred to their service by the local authority itself. This data shows that, by the time young people are referred to and engaging with Guardianship Scotland, they are normally accommodated and looked after by the local authority.

Overall, the evidence obtained shows an inconsistent approach across Scottish local authorities in regard to accommodating and supporting putative children following a brief enquiry and pending a full "Merton compliant" age assessment. The evidence suggests some local authorities do not accept, or recognise, their duty to accommodate putative children in these circumstances. Young people, already in vulnerable conditions, are at risk of routinely being left in adult accommodation, mostly hotels, with no safeguards in place.

Evidence shows that young people and children accommodated in hotels are at significantly increased risk of trafficking and exploitation in the UK⁴⁶. Between 2021 and January 2024, over 400 unaccompanied children were reported missing from Home Office hotels, with 118 still not found in March 2024⁴⁷.

Incidents of violence, sexual assaults against age disputed children and young people living in hotels have been reported⁴⁸, with documented risks including suicidal ideations and severe mental health deterioration⁴⁹.

In November 2023, the Scottish Children and Young People's Commissioner ("CYPSC") called for children not to be placed in hotel-type accommodation for anything other than short-term, emergency basis, as that would likely violate children's human rights under the European Convention on Human Rights, the United Nations Convention on the Rights of the Child and other international treaties⁵⁰.

In summary, evidence suggests that many putative children are not being accommodated in appropriate housing, or receiving a looked after service at all. This not in accordance with statutory duties under the 1995 Act or the Human Trafficking and Exploitation (Scotland) Act 2015.

As such, we call on Scottish local authorities to:

- Provide clarity on the young person's Looked After status as soon as practicable after a brief enquiry is conducted:
- 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;
- Put in place an individual care plan tailored to the child's needs, as soon as a putative child is taken into care.

5.4 Successful legal challenges

As part of our Freedom of Information requests, we asked local authorities to confirm the number of cases where, following the decision to treat an age disputed young person as an adult, their decisions were challenged and withdrawn. From the responses received, it appears that local authorities do not keep records of these cases and it is therefore not possible to ascertain how many decisions across Scotland are challenged and eventually withdrawn.

However, as part of this research, we considered our casework experience and also obtained information from Latta & Co, the largest legal aid immigration and asylum firm in Scotland⁵¹.

We asked Latta & Co to share data in respect of cases in 2023 where they assisted age disputed young people to challenge a brief enquiry decision finding them to be adults. Data shows that, out of all the cases concluded, 62.5% (5 of out 8 cases concluded) were successful, resulting in the decisions either found to be unlawful or withdrawn by the local authority.

We have also considered our casework experience at JustRight Scotland from January 2022 to present. Our data shows that in **89%** (8 of out 9 cases concluded) of cases where a brief enquiry decision was challenged, it was either found to be unlawful by the Court or withdrawn by the local authority.

The data collected therefore suggests that the majority of brief enquiries finding age disputed young people to be adults which are challenged are eventually withdrawn or overturned.

In light of this, we ask local authorities to:

Review their internal procedures and ensure that workers are instructed to comply with the legal standard of fairness set out in case law and guidance, when carrying out brief enquiries.

5.5 The importance of advocacy in reaching a positive outcome: the experience of British Red Cross

The age disputed young people discussed in this report do not have access to advocacy and support from Guardianship Scotland, because young people need to be in the care of a local authority to receive their service⁵².

At present, no dedicated, specialist advocacy service exists for age disputed young people in Scotland.

However, over the last few years, the Young Refugee Service at BRC in Glasgow has dedicated capacity for and built expertise around supporting age disputed young people.

Over time, this service has become a crisis response service. Age disputed young people who present at BRC's offices are often in very vulnerable situations. Many are street homeless, hungry, sleep deprived and fearful due to having had negative interactions with adults.

BRC have noted that their support to age disputed young people includes duty casework as well as long term one-to-one support.

Duty casework involves addressing the immediate safeguarding concerns for the age-disputed young person – i.e. homelessness, suicidal ideation, destitution and safety – if having just escaped abuse or trafficking. The duty caseworker carries out an initial needs assessment, creating a safe environment for the young person to disclose as much as they can about the help they need, before making the appropriate referrals. These referrals include to the relevant local authority, foodbanks and safe places to eat, and a legal representative (if necessary).

BRC noted that this urgent, essential support often needs to take place in one day, which can be difficult if a number of age-disputed young people present to the service simultaneously. After the initial referrals are made, it can take days or weeks of ongoing advocacy for age disputed young people to be accommodated and financially supported by the relevant local authority. The various barriers to accessing support are detailed earlier in the report.

BRC stated that all the age disputed young people they support would be unlikely to be able to access local authority care without their advocacy, reflecting on language barriers, digital poverty as well as trauma and distrust of authority figures.

Following the initial duty support, once a BRC young refugee caseworker has capacity, the case is then allocated for one-to-one support. This service includes accompanying young people to services (including physical/mental health, post-trauma support, homelessness, social work, destitution, legal services) and opportunities available to them (including education, volunteering, sports, arts, community activities). Caseworkers also help young people understand the complex systems they are navigating, including age assessment and the asylum system. Advocacy support enables young people to access their rights and entitlements, have their voices heard and contribute to decisions that affect their lives – including the age dispute process.

BRC noted that, in 2023, the average length of BRC's one-to-one young refugee casework service was **61** weeks, with **20%** of young people receiving casework support for over two years.

BRC support in these cases will often continue until the young person has access to local authority care and support from Guardianship Scotland, or until alternative, appropriate support is in place if they are found to be an adult following a full "Merton-compliant" age assessment. BRC provided one-to-one support to **32** age disputed young people in 2023. The data⁵³ from this service shows that:

- On average, it took 60 weeks from their entry to the UK for age-disputed young people who underwent a full "Merton-compliant" age assessment to obtain a decision on their age;
- All young people supported had either a brief enquiry or a full "Merton-compliant" age assessment. Legal action was required in 62% (20) of cases before the local authority agreed to carry out a full age assessment;
- In 70% of the cases where age assessments were concluded (18 of 26), young people were found to be children.

This data demonstrates the urgent need for long-term advocacy support for age disputed young people in Scotland. It shows that age disputed young people with access to specialised advocacy support are more likely to have access to fairer assessments and fairer outcomes.

At present, one-to-one advocacy support for age disputed young people in Scotland is very limited. The Young Refugee Service at BRC is the only specialised service providing this. This service is limited to age disputed young people residing in central belt between Glasgow and Edinburgh. At the time of writing, the service is operating with three caseworkers offering one-to-one support. BRC reports that the service is unable to cope with the demand of age disputed young people in need.

In light of this, we call for the Scottish Government to:

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 (as recommended by Together in their 2023 annual report ⁵⁴) or creating a separate service.



6. Local authorities' needs

As part of this research, we issued a call for local authorities to give their views on the demands of meeting their statutory duties, and we consulted with a number of local staff. During these discussions, local authorities emphasised the need for wider national discussions on supporting age disputed young people and clearer guidance on how brief enquiries should be carried out. They noted that the Scottish Government's Age Assessment guidance lacks sufficient direction for conducting these assessments. Additionally, while templates are available for full 'Merton compliant' age assessments, similar resources are not provided for brief enquiries.

Most local authorities noted that they are in the process of creating internal guidance for their workers to respond to the increased number of age disputed referrals received but that this was a complex task due to the lack of broader guidance in this area. Some local authorities suggested that additional tools should be incorporated in future guidance, including the ECPAT positive outcome framework 55 as well as the guidance practice note from BASW 56.

Over the last two years, JustRight Scotland and other organisations supporting age disputed young people and UASCs have highlighted the urgent need for the Scottish Government Age Assessment Guidance to be updated and expanded to address brief enquiries. At time of writing, it is understood work around this had been paused and may resume in the coming months.

We believe that the creation of a standardised template would assist local authorities to make lawful decisions, in accordance with the standards set out in caselaw, both in terms of procedure but also substance.

As part of this, we believe local authorities should be encouraged to provide reasons for their decisions, especially if assessing a young person as an adult. This would allow young people and those assisting them to better understand decisions and for reconsiderations and legal challenges to be more focused. This would benefit both young people but also local authorities, as making more robust and adequately reasoned decisions may lead to fewer legal challenges, saving local authorities' resources.

We therefore urge the Scottish Government to:

Review the <u>Age Assessment Guidance</u>
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
provide adequate reasons in support of
their decisions.

7. Conclusion and recommendations

This report has considered the obstacles that age disputed young people face in Scotland. By publishing this report, we hope to draw attention to the experiences of this particularly vulnerable cohort.

We acknowledge that local authorities in Scotland are under a significant amount of pressure. They must be provided with the resources and tools to comply with their statutory duties and their human rights obligations to children and young people. Poor decisions and practice can have serious consequences for the young people involved. Children who are wrongfully assessed as adults will risk facing destitution, homelessness, exploitation and (re)trafficking. Age is also central to a child's development and identity; being disbelieved about their age is likely to have a long term negative impact on a young person's wellbeing ⁵⁷. It is therefore crucial that urgent action is taken to tackle the issues highlighted in this report.

We recommend:

The Home Office to:

- 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).
- 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.

The Scottish Government to:

- Review the <u>Age Assessment Guidance</u> 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 provide adequate reasons in support of their decisions;
- 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;
- 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 to:

 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.

Scottish local authorities to:

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

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

Q)

Appendix A: Legal opinion by Janys Scott KC

The legal opinion is available in full on our website:

https://www.justrightscotland.org.uk/wp-content/uploads/2024/09/Opinion-final.pdf



Appendix B: Summary of Freedom of Information Requests and responses

In January 2024, all local authorities in Scotland, 32 in total, were sent the following request for information under the Freedom of Information (Scotland) Act 2002:

- 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.

All local authorities responded. One local authority (Glasgow City Council) does not maintain a record of age disputed young people who are found to be clearly and obviously over 18 (category 3), and therefore its data was not included in the report.

9 local authorities had no reportable data. Across the remaining 22 local authorities, between 218 and 264 age disputed young people were recorded with a breakdown as follows:

- Between 82 and 106 age disputed young people were taken into care and had their age accepted without further enquiries. Across local authorities, the figure ranged from 0 to 12;
- Between 40 and 54 age disputed young people were taken into care as putative children pending further assessments. Across local authorities, the figure ranged from 0 to 11;
- Between 96 and 104 age disputed young people were found to be "clearly and obviously" over the age of 18 and refused support. Across local authorities, the figure ranged from 0 to 30;
- The number of young people accommodated following a legal challenge, range from 0 to 3, although most local authorities do not appear to record this information.

Abbreviations

1995 Act - The Children (Scotland) Act 1995

BASW - British Association Social Workers

COSLA - Convention of Scottish Local Authorities

CYPCS - Children and Young People's Commissioner Scotland

GMIAU - Great Manchester Immigration Aid Unit

ECHR - European Convention on Human Rights

ECPAT UK - Every Child Protected Against Trafficking

NRM - National Referral Mechanism

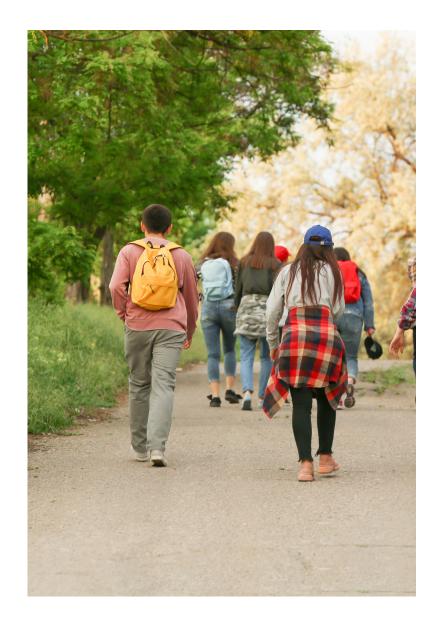
NTS - National Transfer Scheme

TESS - Trafficking and Exploitation Survivors' Service

UASC - Unaccompanied asylum-seeking child

UKVI - The Home Office United Kingdom Visas & Immigration (UKVI)

UNCRC - United Nations Convention on the Rights of the Child



REFERENCES

6	Supra note 1
7	Supra note 4
8	Supra note 1
9	Home Office, Assessing age for asylum applicants: caseworker guidance, https://www.gov.uk/government/publications/assessing-age-instruction
10	Home Office, Unaccompanied asylum seeking children: national transfer scheme
	https://www.gov.uk/government/publications/unaccompanied-asylum-seeking-children-interim-national-transfer-scheme
11	Supra note 9
12	Supra note 1
13	Refugee Council, Identity Crisis: How the age dispute process puts refugee children at risk https://www.refugeecouncil.org.uk/information/resources/identity-crisis/
14	GMIAU, "I'm terrified": the dangers of Home Office Age Assessments, https://gmiau.org/age-assessments-2209/
15	Independent Chief Inspector of Borders and Immigration, An inspection of the initial processing of migrants arriving via small boats at Tug Haven and Western Jet Foil,
	https://assets.publishing.service.gov.uk/media/62d7d12bd3bf7f2861b893f4/E02726679_ICIBI_Tug_Haven_and_Western_Jet_Foil_Web_Accessible.pdf
16	UNHCR, Asylum screening in the UK, An audit of the UK's asylum intake, registration and screening procedures and recommendations for change,
	https://www.unhcr.org/uk/sites/uk/files/2023-06/asylum_screening_in_the_uk.pdf
17	Supra note 3
18	lbid
19	lbid
20	lbid
21	See, for instance, Scottish Government, Programme for Government 2018 to 2019,
	https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/pages/8/
22	Scottish Government, Getting it right for every child (GIRFEC), https://www.gov.scot/policies/girfec/
23	The Promise Scotland, https://thepromise.scot/
24	Together, State of Children's Rights in Scotland, https://www.togetherscotland.org.uk/media/3266/socrr23_final.pdf
25	Local government in Scotland, Financial bulletin 2022/23, https://audit.scot/uploads/docs/report/2024/nr_240116_local_government_finance.pdf
26	Local Government Information Unit, The State of local government finance in Scotland, https://lgiu.org/wp-content/uploads/2023/12/State-of-Local-Government-Finance-in-Scotland.pdf
27	Home Office, AASC/AIRE Provider Age Assessment Standard Operating Procedure 23.02.2024, v1.7
28	Supra note 3
29	https://www.parliament.scot/-/media/files/committees/social-justice-and-social-security-committee/correspondence/2024/british-red-crossrefuge-housing-11-march-2024.pdf
30	R (on the application of B) v Merton LBC [2003] EWHC & R (AF) v Milton Keynes Council [2023] EWHC 163 (Admin)
31	AB v Kent County Council [2020] EWHC 109 (Admin) and BF (Eritrea) v Secretary of State for the Home Department [2021] UKSC 38
32	Scottish Government, Age assessment: practice guidance,
	https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2018/03/age-assessment-practice-guidance-scotland-good-practice-guidance-support-social/
00	documents/00532940-pdf/00532940-pdf/govscot%3Adocument/00532940.pdf
33	British Association of Social Workers, Age Assessment Practice Guide, https://basw.co.uk/policy-and-practice/resources/age-assessment-basw-practice-guide
34	Supra note 30
35	Section 12, Human Trafficking and Exploitation (Scotland) Act 2015
36	R (SB (a child)) v Royal Borough of Kensington & Chelsea [2022] EWHC 308 (Admin)
37	R (on the application of JL (A Child) v Islington LBC [2009] EWHC 458 (Admin) at §§ 68 and 71
38	(G v Southwark LBC [2009] 1 WLR 1299, per Lady Hale at §28)
39	R (M) v Hammersmith and Fulham LBC [2008] 1 WLR 535 per Lady Hale at §§29 – 31
40	See also Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 (SSI 2003/608), Aftercare (Eligible Needs) (Scotland) Order 2015 (SSI 2015/156)

- 41 Scottish Government, New Scots Integration Strategy 2024, https://www.gov.scot/publications/new-scots-refugee-integration-strategy-2024/documents/
- 42 GREC, New Scots resettlement in Grampian and Scotland, Position Paper,
- https://www.parliament.scot/-/media/files/committees/equalities-human-rights-and-civil-justice-committee/correspondence/2023/asylum-seekers-in-scotland-2-may-2023.pdf
- 43 Scottish Government, Asylum seekers extending the right to work: evaluation, analysis, and policy options,
 - https://www.gov.scot/publications/extending-right-work-asylum-seekers-scotland-evaluation-analysis-policy-options/documents/
- 44 Some local authorities in their response provided a range (minimum and maximum figures), rather than exact numbers
- Legal Service Agency, Legal issues in the accommodation and support of asylum seeking and trafficked children under the Children (Scotland) Act 1995, https://miclu.org/assets/uploads/2017/04/4-Legal-issues-in-the-accommodation-and-support-of-asylum-seeking-and-trafficked-children-under-the-Children-Scotland-Act-1995-Legal-Services-Agency-2014.pdf
- 46 Supra note 4
- 47 The Guardian, Children missing from Home Office hotels likely to have been trafficked, report finds, https://www.theguardian.com/global-development/article/2024/jul/17/children-missing-from-home-office-hotels-likely-to-have-been-trafficked-report-finds
- 48 Supra note 3
- 49 Ibid
- 50 CYPCS, Placing Children in Hotel-Type Accommodation: A Human Rights Analysis Report,
 - https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2023/11/Children-Young-Peoples-Commissioner-Scotland_Hotel-Accommodation-Report_November-2023.pdf
- 51 Scottish Legal Aid Board, Annual reports, https://www.slab.org.uk/corporate-information/publications/corporate-information/annual-reports/
- 52 https://www.aberlour.org.uk/get-help/guardianship-scotland
- This is based on case data available to BRC at time of writing
- 54 Supra note 24
- 55 ECPAT UK Creating Stable Futures: Human Trafficking, Participation and Outcomes for Children < https://www.ecpat.org.uk/Handlers/Download.ashx?IDMF=7c28a8bd-c9f8-4082-8d3a-aec642798eb3>
- 56 Supra note 33
- 57 Helen Bamber Foundation and Young Roots, "They made me feel like myself": Supporting young people through age disputes,
 - https://helenbamber.org/resources/research/psychological-impact-age-dispute-process-unaccompanied-children-seeking-asylum

JustRight Scotland

JustRight Scotland is a Scottish Charitable Incorporated Organisation (SC047818) which provides legal services through its limited liability partnership, JustRight Scotland LLP which trades as JustRight Scotland (SO305962). This firm has been authorised to act as solicitors by the Law Society of Scotland (Registered No 53703).

Room 1, 1st Floor, Libertas House, 39 St Vincent Place, Glasgow, G1 2ER

© JustRight Scotland (JRS) September 2024

This report was funded by the Strategic Legal Fund ("SLF") managed by the Immigration Law Practitioners' Association ("ILPA")], with special thanks for their support



WE DEFEND AND EXTEND PEOPLE'S RIGHTS

