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FORCED ADULTHOOD

The Home Office's incorrect determination of age and how this leaves child refugees at risk.

HELEN BAMBER FOUNDATION
strength to fly

HUMANS FOR RIGHTS NETWORK

REFUGEE COUNCIL

SUPPORTING AND EMPOWERING REFUGEES

“At first, they just asked me about my name, but the age they wrote down was not correct.

I’m 16. I felt bad because I travelled by boat, we had a lot of problems, I was not feeling normal, because of the boat crossing. I didn’t feel well. When I saw the form – I saw what they had written down, I saw that it wasn’t my age. I said ‘it’s not my age!’ They had put that I was 22. They just said you can correct it later.”

Mohammed*, 16, Afghanistan (Refugee Council client)

Executive Summary

Hundreds of children seeking asylum in the UK are being incorrectly assessed by the Home Office using a short visual assessment shortly after their arrival. This flawed decision-making process results in children being placed in unsupervised adult accommodation and immigration detention, exposing them to significant risks and potential harm. This joint report by the Helen Bamber Foundation, Humans for Rights Network and the Refugee Council provides updated evidence of the Home Office improperly treating large numbers of children seeking asylum as adults upon arrival in the UK.

The new data that has been obtained paints an alarming picture:

- Between January and June 2023, 69 local authorities received 1,004 referrals to their children's services departments of young people who had been sent to adult accommodation or detention. Of the cases where a decision on age was made/age assessment concluded (847), more than half (57%) were found to be children - meaning that in just 6 months at least 485 children had been wrongly placed in adult accommodation or detention at significant risk.
- Taken alongside the data from 2022, this shows that over an 18-month period (January 2022 to June 2023), more than 1,300 children were wrongly assessed to be adults by the Home Office.
- In the same period (January 2022 to June 2023), the Humans for Rights Network recorded 832 safeguarding episodes where there were strong reasons to believe that a child was sharing accommodation with an unrelated adult. Of these 832 cases, 406 subsequently had their ages accepted by local authorities, 123 are in local authority care pending the outcome of an age assessment and a further 136 continue to challenge their age assessments represented by solicitors who believe there are grounds to suggest the individual is a child. The organisation has been unable to re-establish contact with a further 50 individuals, raising serious questions about their safety and whereabouts.
- Humans for Rights Network has identified 15 cases where children wrongly treated as adults have been criminalised, with 14 spending periods of time in custody in adult prisons.
- In the same period, the Refugee Council's Age Dispute Project assisted 185 children who had initially been determined to be adults; subsequently, 98 of them were taken into local authority care from an unsafe adult setting, some pending further assessment. For some of these children, safeguarding referrals had to be submitted to Local Authorities to ensure children received care appropriate to their age and needs.

> "We hope to study. But here we don't feel good. We are under pressure."

Between January 2022 and June 2023

more than 1,300 children

were wrongly assessed to be adults by the Home Office.

832 safeguarding episodes

where there were strong reasons to believe that a child was sharing accommodation with an unrelated adult.

15 cases

where children wrongly treated as adults have been criminalised, with 14 spending periods of time in custody in adult prisons.

Once these children are moved to adult asylum accommodation, staff are discouraged from referring potential children to local authorities,[1] leading to a lack of care, support, and information. With the implementation of the Illegal Migration Act 2023, the situation could worsen, allowing for the swift removal of wrongly age-assessed children without proper appeals. The introduction of a National Age Assessment Board and biological (scientific) methods for assessing age does nothing to solve the issue of flawed decision-making at the border[2] because resources and attention are not directed at the root cause of the problem.

The system is in urgent need of reform to make sure that children who are going through the asylum system are protected.

THE HOME OFFICE SHOULD:

- limit the conduct of age determinations to staff with relevant training and only treat someone claiming to be a child as an adult in exceptional circumstances, i.e. if there is evidence that they are in their late 20s or older;
- publish full statistics on the number of people claiming to be children who the Home Office has treated as adults and put in place monitoring processes so it can track the outcomes for those who are later determined to be children;
- notify local authorities about potential children who have been determined to be adults by the Home Office.

THE GOVERNMENT SHOULD:

- abandon the implementation of the provisions in the Illegal Migration Act 2023 that would leave children at risk, for example, of being removed from the UK even if they are challenging a decision on their age;
- establish an independent body to oversee age determinations.

These children, who have already been through so much, are deeply traumatised and scared when they are erroneously placed in accommodation with unrelated adults and their ages are not believed by immigration officials. Moreover, they lack basic information about how the UK refugee protection system operates, which is necessary to understand their rights and how to advocate for themselves and ensure that they are treated fairly.

Stories similar to those of Mohammed and Jamal are too often heard by practitioners supporting children claiming asylum in the UK.[3]

> “They said I was 25. I felt sad and shocked. I’m 16 years old. I’ve been in the hotel about two months. I live alone here, with adults, I don’t have money, I’m worried about the future, I don’t feel good at all. I’d like to go to school, to start my education, and have a bright future.”
>
> Jamal*, 16, Afghanistan (Refugee Council client)

1 Please refer to the section ‘Lack of safeguards’ on page 13 for further detail.
2 Refugee Council’s analysis of the IAESAC’s report, January 2023, available here.
3 Mohammed* and Jamal* (all names in this report have been changed) are both 16 and from Afghanistan. They arrived in the UK alone and exhausted. They were not believed about their age, and sent to an adult hotel. They describe how difficult this experience has been, and the impact it is having on them.

Introduction

Organisations have repeatedly raised concerns about the Home Office incorrectly treating children seeking asylum as adults, based on a short visual assessment on arrival in the UK, and placing them alone and at significant risk in unsupervised accommodation and in immigration detention.

Figures in the Helen Bamber Foundation and Humans for Rights Network's report, '*Disbelieved and denied*',[4] showed that in 2022 over 1,300 referrals were made to local authority children's services departments of young people who had been sent to adult asylum accommodation or detention.

Of those, almost two-thirds (65%) were found to be children – meaning that in that year, over 850 children had been wrongly put into the adult asylum system with no support or protection. Many of these children, some as young as 14, have been forced to share rooms with adults. The government has claimed that half of age disputes are adults posing as children[5] but this is based on false and misleading data.[6]

In its report from September 2022, '*Identity crisis*',[7] the Refugee Council highlighted the cases of 233 children it supported in 2021, 94% of whom the Home Office had wrongly judged as adults and housed with other adults. These children had no access to support or education and were at risk of abuse and neglect.

In over half of these cases, the Home Office claimed these children were at least 25.

New figures and case studies in this report show that the situation is not improving. Home Office decision-making at the border continues to be fundamentally flawed and this is now not only resulting in children being placed in adult accommodation, including large-scale accommodation centres, but also in adult prisons.

Furthermore, if measures in the Illegal Migration Act 2023 are introduced, there could be hundreds of children wrongly removed from the UK and sent to Rwanda or other countries where they might be at serious risk, without ever having interacted with child protection professionals or had a chance to challenge the Home Office's decision.

Given these risks, the government must urgently improve decision-making by immigration officials and introduce safeguards to ensure children receive the protection and support to which they are entitled.

4 Helen Bamber Foundation and Humans for Rights Network report, '*Disbelieved and denied*: *Children seeking asylum wrongly treated as adults'* by the Home Office, April 2023, available here.
5 News story on the National Age Assessment Board, 31 March 2023, available here.
6 Home Office quarterly immigration statistics for the year ending September 2023, available here. Please refer to the section further down this report titled '*The number of children wrongly deemed to be adults*' to learn about issues with how the Home Office is presenting this data.
7 Refugee Council report, '*Identity crisis: how the age dispute process puts refugee children at risk*', September 2022, available here.

Disputing age

Separated children seeking asylum have fled war, persecution and human rights abuses, and many have also been victims of trafficking. There are many reasons why children come to the UK, some on their own. They could have been separated from their loved ones during extremely dangerous journeys or had to leave their families because it was no longer safe for them to remain in their home country. According to the Home Office's own report,[8] people seek safety in the UK because of their family and social networks, because they might know the language, and because they believe their rights will be respected. Organisations know from their frontline work that children have suffered loss and separation and endured dangerous and traumatic journeys to reach safety.

However, over recent years, the government has made the asylum system less accessible and more punitive for all refugees. These changes have included excluding children from the child protection and welfare frameworks that should apply to all children in this country, regardless of nationality, ethnicity or immigration status.

One way the government has been doing this has been to dispute that a child is the age they say they are and instead treat them as an adult based on a visual assessment of their 'appearance and demeanour'.[9]

Many children who come to the UK on their own from countries such as Afghanistan, Sudan and Eritrea are unable to show official identity documents (ID), such as passports or birth certificates, either because they have never had them; because they have been destroyed, lost or taken; or because the child has been forced to travel on false documentation. Without ID it is extremely difficult to determine a child's age, and many will have their age assessed by the Home Office or local authority children's services. It is also becoming increasingly common for a child to arrive with evidence of their age but for this to either not be requested or dismissed on arrival.

When an immigration official initially encounters someone making an asylum claim who says they are under 18, they can:

1. accept the age the person claims to be;
2. 'dispute' the person's claimed age because they doubt that they may be a child (referred to in this briefing as **'age disputed child'**);
3. decide that the person's appearance and demeanour "very strongly suggests they are significantly over 18" (referred to as **'children treated as adults'**).[10]

Groups 1 and 2 are transferred to a separate processing centre in the Kent Intake Unit, with group 2 potentially subjected to further assessment by social workers. Those in group 3 will have been subjected to an age interview in Western Jet Foil (a disembarkation place in Dover where people who were rescued at sea are initially processed by Home Office officials). The issues raised in this report are particularly relevant to this group of young people as they are subjected to a flawed age-assessment process.

If found to be a child or an 'age-disputed child' (i.e., the first two of the list above), they are referred to a local authority. Children in the UK without a parent or carer to look after them are the responsibility of children's services, therefore local authority social workers will decide if a detailed assessment is needed. If it is, they will come to their own decision on the individual's age, following a detailed process outlined in guidance and case law.[11]

Over the past two decades, legally binding procedural safeguards have been introduced to ensure that these assessments are conducted fairly and consider a range of information about the young person. Statutory guidance from the Department for Education makes clear that age assessments should not be routine and should only be carried out 'where there is reason to doubt that the individual is the age they claim'.[12]

If the person is deemed to be an adult by the Home Office ('children treated as adults'), they are not sent for a further assessment. Instead, they are given a date of birth and sent to live in adult asylum accommodation, including hotels, or held in immigration detention. No one tells the local authority that they are there, and the onus is almost entirely on the child to find a charity or hotel staff member to assist them once in the hotel, which is extremely difficult to do.

8 Free Movement reporting from November 2022, available here.
9 See the Home Office guidance: *Assessing age for asylum applicants: caseworker guidance for further detail*, available here.
10 *Ibid.*
11 See, for example, Appendix N of the Association of Directors of Children's Services *Age Assessment Guidance*, October 2015.
12 Department for Education, *Care of unaccompanied migrant children and child victims of modern slavery: Statutory guidance for local authorities*, November 2017, p 13.

Flawed decision-making

Even the Home Office's own guidance for the National Age Assessment Board makes clear that 'physical appearance is a notoriously unreliable basis for assessment of chronological age' and 'demeanour can also be notoriously unreliable and by itself constitutes only somewhat fragile material'.[13] Yet the government has retained a policy whereby border officials can decide the age of new arrivals based on 'physical appearance and demeanour'.[14]

Mistakes are highly likely because decisions are being taken in circumstances that do not allow for careful assessments to be made. The Independent Chief Inspector of Borders and Immigration (ICIBI) has highlighted concerns at the quality of the age assessments being undertaken at ports, described as 'perfunctory' with minimal engagement with young people, and the failure of frontline staff to adequately record the age dispute process. He has noted the 'strong suspicion amongst some staff and stakeholders that children were being noted as adults in order to pass the problem of minors onto someone else'.[15]

Many children arrive without official identity documents because they didn't have them in the first place, they were destroyed on their journey (including by traffickers) or they have false documentation. This makes age assessment challenging. Even when individuals arrive with evidence of their age, the Home Office may dismiss or not request this documentation, contributing to incorrect age determinations. Indeed, NGOs often see that some forms of ID, like the Afghan taskira, are not accepted or it is not recorded that a child has a copy of documentation with them, either in a physical form or on their phone.

Children have reported being asked to point to a number to indicate how old they are, and dates of birth have been incorrectly translated into the Gregorian calendar. Due to a lack of any independent support through that process (as is the standard in the child support system), they often struggle to argue that the evidence and information they do have to support their claimed age is given proper consideration.

Multiple children have provided accounts that make clear that not only is the Home Office operating a deeply problematic policy, but it is also adopting practices outside of this policy. Organisations' direct work with children has highlighted that upon arrival individuals are asked to point to their age on a piece of paper. Those who point to seventeen or under are segregated and subjected to further scrutiny. These children are then, based on a brief glance by an immigration officer, separated into three groups as listed on page six.

Furthermore, during the subsequent age assessments, most often lasting between 10 and 40 minutes, organisations have heard accounts from children of the following practices:

- Children are not being provided with the correct interpreter; for example, speakers of Nuer are provided with Arabic interpreters or speakers of Kurmanji Kurdish are provided with a Sorani Kurdish interpreter;
- Children are being told they are lying about their age and are told they are in fact adults;
- Children are being laughed at or mocked when they provide their correct age and date of birth;
- Children are being told they cannot possibly be a child because they are too tall, their hands are too big, they are too hairy or another similar wholly inappropriate comment relating to their physical appearance;
- Children are being told 'there will be a lawyer at the hotel, you can fix the (age) problem there' or not being provided with any information as to how to challenge the decision made about their age at the point of arrival.

13 National age assessment board guidance (publishing.service.gov.uk)
14 See the Home Office guidance: *Assessing age for asylum applicants: caseworker guidance for further detail*, available here.
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*

Mohammed*, 16, Sudan

(Humans for Rights Network client)

"I arrived in Dover in the rubber boat, and after my arrival they gave me dry clothes and a meal and sent me to a large tent, and after several hours they took me to the interrogation room where there were three people and the translator on the phone.

They asked me about my age, and I answered them that I am 17 years old, and they told me that this is not your age.

It is not the real one, because you are tall, so I told them that my family is all tall and I look like them, but my age is young, they did not believe me."

Passali*, 16, Afghanistan

(Refugee Council client)

"When I arrived I didn't feel good. They gave me a paper, and my age was incorrect, I didn't know English. I said this is not correct, they said you can correct it later. I'm 16 but they said I was 18.

I didn't feel good. I have a picture of my Taskira, [Afghan ID] but I asked someone to send it as well. They want to see the original. In two or three days it will arrive.

We don't have clothes but the weather is cold. We don't have medicine, or anything. It's not good for us. We suffer with depression and anxiety. Every day we are waiting, today, tomorrow, another day, we hope they will move us."

Helen*, 16, Eritrea

(Humans for Rights Network client)

"I was very sick on the boat, the UK police came with the boat and rescued us. They brought us to the land. They took us somewhere and they asked us about our ages and provided us with clothing.

First of all they asked in a group, then when I said my age they said to me you are lying, so they took us to a private room and a lady asked me some different questions, she said 'ok your age, I can guess your age is 22'. She said because you arrive by boat, you must know what you are doing, therefore you are over 18.

They told us that we don't believe or trust your age, we don't believe you are the age you mention so we are going to ask you some questions about your age.

The hotel I am in now, there are lots of people, more than my age, men more than my age, I find it quite stressful here. It is mixed over 18's, men and women. The staff in the hotel told me they cannot help me with my age problem."

Helen has since been accommodated by the local authority and has had her age accepted.

The number of children wrongly deemed to be adults

As covered in detail in the '*Disbelieved and denied*' report by the Helen Bamber Foundation and Humans for Rights Network, **the government does not publish clear and distinct statistics on how many young people it treats as adults following a decision at the border, nor does it monitor what happens to them.**

This is despite repeated requests from civil society for over a decade and calls from MPs[16] and Peers[17] for this information and a system that should mean the numbers are easy to track.[18]

The government has made the misleading claim that 'in almost half of [age dispute] cases —49%—the people in question were found to be adults'.[19]

This figure fails to include the hundreds of children deemed to be adults by the Home Office who are subsequently referred to local authorities and then found to be children.

Without its own published disaggregated data, the government does not know how its own policies and procedures are working, choosing instead to present a simplified and misleading picture.

NEW DATA COLLECTED THROUGH FREEDOM OF INFORMATION REQUESTS SHOWS THAT:

- **From January to June 2023, 69 local authorities received 1,004 referrals to their children's services department of young people who had been sent to adult accommodation/detention.**
- **Of the cases when a decision on age was made/age assessment concluded (847), 57% were found to be children - meaning that in just 6 months at least 485 children had been wrongly placed in adult accommodation or detention at significant risk.[20]**

Taken with the data from 2022, this shows that in 18 months over 1,300 children were wrongly assessed to be adults by the Home Office.

These figures are likely to be an underestimate because not all local authorities collect this data and not all children are being referred to children's services.

Between January 2022 and June 2023, Humans for Rights Network recorded 832 safeguarding episodes when there were strong reasons to believe that a minor was sharing accommodation with an unrelated adult, nationwide.

Of these 832 calls for assistance from children, 406 have subsequently had their ages accepted by local authorities, a further 123 are in local authority care pending the outcome of an age assessment and a further 136 continue to pursue their age assessments represented by solicitors who believe there are grounds to suggest the individual is a child. The organisation has been unable to re-establish contact with a further 50 individuals, raising serious questions about their safety and whereabouts.

Humans for Rights Network has identified 15 cases where children wrongly treated as adults are subjected to criminalisation, with 14 spending periods of time incarcerated with adults in adult prisons.

In the same period, the Refugee Council's Age Dispute Project assisted 185 children who had initially been determined to be adults; subsequently, 98 of them were taken into local authority care from an unsafe adult setting, some pending further assessment.

16 See Stuart McDonald MP in Home Affairs Select Committee evidence session on 'The work of the Home Secretary', 23 November 2022.
17 See Baroness Lister in the House of Lords debate on 21 July 2022.
18 Home Office guidance makes clear that all those treated as adults should be issued with an IS97M form and that CID (its case management system) "must be updated with confirmation why it has been agreed to treat the claimant as significantly over 18 and note who the assessing officer and countersigning officer were." Consequently, the numbers treated as adults should be easy to track, but the Home Office claims its case management system will not allow it to access this data. See Home Office, *Assessing age for asylum applicants: caseworker guidance* and 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*. Additionally, a local authority that takes a child seeking asylum into their care would approach the Home Office to receive funding for that child, therefore it is possible to extract and cross-reference information on the number of de-facto children taken into care from at least two sources that the Home Office has easy access to.
19 Illegal Migration Bill - Hansard - UK Parliament
20 The Observer, *UK accused of attempting to deport children to Rwanda*, 5 June 2022. This issue was debated in detail in the House of Lords on 21st July 2022.

Putting children into the adult system places a significant burden on local authorities who under the Children Act 1989 have a statutory duty to look after children who are considered to be 'in need' and in their area for 24 hours.[21]

The National Transfer Scheme (NTS), set up through the Immigration and Asylum Act 2016, is a mandated system designed to distribute the responsibility for the care of unaccompanied asylum-seeking children across local authorities in the UK. It should allow local authorities to regularly assess their capacity and plan accordingly.

However, increasingly more local authorities are having to take into their care children who have been wrongly treated as adults by the Home Office and placed in adult accommodation in their area, a process which can be described as the 'NTS through the backdoor'. This situation puts strain on existing resources and services and does not give time to adapt support that is tailored to the needs of a child who is taken into care, including trauma-informed support and medical assessments.

Moreover, local authorities need to assess their capacity to ensure that adequate housing, foster families, and suitable facilities are available to meet the specific needs of these children.

21 Local Government Association briefing, *Debate on accommodation of asylum-seeking children in hotels*, House of Commons, 5 June 2023, available here.

At risk of harm

The government has emphasised the threat posed by adults seeking asylum who pretend to be children if they are placed in schools. This is certainly a valid and important point. But it is just as important to acknowledge the real risk of harm a child faces when wrongly assessed as an adult and placed in adult accommodation with no specialist support or help, no access to education and crucially, no one to look after them.

Organisations, including the Refugee Council, have seen children as young as 14 being placed in hotels or detention and many have been forced to share rooms with adults, with no safeguards in place. There have been numerous reports of incidents of violence and sexual assault against children in hotels.[22]

Last year, there were numerous cases of children who had been detained as adults being issued with 'notices of intent'[23] to remove them to Rwanda.[24]

In the time period between January and June 2023, 8% of all safeguarding referrals at the Refugee Council were children who were age-disputed, when there were strong reasons to believe that a child was sharing accommodation with an unrelated adult.[25]

This data paints a bleak picture of separated children's experiences on arrival in the UK. Behind each case there is a child who has been failed by the system, who has experienced abuse, exploitation, distress, or harm.

- **The highest reported risk** is suicidal ideation.
- **The second highest reported risk** is the risk of absconding, in which young people report feeling frightened in their accommodation, and run away, either into homelessness and destitution, or to unknown individuals offering them accommodation where they face high risks of exploitation and abuse, especially as these young people then disappear off the radar.

In 2022, the Refugee Council supported two children who were survivors of particularly abhorrent crimes, with two serious Child Protection safeguarding risks, both of which were reported to the police and Children's Social Care. In one case, a young person was hospitalised following an assault with a knife and in the second a young person was sexually assaulted by an unknown adult with whom they were sharing a room.

These experiences have a profound impact on children's mental health and their sense of belonging and safety. Children who experienced so much distress and often unimaginable horrors, are further exposed to avoidable risks, cut off from access to education and vital support, and they struggle to make sense of their experiences, start to rebuild their lives or dream of a better future.

Organisations, including the Refugee Council, have observed children subjected to harassment and abuse. They become destitute because they feel so unsafe in their accommodation that they feel left with no other choice but to leave. They are subjected to racial abuse, witness self-harm and suicide incidents as well as other traumatic events such as fire and assault of other residents by security staff.

All of these traumas are entirely preventable; children are subjected to these harms as a direct result of being wrongly placed in adult accommodation due to the Home Office's age assessment policy at the point of entry.

22 The Independent, *Labour MPs raise concerns over welfare of child migrants*, 7 November 2022.
23 A notice of intent is issued to a person whose claim is being considered inadmissible, i.e. it will not be accepted into the UK asylum system.
24 The Guardian, *UK accused of attempting to deport children to Rwanda*, 5 June 2022.
25 Section 17 of the Children Act 1989, imposes a duty on local authorities to safeguard and promote the welfare of children within their area who are in need. Children who have no responsible adult to care for them are separated or 'unaccompanied', and are therefore 'in need' and a Social Care intervention is warranted. The Refugee Council considers any risk to a child in which a Social Care intervention is warranted to be a safeguarding risk, so any child who is not looked after by a responsible adult (be that family, or Local Authority) is recorded as a safeguarding risk in order to be compliant with the Children Act. Further information is detailed in the organisation's Safeguarding Children and Young People Policy.

Faisal*,17, Iran

(Humans for Rights Network client)

"On Sunday night someone attempted a suicide. Police and emergency services got involved. I have heard some other people tried to harm themselves in the past as well. We are really in bad conditions, in the middle of nowhere, we have nothing to do here, no amusement and hobbies, staying in a room all the day, every day will affect your mental health in a way or another. Some are involved in drugs. We need to check in and out every time going out. They don't believe in us.

I don't feel well mentally, I have thoughts of harming myself as well sometimes. I don't have a plan for it, how to or when to do it. But in isolation, it comes to mind. I would like to see a doctor for my mental health, I haven't seen one yet. I want to ask the staff to arrange it for me.

We need help, here is not the right place to be. Even the security staff noticed we are not good mentally."

Sarwar*,16, Iran

(Humans for Rights Network client)

"I'm the youngest in the hotel, they are all adults here. The adults treat me in a different way, I don't feel safe here. It's been almost a year since I've been here.

It happened to me around 6 months ago when some adults attempted to assault me physically and offered me drugs. It didn't happen in the end and stayed in the verbal stage, I resisted them."

Isayas*,17, Eritrea

(Refugee Council client)

"Previously I was living alone in the hotel room. But one week later, after the social worker came to examine my age, they brought me an adult person in the room, I felt very frightened. It's a problem. I have been in this hotel for almost two months. It is very difficult to cope my life with him [the adult sharing his room].

"I am 17. I am afraid of the people because they are older, I am not able to move freely… Normally I would like to go out, but at the moment I am spending most of my time in the hotel, sometimes I sit around the corner from the hotel.

"When I came here to the UK, on my journey we crossed through so many challenges… Now the issue is here in the hotel.

"My hope for the future is to continue my education, improve myself and my skills. I would like to study computer science."

Treated as criminals

In 2022, the law was changed to criminalise almost all means of entering the UK in order to claim asylum.

The Nationality and Borders Act 2022 (NABA) amended sections 24 and 25 of the Immigration Act 1971 so that now both arrival without entry clearance and entry without leave to enter are criminal offences.[26] This is despite the fact that there is no entry clearance visa that can be applied for in order to enter the UK, and an individual must be in UK territory before they can lodge an asylum claim.

In addition, is it now also illegal to facilitate the arrival of people seeking asylum in the UK, even where there is no gain for the facilitator. The maximum sentence for 'entry' is four years – for facilitation, it is life imprisonment.

Research by Oxford University's Centre for Criminology found that, in the year to June 2023, 'over 185 people have been charged with either Section 24 or 25 offences following small boat crossings into UK territory'.[27] The Crown Prosecution Service (CPS) accepts that imprisoning tens of thousands of people would not be in the public interest. Therefore, it has said it will only pursue cases with 'aggravating factors', including those who 'had their hand on the tiller of the dinghy, however temporarily'.[28]

Criminal courts can make a determination on the age of a defendant for their own reasons, taking 'such evidence as may be forthcoming at the hearing of the case'.[29] In practice, this results in the court accepting the Home Office decision that a child is an adult, which is often presented as fact with no acknowledgement that there was a dispute about age.

If a child comes before a criminal court before having been seen by a local authority it would usually mean that the court must decide between the view of immigration officials that a child is an adult, and the child themselves stating that they are under 18.

Many judges believe that the dates of birth have been provided to the Home Office by the children themselves. They have little understanding of the flawed age determination process that takes place upon arrival and that these dates are arbitrarily assigned by immigration officers.

Humans for Rights Network has identified 15 cases where children wrongly treated as adults have been charged with offences under NABA, with 14 spending periods of time held with adults in adult prisons.

Most of the cases involve Sudanese or South Sudanese children who have travelled to the UK via Libya.[30] These children are some of the most distressed the organisation works with, exhibiting clear signs of trauma as a direct result of time spent in adult prisons. There is no route by which a child can access impartial advice from the prison, and therefore the organisation cannot be certain that all children subject to criminalisation were identified.

This was made clear in December 2023, when during a social visit, the organisation identified another child after he had already spent almost three months in HMP Elmley, sharing a cell with an adult male.

26 Section 24 Immigration Act 1971.
27 *Evidence from courtwatching: documenting the criminalisation of people seeking asylum in the UK*, Oxford Law Blogs
28 *R v Mohamed and ors*, Canterbury Crown Court, 21 December 2022.
29 Children and Young Person's Act 1933, section 99.
30 The Guardian, *Children reaching UK in small boats sent to jail that houses adult sex offenders*, 27 August 2023 and Open Democracy, *I spent a day watching asylum seekers being jailed. Here's what I learnt*, 11 July 2023.

Marwen*, 17, Sudan
(Humans for Rights Network client).

Marwan arrived in the United Kingdom by small boat in August 2022 when he was 17 years old.

He was assessed upon arrival as significantly over 18 years old by two Home Office officials, who allocated a date of birth making him 21 years old. Marwan has since explained that the interview lasted around 10 minutes.

After the interview, he was taken to Manston Detention Centre. Three days after he arrived, he was arrested for the section 25 offence of facilitating the entry of people who were not nationals of the United Kingdom, and the section 24 offence of attempting to arrive in the United Kingdom without valid entry clearance.

Marwan was then taken to Margate Police station, where neither the police nor his criminal lawyer asked him about his age. Marwan was subsequently charged with the offences in early September 2022 and taken to Folkestone Magistrates Court the following day.

At this hearing, Marwan told the court his claimed date of birth. However, as the Home Office had determined that his age was 21(based on a visual assessment), Marwan continued to be treated as an adult for the purposes of the criminal hearing. Marwan's clear communication that he was in fact 17 was disregarded and he was sent to HMP Elmley, an adult prison in Kent.

Marwan was held on remand at HMP Elmley. He raised to prison staff that he was 17 years old, but because he was recorded as being 21 years old no actions were taken to safeguard his welfare. At this time, Marwan was sharing a cell with a 30-year-old man. At a hearing in early October 2022, Marwan pled guilty to the section 24 offence, after the section 25 offence was discontinued.

Between his arrival in August 2022 and October 2022, Marwan received no support and Humans for Rights Network was unaware of his presence in an adult prison. Marwan was eventually able to call a friend from prison who raised the alarm, contacting a volunteer he had met in France who subsequently referred Marwan to Humans for Rights Network.

Humans for Rights Network sent safeguarding referrals to the prison and the local authority regarding Marwan's age and the clear and immediate risk of harm, but no action was taken following either safeguarding referral. Humans for Rights Network subsequently referred Marwan to a community care solicitor, who visited him in November 2022, a process frustrated by the difficulties in obtaining an appointment at the prison.

Marwan's community care solicitor wrote to the local authority, a bail address was provided by the local authority, and it was confirmed that they would decide whether his age is accepted or if a full age assessment was needed.

Marwan was released into the care of the local authority in early December 2022, four months after he was first imprisoned. One month later it was confirmed by the local authority that there were not sufficient grounds to undertake a full age assessment and Marwan's date of birth was accepted.

Marwan became a looked-after child. He has subsequently been acquitted of any offence due to the fact that he is a child.

Marwan's case clearly shows that there are significant failings within a wide range of procedures and practices implemented by state actors from the Home Office to the Ministry of Justice. Marwan is recovering well but has ongoing mental health issues, suffers from sleeplessness, and struggles to talk about his time in prison where he was subjected to violence.

Lack of safeguards

Staff in asylum accommodation are deterred from referring people claiming to be children to local authorities. They are told that if the Home Office has already carried out an assessment then they should only refer the child to a local authority if the individual is 'childlike, is highly vulnerable and/or not behaving like an adult'.[31] In practice, this has been interpreted by staff as meaning they should never refer a child to children's services. Children wrongly treated as adults receive no information or support on how to contact a Local Authority to address what has happened to them.

When children are then referred to local authorities, the Home Office frequently refuses to accept the local authority's decision on age if they decide not to carry out a full assessment. A recent IS97.M[32] form includes the following paragraph which is extremely concerning in terms of information sharing/information from an age assessment used for purposes of a decision in an asylum claim (see the section below on National Age Assessment Board):

> ***'If a local authority has made/makes a finding on your age, the Home Office will request a copy of the local authority's reasons for reaching that particular finding in order to help determine your age for immigration purposes. If the information provided by the local authority also reveals other information relevant to your claim for asylum, we may take this into account when determining your asylum claim.'***

At present, the process for identifying children wrongly treated as adults relies heavily on the role of charities and NGOs working in hotels, detention and other accommodation sites. NGOs try to intervene to ensure that these children receive the care and support they need, including education, healthcare, and legal representation. However, because of its unpredictable nature and the lack of published data, it is nearly impossible for NGOs to foresee the numbers they will encounter when they visit asylum accommodation and immigration removal centres. As such, there is significant pressure on NGOs, who are not funded by the government to do this work, to fill the gap resulting from the government's failure to safeguard children.

Over the years, children have repeatedly shared their experiences of the flawed age assessment process with decision-makers and advocacy organisations, highlighting the consequences for their safety, and suggested improvements. Organisations have dedicated their resources to working with young people and peers to collect data to inform discussion on age determinations at the port of entry. There is a wealth of evidence to show, without a doubt, that the system of visually determining age is not working, yet there has been limited action from the Home Office to address the concerns raised.

Mistakes often lead to costly litigation as this is often the only way a child can seek justice and have their actual age confirmed. However, access to specialist legal advice in this area is limited and it can take months for a case to be listed for a hearing, leaving a child in nerve-wracking limbo during the formative years of their life.

Not only are these children missing out on the care and protection of local authorities and child protection experts, but they are also being left exposed to exploitation, abuse, and mental and physical harm.

31 AASC/AIRE Provider Age Assessment Standard Operating Procedure, 06.07.2022 v1.6, section 3
32 A form that the Home Office should fill in when they are visually assessing a child and making decision on their age.

"I have been here for 2 months, living in this hotel. All the people here are older, I am not comfortable… I am 16 years old. There is not many people I know from my country. There is an older man in my room. My hope was to learn English here.

There is no one in the hotel who helps me with English or with any advice. I am alone. The food is sometimes good but sometimes not good. I like to play football, but I do not have the opportunity to play here. I left from Sudan… I did not know anyone. No family, no friends with me. For the future I hope Allah will guide me."

Need for urgent action

Changes to policy and practice at the border are more urgent than ever. If the relevant provisions of the Illegal Migration Act 2023 (IMA) come into force, any person who meets or may meet the conditions for removal under Section 2 of the Act will lose the right of appeal against a decision on their age.[33] While they can still challenge the decision via judicial review, the IMA makes clear that an application for judicial review 'would not prevent the government from taking steps to remove the individual' and the court may grant relief only on the basis that it was wrong in law, not wrong as a matter of fact.[34]

In short, the IMA allows for children to be wrongly assessed as adults by the Home Office and then swiftly removed from the UK to another country without having had the chance to challenge that decision and without ever encountering social workers. The government has claimed that a judicial review can simply 'continue from outside the UK'.[35]

The IMA also includes wide powers to detain separated children for unlimited periods[36] – these have been justified by the Immigration Minister as necessary because of the increased numbers of separated children arriving in the UK by small boat and the need for 'ways to ensure that where those people are age-assessed […] they are held in appropriate detained accommodation.'[37]

We are already seeing hundreds of children put at risk by the current age dispute process – now the government has given itself the power to make the system even worse.

When questioned about this, the government frequently refers to the introduction of a new National Age Assessment Board (NAAB) as a solution. Putting aside concerns that NGOs have already raised that it will lack independence and remove power and responsibility from child protection experts,[38] the Board also does not work with people who have just arrived in the UK so it clearly won't impact those decisions.

New powers to use scientific methods to determine age are also not the solution. The government's own scientific committee has made clear that these methods can only conclude whether age is 'possible' and should only be used as part of a wider social work assessment.[39]

In short, the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 will do nothing to solve the problem of Home Office staff wrongly determining that a child is an adult at the border.

This can only be solved by the government taking responsibility for what is clearly a flawed policy and ensuring that all children whose ages are disputed are referred to independent child protection experts for further assessment. [40]

33 Clause 57, Illegal Migration Act. The age assessment appeal system provided for by the Nationality and Borders Act 2022 has not yet been introduced, and so the current option for challenging these decisions is still via judicial review.

34 This effectively overrules the 2009 Supreme Court decision in A v Croydon, which made clear that it falls to the court to decide the age of the young person, not only determining whether they are a child or an adult, but also ascribing a date of birth. The court's decision is then binding on the local authority and also the Home Office. R (A) v LB of Croydon, [2009] UKSC 8

35 Illegal Migration Bill: Child's Rights Impact Assessment (CRIA)

36 For more information on the measures in the Bill, see the Refugee and Migrant Children's Consortium, *Briefings on the Illegal Migration Bill*

37 Illegal Migration Bill - Hansard - UK Parliament

38 Refugee and Migrant Children's Consortium, *Briefings on Part 4 (age assessments) of the Nationality and Borders Bill*

39 Age Estimation Science Advisory Committee, *Biological methods to assess unaccompanied asylum-seeking children's age*, January 2023

40 It is worth noting that the British Association of Social Workers has urged its members not to work with the Home Office to assess the ages of asylum seekers, saying that political pressures could undermine their professional judgment. See The Guardian *Social workers should not assess asylum seeker ages for Home Office, professional body says*.

Recommendations

THE HOME OFFICE SHOULD:

Limit age determinations to those with relevant training and only treat someone claiming to be a child as an adult in exceptional circumstances, i.e. if there is evidence that they are in their late 20s or older.

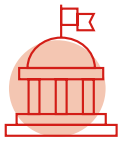
Publish separate statistics on the number of people claiming to be children whom border officials have determined to be adults on the basis that their 'physical appearance and demeanour very strongly suggested that they were significantly over 18 years of age' and put in place monitoring processes so it can track the outcomes for those who are later determined to be children. The monitoring process should be set out independently of the Home Office to ensure oversight of age assessments at the port of entry.

Where a person has claimed to be a child but is being treated as an adult by the Home Office and is to be moved to adult accommodation/detention, the Home Office should notify the relevant local authority so that they are aware that there is a putative child in their area.

Where a person in adult accommodation or detention claims to be a child but is being treated as an adult by the Home Office, the Home Office (or its contractors) should make a referral to the relevant local authority, irrespective of the Home Office's decisions, so that they are aware that there is a putative child in their area and can assess accordingly. A referral should also be made to a legal representative.

THE GOVERNMENT SHOULD:

Abandon the implementation of provisions in the Illegal Migration Act that would: leave children at risk of being removed from the UK even if they are challenging a decision on their age; make legal challenges harder to bring; or allow for children to automatically be treated as adults simply for refusing to consent to scientific procedures as part of their age assessment.



Establish an independent body to regularly analyse and oversee the numbers and quality of 'age determinations' made by the Home Office at the border.

Ahmed, 17, Afghanistan (Humans for Rights Network client)

Ahmed arrived on a small boat in June 2023. The boat he travelled in got into difficulty in the Channel, and he and the others on this boat had to be rescued. He explained how everyone was very distressed and screaming, and that they had to wait 30 minutes to be rescued.

He had brought with him photographs of a number of documents that proved his age, which were contained in his phone. Upon arrival, he informed the immigration officers that he had these documents but was not permitted to show them to the immigration officers.

He was subsequently treated as an adult and was first sent to Manston where he spent two days sleeping on the floor in a tent.

He was then moved to a large hotel in West London where he was forced to share a room with an unrelated adult male.

On one occasion he left the hotel he was accommodated in due to acute distress and discomfort as he felt that no one was listening to him or helping him. He took himself to a police station, and after some discussion, Humans for Rights Network was able to assist him back to his hotel. Not long after this, social services visited him and he was immediately accommodated before his age was accepted by the local authority.

Annex

Freedom of Information (FOI) requests sent and summary of responses

All local authorities in England responsible for social care services for children (152 in total) were sent the following request for information under the Freedom of Information Act 2000:

- *In January to June 2023 how many individuals claiming to be children (aged under 18) were referred to your children's services department having been assessed to be an adult by the Home Office and placed in adult asylum accommodation or detention?*
- *Of those referred, how many were subsequently assessed by your children's services department to be under 18?*

115 local authorities replied with data, 16 refused on grounds of cost, low numbers or because they did not have the data in a reportable format. 21 did not respond. Of the 115 local authorities with data, 69 had received referrals of children who had been treated as adults by the Home Office. The number of referrals to local authorities ranged from 0 to 84 and the proportion of referrals who were subsequently assessed to be children by the local authority ranged from 0% to 100%. In six local authorities, final decisions on age had not been made – the data on referrals to these local authorities was included but not the data on those assessed to be under 18.

PHOTOS:

The photos in this report, on the title page and on pages 5, 10, 12, and 18, show young people the Refugee Council has worked with who were not believed about their age. Credit: Joel Goodman. The photos on pages 2 and 8 are stock images.

helenbamber.org

@HelenBamber

The Helen Bamber Foundation is a specialist clinical and human rights charity that works with survivors of trafficking, torture and other forms of extreme human cruelty. Our multidisciplinary and clinical team provides a bespoke Model of Integrated Care for survivors which includes medico-legal documentation of physical and psychological injuries; specialist therapeutic care; a medical advisory service; a counter-trafficking programme; housing and welfare advice; legal protection advice; and community integration activities and services. Asylum Aid, part of the Helen Bamber Foundation group, provides high-quality legal representation to some of the most vulnerable people seeking asylum in the UK, including but not limited to: children, survivors of trafficking, and stateless people.

humansforrights.org

@humansforrights

Humans for Rights Network is a need-led Human Rights organisation, established to facilitate safety & dignity for people forced to migrate, to advocate for a rights-based approach to the movement of people throughout Northern Europe, and to represent humans whose rights are violated. We are led and informed by the Migrants we work with and collaborate to address mistreatment and challenge systemic and structural racism & discrimination and the harmful impact of these. We work with the humans impacted by the traumatic & damaging asylum & protection system in the UK through the provision of agile investigative casework, seeking a solution for the individual human driving change to the systems & structures that damage.

refugeecouncil.org.uk

@refugeecouncil

The Refugee Council is a leading charity working with refugees and people seeking asylum in the UK, including separated children. Founded in 1951 following the creation of the UN Refugee Convention, we exist to support and empower people who have fled conflict, discrimination and persecution to rebuild their lives here in the UK.

Our children's services enable separated children to address unfair or unjust treatment, reduce their isolation and re-traumatisation, and improve their wellbeing through: independent information and immigration and children's social care advice; advocacy to challenge exclusion such as age assessments; therapeutic and psychosocial services to recover from loss and trauma and gain life skills necessary to rebuild their lives in the UK.

We involve children as equal partners to share their experiences with decision-makers and call for changes that will improve the treatment of separated children.

Contact us at the Refugee Council,
PO Box 68614, London, E15 9DQ

supporter@refugeecouncil.org.uk
or 020 7346 1205

Please keep in touch with our work on Facebook, X and Instagram.

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