



Trafficked young people and the issue of age determination

Kamena Dorling
Migrant Children's Project
19th November 2014



Why is age an issue?

- Lack of documentation to evidence age, or false ID
- YP may not know their date of birth.
- YP may have given different ages to different professionals/authorities, particularly on their journey to the UK, where to be identified as a child may have been perceived as placing them in greater danger.
- Wide variations in young people's growth, ages of puberty etc within ethnic and national groups .



Why is age an issue?

- Will affect how the young person might be cared for by children's services, and their access to education
- Will affect how their asylum application is processed.
- Child 'deemed' to be an adult will not be entitled to an appropriate adult for criminal proceedings, they will be unable to apply for special measures in court proceedings, they will be detained and sentenced as an adult and have no access to age appropriate services.

Who assesses age?

Home Office

- Based on appearance & demeanour
- If “***very strongly*** suggests that they are ***significantly*** over 18 years of age” will be treated as **adults**.

Local authority

- Must make own assessment a ‘gateway decision’ whether child in need under *Children Act 1989*
- Must be in accordance with case law (*‘Merton compliant’*)

Criminal court

- Child may be ‘deemed’ an age by Judges without thorough assessment
- Must be more than ‘superficial observation’



A lawful age assessment

- Cannot be made **solely** on the basis of appearance,
- Should be **holistic assessment** taking account of the young person's appearance, demeanour, background and credibility
- Should take into account relevant factors from the child's medical, family and social history
- Decision maker should seek to elicit the general background of the applicant, including his family circumstances and history, his educational background and his activities during the previous few years.
- Ethnic and cultural information may also be important



A lawful age assessment

- The child should always be given the **benefit of any doubt**
- Two qualified and properly trained social workers
- An appropriate adult should be offered
- Child should be informed of the purpose assessment & consequences decision
- Child-friendly and sensitive approach, checking that questions have been understood, offering breaks
- Child should have opportunity to deal with important points adverse to their age case
- The decision must be based on firm grounds & explained to the child. Should be issued in writing & contain information on right to challenge the decision



Child victims of trafficking

- Child trafficking: **‘recruited, transported, transferred, harboured or received for the purpose of exploitation’**
- **Consent is irrelevant** for child victims
- NOT same as smuggling (facilitating travel to the country)
- Children trafficked for:
 - Sexual exploitation
 - Forced labour
 - Domestic servitude
 - Criminal activities
 - Benefit fraud
- All those working with children must be alert to indicators



Child victims of trafficking

- Identification can be difficult – either unaware or reluctant to disclose, lack of ID, false details etc
- **Signs of trafficking** include:
 - Signs of malnourishment
 - Unexplained phone calls while in placement
 - Money or possessions unaccounted for
 - Signs of physical or sexual abuse
 - Going missing from local authority care
 - Fear of authority figures
 - A history with missing links and unexplained moves
 - A prepared story similar to that of other children
 - Showing fear for family in country of origin
- Toolkit: www.londonscb.gov.uk/trafficking



Child victims of trafficking

- Many trafficked children have no ID or use false ID
- Some in UK for long time and do not know age
- Some told to say they are adults in order to cross borders more easily - may have been coached by trafficker
- May provide false details / be reluctant to disclose

- **First and foremost a child protection issue**
- Evidence that child or YP has been trafficked wd generally provide defence of duress – should not be prosecuted
- Prosecutors should work with relevant organisations



Assessing age in criminal justice

- Court must make 'due inquiry' & consider 'any available evidence'
- Age presumed/declared by court deemed to be true age
- If doubt, must be viewed as child til age can be verified by ID or independent assessment
- Need 'more than superficial observation' to make appropriate assessment
- Prosecutors should assist court by adducing relevant documents, inviting oral evidence
- Additional evidence available from Home Office or local authority



Points to consider

- Impossible to assess age based solely on appearance
- Are there indicators of trafficking? Has YP been referred to the National Referral Mechanism?
- What evidence is there to support the YP's claimed age? Documentation? Evidence from those working with YP?
- Has there been a local authority assessment?
(NB: Home Office assessments focus solely on appearance and demeanour)
- Child protection concerns should take priority
- Need to be mindful of risk of re-trafficking

MIGRANT CHILDREN'S PROJECT

- The Migrant Children's Project provides free one-to-one **legal advice, legal guidance** and **training** on the rights and entitlements of migrant, asylum-seeking and refugee children, young people and their families.

MCP advice line: 020 7636 8505

Email: mcp@coramclc.org.uk

www.childrenslegalcentre.com

www.seekingsupport.co.uk

If you have any further questions please do contact us