

# ILPA information sheet

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## Age Disputes (Dental X-Rays)

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On 28 March 2012 (shortly after 6pm), the UK Border Agency announced it was to start a trial using dental x-rays in age-disputed asylum cases. The trial was said to start on 29 March 2012. This information sheet provides information about the UK Border Agency trial, and more generally about the use of dental x-rays.

### UK Border Agency trial

The UK Border Agency has explained that it will run the trial with Croydon Council and Professor Graham Roberts of King's College Hospital. The purpose of the trial is said to be:

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

The trial will apply to asylum-seekers who claim to be children and are age assessed by Croydon Council as adults. The UK Border Agency states that these people will be given "*the opportunity to have a dental X-ray at Guys Hospital.*" The results would be passed back to the Agency, and if the results "*indicate that the individual is likely to be under 18, Croydon Council will be invited to review [its] age assessment.*" The Agency says that if someone decides not to participate in the trial, this will not "*adversely affect [the person's] claim for asylum or humanitarian protection.*"

### Seeking to establish a person's age by dental x-rays

The expert evidence is clear that a person's age cannot be accurately determined by way of dental x-rays. There is no medical procedure that can accurately determine a person's age. As regards dental x-rays, the x-ray is used to assess the degree to which a person's teeth have developed. These develop at different rates for different people. These differences occur between people of the same ethnic or socio-economic background, and may vary further as between people of different ethnic or socio-economic backgrounds. Assessments based upon dental x-rays assess a person's age as potentially within an age range. This range refers to the age range within which most people whose teeth are similarly developed are likely to fall. Nonetheless, a person may be a very fast or very slow developer. Some people with similarly developed teeth will, therefore, fall outside the range, one way or the other.

In 2008, the then Minister for Immigration (Liam Byrne MP) convened a working group on age assessment. In the course of the work of that group, dental x-rays and other procedures were considered. The working group did not report publicly, but there was no agreement in favour of using dental x-rays. One key reason for this was the lack of reliability of using x-rays in assessing age. To ILPA's knowledge, there is no evidence to show that position to be any different today.

## **Ethical and legal considerations**

X-rays involve exposing a person to a very small, but significant amount of radiation beyond what is normal. Related to this are three key aspects to the issue of whether it is ethical or lawful to conduct a trial such as that of the UK Border Agency.

Firstly, a general ethical rule for medical practitioners using procedures (such as x-rays) which involve exposing a person to radiation is that this should not be done unless there is a therapeutic benefit to the person in so doing – i.e. is it useful or necessary for the person's health. This would include something that would help diagnose an injury or illness, so that it could be treated. There is no therapeutic benefit to what the UK Border Agency is doing. In 2008, the then Chief Medical Officer (Liam Donaldson) wrote to the then Minister for Immigration (Phil Woolas MP) explaining that he shared the concerns of the General Dental Council and the Royal College of Paediatrics and Child Health that using dental x-rays in this way was not ethical. The Chief Medical Officer's letter is available at:

<http://www.ilpa.org.uk/data/resources/14476/08.10.21-Sir-Liam-CMO-to-Phil-Woolas-age-assessment-.pdf>

Secondly, before exposing a person to radiation (or any other harm), a medical practitioner should ensure the person has given informed consent. To be 'informed consent', the person's agreement to undergo the procedure must be voluntarily and in full knowledge and understanding of the consequences of his or her agreement (e.g. the exposure to radiation, for what the x-rays are to be used etc.). The Chief Medical Officer, in his 2008 letter to the Minister for Immigration, made clear that he considered there to be real risks that what the Agency is now doing would not meet "*the standards of informed consent*". This is because of the risk that an asylum-seeker, particularly a separated (unaccompanied) child seeking asylum, feels that he or she must agree to the procedure for his or her asylum claim to be properly dealt with.

Thirdly, there is a question of the lawfulness of exposing a person to radiation in the way the UK Border Agency intends. Legal opinions have been given in the past indicating that doing so in the case of a child, where there is no therapeutic benefit to the person and/or where the person has not given informed consent is to unlawfully inflict harm upon the person.

This year, very similar views have been expressed by experts in evidence to the Australian Human Rights Commission, which is conducting an 'inquiry into the treatment of individuals suspected of people smuggling who say they are children'. More information on the Australian inquiry is available at:

<http://www.hreoc.gov.au/ageassessment/index.html>

## **Further information**

In May 2007, ILPA published research by Heaven Crawley on the issue of separated children seeking asylum, whose age is disputed. The published report is called *When is a child not a child? Asylum, age disputes and the process of age assessment*. In his foreword to that report, the then Children's Commissioner (Sir Al Aynsley-Green) condemned the then current proposal of the Home Office on using dental (or skeletal) x-rays. The report is available at:

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

The Children's Commissioners for England, Northern Ireland, Scotland and Wales have jointly condemned the current pilot. A statement issued by the Commissioners is available at:

<http://www.ilpa.org.uk/data/resources/14476/12.03.29-Age-assessments-x-rays-JOINT-STATEMENT-FROM-THE-FOUR-UK-CHILDREN.pdf>