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Age Disputes and Age Assessment 2

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In May 2007, ILPA published research by Heaven Crawley on the issue of separated children seeking asylum, whose age is disputed. More information about that research and the published report is available from the October 2007 “Age Disputes and Age Assessment” information sheet. The published report called *When is a child not a child? Asylum, age disputes and the process of age assessment* remains available in the publications section of the ILPA website (www.ilpa.org.uk).

This information sheet explains developments relating to age assessment. In particular, it provides information about the November 2009 judgment of the UK Supreme Court in the case of *A v London Borough of Croydon & Anor; M v London Borough of Lambeth & Anor* [2009] UKSC 8. In this information sheet, the case is referred to as the Croydon & Lambeth case. The judgment is available at: <http://www.bailii.org/uk/cases/UKSC/2009/8.pdf>

The role of social services

Local authorities in England and Wales have statutory responsibilities under the Children Act 1989 towards children in need. Under section 20 of that Act, any child in need within the area of the local authority is to be provided accommodation if the child requires accommodation because:

- there is no person with parental responsibility for the child; or
- the child is lost or has been abandoned; or
- the person who has been caring for the child is prevented from providing suitable accommodation or care

Separated children seeking asylum fall within these statutory responsibilities. If there is some doubt about whether someone seeking asylum is a child, local social services will need to assess that person's age in order to assess whether that person is a child and how old he or she is. Social services will need to do this in order to assess whether they have any statutory responsibilities under the Children Act 1989, including to provide accommodation, to the person; and to assess the extent of those responsibilities.

Age disputes

If social services think that an asylum-seeker is not the age he or she says, this is an age dispute.

In some cases there may be an age dispute where there is disagreement between the UK Border Agency and the asylum-seeker as to his or her age – this is briefly dealt with below.

The decision in the Croydon & Lambeth case

Where there is an age dispute, an asylum-seeker may bring a judicial review application against social services. The Croydon & Lambeth case is an example of this. The key issues in the case were:

- whether the role of social services in assessing the asylum-seeker's age is subject to Article 6 of the European Convention on Human Rights, which requires that the assessment of a person's civil rights is decided by an independent and impartial decision-maker
- whether the role of the court in an age dispute case is to check that social services have properly considered the case and reached a reasonable decision, or whether it is the role of the court to make its own decision as to the age of the asylum-seeker

The court did not make a final decision on the first of these two issues. The court did indicate that it considered it likely that Article 6 did not apply. However, because of the decision on the second issue there was no need to make a final decision on this first issue.

As regards the second issue, the court decided that the role of the court was to make its own decision as to the age of the asylum-seeker. This is a significant development. Previously, when a judicial review application was brought in an age dispute case, the courts have restricted their considerations to deciding whether social services have properly considered the case – i.e. have they considered all the relevant evidence, and have they reached a reasonable decision on that evidence. Now the court will have to consider all the relevant evidence and make its own decision. If the court considers that the asylum-seeker is a child, the court must make that finding – even if the court also considers that it was reasonable, on the evidence, for social services to have concluded that the asylum-seeker is an adult.

In future, social services may need to be particularly careful to consider all the evidence about the asylum-seeker's age. This will include evidence available after social services have assessed the asylum-seeker to be an adult. Social services may also need to be careful to make sure that the benefit of any doubt about the asylum-seeker's age is given to him or her. Otherwise, social services may find that their assessment is overturned by the court.

The role of the UK Border Agency

In most cases, the UK Border Agency accepts any assessment of age by social services. However, in some cases the UK Border Agency makes its own decision as to the age of an asylum-seeker who claims to be a child.

The decision of the UK Border Agency about an asylum-seeker's age is very important because it is UK Border Agency policy that:

- separated children must not be detained (save in very exceptional cases); and
- separated children must not be removed from the UK unless safe reception arrangements are in place in the country to which it is proposed to remove the child; and
- interviews of separated children, and the assessment of their evidence, must be conducted and considered with particular care and sensitivity

The key UK Border Agency policy document in this area is the asylum process guidance on "Assessing Age". This is available at:

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age?view=Binary>