
*Disputes between
local authorities in
age assessments*

Survey findings



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January 2019



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IMMIGRATION AID UNIT

Disputes between local authorities in age assessments

What is this about?

One of the reasons young people contact the Greater Manchester Immigration Aid Unit (GMIAU) for help is because they have been age assessed as an adult and dispersed into adult asylum accommodation in the North West. When we support them in challenging the decision on age we are often faced with a conflict as to which local authority is most appropriate to re-assess the young person. Many young people do not want to leave the North West. Typically, they have had very negative, short experiences (often a matter of hours or days) in the original local authority while an age assessment or screening session took place. In contrast they may have been in the North West much longer and have developed important support networks and obtained further, new supporting evidence of age.

We were struck by the lack of clarity over what happens in these circumstances and the absence of young people's voices in decision-making. We were keen to ensure that any action reflected both the need to honour young people's wishes whilst also ensuring the local authority that undertook the first age assessment does not avoid legal or financial responsibility.

With thanks to funding from the Strategic Legal Fund we therefore undertook research to shed light on the position in guidance, case law and in practice.

Greater Manchester Immigration Aid Unit (GMIAU) is a registered charity (112390) based in the North West of England providing free, confidential, independent legal advice and representation on immigration and asylum. Every year we represent more than 1,000 people claiming asylum in the UK. We also run specialist support services for children and young people which include advice and representation in immigration law and public law, one to one support and our monthly All4One youth group and Girls Group.

With thanks to funding from the Strategic Legal Fund, GMIAU undertook research to better understand which local authority bears responsibility when an unaccompanied child seeking asylum has been assessed as 18+, dispersed to a new area by the Home Office and then requests a re-assessment of their age and support under section 20 of the Children Act 1989.

This research arose as a result of our casework experience which suggested there is a lack of consistency in practice as to which local authority takes responsibility for re-assessing a child's age and carrying any subsequent duties to the child, that existing guidance is not clear enough to deal with the matter one way or another and that this is having a detrimental impact on children and young people.

We wanted to determine what the current position was in guidance, case law and in practice and to suggest ways forward so that the needs of children are best met.

The current position in guidance and case law

The relevant guidance in place at present (to be considered alongside case law) includes:

- Department for Education (DfE), Care of unaccompanied migrant children and child victims of modern slavery - statutory guidance for local authorities, November 2017.
- Association of Directors of Children's Services (ADCS), Age Assessment Guidance, October 2015
- Home Office and ADCS, Age Assessment Joint Working Guidance, June 2015

The statutory DfE guidance does not deal with the matter explicitly and simply states that “*the local authority in whose area the looked after child is has responsibility for looking after the child*” (this may be the entry local authority if the child remains there or the receiving local authority if the child is transferred).

The ADCS Guidance (which is not statutory guidance) has a section dedicated to this issue at pages 64 to 65. It refers to three cases:

- (i) *R (on the application of Liverpool City Council) v London Borough of Hillingdon & another*

The Court of Appeal held that, after a young person had been released from Harmondsworth Immigration Removal Centre, the London Borough of Hillingdon should have conducted an age assessment and also a full assessment of his needs for the purposes of Section 20 of the Children Act 2004, even though the young person had previously been assessed by Liverpool.

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- (ii) *R (on the application of HA) v London Borough of Hillingdon and Secretary of State for the Home Department*

This is often relied upon as authority for the position that responsibility remains with the original authority. It is a non-binding decision relating to interim accommodation where only the original local authority was party to the proceedings. The possibility of concurrent duties between two local authorities was raised in both this case and the above case involving Liverpool City Council but not resolved

- (iii) *R(A) v Leicester City Council and London Borough of Hillingdon*

Here the Court of Appeal found that concurrent duties were owed between both local authorities involved.

Current case law is therefore limited in number and scope and fails to resolve the issue as to local authority responsibility where a child's age needs to be re-assessed.

The ADCS guidance goes on to state that *“a local authority should conduct an age assessment for any child who comes to their attention where there is significant reason to doubt the age claimed even if the child has moved from another local authority area before an age assessment is conducted”* and subsequently refers to the Home Office/ADCS Joint Working Guidance that *“Local authorities may find it useful to consult this and agree between them which body will take responsibility, but this guidance is not statutory or case law and the courts may make a decision around responsibility for an assessment which does not fit within this guidance.”*

The Joint Working Guidance is a document agreed between the Home Office and the ADCS and is intended to help the relevant agencies to work together to provide an age assessment process which is efficient, effective and enables them to comply with their statutory duties. The guidance states that *“LA [local authority] responsibility is tied to geographical boundaries so it is possible that an age assessment may be sought from more than one LA. For example, where an asylum seeker moves to accommodation which is within a different LA boundary. In some cases the assessments may not be in agreement.”*

The Joint Working Guidance does suggest actions for varying scenarios. However the share of responsibility between the entry and receiving local authority is not prescribed. Instead the emphasis is on local authorities working together in collaboration, promptly agreeing which takes responsibility for conducting the assessment, and prioritising their safeguarding duties.

In situations where there is a potentially unlawful age assessment the Joint Working Guidance states that *“the LA’s must collaborate and promptly agree which LA must take responsibility for conducting the age assessment.”* Where there are conflicting age assessments the Home Office is to *“notify the LAs concerned for them to agree which LA should take responsibility.”* And in the event that new information is being brought forward, it states *“if the individual has moved location and LA, this should also be referred to the LA which conducted the previous age assessment and agreement reached, depending on the circumstances, as to which LA will reassess the age of the individual, taking full account of all sources of information.”*

With the guidance and case law as it currently stands, each case depends on local authorities agreeing between themselves as to who has responsibility for conducting a new age assessment and for any duties that result from it. There is no dispute mechanism in place to resolve any disagreements between local authorities apart from the child being able to issue judicial review proceedings.

The current position in practice

To try and establish what was actually happening around the country we undertook an initial mapping exercise to locate legal advisors, support organisations and social workers/social work groups working with young people facing this situation. We then designed a survey to establish people’s experiences and to test whether those working with this particular group of young people agreed there was a need for further guidance.

A separate survey was designed for legal advisors and for social workers/support organisations as a result of their differing roles and involvement with age disputed young people. The surveys were disseminated to people identified in the initial

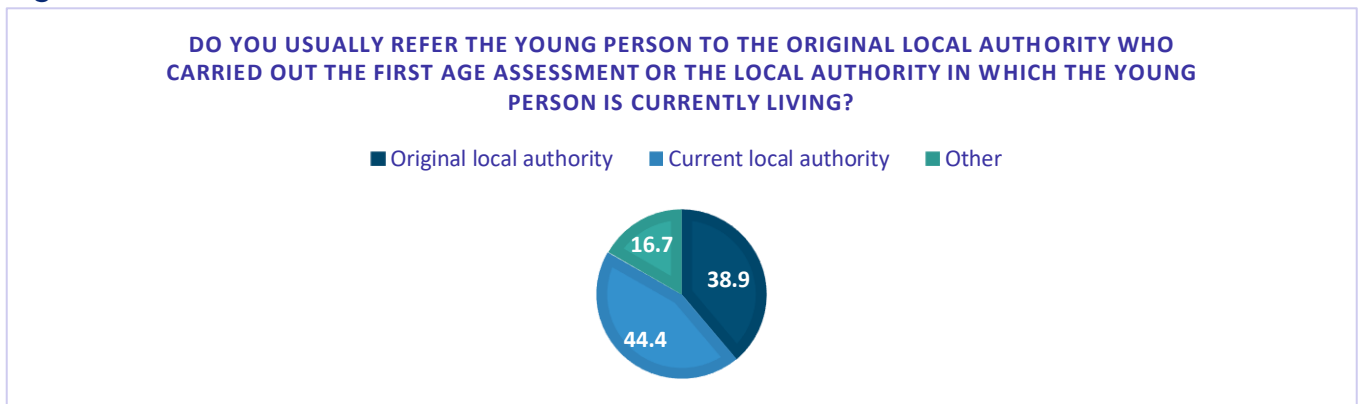
mapping exercise and were also shared on relevant group mailing lists including the Refugee and Migrant Children Consortium, the Refugee Legal Group, the Law Centres Network, the British Association of Social Workers and the Immigration Law Practitioners Association Children sub-group.

A total of 35 responses were received. Here is a synopsis of what they said –

(i) The actions of social workers, support agencies and legal advisers

The results of the survey confirmed that our experience at GMIAU is more widespread, and that there is a significant lack of consistency in dealing with cases where young people have been age disputed and moved to another local authority area.

Figure 1



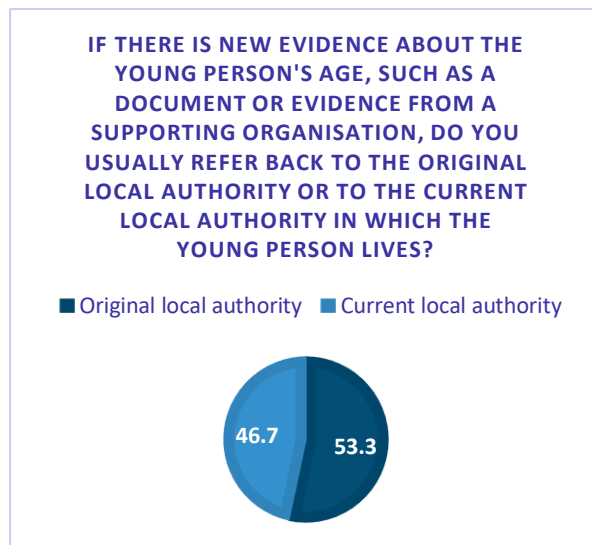
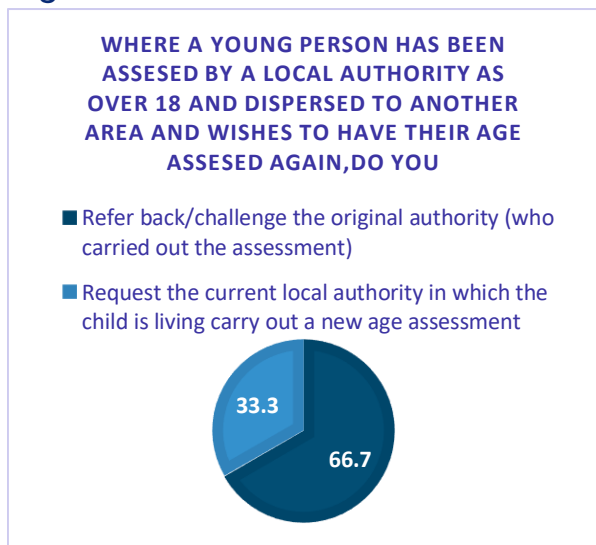
With respect to the survey sent to social workers and support agencies: when asked if they referred young people for an age assessment to the original local authority or to the local authority in which the young person was currently living, 44.4% stated the original local authority, 38.9% stated the current local authority and the remaining 16.7% either didn't make referrals themselves or practice varied on each occasion.

Figure 2



Those who did not make the referrals themselves but worked with young people were asked what they were seeing happening in practice. A similarly mixed outcome was apparent with 36.8% stating the young person was usually sent back to the original local authority, 21.1% remaining in their current local authority and the remainder providing a mixture of different scenarios.

Figures 3 and 4



The response was similarly split in the legal survey where 66.7% said they referred back to the original authority and 33.3% to the current local authority (although 20% did not take this action on every occasion). The decision was also split in cases where new documentation or other evidence had become available, with 53.3% referring to the original local authority and 46.7% to the current local authority.

(ii) The views of young people

Figures 5, 6, 7 and 8

Respondents in both surveys had experienced situations where a young person had refused to move back to their original local authority, and the majority of respondents from both surveys had also never seen cases where the local authority had agreed to an out of borough placement.

Figure 5

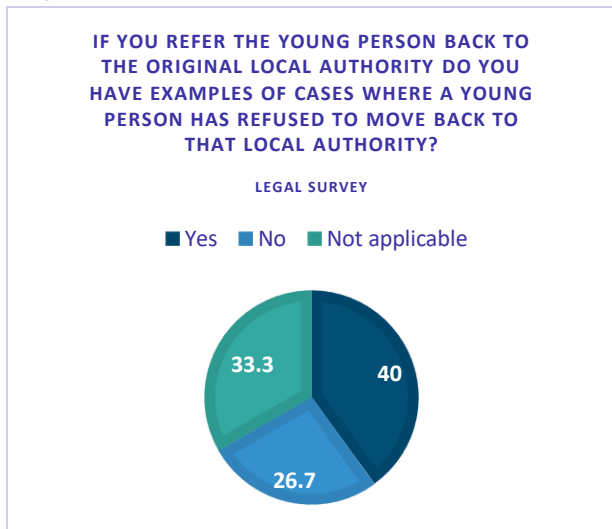


Figure 6

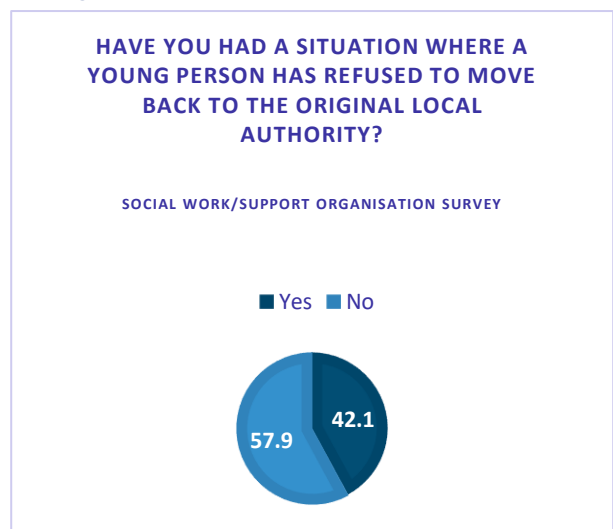


Figure 7

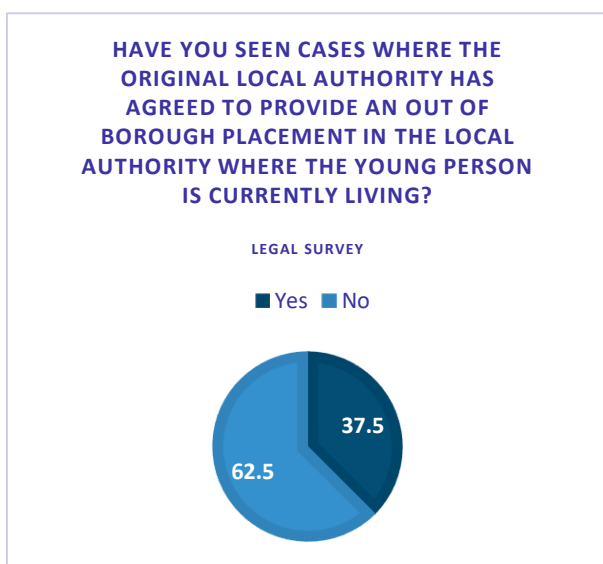


Figure 8



A total of 68.4% of support organisation staff/social workers who responded felt that local authorities did not take into consideration the views of the young person in deciding where to place them.

(iii) The need for guidance

All but one of the respondents stated that better guidance was required. However the one respondent who felt clearer guidance was not needed also stated that guidance should state, where there is a dispute, that the local authority to whom the referral is made should carry out an assessment and accommodate and support the young person until a decision is made in order to prevent young people being disadvantaged by arguments over which authority was responsible.

No legal advisors were aware of any local authority having specific policies or guidance in such cases and only 26.3% of respondents from the social work/support organisations were aware of any local authority policy.

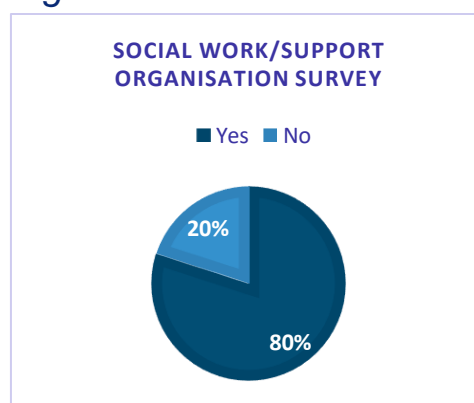
Three proposals were put forward as to what could be included in new or amended guidance to clarify the situation. These were:

- (i) Where there is a challenge to the original age assessment a referral should be made to the original local authority for a re-assessment and accommodation and support be provided in accordance with the child's best interests (including consideration of an out of borough placement where requested). 86.7% of respondents to the legal survey agreed with this and 80% of respondents to the social work/support agency survey agreed also.

Figure 9



Figure 10



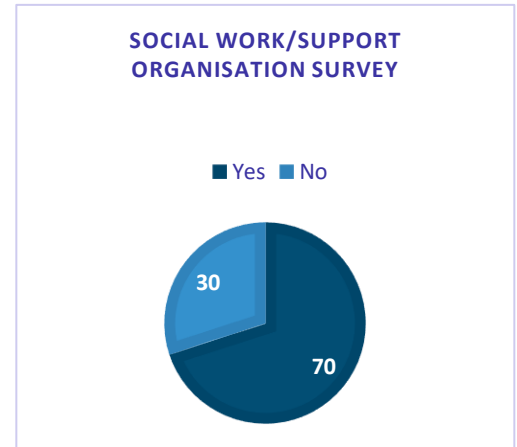
- (ii) Where there is new evidence in relation to a young person's age a referral can be made to the local authority in which the young person is living and

the local authority should carry out an assessment and accommodate and support the young person accordingly. 93.3% of respondents to the legal survey agreed with this and 70% of social work/support agency survey respondents agreed with this; and

Figure 11



Figure 12



- (iii) Where there is a dispute as to which local authority is responsible the local authority to whom the referral is made should carry out an assessment and accommodate and support the young person until a decision is made as to which local authority is responsible. 100% of legal respondents felt that this particular guidance would be beneficial and 70% of support agencies/social workers surveyed agreed.

Figure 13



Figure 14



Within the space for additional comments, respondents to the legal survey flagged the lack of clarity in the current situation, the impact this has on the young person, and how the practice of local authorities is inconsistent and often not in the best interests of the child.

The comments from social workers/support agencies appeared more mixed, with some stating that the matter should always be referred back to the local authority and others raising concerns about the disruption this creates in young people's lives after they have developed trust and relationships in a new area, and the focus being on the young person's best interests.

Recommendations

The research findings show both that there is significant inconsistency in practice nationwide and that there is a desire from professionals supporting young people in this situation for clearer, amended or new guidance.

The outcome of the survey clearly suggests that

- consideration needs to be given, first and foremost, to ensuring the best interests of the child are paramount in any decision or action taken by a local authority;
- there needs to be clarity with regards to which local authority is responsible for undertaking a new age assessment and assuming any duties that fall from it;
- where there is a dispute this should not result in significant detriment to the young person whilst it is being resolved; and
- the original assessing local authority should not avoid legal and/or financial responsibility where they have carried out an unlawful assessment.

GMIAU now wants to work with others supporting young people in this situation to further clarify guidance and practice in line with the research findings. We aim to do this by exploring policy, strategic litigation and best practice tools.

In recognition of the survey findings and direct reports from young people themselves, we will also be supporting young people to shape and deliver the work.

If you are interested in finding out more or contributing to this work please contact laura@gmiau.org



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