



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [Legislative Scrutiny: Nationality and Borders Bill](#), HC 588

Wednesday 17 November 2021

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Members present: Harriet Harman MP (Chair); Lord Brabazon of Tara; Joanna Cherry MP; Lord Dubs; Florence Eshalomi MP; Lord Henley; Angela Richardson MP; Dean Russell MP; David Simmonds MP; Lord Singh of Wimbledon.

Questions 28 - 35

Witnesses

[II](#): Stewart MacLachlan, Senior Legal & Policy Officer, Refugee and Migrant Children's Consortium; Luke Geoghegan, Head of Policy and Research, British Association of Social Workers.

Examination of witnesses

Stewart MacLachlan and Luke Geoghegan.

Chair: Could we welcome our next panel to focus on the issue of migrant children's rights? We have Stewart MacLachlan, who is the senior legal and policy officer at the Refugee and Migrant Children's Consortium. Thank you for joining us, Stewart. We also have Luke Geoghegan, head of policy and research at the British Association of Social Workers, which is the professional association of social workers, of which Luke is also one. Could we start with a question from David?

Q28 David Simmonds MP: For the record, I chair the All-Party Parliamentary Group on Social Work, for which BASW is the secretariat. My question is in place of the one Baroness Massey was going to ask; she is not with us today. In your written evidence to the inquiry, you noted that there is not yet an equivocal reassurance from the Government that children who come to the UK unaccompanied will be excluded from the two-tier system that is envisaged by the Bill. What impact will this have on the legal rights of children?

I also note the comments in evidence about no recourse to public funds conditions and that that would keep refugee children locked in extreme poverty for long periods. Could you set out to us as a committee why you see that being the case?

Stewart MacLachlan: Just for clarity, I am a senior legal and policy officer at Coram Children's Legal Centre, but I am representing the Refugee and Migrant Children's Consortium, which is an organisation of around 60 NGOs working on the rights of children both domestically and internationally.

On the first part of your question about the two-tier system, fundamentally the RMCC position is that we disagree that there should be a two-tier system overall, whether it is adults, families or children, but at the very minimum there should be specific protections in place for children, particularly unaccompanied children, arriving in the UK. As has been highlighted in the first session, there are a number of reasons why individuals flee and seek asylum in the UK. It is important that children in particular are not seen to be essentially punished for things that are outwith their control. They do not often have much say in their movement from one place to another, whether they are part of a family unit, whether they are unaccompanied or whether they are being moved or trafficked.

There will be further legal challenges to this, because there are breaches to the refugee convention with regard to the definition of a refugee and safe countries as well as the failure to facilitate integration. Specifically with regard to children, there is a breach of the rights in the UN Convention on the Rights of the Child in terms of non-discriminatory

positions, best interests, providing protection to refugee children and promoting recovery for those who have suffered a significant harm.

As I say, we fundamentally disagree with there being a two-tier system. If it were put through, we would definitely want to see wide-ranging exclusions particularly for unaccompanied children but also for children who are accompanied as part of families, as well as various other circumstances outside that.

No recourse of public funds and how that would work is a particular concern. Depending on what comes out following the Bill, it will be a concern for unaccompanied children but also for children and families. A lot of research has been done on the impact that no recourse to public funds has had on children and vulnerable people. There is a good reason for the safety net in the UK for people, so why would we exclude refugee children, refugee families and refugee individuals who have had to flee persecution? They are accepted as having fled persecution, so why should they not have that safety net in place? I mentioned that there has been research on this. We have seen how no recourse to public funds conditions have pushed people into poverty if they are on a long route to settlement. It stunts both social and economic growth for children in the long term.

The backlog and the delays were mentioned in the first session. This will inevitably make the backlog worse, because you are looking at a system where a large number of refugees will have to extend their leave every two and a half years, which means that every two and a half years they will have to go through a process and access legal advice. It is not clear whether fees will have to be paid. That will further impact their financial circumstances.

On the NRPF point, this will put further pressure on local authorities and other services supporting these children. They may have to go to the local authority to receive, in England, Section 17 support. That will place further pressure on local authorities, whose resources, as we will talk about with age assessments, are already stretched.

We have not seen a lot of the impact assessment that has been done on behalf of the Government. It is not very extensive when it comes to the NRPF condition and how that will have an effect. It would be really useful to see more information about that and whether there has been an assessment of how the NRPF condition will affect refugees in terms of homelessness and poverty.

David Simmonds MP: Could I just ask you to clarify? The 1999 Immigration and Asylum Act brought about no recourse to public funds, and the dispersal programme was introduced in the early 2000s. That created the landscape that we recognise today. Does your research base go back prior to that period when asylum seekers were part of the mainstream of the welfare system in the UK? Are you in a position to share with us any insights about the strengths or weaknesses of that approach, how that has changed in the currently system and how it might

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improve or get worse with what is proposed in this new piece of legislation?

Stewart MacLachlan: Personally, I would not be able to answer that in great detail. I can definitely go back to the membership on it, and I am sure that some will be able to comment on it. In particular, it has got significantly worse since 2012 because of the introduction of NRPF for those on limited leave to remain on the basis of family and private life. To some extent, the creation of the hostile environment led to more immigration functions becoming part of everyday life, affecting everything from the right to rent to free school meals.

There is also the issue of what is understood to be public funds. No recourse to public funds under the Immigration Rules is different from what someone understands public funds to be in general—funding for education, healthcare, et cetera. I can definitely go back to the membership and see whether they can make any further comments in relation to that.

Q29 **Joanna Cherry MP:** Good afternoon. I am the Member of Parliament for Edinburgh South West. Stewart, I want to ask you about the Convention on the Rights of the Child, which you have mentioned already. In the Northern Ireland Human Rights Commission written evidence to us, it has recommended that the Bill be amended to include an express commitment to uphold the Convention on the Rights of the Child's four guiding principles.

As I am sure you know, they are: first, non-discrimination; secondly, that the best interest of the child is a primary consideration in decision-making; thirdly, the right to survival and development; and, fourthly, the right to participate in proceedings. I am interested to know whether you agree with that recommendation from the Northern Ireland Human Rights Commission and, if so, why.

Stewart MacLachlan: The simple answer is yes. That would be incredibly useful in terms of the Bill. Fundamentally, overall, the RMCC position is that incorporation of the UNCRC as a whole into UK law should be a matter of priority. Putting aside the legal and devolution issues that came about in Scotland implementing that, there was an agreement that the incorporation of the UNCRC would be a good thing for the UK as a whole. Yes, we agree with the Northern Ireland Human Rights Commission's position, but consideration should also be given to full incorporation.

As part of that, I mentioned impact assessment in answer to a previous question, but as far as I am aware there has been no published impact assessment on child rights specifically for the Bill. Children are mentioned within the impact assessment but in very brief detail, and we would definitely want to see a full children's rights impact assessment carried out as part of the Bill as a whole.

Joanna Cherry MP: You mentioned earlier that the Bill potentially breaches the non-discrimination provisions, the best interest provisions

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and the duty to promote recovery to those who have suffered significant harm. Are there any other amendments to the Bill that could be made to safeguard the rights of unaccompanied children? In addition to incorporating the four guiding principles of the CRC, could anything else be done by way of amendment to the Bill to safeguard the rights of unaccompanied children?

Stewart MacLachlan: Yes, definitely. We have been pushing in a number of areas over the past few months as part of the consortium and individually as organisations. In terms of the Bill, credibility and standard of proof were mentioned earlier. That is a particular issue for children, especially as they will have even more vulnerability when it comes to being able to articulate their claim. It would also be problematic to prove their claim to the new standard on the balance of probabilities, which is slightly mirrored in the age assessment provisions in terms of the standard of proof also moving up.

A fundamental issue that is not in the Bill but has been a long-term push is for guardians for unaccompanied asylum-seeking children. At this time there are independent child-trafficking guardians for those who have been identified as victims of trafficking. That is useful, but you can look to other countries where a guardianship service has made an incredible difference. I can speak personally to that. I have represented children in Scotland and children in England. The Scottish Guardianship Service, which has been running for the last 10 years, has been by far the biggest difference between working in the two different systems. It provides an invaluable service to children, and it would be good to see all children—

Joanna Cherry MP: In a nutshell, what does it add that should be mirrored across the UK?

Stewart MacLachlan: It adds something to the child's experience, because they receive a guardian right at the start of the process. The guardian supports them throughout different parts of the process. Whether they are going through an age assessment, whether they are going through their asylum claim, whether they have been referred to the NRM or whether they are having an education issue or a housing issue, there is someone, a point of contact, who is specifically there to represent them. Above all, it is to represent them. It is not where you have a legal rep who has certain duties and a social worker who has certain duties.

Joanna Cherry MP: It is a bit like an advocate for the child, really.

Stewart MacLachlan: Yes, essentially.

Joanna Cherry MP: I do not mean a legal advocate. I mean an advocate.

Stewart MacLachlan: Yes. They can help them through that process. They can attend appointments with them. You can see the difference in understanding the process, in feeling supported and in having someone to talk to throughout that process. Inevitably, it just makes a difference

to have someone there who is on your side. When they evaluated it—they continue to evaluate the service—they saw that difference in how the child felt going through the process.

- Q30 **Lord Dubs:** I am a Member of the Lords. Your comment about guardians touched on an element of the supplementary question that I wish to ask. A foster mother of a Syrian girl refugee told me that the girl was asked to go to Lunar House to be interviewed as part of an age assessment process. The foster mother was not allowed to be present. There was nobody else present other than the Home Office officials who were interviewing the girl about her age assessment. It was such a distressing experience that the girl left in floods of tears, absolutely distraught. If we had a person of the same age on a criminal charge, they would not be interviewed on their own without some independent person there to safeguard them. A guardian would have done it. Can you comment on that? Was this an exceptional instance, or is this typical?

Stewart MacLachlan: I would not say that a child being asked to go to the Home Office, rather than to a social work office, is typical. I can check with members to see whether they have found that. It may be a more common example for those who work more on front-line cases. It is a really obvious case of exceptionally bad practice on their part, but, yes, there should have been an appropriate adult there with that person. In any event, if someone is being questioned about an age assessment, you would expect a legal rep there, if it is related to their Home Office claim. If it is to do with age assessment, you would expect an appropriate adult to be there as well.

- Q31 **Dean Russell MP:** I am the Conservative MP for Watford. The Home Office's new plan for immigration noted that since 2015 the UK has received applications from on average more than 3,000 unaccompanied asylum-seeking children per year. Could you briefly describe how a decision is made on whether a person claiming is a child or is not actually under 18? What is the effect on the system, the process and how they are treated, please? Perhaps I could come to you, Luke, on that.

Luke Geoghegan: Good afternoon, committee. There is a widespread recognition that children, because of their age and developmental status, have specific needs and human rights. This is enshrined in convention internationally and law nationally. The 1989 Children Act states, in Section 1(1), that "the child's welfare shall be the court's paramount consideration".

The Act applies to children in Wales, but the paramountcy principle is not in doubt in the other two legal jurisdictions in the UK. Most asylum-seeking children coming to the UK first arrive in England, and for reasons of brevity I will focus on the legal situation in England. In addition to what my colleague Stewart was saying, a two-tier system under Clause 11 would be a breach not only of the ECHR and the CRC but of the Children Act.

Since the child's welfare is the paramount principle, this overrides issues of immigration and citizenship. That explains why a child is treated as a child first rather than as a migrant, with the accompanying needs and rights that attach to being a child. This explains why unaccompanied asylum-seeking children on reaching 18 and legal adulthood are, from that point, subject to immigration law. The assessment of a child's needs under the legislation is not simply about a chronological assessment of age. It involves a wider assessment of the child's needs, which is required by the legislation, and, crucially, how those needs are best met.

There is widespread recognition that all children who are in care are vulnerable. Children who are looked after because of their unaccompanied asylum-seeking status are particularly vulnerable. They will all have suffered traumatic events. They have been separated from their parents. They have had to leave their countries, home and everything that is familiar to them. They may have witnessed or been subject to extreme violence. They may have been abused and they have had to function, perhaps for many months or years, without appropriate adult support and protection.

For those individuals claiming asylum at an official point of entry, for example a port or airport, an immigration officer can make an assessment of age. If the situation is unclear, the case is referred to a social worker, who undertakes an initial assessment, followed by a full age assessment. For individuals arriving at an unofficial point of entry, for example a beach or lorry park, police are often the first on the scene, but are not legally empowered to make a determination of age. A social worker will then be contacted, who will undertake an initial assessment of age and, once accommodation has been resolved, a fuller assessment.

In line with the paramountcy principle of the Act, it is not for the child to prove that they are a child. It is for the authority to prove that the child is not a child. We are deeply concerned that the wording of Clause 29 of the Bill implies a shift away from this position in talking about insufficient evidence or significant doubt.

Age determination is about broad determination, not precise determination. In everyday language, we might say, "Luke is in his late 50s" and it is implicitly understood that this is a broad estimate. In the absence of appropriate documentary evidence, the independent verification of a precise chronological age of a child or young adult is not possible. Many asylum-seeking children are coming from countries where systems for the registration of births are fragile or non-existent. Countries may have had registration systems in the past that have been destroyed by armed conflict.

Age assessment is a complex process. The most effective age assessment is multidisciplinary and may, for example, draw on the expertise of education professionals and other relevant professionals. Age assessment may also have to take place in less than ideal settings, such as a lorry park, where newly arrived children remain frightened, exhausted and

without access to a range of multidisciplinary resources. Some of this age assessment may be continuative over an extended period and confirmatory.

Those of you who have raised adolescents or teenagers will know that a normal part of development is for an individual to seem very adult one day and behaving like a child the next. In addition, the experience of being an asylum-seeking child can prematurely age a child. A child who is 15 and has travelled solo from, say, Afghanistan may well have to adopt the demeanour of a young adult, ie over 18, to survive. Conversely, a young person may regress to the appearance of a young child once they believe they are safe, or they may oscillate between these alternative presentations. The process of age determination takes time and is extremely skilled work.

Dean Russell MP: I take your last point, but in the media a few years ago I remember there was a whole flurry of stories about what looked like grown men coming through and being considered children. That caused a lot of concern. Even to this day, I still have constituents very concerned that grown adults, especially men, might be coming here while being considered children. To clarify, from your perspective, is there a significant problem of adult asylum seekers falsely claiming to be children? Has there been evidence of that in the past?

Luke Geoghegan: The wording of the new plan for immigration presented some information on this. Unfortunately, contextual information was missing. The NPI implied that 54% of those who had their claims assessed who claimed to be children are in fact adults. The truth is that only 25% of unaccompanied children have an age assessment. If 10,000 children arrived in the UK, 2,500 would need an age assessment and just over 1,300 would be found to be in fact adults, or 13%, which is rather different from the headline of 54%.

The reality is that a number of claims to be children are not upheld because the system has a number of screens in place. There is the immigration officer's age determination. There is the age assessment carried out by social workers. Social workers can and do assess people as being over 18 and not children. Of course, there is also the adversarial nature of the immigration process.

Q32 **David Simmonds MP:** My question will start with the point about the demands that age assessment processes place on local authorities and how those could be reasonably minimised while ensuring that the rights of the child are protected. Can I ask both of you to address the ethical point in particular? I am aware that there is a debate within the social work profession about whether it is ethical to carry out an age assessment at all, given that there is no best-interest benefit to the child or the person in front of the social worker from that.

I am also aware that the same issue applies in the medical profession, in that it is very clear, certainly in what I have heard from doctors, that it would be unethical to carry out a medical procedure for the purposes of

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age assessment unless it carried a clear medical benefit to the patient. To be carried out for any other purpose would not be ethical and may well be unlawful. Particularly given that a Merton-compliant age assessment is the current standard accepted by the courts, would you be able to address that particular point?

Luke Geoghegan: Of course, there are significant pressures on the children's services system, of which age assessment is one very small part. It is also the case that maintaining principles of human rights and legal duties under the Children Act comes with a financial cost. The age assessment process is a small part of provision for unaccompanied asylum-seeking children. Individual authorities, such as Kent and Hillingdon, face very specific pressures. There are concerns in the public domain about the effectiveness of the national transfer scheme.

The national age assessment board could be useful, but could simply add another layer of bureaucracy and delay to the process. Elsewhere today, a committee has heard evidence of delays in processing claims. Any delay in deciding claims is particularly problematic when considering the lifespan of a child. As you get older, the years seem to fly past ever more quickly, but maybe for a 13 year-old—we do not remember much before three—a year is 10% of your life. The delay and the anxiety that it causes for young young people is intolerable. I have had direct personal experience of that from young people I have worked with.

In an ideal world, maybe age assessments would not be necessary, but we recognise, going back to my earlier point, that children have specific needs and rights that have to be met. Our society has determined that the cut-off point for that is at the age of 18, when you move from childhood to legal adulthood. Other societies set a different determining age. While we recognise that children have specific needs and rights, we then have to define what a child is. Then we have to do an age assessment.

Stewart MacLachlan: One fundamental issue is that there is no assessment of age to any accuracy that can give the answer that would work for lots of different things—care, accommodation and risk in the asylum process. Part of the issue is that some of the provisions of the Bill will potentially create further problems and more age assessments, to some extent, by changing the definition of an age-disputed child. This moves away from previous statutory guidance, which says that you should age-assess only if there is a significant doubt, to saying essentially that if someone disputes the age, they are age-disputed. That will just create further delay, but also, potentially, the requirement for further age assessments.

Depending on how it comes about and how it works, the national age assessment board will create further issues with age assessments being carried out at different times. The other issue with age assessments at the moment is the Home Office assessing age on physical appearance and demeanour alone in the first instance, and the recent uptick of what are often referred to as short assessments or on-the-spot assessments.

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They are difficult to explain but are not full age assessments. They are meant to be short assessments, carried out by social workers, that are a bit more than just a physical appearance and demeanour check but not necessarily much more than that. Those are probably the cases you have seen more of in the courts in the last couple of years and are to do with the legality of that and the limits of those assessments.

I know concern was mentioned about adults claiming to be children in the process. There are also significant issues with children being treated as adults in the process. When I practised in Glasgow, I had significant experience of this. Every few weeks there was a call from an NGO working in the adult accommodation dispersal area in Glasgow that would say, "We have concerns that this person is a child". You would meet them, and they were an incredibly vulnerable person who had been treated as an adult up to that point and then assessed by social services in Glasgow as a child. You are seeing that more and more with children for example in the recent increase in arrivals in small boats, not necessarily in the asylum process as a whole.

David Simmonds MP: May I interrupt you for a moment? Can I particularly press you on the point about why this matters? There is clearly a well-understood moral case for why it is important to understand whether this is a child or an adult, but it is incredibly legally significant. If they come within the remit of the 1989 Children Act and all the legislation that follows, it transforms their entitlement and the cost of their entitlement under UK law. To the point that my colleague the Member for Watford raised, what is the impact of making the decision one way or the other? Can I press you on why that matters so much?

Stewart MacLachlan: In terms of deciding whether they are a child or an adult, it brings them under the duties of the Children Act 1989, which means that they will be looked after and accommodated by the local authority and then care leaving support, if they meet the criteria of the 13 weeks. It makes a difference, in that otherwise an adult would go to adult accommodation and adult services within the asylum process. There is a very separate system.

You have specific extra protections within the child system, in that there are a few extra steps. You get a responsible adult at your main substantive interview. Fundamentally, the decision that is made is different. It is recognised that children are at extra risk to some extent—depending on the country they are from, obviously. Every case is individually decided, but it is recognised that for example a child victim of trafficking from one country is potentially at a different risk from an adult victim of trafficking from that country under the refugee convention. That is the difference in terms of what it means for an adult and a child.

The point about whether a child's age is unknown or they are treated as an adult is that they lose those protections. Although it is not a perfect system by any means, because age is not certain and there will be cases of adults who are treated as children, at least for some part there is

supervision there. There is some level of protection there in terms of accommodation. If a child is moved into adult accommodation or adult detention, there is no protection there. That puts them at huge safeguarding risk, and at huge risk of exploitation and abuse.

One of our members, the Refugee Council, runs an age dispute project. I want to make sure that I get the right numbers. It found that, from July to September 2021, 48 children were accepted by the local authority, having initially been assessed as an adult by an immigration officer at port of entry. Another 105 were taken into care for a further assessment, so an age assessment could be carried out.

David Simmonds MP: If I may pursue this point, in practical terms the difference will be that, as a young person who becomes a care leaver, you can be supported by the British taxpayer to go to university and be provided with accommodation. You will be paid a leaving care grant. That support entitlement goes up to the age of 25. It is very much going into the care system and being supported, versus being put through the dispersal system as an adult asylum seeker, which is a much more perilous thing. In terms of the impact that has on the receiving local authority, we know that on average a child in care costs £50,000 a year to support. That is a significant change in the way that person is treated, depending upon the age.

I will press you a little more on the point about the age assessments, because we do not have anyone with medical expertise in front of the panel. As I understand it, the key issue is what the age assessment is intended to prove. We talk about adult versus child, but, in reality, because we know that three-quarters of unaccompanied children are 16 and 17-year-old boys we are usually in a discussion about whether they were just under 18 at the time of arrival or just over.

We may be talking about a matter of weeks in their age. Certainly the medical advice I have received is that we are not talking about a seven-year window of accuracy, based upon the types of medical technology that are available. We are much more specific than that.

Stewart MacLachlan: By and large, yes, your typical case will not be whether someone is 14 or 40, or 13 or 30. It can often be whether they are 14 or 16, or 17, 18 or 19, years old. No scientific method is doing that.

To some extent, age assessment will not be able to accurately assess that, but that is why there are a number of safeguards in place around the benefit of the doubt and making sure there is someone there with the young person who is being assessed, so that they go through a process. By no means is age assessment perfect, but it is probably better than scientific methods that are nowhere near accurate enough to be able to do the job that the Home Office and we would want them to do: to accurately assess age.

David Simmonds MP: As you have gathered, this is a particular

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hobbyhorse of mine. I will press Luke on this as well. One issue with the legalities of this, as we heard in Stewart's evidence, is that there may be circumstances where some local authorities, or a local authority in particular, fall foul of rules that are outside the Home Office's ambit. An example is that, while the Home Office may say that no recourse to public funds means a lack of access to education, the local authority has a legal duty to provide it. Whether the Home Office thinks that the person has a right to access it or not, the local authority is obliged to provide it.

We are seeing the same issue cropping up with the national transfer scheme, in that although the Home Office has powers to mandate local authorities to take in unaccompanied children, it does not have powers to mandate the child themselves to move. There are quite a few of these burdens stemming from this issue that create significant potential costs and logistical challenges. Could you perhaps say a little more about that, and then I will stop asking questions?

Luke Geoghegan: There are significant resources involved, as you know. There is accommodation. There is schooling. There are social work services. There are specialist services to deal with trauma and mental health. As you rightly point out, there are aftercare legal duties for the local authority.

The Children Act looked at meeting the needs of the child. The needs of the child were always there, and the Children Act came along and made that a statutory responsibility for all of us. We work within that legislation. I come back to the point that, wherever I travel in the world, it is always recognised that children have particular needs over and above those of their adult counterparts, and the Act enshrines that, really.

Q33 **Dean Russell MP:** I declare that I am the chair of the digital identity all-party group. I was interested in the age verification conversation. I am aware, through that, that there is some pretty advanced technology now that can do age verification, I understand from facial recognition, to within a year for young people. It is quite new technology, so I am not expecting you to have already used it.

I wondered how nimble the system is to adopting new technologies to do age verification. I understand that it is getting more and more accurate every year. I wondered whether that might be not necessarily the full solution but an element of making sure that this process is more accurate.

Luke Geoghegan: This is not my specialist area. The little bit of reading I have done is that artificial intelligence draws on the knowledge that it takes on. It will read the faces of people it knows to be 16 or 18 because the operator tells it that and then it will make a conclusion. If you draw a different set of faces, it may make mistakes. The term in AI for risk assessment, for example in criminal justice matters, is "amplification". It judges certain ethnic groups riskier than others, because that is the data that it is being fed.

Dean Russell MP: I totally get that at the moment it is not quite there. I wondered whether there is an openness to looking at new technology and new approaches to improve the accuracy of age verification over time.

Luke Geoghegan: There is an openness. When we get to the questions on the national age assessment board, we would like to make some positive comments on that.

Q34 **Lord Singh of Wimbledon:** Good afternoon. I am a Cross-Bench Member of the House of Lords. At present, an individual will be treated as an adult when their physical appearance and demeanour strongly suggest they are over 25 years of age. The Government have said that they will explore lowering this threshold so that an individual will be treated as an adult when they appear to be significantly over 18 years of age. Would this change respect the rights set out in the Convention on the Rights of the Child, the European Convention on Human Rights or domestic law?

Luke Geoghegan: I made earlier the point that age assessment is not an accurate science. There is a broad range. Therefore, if you lower the threshold from over 25 to over 18, the risk is that 15, 16 and 17 year-olds are swept into the adult category. I hope it is not too controversial to say that, when there is a zone of possibility, you want a margin of error that is acceptable. Moving it down from 25 to 18 makes the risk much greater that you will include 15, 16 and 17 year-olds in the net of adulthood and that therefore you breach their rights as a child.

Stewart MacLachlan: Luke has set out the main issue: the lack of accuracy, specifically with a physical appearance and demeanour assessment alone. When a young person has just arrived in the UK at that time and been held in an immigration unit, it has been recognised by the courts that there is a large margin of error within decision-making at that stage. To some extent, it also reflects some of the concerns that we have over short-form assessments.

There is a strong possibility that it breaches Section 55 of the 2009 Act under which the Home Office has to take the best interests of the child into account as a primary consideration. It can lead to children being treated as adults even in the short term, and being unlawfully detained and at risk of exploitation.

Q35 **Chair:** Can I ask one final question that looks ahead, as Mr Geoghegan anticipated, to the national age assessment board? The Bill would allow for the creation of a national age assessment board to carry out direct age assessments and act as a first point of review for any local authority age assessment decision. Do you have any concerns about such a body? If so, are there any safeguards that could allay those concerns?

Stewart, in your response to the new plan for immigration, you stated that the decisions of the national age assessment board could not be binding without amendments being made to the Children Act 1989. Can you briefly explain that view?

Luke Geoghegan: BASW would welcome a central resource for age determination expertise. That might include digital techniques. It might include scientific and medical techniques. Unfortunately, we have concerns about the legislation as it stands. Our understanding is that establishing an expert centre does not need primary legislation. In any process, there need to be checks and balances within the system. At the moment, we have not had any clear reassurance that the NAAB would be sufficiently independent of the Home Office.

Given the weight on scientific methods in the NPI, it would be really encouraging to see an independent scientific advisory board. It would be really encouraging to see a knowledge base, processes and transparent procedures for doing that. It would also be nice to see clear timescales for the process, and advocacy and appeal rights.

Our main concern—maybe this comes back to part of our conversation, David—is whether the NAAB would relieve the local authority of pressure. As it is currently constructed, we do not think it would. Returning to the very first point, age determination is not just about chronological assessment of age. It is about assessing and meeting the needs of the child. Unless the NAAB is proposing to take on the duty of assessing and meeting the needs of the child, another assessment has to be done in parallel with any age assessment done by the NAAB, which means more bureaucracy.

Stewart MacLachlan: Members have some concerns over the NAAB—some ideas about safeguards in particular—and how it would work. We have some serious concerns about how it could overwrite local authority decisions on age to some extent if a local authority decided that an age assessment did not need to be undertaken, the Home Office asked the NAAB to undertake and the NAAB decided to do so. We have some concerns about who will carry out these assessments, with what training and experience. It can work well if, for example, the local authority does not have that experience, but there are concerns about that.

I guess some of the safeguards could be to limit the asylum board process to local authority decisions where a review is needed, or, as I mentioned, to amend the process for making it significant doubt rather than insufficient evidence to be assured of their age, when you are considering a child to be age-disputed or not.

Chair: Why would the Children Act need to be amended?

Stewart MacLachlan: I may write further, if that is more helpful, because it was one of our members. I will explain it as best I can. This is fundamentally about immigration affecting children's rights and safeguards. In essence, when the local authority carries out an age assessment, it is making a gateway decision to determine whether a child is a child and should be supported under Part 3 of the Children Act 1989. In those cases, if the NAAB is asked to assess by the Home Office and not the local authority—so if the local authority thinks there is no reason to assess—how can that decision be binding on the local authority? It has

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decided to care for that child, and then essentially it has been overridden by the asylum board.

David Simmonds MP: The issue with the Children Act is that it is the local authority's legal duty, which is an inalienable duty. Effectively, it does not matter what the Government say. The Children Act says that the local authority is still on the hook for that. The fact that the NAAB made the decision would be irrelevant.

On the point about the use of this evidence, my understanding is that the issue is not whether the Home Office thinks it is reliable, but whether a court, in hearing a judicial review, accepts it to be true. The use of medical evidence was abandoned, because the evidence given by medical professionals about the age of a child where there was a dispute was proved to be not true in the evidence that was given to the court.

Therefore, a court is under no obligation to accept the age assessment carried out by the NAAB, or provided by technology or any other source. It will make a decision on the balance of evidence before it. I do not think this legislation changes that, unless you can tell me otherwise.

Stewart MacLachlan: I can take that away and come back to you. That is probably more helpful.

Chair: Thank you very much indeed, both of you, for shedding light on what is a very complex and difficult area, but also one that, as you have drawn out, has huge implications.