

Separated & Unaccompanied Children in Scotland

Age Assessment

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JustRight Scotland

Scotland's Legal Centre for Justice and Human Rights

Our vision: Collaborative Social Justice

- Identify gaps in the law and the provision of legal service that lead to inequality and prevent access to justice
- Create collaborative projects – with legal and non-legal partner organisations – that cross disciplines, sectors and borders to meet those gaps



: www.justrightscotland.org.uk

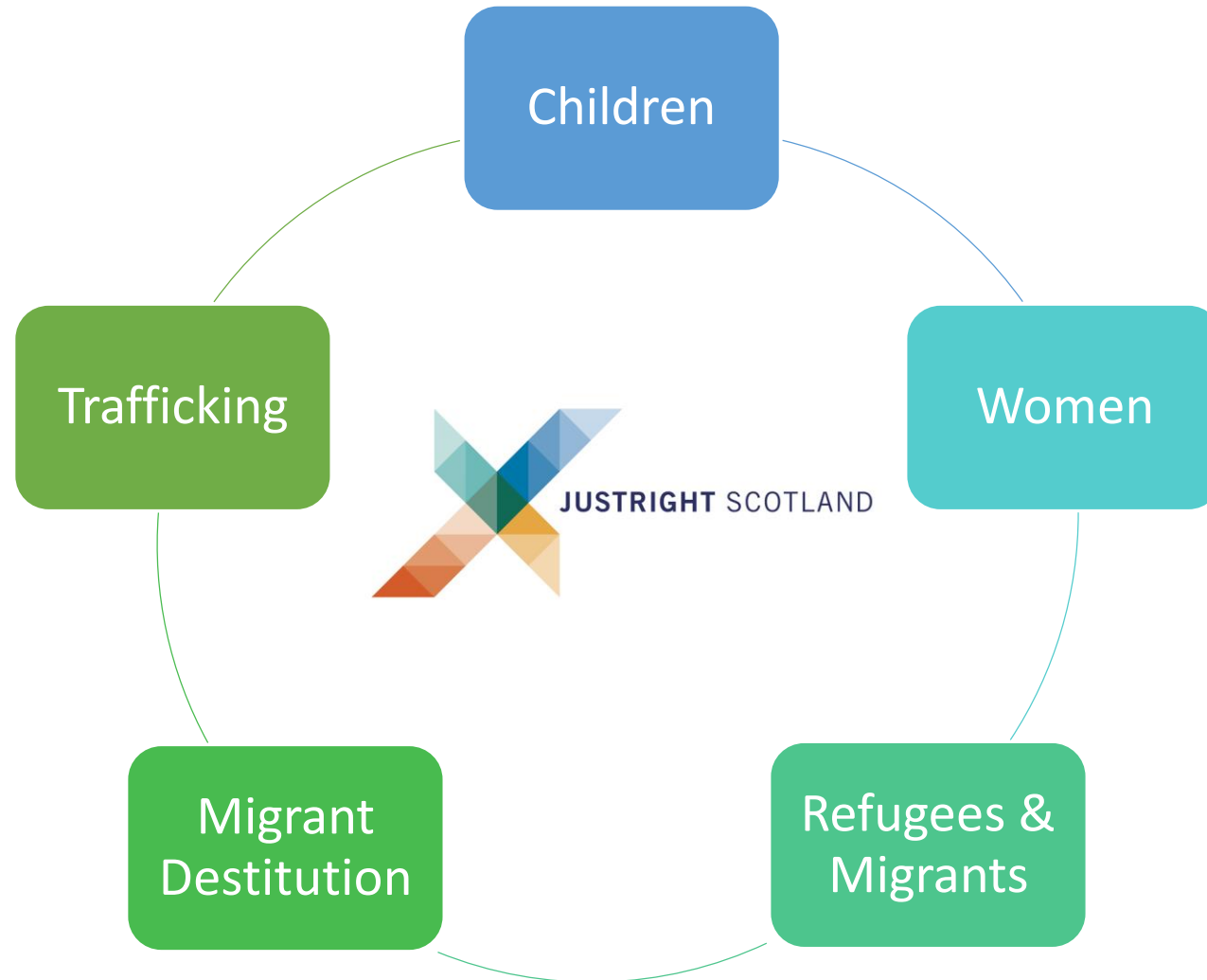


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Presentation Outcomes



- Understanding the **international legal framework** for age assessment of separated and unaccompanied children
- Discussion around different models of age assessment
 - **Medical** assessment
 - **Psycho-social** assessment



UNHCR Children on the Move

<https://www.youtube.com/watch?v=L24Ed4ndVBs&t=147s>



International Legal Framework



Key International Principles

Key International Principles that must guide an age assessment are found in:

- **UNCRC** – e.g. Article 3
- **EU Charter of Fundamental Rights** – e.g. Article 24
- **European Convention on Human Rights** – e.g. Article 3 & 8
- UNHCR '**Guidelines On International Protection**', No.8 - §75
- UNCRC, **General Comment No.6** - §31



Key International Principles

- The **best interests** of the child must be a primary concern
- Only conducted where doubt, and **not as matter of routine**
- Only conducted with child's **informed consent**
- Age assessment must respect **moral and physical integrity**
- A **guardian or appropriate adult** must be present
- Child shall be given the **benefit of the doubt**
- Age assessment must be done by the **least intrusive method**
- Child must be given effective opportunity to **challenge** the assessment



European Convention on Human Rights

- Article 3 ECHR – prohibition of inhuman, degrading treatment and torture
 - Requires member states to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment by private parties (*A v UK (1998)*).
- Article 8 ECHR – right to respect for private, family and home life
 - Requires member states to take measures to protect the physical and moral integrity of persons
- For children, Arts 3 & 8 demand that the best interests be respected (*C.A.S. and C.S. v Romania (2012)*)



Recast EU Procedures Directive 2013/32/EU

- Article 25(5)

“Member States may use **medical examinations** to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant’s age. If, thereafter, Member States are still in doubt concerning the applicant’s age, they shall assume that the applicant is a minor.”



Models of Age Assessment

B **I** **N** **G** **O**

Age Assessments across Europe

- Very difficult to obtain statistics as most countries don't collect data

Unaccompanied children undergoing age assessment: 2016-2017		
*	1 January – 31 December 2016	1 January – 30 June 2017
AT	2,800	:
BE	1,274	:
GR	17	42
HR	0	0
MT	23	:
SE	:	6,000
UK	928	314

Source: ECRE, Asylum Information Database, Aug 2017





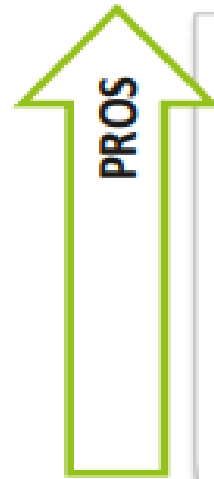
Medical Age Assessments

- Medical age assessments are used in some EU member states
- There are 2 categories of medical age assessment
 - Radiation-free: dental observation, MRI, physical development
 - X-ray Radiation: carpal (wrist), collar bone, dental
- EASO, Practical Guide on Age Assessment, 2nd Ed
March 2018



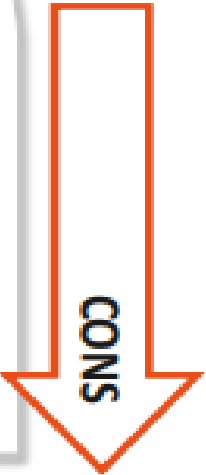
Medical Age Assessments – Radiation Free

- **Dental** observation
 - 16 EU states
- **MRI** – wrist or knee



Does not use radiation, only external observation
The tooth mineralisation is not affected by ethnicity or nutrition

Not designed to estimate the chronological age, just to confirm if the development of this specific case follows the average or not
The only teeth that can be used as an indicator of adulthood are the third molars, which may or may not appear at any time between age 15 and 23



- **Physical** examination/ **Sexual Maturation** Observation
 - 11 EU states
 - 7 EU states



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Medical Age Assessments - Radiation

- **Carpal** (wrist) – 23 EU states
- **Collar Bone** – 12 EU states
- **Dental** – 19 EU states



PROS

Perceived as scientifically valid (results have been tested through a validation study)
According to the protocols and studies, the margin of error is measured and reported
Equipment is easily accessible and economic
Examination time is short and allows for superpositioning different images

Physically intrusive since it uses radiation
Opposition on ethical grounds to radiology for migration control purposes without therapeutic benefit
Results may be difficult to interpretate for non-medical experts
Does not take into consideration psychological maturity



CONS

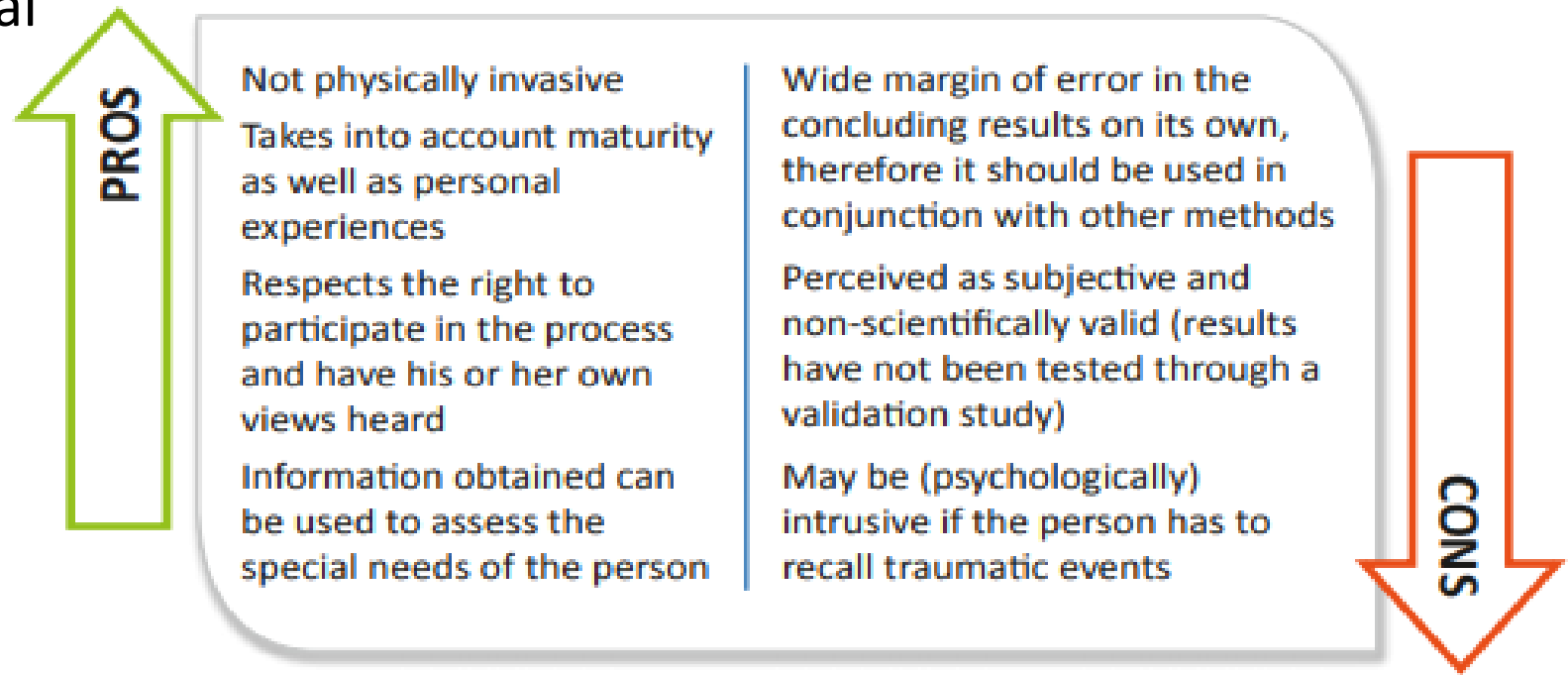
Non-Medical Age Assessments

- Assessment of **documentary** evidence
 - E.g. school records, church certificates, student card etc.
- Age assessment **interview**
 - Collecting and analysing the account of the YP – essentially obtaining a chronology and other information to verify age
 - Conducted by immigration authorities
 - 17 EU states use this – often before they revert to medical

Non-Medical Age Assessments

- **Psychosocial** assessment

- Assesses **mental maturation** rather than physical maturation – cognitive and behavioural appraisal.
- Requires specialism in developmental stages of children and young adults
- 11 EU states, prior to medical



Non-Medical Age Assessments

How many ONLY use non-medical?

3 EU states

1. United Kingdom



2. Slovenia

- Physical appearance only



3. Ireland

- Social work assessment



In the Dock: Medical Age Assessments

- **Darboe and Camara v. Italy** – ECtHR – App no. 5797/17
 - Applicants are all, apart from one, UASCs. They were age assessed and placed in a reception centre for adults.
 - Cona reception in Venice has a capacity of 500 persons – it had 1,400 people in it
 - The dormitory was 360 sq ft and had approximately 250 people
 - Unsafe, no law enforcement – knives, drugs and prostitution
- They allege violations of **Articles 3 and 8 ECHR** as they were exposed to inhuman and degrading conditions, violating their physical and moral integrity.
- They further allege that the procedure for **determining their age** was conducted in breach of national and international law.

In the Dock: Medical Age Assessments

- AIRE Centre intervention, July 2017: Medical age assessments are a **violation of Article 8 ECHR** as they are disproportionate to the aim pursued in conducting them
- Medical age assessments don't provide an accurate estimate of age
 - *“Health professionals should not participate in age determination until methods with acceptable scientific and ethical standards have been developed.”* (ISSOP, 2017)
 - *“All such techniques have been widely criticized as they are often arbitrary, do not take into account ethnic variations...are out of date...invasive and procure harm to the individuals...and generate a margin of error that makes them too inaccurate to use.”* (CoE ad hoc Committee on Rights of the Child, 2017)
 - *“The unpalatable truth is that physical maturation is problematic for assessing age...the use of developmental markers, be they skeletal, dental or other, for age assessment purposes, is imperfect and where they are used the quality of their evidence should be challenged.”* (T.J. Cole, *Annals of Human Biology*, 2015)

In the Dock: Medical Age Assessments

*“The requirements underpinning Article 8 cannot be fulfilled where **non-holistic** and **intrusive** medical age assessment methods are used as they have a **low evidential value** and a **detrimental effect** on children’s rights, including respect for moral and physical integrity.”*

- **Aire Centre, Intervention in *Darboe and Camara v Italy*, July 2017**

The UK Model



EU Asylum Statistics



Total number of first time asylum applications to the European Union in 2017 was an estimated **650,000** (46% decrease on 2016)

- In 2017, the UK received **26,350** first-time applications, approx. **4%** of the EU total.
 - Germany received over 198,000, approx. 31% of the EU total (fall from 60% in 2017)
- Source: <http://ec.europa.eu/eurostat>

UK Asylum Statistics

- **2,206** applications from UASCs in the UK 2017 – just under 10% of total.
- **83%** applications come from Sudan, Eritrea, Vietnam, Albania, Iran, Iraq and Afghanistan
- **89%** are male
- **57%** get Refugee Status or Humanitarian Protection
- Source: <https://www.refugeecouncil.org.uk>



UK Age Statistics

- **70%** of UASCs aged 16+
- Stated age is usually **14 – 17**
- **32%** of UASC claims in 2017 were age assessed (712 of 2206 claims)
- **72%** of age disputes come from Afghanistan (124) Eritrea (112) Iraq (99) Sudan (92) and Iran (87)



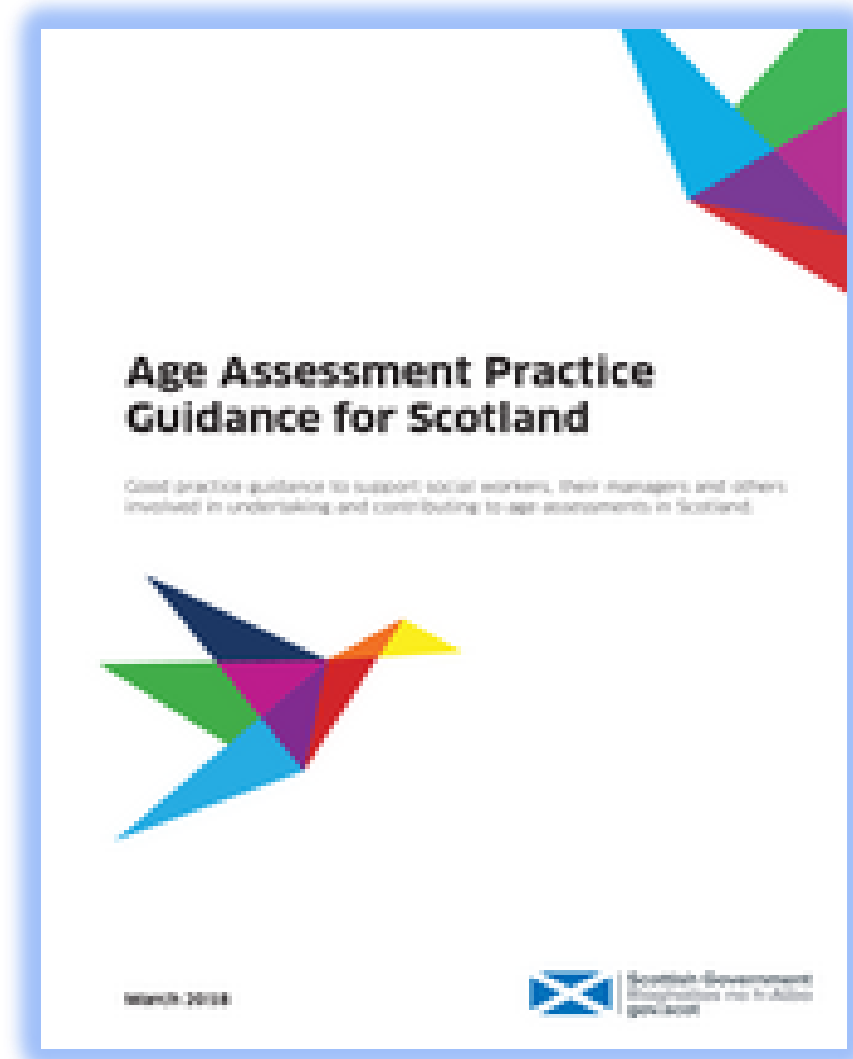
Merton Compliance

- **R(B) V Merton London Borough Council [2003] 4AER 280**

- Except in clear cases, age should not be determined solely on basis of physical appearance.
- Background of the young person should be sought, e.g. family history, education etc.
- Local authority should not simply adopt decision of Home Office, but may take information obtained by the Home Office into account.
- Interpreter should be present at interviews.
- Detailed note of interviews should be kept.
- Young person should have inconsistencies or doubts put to them to allow them to respond.
- Local authority has obligation to give adequate reasons



New Age Assessment Guidance



Case-Law

- **R(A) v London Borough of Croydon; R(M) v Lambeth [2009] UKSC 8**
 - The local authority may decide if a young person is taken to be a child for eligibility for support under Children Act 1989
- **Home office v VS [2015] EWCA Civ 1142**
 - Where there is a dispute over the child's date of birth and there is a local authority age assessment, the Home Office is required to make reasonable inquiries in order to arrive at an informed decision on the issue of the child's age.



But...

- **AU v Glasgow City Council [2017] CSOH 122**
 - Easier in Scotland to challenge age assessments – now ‘fact-finding’ Judicial Review OR Declarator
- *“Social workers have a special duty to stand alongside unaccompanied children...and ensure that their needs are met...If we do not make this possible, there are great risks for the child and for the community. It is therefore inappropriate for social workers to determine age **on their own.**”*
 - IFSW, May 2017

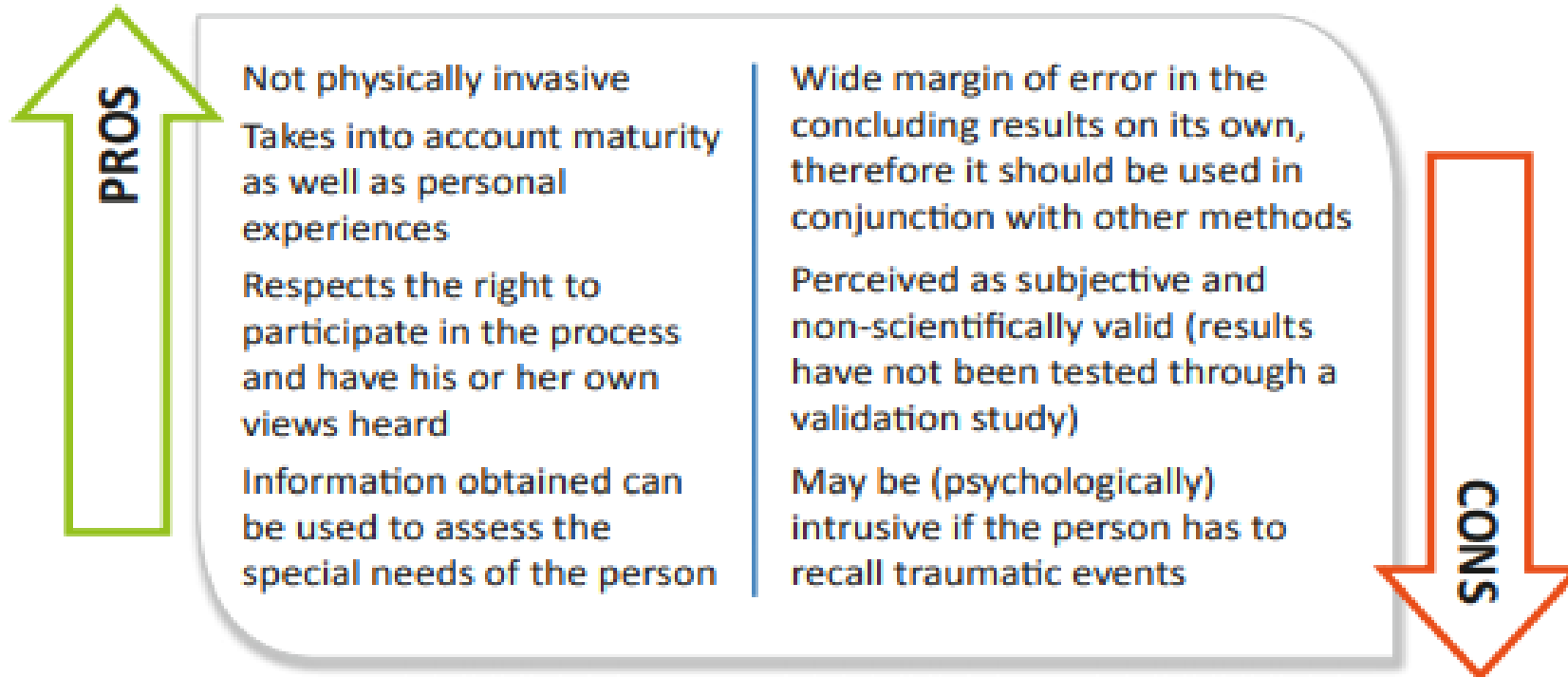


But....

- “Social workers should **not** be asked to undertake **single agency** age determinations. Greatest reliability is achieved by holistic assessments. ‘Social workers should recognise the limits of their practice and seek advice or refer to another professional if necessary to ensure they work in a safe and effective manner.’ (BASW Code of Ethics, Ethical Principle 12)”
- “Given the combination of the **inherent inaccuracy** of determinations, the importance of the rights at stake, and the established principle that best results are achieved by holistic assessment, this ethical principle supports **multi-disciplinary determinations.**”
 - BASW, Position Statement on Age Assessment, 2015



Debate?!



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