



# REVIEW INTO ENDING THE DETENTION OF CHILDREN FOR IMMIGRATION PURPOSES RESPONSES FROM ORGANISATIONS

**SECURING OUR BORDER CONTROLLING MIGRATION**

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# 1. ALL AFRICAN WOMEN'S GROUP

Dear Madam/Sir,

This is a joint submission from four women's organisations based at the Crossroads Women's Centre which do daily work defending the legal, civil and human rights of women seeking asylum. The [All African Women's Group](#) is a self-help group of asylum seekers. In 2009, it founded the [Mothers Campaign for Family Reunion](#). [Black Women's Rape Action Project](#) and [Women Against Rape](#) provide specialist services to rape survivors. [Legal Action for Women](#) provides free legal services to low income women and their families.

We ask that the review consider:

1. The overwhelming evidence of the harm caused to children, not only of detention<sup>[1]</sup>, but crucially of being separated from their mother or primary carer<sup>[2]</sup>. We refer you to a recent [letter](#) in the press on this, submitted and signed by us along with others, including Oliver James, clinical child psychologist and Professor Sheila Kitzinger. Over 60 individuals and organisations further endorsed it at a recent meeting in Parliament (attached).
2. Mothers who have been separated from their children are acutely aware of the trauma their children suffer as a result – crying, depression, bed wetting, mutism, aggression... They speak constantly of their anguish at being prevented from taking care of their children and keeping them out of harm's way. Mothers detained with their children as well as mothers whose children have been put in foster care or placed with relatives, must be allowed to give evidence to the review in person. Who best to represent children's interests than their mothers who love them?
3. The review must not be used to speed up removals. If it really intends to tackle the harm being done to children, it must redress grave injustices in the asylum process starting with the lack of legal representation. Without legal representation it is almost impossible to get the expert psychiatric and other evidence to corroborate a claim. As a result children and their carers who have a legitimate right to asylum are removed back to rape and murder. There are mothers in our network who were tortured after being removed and have since returned and won full refugee status as well as compensation. The Home Office is directly responsible for the torture they suffered. Women who have corroborative evidence are six times more like to win at appeal<sup>[3]</sup> which is definitive proof of how many women dismissed as bogus are in fact victims of the fast track. 60% are women in Yarl's Wood Removal Centre are unrepresented at their appeal<sup>[4]</sup>.
4. We also ask that the review consider the impact on children and mothers of: violence during removals, the government policy of destitution and denial of NHS care after initial refusal of an asylum claim even after an appeal has been lodged; imprisonment of mothers convicted of minor offences committed while destitute or because of threats against their own life or the lives of their children.

Yours sincerely,

Stella Mpaka  
All African Women's Group  
Cristel Amiss  
Black Women's Rape Action Group  
Niki Adams  
Legal Action for Women  
Kristina Brandemo  
Women Against Rape

Some of the women who would like to give evidence:

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[1] In December 2009, the Royal Colleges of General Practitioners, Paediatrics and Child Health and Psychiatrists and the UK Faculty of Public Health published a joint statement that the detention of children caused significant physical and mental harm to children. They recommended that the detention of children should end without delay.

[2] "Between 1940 and 1945, 80 children between 10 days and 10 years old, made homeless by reasons of war, were placed in three residential nurseries . . . After 56 months of continuous observation, the first and foremost conclusion reached was that, for a child, the horror of war pales besides the horror of separation from mother." Trauma of Separation, by Michael J. Burlingham, New York Times, December 12, 1994. DW Winnicott in 1965 said there is no such thing as an infant, only the mother-infant system. "The theory of Parent-Infant Relationship."

[3] "Misjudging Rape: Breaching Gender Guidelines and International Law in Asylum Appeals".[date] Black Women's Rape Action Project and Women Against Rape.

[4] A "Bleak House" for Our Times: An investigation into Yarl's Wood Removal Centre by Legal Action for Women, 2006

\_\_\_ was left destitute with a new born baby and a one year old daughter when her asylum claim was refused. Despite the fact that she was breastfeeding, both children were taken into foster care by social services and she was sent to Yarl's Wood. A campaign co-ordinated by Black Women's Rape Action Project got her reunited with her children in detention and eventually released. She has now won her right to stay in the UK. But the impact on her children of the sudden separation at such an early age is still evident. The abrupt termination of breastfeeding has had a dramatic impact on her son. He continues to get extremely distressed within seconds when not being held by his mother. Ms \_\_\_ was denied the use of a sling so her son was forced out of his mother's arms and into a buggy, wailing his head off. He continues to suffer from "severe developmental delays, including refusal to swallow solid food in any form, and no speech development". When they were reunited Ms \_\_\_ said her daughter was like a stick, she had eczema, and her nails were too long. Following their release it was almost a year before her daughter would allow herself to be in a room with a closed door.

Her situation was reported in the media:

<http://www.guardian.co.uk/society/2007/nov/24/immigrationandpublicservices.family>

"[Deportee separated from breastfeeding](#)" Guardian, Tuesday 22 May 2007

Ms M was detained in Yarl's Wood twice, firstly for several months while pregnant and then after the birth of her daughter, On the second occasion in 2009, she was taken back into Yarl's Wood even though she was diagnosed as having post-natal depression. Lack of good food and the trauma of being locked up caused her breast milk to almost dry up. She was denied breastfeeding support. She was unable to bottle feed as the authorities refused to give her a kettle. The baby was hungry and terribly distressed. She got sick and was denied appropriate medical treatment. Ms M was released in October and now lives hand to mouth dependent on support from her church and us. She is terrified that Social Services will take her daughter into care. She is concerned that her daughter's development may be affected by the terrible conditions they both endured.

Ms N is a single mother separated from her two children. They have been in the UK for 12 years. She was sent to Yarl's Wood in June 2009 after serving a four and a half year sentence for intent to supply a class A drug of which she has always maintained she is innocent. She won asylum in late October, but the Home Office appealed and she has been kept in detention since. While she's been inside, her son has been attacked by a gang and threatened with guns. He was a witness to a murder and she is terrified that he is vulnerable to reprisals. She is frantic because she is unable to protect him.

Ms D a mother and grandmother was detained for nearly two years. She has lived in the UK for 23 years. Her daughter suffered in particular, as she was without her mother's advice and support during her first pregnancy.

Ms B with her five children who was illegally deported and assaulted immigration guards during removal. See [article](#).

## 2. ALLIANCE PARTY OF NORTHERN IRELAND

I have just received, via the office of Naomi Long MP, the undated letter from the Home Secretary on the UKBA review into ending the detention of children for immigration purposes, which was received in her office on June 22.

We strongly support the aim of ending the detention of children in the immigration system. The detention of children who are not guilty of any crime is a scandal that should shame any civilised society. However, we are concerned that the welcome end of child detention is not replaced by alternatives which are equally unacceptable. We would, for example, be strongly opposed to children's right to a family life being abridged by their placement in foster care while their parents are detained, in the absence of any welfare or child protection issues.

In terms of the conduct of the review, I am a little surprised that your sole consultee with a specifically Northern Ireland remit whose views are to be actively sought is the Office of the First Minister and deputy First Minister.

I appreciate that you have said that your list of consultees is not exhaustive. However, it is now late in the review process, and Northern Ireland faces some unique issues in relation to immigration. Prime among these are:

- the communal divisions among the indigenous population, which have major implications for how child refugees live in the community;
- the fact that Northern Ireland is the only part of the UK which shares a land frontier with another sovereign state;
- the fact that children detained in the immigration system are removed to a detention centre in Scotland, which usually ruptures any community links developed in Northern Ireland. This has proven particularly disruptive for detainees who are subsequently given leave to remain in the UK.

I would therefore suggest actively seeking views from the following NGOs and statutory bodies, which are all active in this field in Northern Ireland.

- Equality Commission Northern Ireland
- Law Centre Northern Ireland
- Northern Ireland Commissioner for Children and Young People
- Northern Ireland Council for Ethnic Minorities
- Northern Ireland Community of Refugees and Asylum Seekers
- Northern Ireland Community Relations Council
- Northern Ireland Human Rights Commission
- Refugee Action Group (Northern Ireland)

Thank you for your attention,

--

Gerry Lynch  
Executive Director  
Alliance Party of Northern Ireland

### 3. THE ASSOCIATION OF VISITORS TO IMMIGRATION DETAINEES (AVID)

#### **Association of Visitors to Immigration Detainees: Response to UKBA's Review into Ending the Detention of Children for Immigration Purposes**

1st July 2010

The Association of Visitors to Immigration Detainees (AVID) is the national organisation of volunteer visitors to detainees. We have 32 members, both individuals and groups, representing over 400 volunteers who visit those detained under Immigration Acts in the UK. Our members visit immigration detainees wherever they are held: Immigration Removal Centres, Short Term Holding Facilities or prisons. This includes those IRCs in the UK which have detained or continue to detain children: Yarl's Wood, Tinsley and Dungavel. AVID represents these members at various stakeholder fora including the UKBA Detention User Group and its medical sub group. We are also members of the Refugee Children's Consortium, a network of NGOs who work collaboratively to ensure that the rights and needs of refugee children are promoted, respected and met.

#### **Introduction: the Review**

AVID strongly welcomes the government's commitment to ending the detention of children for immigration purposes. As an organisation, we have raised our concerns on the practice of detaining children since our inception in 1994. We particularly welcome the review's acknowledgement of the need to give credence to international, EU and human rights obligations.

Our response to the review is based on the following principles:

- That an end to the detention of children and families can and must be immediate; it is not reliant on determining so-called "alternative to detention" projects or discussion on proposals for increasing removal or return
- Families and children should never be separated for immigration control purposes
- Any discussion on returns or solutions to removals at the end of the process must take account of the family's holistic experience of the entire asylum process and recognise the need for good quality legal advice to be provided throughout

#### **The current circumstances under which children are detained:**

Currently, children are detained either with their families or because the UKBA disputes that they are under 18. Government policy states that children are detained with their families as a measure of last resort and for the shortest period of time. The UKBA also states that "there must always be a presumption in favour of not detaining a family"<sup>1</sup> and yet every year around 1,000 children are detained in Immigration Removal Centres<sup>2</sup>. The exact length of detention of children and families is difficult to ascertain as figures are only issued on a snapshot basis, but the latest Home Office data shows that between January and March of this year, 17% of those detained aged under 18 were held for longer than 29 days<sup>3</sup>. The HMIP report of Yarl's Wood IRC in Bedfordshire highlighted that in 2009, 68 children had been held for over a month and a baby had been held for more than 100 days, despite concerns having been raised about their welfare by social workers<sup>4</sup>. The report also showed that monthly data from the centre recorded the average length of stay as between 12 and 27 days<sup>5</sup>.

Part of the justification for detaining families is the perceived increased risk of absconding. However, there is no evidence which suggests families pose a risk of absconding- in fact, often families are at less risk of absconding than single adults, given the increased likelihood of social systems having been established, links in the community and the upheaval this would cause. International evidence exists to highlight the minimal risk of families absconding. In Australia, for example, where families and children were released into the community and on to a case management system, less than 1% absconded<sup>8</sup>. David Wood himself acknowledged the minimal risk posed by families in evidence given to the Home Affairs Committee in 2009, saying "it is not terribly easy for families to abscond"<sup>9</sup>. For this reason, the detention of children and families should end immediately.

Present policy also sets out that unaccompanied children should not be detained. However, each year some numbers of unaccompanied children whose age is disputed by the UKBA end up in detention centres with adults. The UKBA practice of treating age disputed minors who cannot provide satisfactory evidence to prove they are under 18 as an adult has resulted in many young people being detained<sup>10</sup>. The Independent Monitoring Board at Harmondsworth IRC reported that "*UKBA's attitude to age disputes is not primarily defined by a desire to protect children, and there is a culture of disbelief when a detainee claims to be under 18*"<sup>11</sup>. The impact of age disputes on young asylum seekers is well documented<sup>12</sup>. The commitment to end detention of children must therefore include consideration of those who arrive unaccompanied and whose age is disputed.

Evidence is mounting on the significant mental and physical harm these periods of detention are having on children. This is something which visitors groups at centres such as Yarl's Wood and Tinsley have also relayed to us. In addition, recommendations published by the Royal Colleges of General Practitioners, Paediatrics and Child Health and Psychiatrists and the UK Faculty of Public Health in 2009 make clear that the detention of children causes harm and calls for the practice to end immediately<sup>13</sup>. The previous Children's Commissioner, in his report 'The Arrest and Detention of Children Subject to Immigration Control' of 2009, outlined the 'profound and negative impact' of detention on children<sup>14</sup>.

**Detention in the UK is without trial, for unlimited periods, and without automatic judicial oversight. Detention of children and families is not being used as a last resort or for the shortest period of time. There is no evidential basis for concern that families would abscond. Detention is harmful to the physical and mental health of children. It is therefore clear that the detention of children and families must end now. Safeguarding children's welfare through international and domestic law:**

The UKBA has a statutory duty to safeguard and promote the welfare of children under Section 55 of the Borders, Citizenship and Immigration Act 2009, which came into force on 2 November 2009. This duty is equal to that imposed on all other statutory bodies dealing with children under the Children Act 2004. The UN Convention on the Rights of the Child article 3(1) requires of signatories that *"the best interests of the children shall be a primary consideration"*. AVID welcomes the government's commitment in the terms of the review to consider its obligations under international, EU and Human Rights law.

The concern that we have is that any measures proposed must not involve recourse to the separation of children from their families-whether one or both parents. In June 2010 Home Office Minister Baroness Neville-Jones told Parliament that the government "certainly aim not to separate families from children or children from families"<sup>15</sup>. However, this does not rule separation out as an option, and some two weeks later in a Whitehall debate on Child Detention on 17th June 2010, Damian Green immigration Minister said *"...there will remain difficult cases where solutions will have to be found and where enforced removals are likely to continue. That approach could involve separating different members of a family and reuniting them before departure"*<sup>16</sup>. This raises serious questions about child welfare and the best interests principles of the UK's international obligations.

Visitor groups have reported to AVID their concern about the ongoing separation of mother and child which already occurs when women who have served minor prison sentences are transferred to immigration detention rather than being released, despite their children being in the care of social services and having a good record of reporting. The following case studies serve as useful examples to illustrate the difficulties and potential impact of separating children from their parents under immigration powers:

#### **Case Studies: Detainees at Yarl's Wood IRC**

*Woman A from Jamaica has lived in the UK for 13 years. Following arrest for shoplifting, she served a prison sentence and has since been in Immigration Detention for the past seven months. During this time, she has been separated from her three year old daughter who is a British Citizen. She has missed a significant period of her daughter's life and, most importantly, her daughter has been deprived of her mother's care. She has only seen her daughter four times during the past seven months in detention, because of the distance and cost of travel. Comparably, during her prison sentence she was able to see her daughter twice a month. She has been refused bail three times.*

*Woman B from Nigeria, was detained on arrival. She had previously spent a considerable amount of time legally in the UK. She is in an ongoing relationship with a British Citizen and they intend to marry. She has two children, both born here. Having previously left her children in her partner's care, she returned from Nigeria in haste following his arrest. She has been in detention for over four months, and has only seen her children twice during that time as they are in Social Services care. She has made four applications for bail, which had to be withdrawn because of difficulties with sureties and her address<sup>17</sup>.*

AVID believes that any separation of the family unit by detaining a parent or the parents without their children would be in contravention of the best interest principles which underpin the UN Convention on the Rights of the Child. The Children's Act 1989 is similarly very clear that a child's best interests are served when they are with their parents. Any separation of the family unit for immigration purposes is highly unlikely to be in the best interests of the child and this must be considered by UKBA throughout this review.

**Children and their families should never be separated for immigration purposes. The best interests of the child must prevail, in line with the UK's obligations under the UN Convention on the Rights of the Child and its statutory obligations under the Borders, Citizenship and Immigration Act 2009**

#### **UKBA's current approach and the terms of the review:**

The terms of reference to the review state that its aim is to "consider how the detention of children for immigration purposes will be ended". AVID welcomes this and congratulates the Government on committing to this important step.

However, specific questions asked of stakeholders in the accompanying letter focus on removals and return. AVID would caution an over emphasis on the end stage, and advocate a more holistic approach which acknowledges that families have very different experiences of the asylum process, and that these experiences will impact on the position they take on returns. As outlined above, families are currently detained while there are still matters outstanding on their cases. This reflects wider issues in the asylum and immigration system. A wider programme of reform is more likely to result in increased trust and confidence in the system, which in turn is likely to increase the likelihood of families returning. This reform should give cognisance to the following:



#### □ **Improvements to initial decision making**

The Home Office's own statistics reveal that 27% of appeals to the Asylum and Immigration Tribunal successfully overturned UKBA's decision on asylum cases in the first quarter of 2010<sup>18</sup>. Several studies similarly point to a discrepancy in the quality of initial decision making. For example, the UNHCR's Quality Initiative Project revealed a number of causes for concern in the initial determination process<sup>19</sup>. AVID proposes that this project as carried out by the UNHCR should be considered by the UKBA and the recommendations made should be implemented with immediate effect.

International evidence shows that asylum seekers and refugees are more likely to accept a negative decision if they feel that they have been treated fairly throughout the system<sup>20</sup> and this includes at initial decision making, so the possible benefits of improvements to this stage are clear.

#### □ **Improved access to quality legal advice**

The letter accompanying the ToRs specifically asks if there is a need to review the contact arrangements between families and their access to legal representation. In AVID's view this should be a primary concern which merits urgent consideration. Our member groups often report that the single biggest frustration for detainees is access to quality legal representation.

The recent closure of Refugee and Migrant Justice (one of the largest charities providing legal advice to asylum seekers and migrants) is the latest in a series of crises faced by clients in light of changes to the legal aid system and the fixed fee system. This has impacted on both availability and quality. For example, a recent report by ICAR and Refugee and Migrant Justice highlights the costs of providing quality legal representation and shows that the present legal system in fact acts as a disincentive for quality<sup>21</sup>. Reviewing the system for legal representation is therefore essential for asylum seekers to be able to access good quality, publicly funded legal advice.

The need for this advice to be made available from an early stage is demonstrated by the Solihull Early Legal Advice Pilot. Findings from this project show that this early access is critical in terms of improvements in initial decision making, as well as instilling a greater degree of confidence in the system from claimants<sup>22</sup>. We would therefore propose that the Solihull model of front-loaded legal advice should be rolled out nationally.

#### □ **Communications and case management**

The ToRs also asks for views on ways in which UKBA could improve its engagement and contact arrangements with families. Again, there is international evidence that increased communications through a case management approach enhances positive perception of the system and in turn generates higher compliance rates. In Australia, for example, case management using a social work model and emphasising the provision of information to clients throughout the process generated a 93% compliance rate, with 60% of those not given leave to remain taking up voluntary departure<sup>23</sup>. This model emphasises communication and information provision through regular meetings, and prepares claimants for all possible outcomes- similar to the system successfully implemented in Sweden in the 1990s<sup>24</sup>. This type of case management model is an example of good practice which, coupled with improvements in legal provision outlined above, should be considered by UKBA.

#### □ **"Alternative to Detention" pilots**

A series of "alternative to detention" projects for families have been piloted in the UK in recent years including in Millbank (Ashford, Kent) and the current pilot running in Glasgow. These projects have focussed on the end of the process in terms of working with families who have been refused asylum. Evaluation of the pilot project in Kent, undertaken by Bail for Immigration Detainees and the Children's Society, outlined the failure of the project and highlighted that, for the families involved, they felt unsupported and confused by the initiative<sup>25</sup>. The evaluation also notes that an *"alternatives pilot cannot work in isolation from wider system change because by the time those families had reached the end of the process they were not able to trust or engage with the process effectively"*<sup>26</sup>. This evaluation reinforces AVID's view that to focus on intensive support and resources at the end of the process in this way ignores the experience of the families throughout a broader asylum system and as such, is unlikely to be successful. A more holistic model which incorporates the elements outlined above and therefore engages with the asylum process as a whole rather merely focussing on returns and removals would carry greater weight.

**Focusing on finding solutions to the problems at the end of the process need to consider a family's holistic experience of the asylum and immigration process, and most crucially to recognise that the provision of good quality legal advice throughout coupled with better communication at every stage is crucial.**

**Ali McGinley, Director  
1st July 2010**

1 UKBA Code of Practice for Keeping Children Safe from Harm, Section 3.2, p10

2 Home Affairs Select Committee: The Detention of Children in the Immigration System, 29th November 2009

3 Home Office: Control of Immigration: Quarterly Statistical Summary January- March 2010

4 HM Chief Inspector of Prisons: Report on an unannounced full follow up inspection of Yarl's Wood Immigration Removal Centre, 9-13 November 2009, p 5

5 Ibid p19

6 Ibid p19

7 Home Office: Control of Immigration: Quarterly Statistical Summary January- March 2010

8 International Detention Coalition/Mitchell, G. (2009)Case Management as an alternative to Immigration Detention: The Australian Experience, p1

9 Home Affairs Select Committee: The Detention of Children in the Immigration System, 29th November 2009 970-i question 25

Further, there is evidence to show that families and children are held in detention who are not at the end of the process or are unable to be removed. The same report of Yarl's Wood in 2009 showed that five families who were held in the centre for more than 28 days were not in fact removed but were released<sup>6</sup>. Similarly, UKBA Immigration Statistics show that of those children who were detained in the first quarter of 2010, 55% were released back into their communities<sup>7</sup>. This would suggest that detention is not used as a last resort, nor for the shortest time possible, in cases of children and their families.

10 See, for example: Crawley, H (2007), When is a child not a child? Asylum, age disputes and the process of age assessment, ILPA

11 Independent Monitoring Board for Harmondsworth Immigration Removal Centre: Annual Report for 2009

12 See, for example: Crawley, H (2007), When is a child not a child? Asylum, age disputes and the process of age assessment, ILPA

13 Royal College of General Practitioners, Royal College of Paediatrics and Child Health, Royal College of Psychiatrists and the UK Faculty of Public Health: Intercollegiate Briefing Paper: Significant Harm: the effects of administrative detention on the health of children, young people and their families (2009), p1

14 11 Million: The Arrest and Detention of Children subject to Immigration Control: A report following the Children's Commissioner for England's visit to Yarl's Wood Immigration Removal Centre

15 [www.theyworkforyou.com/lords/?gid=2010-06-02a.252.6](http://www.theyworkforyou.com/lords/?gid=2010-06-02a.252.6) accessed on 28th June 2010

16 Westminster Hall Debate, 17th June 2010: accessed online at Hansard:

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100617/halltext/100617h0001.htm>

17 Evidence from Yarl's Wood Befrienders, provided to AVID on 1st July 2010

18 Home Office: Control of Immigration: Quarterly Statistical Summary January- March 2010

19 UNHCR: Quality Initiative Project: Six Reports, accessed at

<http://webarchive.nationalarchives.gov.uk/20100503160445/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcrreports/>

20 See, for example, International Detention Coalition/Mitchell, G. (2009)Case Management as an alternative to Immigration Detention: The Australian Experience.

21 Refugee and Migrant Justice (2010)Justice at Risk: Quality and Value for Money in Asylum Legal Aid, Interim Report (undertaken by the Information Centre about Asylum and Refugees on behalf of Refugee and Migrant Justice, in partnership with Asylum Aid and Immigration Advisory Service)

22 Aspen, J (2008) Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission

23 International Detention Coalition/Mitchell, G. (2009)Case Management as an alternative to Immigration Detention: The Australian Experience, p8

24 Ibid, p6

25 Outcry Campaign (2009) An Evaluative Report on the Millbank Alternative to Detention Pilot accessed at [http://www.childrenssociety.org.uk/resources/documents/media/17148\\_full.pdf](http://www.childrenssociety.org.uk/resources/documents/media/17148_full.pdf)

26 Ibid

## 4. BAIL FOR IMMIGRATION DETAINEES



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### Review into ending the detention of children for immigration purposes: Response of Bail for Immigration Detainees and The Children's Society

1 July 2010

**Bail for Immigration Detainees (BID)** is a small independent charity that exists to challenge immigration detention in the UK. Since 2001 it has supported families in detention, or separated by detention, to make applications for bail. Visit [www.biduk.org](http://www.biduk.org).

**The Children's Society** is a leading children's charity committed to making childhood better for all children in the UK. Visit [www.childrenssociety.org.uk](http://www.childrenssociety.org.uk).

The **OutCry! campaign** to end the immigration detention of children is a partnership project between The Children's Society and Bail for Immigration Detainees (BID), funded by The Diana, Princess of Wales Memorial Fund. Visit [www.outcrycampaign.org.uk](http://www.outcrycampaign.org.uk).

#### Introduction

BID and The Children's Society very much welcome the new Government's commitment to ending the detention of children for immigration purposes. We have repeatedly condemned the inhumane practice of immigration detention of children which seriously harms children's physical and mental health.

The previous government argued that families were only detained as a last resort, after the refusal of asylum and immigration applications, to effect their imminent removal from the UK. As the former Immigration Minister Phil Woolas told Parliament in 2009:

'Families with children are detained to effect their departure from this country when they have no legal right to remain here. They are detained only as a last resort and for as short a time as possible.'<sup>1</sup>

However, research by BID and The Children's Society found that many of the families we work with in detention have not been given a meaningful opportunity to return voluntarily to their countries of origin before being detained. In a considerable number of cases, there were barriers to families returning to their countries of origin at the time they were detained, which meant it was not possible, lawful or in the children's best interests for the UK Border Agency (UKBA) to forcibly remove them. BID has worked with a number of families who have been granted leave to remain in the UK after being detained for the purpose of forced removal.

There is clear evidence from overseas that far fewer families end up facing forced removal if steps are taken throughout the immigration and asylum process to address the barriers that

- prevent families best presenting their asylum/immigration claim,
- act as disincentives to families complying with the immigration authorities,
- make it harder for families to accept voluntary return if their asylum/immigration claim is refused.

For example, Mitchell's 2009 report on alternatives to detention in Australia found that 67% of the 1,514 people who have entered these projects since 2006 and were not granted leave to remain departed voluntarily.<sup>2</sup> Sullivan et al. found that 69% of the 165 participants who were released from detention to their New York pilot fully complied with the outcomes of their cases, either being granted status or departing voluntarily.<sup>3</sup> In Sweden, 82% of all returns of refused asylum seekers in 2008 were made voluntarily.<sup>4</sup> By comparison, in 2009, only 14% of returns of asylum seekers and migrants from the UK were made through the Assisted Voluntary Return schemes.<sup>5</sup>

<sup>1</sup> *Hansard* HC, 12 Oct 2009, Column 534W

<sup>2</sup> Mitchell, G. (2009) *Case management as an alternative to immigration detention: The Australian Experience* Sydney: International Detention Coalition

<sup>3</sup> Sullivan, E., Mottino, F., Khashu, A. and O'Neil, M. (2000) *Testing Community Supervision for the INS: An evaluation of the appearance assistance programme*, New York: Vera Institute

<sup>4</sup> Centre for Social Justice (2008) *Asylum Matters: Restoring trust in the UK asylum system* London: Centre for Social Justice

<sup>5</sup> Home Office (2010) *Control of Immigration: Quarterly Statistical Summary, United Kingdom October-December 2009* London: Office of National Statistics

We firmly believe that a similarly effective system as exists in other countries can be realised in the UK, but only once significant changes to the existing decision-making and case management system are made to ensure a more individualised, transparent and accountable approach.

As is outlined below, in order that the inappropriate use of detention is not replaced by inappropriate and ineffective use of other enforcement measures, changes are needed to:

- UKBA decision making and family case management, and the provision of legal advice to applicants, so that families are not targeted inappropriately for enforcement action.
- UKBA systems for assessing risk of absconding and decision-making about contact management, so that any requirements placed on families are proportionate and appropriate.

In order to examine the reasons given by the previous government for detaining families, Bail for Immigration Detainees and The Children's Society have carried out detailed research into the cases of 82 families with 143 children who were detained during 2009. Using data from 82 clients' case files, interviews with 30 family members, 10 families' full Home Office files, and enquiries to legal representatives we examined the extent to which these families were at risk of absconding, whether their removal was imminent when they were detained, and what opportunity they had to seek voluntary return before being detained.<sup>6</sup> The recommendations for changes to the management of family asylum/immigration cases set out below are largely based on the findings of this research.

### **An immediate end to the detention of children**

As a priority we want to see the immediate release of all families who are currently in immigration detention.

The Government's commitment to ending the detention of children is a welcome recognition that the harm which is caused to children by detention is too great for the practice to be justifiable. Medical studies have found that detention is associated with post-traumatic stress disorder, major depression, suicidal ideation, self-harm and developmental delay in children.<sup>7</sup> The recent attempted suicide of a 10 year old girl in immigration detention in the UK provided a stark reminder of the implications of these research findings.<sup>8</sup> The continued detention of children is clearly at odds with the UKBA's duty under s.55 of the 2009 Borders, Citizenship and Immigration Act to safeguard and promote the welfare of children.

Since the new Government's announcement on 12<sup>th</sup> May 2010 that they would end the detention of children for immigration purposes, BID and The Children's Society have worked with a number of children in detention who were in extreme distress following their incarceration. In some cases these children were receiving medical treatment which was disrupted by detention; in others we sought to refer children for psychiatric assessments because of concerns about the impact detention was having on their mental health. In this period, parents of some children in detention refused to eat in protest against their own and their children's imprisonment.

BID and The Children's Society are keen to engage in constructive dialogue with the Government over the coming months about improvements to the management of family immigration/asylum cases. However, given that there is no evidence that families are systematically at risk of absconding if they are not detained, the straightforward alternative to detention for these families is liberty. Ending the detention of children is an essential and urgently needed first step in improving the effectiveness of the UKBA's management of family cases.

### **Legal advice and decision making**

In BID and The Children's Society's experience, the main barrier to families returning voluntarily to their countries of origin following the refusal of their legal applications is that they fear for their safety on return.

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<sup>6</sup> 79 families who were clients of Bail for Immigration Detainees (BID) or The Children's Society's Bedford office (TCS Bedford) were approached to take part in this research. These 79 families were the total number of BID or TCS Bedford clients who were released from detention or removed from the UK during 2009. In addition, five families who participated in a BID workshop in a detention centre in June 2009 and were subsequently released from detention were included in the research sample. Two families refused to take part in this research, so in total, 82 families participated in this piece of research. Within this sample, 32 families who were clients of BID or TCS Bedford were released from detention between January and August 2009. We sought to collect post-detention data for all of these families for six months following their release. One family refused to take part, so post-detention data was collected for 31 families.

<sup>7</sup> Lorek, A., Ehnholt, K., Nesbitt, A., Wey, E., Githinji, G., Rossor, E. and Wickramasinghe, R. (2009) 'The mental and physical health difficulties of children held within a British immigration detention centre: A pilot study' *Child Abuse and Neglect* 33:9 pp 573-585; Mares, S. and Jureidini, J. (2004) 'Psychiatric assessment of children and families in immigration detention – clinical, administrative and ethical issues' *Australian and New Zealand Journal of Public Health* 28:6 pp520-526; Steel, Z., Momartin, S., Bateman, C., Hafshejani, A., Silove, D.M., Everson, N., Roy, K., Dudley, M., Newman, L., Blick, B. and Mares, S. (2004) 'Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia' *Australian and New Zealand Journal of Public Health* 28 pp23-32.

<sup>8</sup> Guardian 21/10/09 'Detained Nigerian girl found trying to strangle herself' Diane Taylor  
<http://www.guardian.co.uk/uk/2009/oct/21/detained-nigerian-girl-strangle-immigration>

There continue to be very significant problems with decision-making by the UKBA on asylum cases, and with access to legal representation for applicants. As a result, families often do not feel that the UKBA has properly considered their legal applications, and in a number of cases this perception is justified.

### **Decision-making**

A number pieces of research have found that the quality of decision-making in asylum cases in the UK can be compromised by time limits, varying quality in asylum interviewing practice, selective use of country of origin information or other evidence, and lack of accountability for decision making.<sup>9</sup> Problems with first instance decision-making are clearly evidenced by the fact that 28% of appeals of the UKBA's decisions on asylum cases which were heard by the Asylum and Immigration Tribunal in 2009 were successful.<sup>10</sup>

In research carried out by BID and The Children's Society, post-detention data was collected for 31 families for six months following their release from detention. In the cases of three of these families who lodged Judicial Reviews in detention, it was subsequently found that the UKBA had made errors in the way these families' cases were considered, and their cases needed to be looked at again in full.<sup>11</sup> In addition, one family who lodged a judicial review during their detention had been granted leave to remain in the UK at the time of writing this submission, despite the UKBA earlier having detained this family for the purposes of forcible removal.

These findings show that changes are needed to the asylum/immigration determination system, to ensure that families' protection needs are consistently met, and that a greater proportion of families whose asylum/immigration claims are refused have confidence in this decision and are therefore in a position to consider returning voluntarily to their countries of origin.

**Recommendation:** The UKBA must pay urgent attention to improving the quality of first instance asylum and immigration decisions in family cases. The UKBA should take immediate steps to implement recommendations from UNHCR's Quality Initiative Project on areas of continuing concern in the determination process, including credibility assessment, workloads, and the provision of information to applicants. We would be keen for UNHCR to take a particular role in auditing the implementation of these recommendations in family cases.

### **Legal advice and representation**

Extensive research has been done in recent years into the impact on immigration advisors and applicants of changes to legal aid provision and the introduction of fixed fees in the UK.

There is strong evidence that the overall supply of publicly funded asylum and immigration legal advice has dropped as experienced immigration advisors leave this type of work, unwilling to compromise on quality as funded time per case is reduced. Research and consultation submissions describe so-called 'advice deserts' for asylum and immigration advice in certain parts of the UK, cherry picking of less complex cases, early closing of cases, and delegation of work to paralegals.<sup>12</sup> One study showed a high proportion of asylum seekers are wrongly refused legal aid assistance at appeal stage.<sup>13</sup>

A survey by the LCF in 2008 revealed that in the wake of the introduction of the fixed-fee system, almost one in five law centres was threatened with closure and almost a half (49%) were in serious debt.<sup>14</sup> This crisis in legal aid funding is underlined by the recent closure of Refugee and Migrant Justice (RMJ), one of the largest providers of publicly funded legal advice to asylum seekers and migrants in the UK. Given the dearth of quality legal advice in this area prior to RMJ's closure, it is unclear how the gap created by this new development will be filled.

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<sup>9</sup> Tsangarides, N. (2010) *The Refugee Roulette: The role of country of origin information in refugee status determination* London: Immigration Advisory Service; UNHCR (2006) *Quality Initiative Project: Third report*, London; Baldaccini, A. (2004) *Providing protection in the 21st century: refugee rights at the heart of asylum policy* London: Asylum Rights Campaign; Smith, E. (2004) *Right first time? Home Office asylum interviewing and reasons for refusal letters* London: Medical Foundation for the Care of Victims of Torture

<sup>10</sup> Home Office (2010) *Control of Immigration: Quarterly Statistical Summary, United Kingdom, October-December 2009*

<sup>11</sup> Of the 31 families surveyed, 21 had ongoing legal applications at the point when the research was concluded; four had been removed from the UK; one had been refused leave to remain; two had other barriers to removal from the UK and the outcomes of three cases were unknown.

<sup>12</sup> McClintock, J. (2008) *The LawWorks Immigration Report: Assessing the Need for Pro Bono Assistance*, London; Refugee Action (2008) *Long term impact of the 2004 Asylum Legal Aid Reforms on access to legal aid*, London; Smart, K. (2008) *Access to legal advice for dispersed asylum seekers* London: Asylum Support Partnership; AdviceUK (2008) *It's the System, Stupid! Radically Rethinking Advice: Report of AdviceUK's RADICAL Advice Project 2007-2008*, London; Constitutional Affairs Select Committee (2007) *Implementation of the Carter Review of Legal Aid Third Report of Session 2006-07 Volumes I & II* London: House of Commons; Asylum Aid and Bail for Immigration Detainees (2005) *Justice Denied: Asylum and Immigration Legal Aid - a System in Crisis*, London.

<sup>13</sup> Louveaux, J. (2010) *Asylum Appellate Project: Final Report Exeter*: Devon Law Centre

<sup>14</sup> Law Society Gazette 15/05/08 'Shifting Sands' Jon Robins <http://www.lawgazette.co.uk/features/shifting-sands-1>

Research by BID and The Children's Society found that 16 of the 31 families for whom post-detention data was collected did not have a legal representative for all or part of their time in detention. Several families reported that they had been poorly advised by previous legal representatives, and for this reason did not feel that they had a meaningful opportunity to put their case forward before being detained. A number of families reported that once they were detained, it became more difficult for them to access legal advice at the crucial point when they were seeking to challenge decisions which had been made on their case and consider what options were available to them. In some cases, these factors contributed to a lack of confidence amongst families in the decisions which had been made about their asylum or immigration case, and reduced the likelihood that they would consider voluntary return.

We note that in the letter inviting responses to this review into ending the detention of children, Dave Woods asks whether there is a need to review families' access to legal representation. In our view, this is clearly a matter to which the Home Office and the Ministry of Justice must pay urgent attention. If families are to have confidence in decision-making on their cases, and be in a position to consider voluntary return, they must have access to quality legal representation throughout the determination process. Changes are required to the current legal aid funding arrangements to ensure that families can access quality legal representation and there is sufficient funded time for the full facts in families' cases to be aired before decisions are made. This should include time for legal representatives to gather information from children where this is appropriate and necessary. In addition, adequate funded time should be allowed for legal representatives to have a full exchange of information with clients, in which applicants' expectations about the likely outcome of their claim can be managed and information about options including voluntary return can be provided by legal representatives.

**Recommendation:** A review of the legal aid funding arrangements for family cases is required to ensure that families have access to good-quality publicly funded legal representation from an early stage in their asylum claim, and throughout the determination process. It is particularly important that families are able to access quality legal advice at the point when a legal application has been refused and the UKBA is preparing to take enforcement action.

**Recommendation:** The frontloading model trialed in the Solihull Early Legal Advice Pilot should be rolled out for all family cases across the UK.

**Recommendation:** Current cases where UKBA is seeking to take enforcement action against families should be referred to Solihull Model legal representatives so they can advise families about their options.

### **Barriers to return**

Research by BID and The Children's Society found that in a number of the 82 cases surveyed during the 2009 research period, families were detained when legal, health and documentation barriers meant that it was not possible, lawful or in children's best interests for them to be removed from the UK.

- In the cases of 18 families, 22% of our research sample, ill-health prevented the family being removed for part of their time in detention. These families were detained, in some cases for extended periods, despite family members being so unwell that ill-health presented a barrier to removal.
- Information about families' health situations was not consistently collected or considered before decisions to detain were made. Reviews of detention did not function as an effective safeguard to prevent prolonged detention of children and did not register cases where ill-health had become a bar to removal.
- Nine families, 11% of our research sample, were detained despite not having travel or identification documents. This meant that they could not be removed from the UK at the point when they were detained. One family were in detention for 35 days while a member of the family did not have any valid travel documents.
- Six families had outstanding legal applications at the point when they were detained which meant that they could not be removed. In one case, these applications were not resolved until the family had been in detention for 19 days.
- Three families in this study were forcibly removed to other countries but had to be returned to the UK as a result of documentation and legal barriers to their removal, at an estimated cost of up to £136,000.

In addition, in some cases the length of families' residence in the UK, family ties in the UK and the situation in their countries of origin raised serious questions about the appropriateness of attempting to remove them from the UK.

- In one case, a family's country of origin, Sri Lanka, was judged to be so dangerous at the time of their detention that the UK government was not forcibly removing people to this country.
- 19 families, 23% of our research sample, had been in the UK for over seven years at the time when they were detained.
- Four of the mothers in this research had become pregnant by or had children with men who lived in the UK. These children would have been separated from their fathers if they were removed from the UK.
- A number of parents felt that their length of residence and ties to the UK, and the impact which removal would have on their children had not been properly considered by the UKBA before a decision was made to remove them from the UK.

The cases outlined above demonstrate that a considerable amount of resources are being wasted, and unnecessary harm is being caused to children in attempts to remove families from the UK when this is neither possible nor lawful. Significant improvements therefore need to be made to the UKBA's methods for collecting information on families and making decisions about whether to remove them.

In some cases, it will be necessary for the UKBA to recognise that although a family may not meet the criteria for refugee status or humanitarian protection, in cases where they lack travel documentation, have no safe route of return to their country of origin, or have considerable lengths of residence or family ties in the UK, there will be profound barriers to them returning to their country of origin. The threshold which families in such situations must meet in order to make successful Human Rights claims is set very high, and yet there may be strong reasons why return or removal is not reasonable or appropriate. In such cases, serious consideration should be given to grants of Discretionary or Temporary Leave.

**Recommendation:** Before a decision is taken to remove a family from the UK, thorough consideration must be given to the family's length of residence and ties in the UK, as well as the impact removal would have on the welfare of children in the family. An auditing process should be introduced to ensure that existing mechanisms such as Immigration Rule 395c are applied consistently in all family cases.

**Recommendation:** Effective procedures should be introduced to gather information about legal, documentation, health or other barriers to a family's removal.

**Recommendation:** A pre-removal assessment process should be consulted on with stakeholders, established and independently monitored. This process should have the power to require reconsideration of cases where serious questions are raised about the advisability of proposed removal. The findings of individual assessments should be documented and shared with the family and their legal representatives.

**Recommendation:** Temporary or Discretionary leave should be granted to families in cases where such an assessment finds that it is not advisable or reasonable to expect the family to return to their country of origin.

## Voluntary Return

### Communication of voluntary return

BID and The Children's Society's research with 82 families who were detained during 2009 found that parents were given limited information about voluntary return schemes, and in many cases had no meaningful opportunity to seek voluntary return before being detained.

- 63% parents for whom we have this data did not know that their most recent legal applications had been refused when they were detained, and so had no meaningful opportunity to return voluntarily to their countries of origin.<sup>15</sup>
- None of the parents for whom we have this data reported that they had received a face-to-face explanation of voluntary return options from the UKBA.
- Copies of some families' refusal of claim letters included information about voluntary return, yet others did not.
- Some families commented that voluntary return was communicated to them at a point when they were not in a position to consider this option. In some cases families were sent this information while their asylum applications were ongoing and there were barriers to removing them from the UK; others received it after being detained.
- In many cases, parents were mistrustful of voluntary returns schemes, and doubted whether they would actually be given financial assistance if they returned voluntarily to their countries of origin.

In BID and The Children's Society's view, the most appropriate person to provide families with initial information and advice about voluntary return is a quality legal representative. Unlike the UK Border Agency, IOM or voluntary sector support workers, a family's legal representative is in a position to assess their legal situation and advise them about what options are available to them. However, given the restrictions placed on legal representatives by the changes to legal aid funding arrangements described above, currently legal representatives are not often in a position to fulfil this role.

**Recommendation:** Case owners should inform parents and legal representatives that a family's legal applications have been refused in a face-to-face meeting and in writing before any enforcement action is taken against the family or removal directions are set. A reasonable amount of time – at least three months – following this meeting should be allowed for parents to consider their options, including voluntary return.

**Recommendation:** Following such notification, enforcement action may in practice not be taken against a family within three months, either because of new legal applications by the family or delay on the part of the UKBA. In such cases, further notice should be given to the family and their legal representatives of planned enforcement action, at least three months before this action is taken.

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<sup>15</sup> We were able to obtain this data for 54 families, 34 of whom did not know that their most recent legal applications had been refused when they were detained.



**Recommendation:** Following the refusal of a family's legal applications, parents should be offered the opportunity of meeting with their UKBA case owner or an immigration officer to discuss the International Organization for Migration (IOM)'s voluntary return schemes. Legal representatives should be fully informed about such meetings, and funding should be made available for them to attend.

**Recommendation:** Families should be offered flexibility in the timing of voluntary return, particularly in cases where children have upcoming exams or family members have pre-existing courses of medical treatment which they need to complete before leaving the UK.

**Recommendation:** Action to inform families about the refusal of their legal applications and their voluntary return options should be documented on the family welfare form.

### **Re-entry Bans**

A new policy was introduced in October 2008 of banning families who return to their country of origin through the IOM's voluntary return schemes from re-entering the UK for five years. This policy provides clear disincentives to families participating in these voluntary return schemes, particularly in cases where they have strong family ties in the UK. Furthermore, this policy will only be effective in deterring legal migration, as re-entry bans only prevent families re-entering the UK through legal routes. If the UKBA have concerns about the effectiveness of the visa regime, the most straightforward way of dealing with these would be for instructions on this matter to be sent to Ambassadors or High Commissioners who deal with visa applications abroad.

**Recommendation:** Families who return to their country of origin through the IOM's voluntary return schemes should not be automatically banned from re-entering the UK.

### **Monitoring of voluntary return**

The current dearth of information on the motivations of and outcomes for families who do return voluntarily to their countries of origin create barriers to effective policymaking in this area.

**Recommendation:** Where parents give their informed consent, outcomes for families who return voluntarily to their countries of origin through the IOM should be systematically monitored by an independent agency, and their findings made public.

**Recommendation:** Independent monitoring of voluntary return by families should also collect information about the reasons why families accept voluntary return, their individual needs, and other factors that help or hinder sustainable reintegration in their countries of origin.

### **Case management of family cases**

In their letter inviting responses to this review into ending the detention of children, the UKBA ask specifically for views on how the agency can improve its engagement and contact arrangements with families.

The main way in which the UKBA currently manages contact with asylum and immigration applicants is through regular reporting events, either at police stations or designated immigration reporting centres, which applicants are required to attend. The UKBA has also electronically tagged parents, and run pilots in which families are required to live in accommodation centres.

BID and The Children's Society are concerned that the unnecessary or disproportionate use of enforcement measures such as electronic tagging are both damaging to children's well-being and foster distrust of the UKBA amongst applicants. Research conducted by BID and The Children's Society has found the central factors in parental decision-making about compliance with the UKBA are child welfare considerations, and parents' desire that their immigration/asylum case is properly considered. Therefore, it is essential that any contact requirements and enforcement measures used by the UKBA are proportionate, subject to independent oversight, and consistent with the UKBA's duty to safeguard and promote the welfare of children, and that they do not interfere with family's ability to put forward their asylum/immigration case.

The alternative to detention pilots for families organised and evaluated to date by the Home Office include Clannebor, Millbank and the Section 9 Implementation Project. All of these interventions took place towards the end of process, after families' asylum or immigration applications had been refused. They all had in common the use of coercion and forced changes in families' circumstances, which were intended to encourage a change in mindset and an acceptance of voluntary return. For example, in the Clannebor pilot families were informed that they would be prosecuted for non-compliance if they failed to attend interviews to discuss voluntary return, and some families reported 'aggressive and sometimes threatening questioning' in these interviews.<sup>16</sup> During the Section 9 Implementation Project families who were not seen to be taking steps to leave the UK were told that they could be made destitute and their children might be taken into the care of social services. The evaluation of the Millbank pilot which was commissioned by the UKBA acknowledged that its lack of success was in part due to poor

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<sup>16</sup> Refugee Council (2007) Briefing: Operation 'Clannebor', London; Guardian 18/02/2008 'Charities attack 'distressing' asylum scheme', Lucy Ward <http://www.guardian.co.uk/uk/2008/feb/18/immigration>



communication with applicants and deficiencies in onsite support.<sup>17</sup> There is evidence that these pilots were damaging to families<sup>18</sup> but also that they were not successful in the UKBA's own terms, in that they did not lead to increased numbers of voluntary returns and they may have increased the risk of families absconding.<sup>19</sup>

The outcomes of these pilots demonstrate that coercive sanctions imposed on families at the end of process are not, in fact, an effective method of encouraging voluntary return or compliance. There is international evidence to suggest that enhanced provision of information, and better access to support and legal advice throughout the asylum or immigration process can result in higher rates of compliance and voluntary return.<sup>20</sup>

### **Assessment of absconding risk**

BID and The Children's Society have serious concerns about the way in which families' risk of absconding is currently being assessed:

- Research with BID and TCS's clients has found that only a minority of client families who were detained during 2009 had any history of absconding, and that the vast majority of families who we tracked after release from detention maintained full contact with the Home Office.
- BID and TCS's analysis of 10 families' full Home Office files showed that, in a number of these cases, families' risk of absconding was assessed on the basis of inadequate or inaccurate information, and procedures for assessing risk were not consistently followed.
- Analysis of families' cases did not show any clear correlation between factors which the UKBA regards as increasing the risk of absconding, and families' behaviour in terms of absconding or maintaining contact.
- In a number of cases, it was evident that an assessment of absconding risk was made on the basis of little contact with, or information about, the family concerned.
- Four families were wrongly recorded as having broken their reporting or residence restrictions.
- In most cases, factors which, according to UKBA criteria, would reduce the likelihood of families absconding (such as a history of reporting regularly) were not considered when risk of absconding was assessed.
- Once a family was in detention, and whether or not they made legal applications, both courses of action could be used to justify a judgment that they were at risk of absconding.
- In some cases, details of why a family was deemed to be at risk of absconding were only documented on their file in response to a bail application, at a stage when the UKBA was required to justify their decision to detain the family before a court.

**Recommendation:** The UKBA's criteria for assessing absconding risk in asylum seeking and migrant families should be consulted on with stakeholders and revised in the light of the evidence that is available on risk of absconding.

**Recommendation:** Proper procedures should be established to provide a reliable assessment of families' risk of absconding. Risk assessments must be based on adequate evidence, properly fact-checked, and must take into account all relevant evidence.

**Recommendation:** The UKBA should improve its procedures for recording families' histories of reporting and compliance, so that families are not wrongly recorded as having absconded.

**Recommendation:** The UKBA's processes for assessing absconding risk should be subject to independent oversight and regular independent audits.

### **Reporting and Electronic Tagging**

In some cases where a family is deemed by the UKBA to be at risk of absconding, parents in the family are subject to electronic monitoring, either in the form of tagging or voice recognition.<sup>21</sup> Parents who are tagged are required to remain in their homes for significant periods each day; tagging therefore places considerable limits on parent and children's freedom of movement. In other cases, parents are required by the UKBA to present themselves at reporting centres very frequently, in some cases daily.

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<sup>17</sup> Cranfield, A. (2009) Review of the Alternative to Detention (A2D) Project, London: Tribal

<sup>18</sup> BID and The Children's Society (2009) An evaluative report on the Millbank Alternative to Detention Pilot, London; Refugee Council (2007) Briefing: Operation 'Clannebor', London

<sup>19</sup> Cranfield, A. (2009) Review of the Alternative to Detention (A2D) Project, London: Tribal; BIA (2008) Clannebor Project – The Way Forward, London; Home Office (2007) Family Asylum Policy: The Section 9 Implementation Project, London

<sup>20</sup> Mitchell, G. (2009) Case management as an alternative to immigration detention: The Australian experience Sydney: International Detention Coalition; Lutheran Immigration and Refugee Service, 2009 Alternatives to Detention Programmes, and International Perspective, Toronto; Sullivan, E., Mottino, F., Khashu, A. and O'Neil, M. (2000) Testing Community Supervision for the INS: An evaluation of the appearance assistance programme, New York: Vera Institute

<sup>21</sup> Current legislation permits electronic monitoring of adults under section 36(8) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

Currently these mechanisms are often imposed in ways that appear arbitrary to families and without reference to the identified risk of absconding. They are also used without adequate assessment of the effect they will have on children.

BID and The Children's Society's research found that a number of parents in our study were afraid and anxious about reporting to the Home Office. Where parents asked for alterations to reporting requirements on health grounds these requests were not granted. Five parents in our research had requested changes to their reporting requirements on this basis and presented medical evidence to support this request, but in every case these requests had been refused.

Five parents in our research were electronically tagged, and were not allowed to leave their houses for significant periods every day. These parents reported that their tagging restrictions had a detrimental effect on their children. Parents were not able to attend school sports games or birthday parties with their children, and could not take their children outside the vicinity of their home because of the requirement for them to be in the house at certain hours every day. One father reported that being tagged, the family felt like 'they were imprisoned' that he suffered from stress and anxiety as a result of being tagged, and that this contributed to high blood pressure which he suffered from. The social stigma and restrictions of tagging contributed to families' social isolation.

In a number of cases parents were not given clear reasons for being electronically tagged or for increases in the frequency of their reporting requirements. In one case, tagging requirements which had previously been imposed by the Home Office were revoked by an Immigration Judge at a bail hearing as he concluded that it was not necessary to tag the family.

In the undesirable event that parents are electronically tagged or subject to stringent reporting requirements, the UKBA should be required to demonstrate that this measure is proportionate to an identified, individual risk of absconding and consider the impact of any contact management regime on the safety and welfare of children.

**Recommendation:** A time limit should be introduced on the use of electronic tagging for the purposes of immigration control. In addition, limits should be set on the length of time which parents are required to remain in their homes every day for electronic monitoring purposes.

**Recommendation:** The UKBA should publicly consult on and publish clear guidelines on the use of electronic tagging. Decision-makers should be required to consider the impact of reporting and tagging of parents on children's welfare, given the UKBA's duty to safeguard and promote the welfare of children under s.55 of the 2009 Borders, Citizenship and Immigration Act.

**Recommendation:** The UKBA should publish data on how many parents are currently being electronically tagged or required to report daily for the purposes of immigration control, and the length of time which these parents have been subject to these contact requirements for.

**Recommendation:** If parents are electronically tagged or required to report, case owners or immigration officers should provide parents and their legal representatives with clear reasons and criteria for decisions about any contact requirements that parents are subject to.

**Recommendation:** If parents are electronically tagged or required to report, a clear process for parents to request changes to their contact requirements should be introduced by the UKBA and communicated to parents.

**Recommendation:** The UKBA's processes for allocating contact requirements to families should be subject to independent oversight and regular independent audits.

### **Accommodation Centres**

Two of the 'alternative to detention' pilots which have been run to date by the UKBA have required families to relocate to specific accommodation.

From November 2007 to August 2008 UKBA ran the Millbank Pilot, which involved families moving to a supervised accommodation centre in Kent operated by the charity Migrant Helpline. Families selected for the pilot had their support withdrawn if they did not move to Millbank. Once there they were provided with information to help them consider how best to return to their home countries. Only one of the families involved in this pilot returned voluntarily to their country of origin, and the project was widely acknowledged to have been poorly conceived. Damian Green MP, now Minister for Immigration, made the following comments on the Millbank Pilot in parliament while his party was in opposition:

'I rise as a constituency Member, because the alternative-to-detention project that the Government started took place in my constituency and was pursued, at best, halfheartedly. It did not clearly engage any particularly serious part of the Government's thinking—if, indeed, it was a serious alternative to detention. I suspect that Members from all parts of the House want desirable alternatives to detention, but they have never been properly set out or tried. The experiment in my constituency was nothing like long enough, well resourced enough or serious enough to answer the question about whether we can have a proper alternative.'<sup>22</sup>

<sup>22</sup> *Hansard*, HC 2 Jun 2009: Column 217

Since June 2009, the Glasgow 'Family Returns' pilot has been in operation. Families in this pilot are required to move to specific accommodation, and are offered information to help them consider how best to return to their home countries, as well as being regularly reminded that if they do not co-operate with voluntary return the UKBA will attempt to forcibly remove them from the UK. It is not possible to comment in detail on this pilot because there is limited information in the public domain about it. However, we do note that to date, no families have returned voluntarily to their countries of origin following participation in this pilot.

BID and The Children's Society are concerned that unnecessary disruption and distress has been caused to families by the UKBA's requirement for them to move to specific accommodation as part of these alternative to detention pilots. For example, our evaluative report on the Millbank pilot concluded that:

'Establishing the pilot in a separate accommodation centre was unhelpful - thought must be given to the appropriateness of trying to explore return options for families in a designated centre rather than in the community. The housing of families who had been refused asylum in one place did not create a calm environment. A future pilot should seriously consider whether upheaval is a helpful way to build trust with families considering return. Allowing families to remain in the community with their normal routines intact seems a much more helpful way of building a trusting relationship, and enabling families to think through the options available to them in a calm way.'<sup>23</sup>

Furthermore, in our view the Millbank and Glasgow pilots have not been successful in their aim of encouraging families to return voluntarily to their countries of origin because:

- Coercive sanctions imposed on families at the end of process are not an effective method of encouraging voluntary return or compliance. Such measures only increase families' distrust and fear of the UKBA, rather than encouraging them to engage in a dialogue about voluntary return.
- The design of these pilots has not acknowledged families' need to access quality legal advice in order to be able to assess the options available to them and discuss the implications of voluntary return for them with a legal representative.
- These pilots have not addressed the numerous issues of decision-making and communication with families in asylum/immigration cases which are raised above, and which create barriers to families engaging with voluntary return.

### **Notice of removal**

BID and The Children's Society would like to take this opportunity to make it clear that we would be fundamentally opposed to any change which reduced the minimum 72 hours notice which is currently given to families that the UKBA is planning to forcibly remove them from the UK on a specific flight. As is noted above, there are numerous problems with decision making on asylum/immigration cases and access to legal advice. These issues have in the past resulted in families successfully appealing decisions on their asylum/immigration case, after having been detained for the purposes of forced removal. Any change which reduced the notice of removal currently given to families would further prevent them seeking legal advice and accessing judicial oversight of the decision of the UKBA to forcibly remove them. This would increase the risk that families who have well-founded fears of persecution in their countries of origin would be forcibly removed from the UK.

The Minister for Immigration, Damian Green MP, recently stated in debate in Westminster Hall on 'Alternatives to Child Detention' that the UKBA was considering setting directions for families' removal while families were in the community:

"The UK Border Agency would therefore set removal directions while the family is in the community, giving the family time to submit further representations and to apply for a judicial review if they wish to do so, as well as giving them time to make plans for their return."<sup>24</sup>

In our view, the success of this approach will be highly dependent on the way such interventions are designed.

First, careful consideration should be given to the length of time which families are allowed to submit further representations or plan for return. As we set out above, in our view three months would be an appropriate amount of time to allow. If families have no immediate legal representation, they are likely to seek legal representation at this stage, and sufficient time should be allowed for them to obtain quality representation, have a full exchange of information with their representative, and be properly advised of the options available to them. If families are to engage with the option of voluntary return, it is likely that it will take time for a family who have spent many years in the UK, and may be managing complex issues such as serious ill-health, to make a decision which will lead to very substantial upheaval in their own and their children's lives.

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<sup>23</sup> BID and The Children's Society (2009) An evaluative report on the Millbank Alternative to Detention Pilot, London

<sup>24</sup> *Hansard*, HC 17 June 2010: Column 213WH

In relation to the issue of timing, we note that there is a distinction between informing a family that their legal applications have been refused and they are liable to removal, and setting removal directions with a specific date and flight. In our view, it is important that families are first informed that their legal applications are refused so that they can consider whether to lodge new applications or engage with voluntary return. If families are only given notice that they are liable to removal with removal directions which give details of a specific date and flight for their removal in the very near future, this is likely to alarm parents. In circumstances where they are given very limited time to respond, families are less likely to be able to access *quality* legal representation and properly consider the option of voluntary return. In our view, rushing families at this stage will lead to a low take up of voluntary return.

Secondly, the success of this approach will be dependent on the quality of legal advice which families are able to access at this stage. As is noted above, in our view a review of the legal aid funding arrangements for family cases is required to ensure that families have access to good-quality publicly funded legal representation throughout the determination process. In particular, we would recommend that specific provision is made for families at the stage when they are informed that their legal applications have been refused, to ensure that they can be properly advised of the options available to them.

Thirdly, the success of this approach will be dependent upon UKBA effectively gathering any information about barriers to removing a family from the UK and conducting a pre-removal assessment to consider whether removal of a family is advisable. If families are approached when there are barriers to them returning to their countries of origin, it will not be reasonable to expect them to engage with the voluntary return process. In addition, informing families in this position that they are subject to enforcement action is likely to undermine their confidence in the immigration/asylum process.

Finally, as is noted above, there is a need for UKBA to revise its procedures and criteria for assessing absconding risk in family cases. If UKBA continues to be unable to provide a reliable assessment of risk which is based on adequate evidence and properly fact-checked, it remains unlikely that the agency will be able to provide effective contact management of family cases following the refusal of legal applications.

## **Separation of families**

Since the new Government made the commitment to end the detention of children for immigration purposes, it has been unclear whether they are considering separating children from their parents as one way of implementing this change. On 2<sup>nd</sup> June, Baroness Neville-Jones, speaking for the Government in the House of Lords, said 'we certainly aim not to separate families from children or children from families.'<sup>25</sup> However, The Minister for Immigration, Damian Green MP, more recently stated in debate in Westminster Hall that enforcement measures being considered 'could involve separating different members of a family and reuniting them before departure, so that some family members stay in the accommodation they are used to.'<sup>26</sup>

Currently, in a large number of cases, children are already separated from their parents who are held in immigration detention. In such cases, the parents are migrants to the UK who have committed criminal offences. Following the completion of their criminal sentences, they are held in immigration detention while the UKBA seeks to remove them from the UK. In some cases, children in these families are put into the care of Social Services or private fostering arrangements while their parents are held in immigration detention.

Since November 2008, BID's family team has worked with 21 families where children who are not detained have been split from their primary carer (in every case their mother) who is in detention.<sup>27</sup> During this time, 13 of these parents have been released from immigration detention, having been detained for an average of 326 days. Clearly, separating children from their primary carer for such long periods is likely to be very damaging both to the child and to their relationship with their parent.

BID and The Children's Society have worked with mothers who have been separated by immigration detention from children who are as young as three years old. As these mothers are the sole or primary carer in their families, their children are in most cases placed in the care of Social Services or private fostering arrangements. Some children have had to move between a number of unstable fostering arrangements, and endure the disruption caused by repeatedly moving or missing school as a result. In addition, children in this situation can be separated from their siblings if they are placed in different fostering arrangements.

Mothers often have very limited contact with their children while they are detained. For example, in one case a mother was in immigration detention for five months before Social Services were able to negotiate for her to have

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<sup>25</sup> *Hansard* HL Deb, 2 June 2010, c252

<sup>26</sup> *Hansard* HC Deb, 17 June 2010, c212WH

<sup>27</sup> 18 of these families were single parent families. In two further cases the client's partner was in criminal custody, so the children of these families were in care outside detention. In one case, the child was in their father's care outside detention, but there were safeguarding concerns with this arrangement due to a history of domestic violence. In all 21 cases, the clients were female.

half an hour's telephone contact per week with her six year old child. By contrast, while she was in criminal custody weekly visits were arranged so that she could see her children in person.

In some cases, child protection concerns have been raised about the care arrangements for this group of children. BID and The Children's Society have been contacted by mothers who are extremely concerned about the situations their children are in, but face barriers to exercising control over these care arrangements or contacting relevant bodies (such as Social Services) while they are incarcerated.

For example, one mother who was a client of The Children's Society was held in immigration detention for two years while her children, who were nine and three years old at the time, were placed in a private fostering arrangement. The older child in this family disclosed that they had been physically abused by their foster carers. Shortly before the mother was released from detention, Social Services were considering placing the children in local authority care because of safeguarding concerns about their foster carers. The children's social worker reported to The Children's Society that their ongoing separation from their mother was having a detrimental impact on both children. The younger child was having behavioural and emotional problems, and was referred to Child and Adolescent Mental Health Services, but this agency had cited the instability of the child's care arrangements as a barrier to them undertaking work with him. In this case, the mother was eventually released from detention and she and her children were granted discretionary leave to remain in the UK. She is currently pursuing a claim for damages against the UKBA for unlawful detention.

In another case, a mother was separated from her young son for several months while she was held in immigration detention. This client became pregnant by a UK citizen when she was sixteen and subsequently married her child's father. She experienced domestic violence at the hands of her husband, and after four years divorced him and was granted leave to remain in the UK on the basis of the domestic violence concession. An injunction prevented her ex-husband from having access to her son on the basis of his aggressive and violent behaviour. During the time this client was in immigration detention, her son was in the care of her ex-husband. This situation raised clear child protection concerns, and the client reported that her son told her that he had a bag packed in his room, waiting for his mother to come and get him and take him home, away from his father. In addition, this child had very serious health problems, and was receiving hospital treatment in the form of surgery. During her time in criminal custody, his mother had been able to arrange home visits to accompany her son to hospital, but after she was transferred to immigration detention she was no longer able to visit her son at all. This client was released on bail.

UKBA's stated aim in separating these families is to effect their forcible removal from the UK. However, none of the 21 cases BID has dealt with since November 2008, in which children are separated from their primary carer by detention, have so far led to a parent or child being forcibly removed. In most cases, there are complex barriers to removal during the parent's detention, including: a lack of travel documentation, ongoing legal applications, and ongoing family court proceedings. BID and The Children's Society have serious concerns about the way in which risk of absconding or re-offending is being assessed by the UKBA in these cases. The fact that 13 of these 21 parents have so far been released into the community by either the UKBA or the courts raises serious questions about why they were held for such long periods, if it has now been deemed safe to release them.

Sarah Campbell, Research and Policy Manager, Bail for Immigration Detainees  
Laura Brownlees, Policy Adviser, The Children's Society

The  
Society  
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## 5. BAOBAB CENTRE FOR YOUNG SURVIVORS IN EXILE



### Response to UKBA Consultation on the Detention of Asylum-Seeking Children

**We strongly believe that the detention of children should be stopped, for the reasons explained below.**

Our organisation offers a holistic integrated approach to the care and treatment of young asylum seekers and refugees. We work with children, adolescents and young adults who arrived in the UK seeking asylum during their developmental years. We offer individual and group psychotherapy and practical support with asylum applications, education, health, housing and welfare. Most of our staff have worked with young refugees for over twenty years. All the users of our service have been very carefully assessed as needing treatment for serious psychological symptoms caused by their experiences of violence, separation and loss in their home countries. Their trauma is exacerbated by the experience of certain elements of the asylum seeking systems in the UK. Our clinical findings concerning young asylum seekers' mental health are confirmed by British Association of Adoption and Fostering research, which found that 40% of unaccompanied minors suffer serious psychological difficulties (*Unaccompanied asylum seeking children - The response of social work services* by Jim Wade, Fiona Mitchell and Graeme Baylis, BAAF, 2005). We are carrying out our own research in this area.

We work within the context of the United Kingdom's Children's Legislation, including the 1989 Children Act and Every Child Matters, and also within the context of the UNCRC, in particular: Articles 3 (Best Interests), 22 (Protection), 37 (Freedom from Torture and Deprivation of Liberty, and the requirement for rehabilitation after any period of imprisonment), and Article 39

**'States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.'** Article 39, UNCRC

Other European countries clearly make active use of the UNCRC, as well as their national laws, in planning for the care and treatment of children. In other jurisdictions there are legal precedents, using the Articles of the UNCRC. This is not the case in the UK.

There is a serious and observable gap between UKBA's written policies and its practice in relation to asylum-seeking children. There are numerous examples of serious failures in the protection and safeguarding of minors in detention. Though the UKBA has a statutory duty 'to make arrangements to take account of the need to safeguard and promote the welfare of children as it carries out its functions' (section 55, BCI Act), this is clearly not upheld in practice. (Report of Safeguarding Board, Bedford Social Services, June 14<sup>th</sup> 2010)

These failures lead to four grave problems in considering the physical and psychological health, and the treatment of, child and adolescent asylum seekers.

1. UKBA's practice and organizational structure is demonstrably unsuitable for providing adequate assessment and care for vulnerable children and adolescents and for safeguarding their needs.
2. Decisions to detain children are made by a team within the UKBA that does not meet the child or adolescent concerned. This team thus makes very inadequate assessments, which do not consider the developmental and mental health needs of these children and adolescents and the significant potential consequences of detention.
3. UKBA assessments are strongly biased towards challenging the credibility of minors both in terms of age and history.
4. The UKBA's procedures following the failure of an asylum claim can be extremely traumatic for a child. In particular:
  - a The dawn raid, in which children and their parents are treated as criminals.
  - b Being held in a closed environment with locked doors and staff in uniforms who hold the keys.

- c Being exposed to the distress of their family, and other families in the form of shouting and sobbing during the day and night.
- d Seeing their parents held and restrained. Families are often boarded onto planes for removal, only to be taken off the planes when legal representatives point out UKBA errors.
- e The absence of adequate health-care and attention to health difficulties.
- f Separation of children and parents.
- g Being expected to eat with the whole community at fixed times and to eat food that is unfamiliar to them and sometimes unsuitable. It is unrealistic to expect young or troubled children to conform to institutional rules.
- h Being offered lessons not in any sense geared to their level of ability, and in which the mixture of abilities is not attended to.

Each of these elements separately has the potential to cause long-term mental health difficulties for minors. Together, they have a cumulative impact causing psychological symptoms and developmental difficulties.

These issues have been carefully researched in work by the paediatrician, Dr Anne Lorek and her team, the psychiatrist Dr Matthew Hodes (et al), a large body of work by Professor Heaven Crawley of Swansea University and her team, and in the carefully documented reports prepared by the staff of the NGO Medical Justice. Professor William Yule and Dr Kim Ehntholt have carried out significant research on the impact of detention on age-disputed minors, some of which is due to be published soon.

We ourselves have seen evidence of this in numerous visits to detention centres and in examining children released from detention. This work is documented in various reports. There is only one conclusion.

**The experience of being in detention exacerbates the mental health difficulties of already traumatised children, and causes new difficulties for children who do not have pre-existing trauma symptoms.**

We have had the opportunity to assess in great detail six children in families and several unaccompanied minors and former unaccompanied minors. As a result of detention, all have suffered from complex PTSD and developmental problems.

That more than a third of this group were subsequently given asylum after being held in detention highlights mistakes in the initial UKBA assessments.

A significant number of these young people suffer symptoms directly related to their experiences of detention for long after their release. We assessed a 9 year-old girl who had twice been detained when she was six. She had significant symptoms of complex PTSD, and was regularly overwhelmed with the feeling that everything was going to go wrong, and that any good feelings she had would not last.

The work of Goldstein J., Freud A., and Solnit A. (1986), on the Best Interests of children described in three books (see reference section), highlights the very serious problem of meeting a child's needs when the care of a child is taken away from their parents and given to the state. Further research by Kitzmann et al (2003) and Kilpatrick et al (1997), demonstrates that children who see their parents as helpless and vulnerable, and in particular, abused, are likely to develop serious developmental and attachment difficulties.

**The time-frame of this consultation has not allowed for statutory and voluntary organisations to carry out thorough research or policy review concerning adolescent and child detention.**

**We hope that a working group will be set up as a result of the consultation to look at alternatives to detention which:**

- a) Safeguard and protect the needs of children
- b) Recognize the fact that children must not be separated from their parents
- c) Treats children and adults with dignity and self-respect.

In our view, the organizational structures of the UKBA and the Home Office make them totally unsuitable to safeguard the needs of child and adolescent asylum seekers. We, alongside many colleagues, feel that the UK needs a separate system of specialist workers, independent of government, trained to understand the needs of children and families, and the ways in which they communicate. This team could work with families and would have the skills and training to do this.

In summary: it is clear that the confusion between immigration and asylum means that many genuine asylum seekers are refused asylum. The position of the UKBA as a body within the Home Office, and the description of all relevant legislation as Immigration and Asylum legislation allows for the important difference between immigrants and asylum seekers to be fudged.

There are three groups of people who wish to find a home in the UK

- a) Those who have a well-founded fear of living in their home country where they will experience further persecution or murder.
- b) Those who are especially vulnerable in their home country and need special compassion. This would include survivors of domestic violence in countries that have no infrastructure adequate to protect them and their children.
- c) Those who wish to migrate to the UK to find work.

We have a faulty system in which immigration officers do not make adequate assessments. These mistakes are costly. An asylum seeker initially refused asylum through UKBA errors will cost the UK money in legal fees and in lost earning potential. They will also suffer a prolonged period of stress, during which they cannot legally contribute to the economy.

We strongly recommend that the Home Office sets up an independent system for assessment of asylum seekers, staffed by independent specialists – for example, social workers and clinicians. This system should be entirely separate from the UKBA.

**The needs of asylum seekers must stop going unrecognized. This includes the need for very careful and accurate country information about refugee-producing countries, such as that produced by Amnesty International, Human Rights Watch and the American State Department. We hope that a new independent body, given time to think and to make accurate assessments will be able to take into account the very different circumstances of asylum seekers and immigrants.**

**The detention of children is a cruel and disproportionate response to an inadequate immigration and asylum system.**

Yours sincerely

Sheila Melzak  
 Clinical Director, Baobab Centre for Young Survivors in Exile  
 Consultant Child and Adolescent Psychotherapist

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## 6. THE BAPTIST UNION (FAITH & UNITY DEPARTMENT)

### Review into ending the detention of children for immigration purposes

#### A joint response from the Baptist Union of Great Britain, the Methodist Church and the United Reformed

1. The Baptist Union of Great Britain, the Methodist Church and the United Reformed Church are grateful for this opportunity to respond to this review concerning the welfare of asylum seeking children in detention. There are some 150,000 members of Baptist churches associated with the Baptist Union of Great Britain. The Methodist Church has about 295,000 members and 800,000 people are connected with the Church. The United Reformed Church comprises about 150,000 adults and 100,000 children. The three denominations are the largest of the Free Churches in Britain and are developing increasingly close relationships both locally and nationally.
2. The three Churches are grateful that the government is committed to ending the inhuman practice of detaining children for immigration purposes. This shared concern was tangibly expressed in our “One More Card” campaign in December 2009, when the office of the then Minister for Immigration, Phil Woolas MP, was inundated with thousands of Christmas cards each requesting the ending of detention of asylum-seeking children.
3. The Churches wish to state that they support the principle of border control and acknowledge that the issues of desperate people who have exhausted all legal avenues pose a real challenge to the Government. However we believe that the detention of children for immigration is an inhumane and disproportionate response to the problem.
4. We would refer the Government to professional reports, by, among others, the Children’s Commissioner for England, the Royal College of General Practitioners, the Royal College of Paediatrics and Child Health Care, the Royal College of Psychiatrists, and the UK Faculty of Public Health, which have unequivocally demonstrated the damage done to detained asylum seeking children. These have concluded, without exception, that children experience long-term mental and physical damage under these circumstances.
5. This unequivocal evidence is sufficient to persuade us that the detention of children should end immediately. The review is rightly looking at alternatives to detention, but we would be deeply concerned if this meant that children and families continued to be detained whilst such alternatives were researched and piloted. The detention of children should end without delay.
6. The UK Border Agency has a statutory duty to care for children of asylum-seeking families, under section 55 of the Borders, Citizenship and Immigration Act 2009. They should only ever be detained in ‘*extreme circumstances*’. There may be rare circumstances where it is believed that there are no alternatives to detention, for example in the final few hours before removal. The practice of detaining children for several weeks at a time before then, in many cases releasing them back into the community, can no way be seen as representing extreme circumstances nor can it be in the best interest of the child.

7. We believe that the practice of ending the detention of children should not be achieved at the cost of detaining the parents and taking the children into care, or splitting families in other ways. The UK is a signatory to the 1989 UN Convention on the Rights of the Child. Article 9 of the Convention requires that children are not separated from their parents unless doing so “*is necessary for the best interests of the child*”. We believe this principle must be upheld. We note that Baroness Neville-Jones, a Home Office minister, told Parliament that the Government “...certainly aim not to separate ... children from families”<sup>28</sup> but did not give any guarantee. We believe very strongly that if the outcome of this review results in the practice of the detention of children being replaced by the separation of families for immigration purposes, it will be a resounding failure.
8. We want to emphasise, along with other charitable organisations such as *Citizens for Sanctuary*, the widely accepted fact that families with children do not typically abscond. The Home Affairs Select Committee report *The Detention of Children in the Immigration System First Report of Session 2009–10* stated that, while the risk of absconding is generally viewed as the rationale behind detention, “there is no evidence that families with children systematically disappear”. Thus we recommend that the UKBA’s criteria for assessing the risk of absconding be revised following careful consultation, and be subject to independent oversight.
9. We would therefore urge the Government to provide community-based monitoring for the majority of families. The International Detention Coalition has analysed the use of the “case management model”, used in different ways in Sweden, Australia and Belgium<sup>29</sup>. This case management model uses social work principles to: engage with the family and their individual needs; enable early intervention (i.e. not just when their asylum claim is concluded) to help families to prepare for all possible outcomes; assist with practical needs such as the provision of translated information on all aspects of their case; and build the trust of the family in the system. We believe that such community-based alternatives would help to answer some of UKBA’s concerns regarding engaging families with the asylum process and helping them to consider the options they face (including voluntary return). However we would emphasise that intensive case management must mirror social work principles and begin at the start of the process or it is likely to fail.
10. Measures with penal elements, such as tagging the parents in community, should be reserved for the very few problematic instances. We believe that in general they are disproportionate, damaging to a child’s well-being, and foster distrust of the UKBA. When tagging is used, we propose that it be on the basis of carefully agreed guidelines for a time-defined period, and that there be a recognised process by which parents can request changes in the contact requirements placed upon them. Deportation, with family possessions, should involve only overnight accommodation in a family room or unit.
11. We are aware that many families appear to be detained during legal appeals. Whilst the processes may be in need of greater speed, it is also apparent that availability of legal advice and representation must be properly resourced. New funding systems which mean that organisations such as Refugee and Migrant

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<sup>28</sup> Hansard, House of Lords 2 June 2010, col 252

<sup>29</sup> International Detention Coalition, *Case Management as an alternative to immigration detention: the Australian Experience*, June 2010

Justice may be forced to close are to be deplored. In addition the quality of initial decision-making must be improved - it is estimated that as many as a quarter of initial decisions are over-turned on appeal.<sup>30</sup>

12. A strong recommendation would be that families have access to good-quality publicly funded legal representation throughout the claim procedures. It is vital that they can have confidence in the system, that the full facts are able to be aired before decisions are made, and that expectations and options regarding the outcome can be properly managed and explored.
13. We are deeply opposed to any change that reduced the current minimum period of 72 hours notice required before the UKBA forcibly plans the removal of families. As already indicated, the decision-making processes for those seeking asylum are less than robust, and decisions to forcibly remove families have been successfully appealed. Any reduction in the timescale would prevent families seeking legal advice, and increase the risk of returning families who have well-founded fears of persecution.
14. The three Churches trust that the Government will bring this matter to a swift conclusion. Compared with the overall immigration statistics, the numbers of these families is very small.
15. The detention of children for immigration purposes is no longer a hidden administrative tool of convenience. It is regarded by our three Churches as an outrageous curtailment of the rights of innocent children under article 37 of the UN Convention on the Rights of the Child. We consider that, for the sake of children who are innocent of any crime, the country can afford to take the risk of more humane strategies for managing families seeking sanctuary.

Rosemary Kidd  
Rachel Lampard  
Graham Sparkes

The Joint Public Issues Team, c/o Methodist Church House

June 2010

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<sup>30</sup> "Borders, Citizenship and Immigration Bill", Fifth Report of Session 2008–09, HC 425, Oral Evidence, Q2.

## 7. BARNARDO'S



### Review into ending the detention of children for immigration purposes 1 July 2010

Alison Worsley, Assistant Director – Policy & Public Affairs

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#### About Barnardo's

Barnardo's works directly with over 100,000 children, young people and their families every year through over 400 projects across the UK. We use the knowledge gained from our work with children to campaign for better policy and to champion the rights of every child. With the right help, committed support and a little belief, even the most disadvantaged and vulnerable children can turn their lives around.

Barnardo's work with children and young people in the asylum system includes:

- Specialist foster care for unaccompanied children
  - Support for the whole family, for example providing a place where families can meet
  - Practical support with finding an interpreter, giving donations of clothes and food, and advice on financial assistance
  - Support in accessing education and health services. We have particular expertise in working with families living with HIV/AIDS
- 

#### Barnardo's position

Barnardo's is delighted that the coalition Government announced their commitment to 'end the detention of children for immigration purposes' in the coalition agreement<sup>31</sup>, and in the Queen's Speech and subsequent debates. Indeed we were pleased that the urgency of the matter was demonstrated by the Prime Minister to Parliament when he stated '*after the Labour Government failed to act for so many years, we will end the incarceration of children for immigration purposes once and for all*'.<sup>32</sup> This has been backed by the swiftness of this review, and we hope will just as swiftly be followed by implementation of policies to finally end the detention of children for immigration purposes.

Barnardo's support for the end of immigration detention for children does not mean that we do not accept that the Government has a duty to protect the UK's borders, and ultimately assist return of, or remove, those who do not have a right to remain in the UK.

However, Barnardo's has long campaigned for the end of immigration detention for children, believing it to be as unnecessary as it is shameful. These children have committed no crimes, and do not need to be locked up – yet it has been administratively convenient for the Government to do so. Parliament expressed reservations about detaining terror suspects without charge for significant periods of time and yet has allowed over 1,000 children to be detained with their families each year without charge or trial, for an indefinite period and without the automatic supervision of any court.

#### Keeping children safe

Barnardo's campaigned for the UK Border Agency to have an equivalent duty to all other statutory bodies<sup>33</sup> to make arrangements to safeguard and promote the welfare of children as it carries out its functions. The statutory basis for this duty was achieved in the Borders, Citizenship and Immigration Act 2009 (s.55), which came into force on 2 November 2009.

There is clear evidence that detention harms children – the nature and degree of this harm will depend on the individual circumstances of the child and their family, and the length of time spent in detention. Dame Anne Owers, then Her Majesty's Chief Inspector of Prisons commented in her most recent report on Yarl's Wood<sup>34</sup> that '*what was particularly troubling was that decisions to detain, and to maintain detention of, children and families did not appear to be fully informed by considerations of the welfare of children, nor could their detention be said to be either exceptional or necessary*'.

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<sup>31</sup> HM Government (2010) The Coalition: our programme for government, p.21

<sup>32</sup> Hansard, HC 25 May 2010, Col:49

<sup>33</sup> Under s.11 Children Act 2004

<sup>34</sup> Yarl's Wood full unannounced follow up inspection, 9-13 November 2009; inspection report published on 24 March 2010

The medical Royal Colleges state that '*Almost all detained children suffer injury to their mental and physical health as a result of their detention, sometimes seriously. Many children experience the actual process of being detained as a new traumatising experience. Psychiatrists, paediatricians and GPs, as well as social workers and psychologists, frequently find evidence of harm, especially to psychological wellbeing as a result of the processes and conditions of detention. Reported child mental health difficulties include emotional and psychological regression, post traumatic stress disorder (PTSD), clinical depression and suicidal behaviour.*'<sup>35</sup>

It is clear that given the levels of harm suffered, the policy of detaining children is not compatible with the s.55 duty to safeguard and promote the welfare of children. Whilst recognizing that this duty does not mean that the UKBA cannot carry out its primary functions of immigration control, it does mean that processes should be carried out in a way that safeguards and promotes the welfare of children. Barnardo's is pleased that it has been explicitly stated that the Review will take account of s.55. Any alternative to detention must be assessed against this duty to determine whether that alternative process safeguards and promotes the welfare of children.

### **Alternatives to detention**

The most straightforward alternative to detention is liberty.

There have been three principal objections from Ministers and Officials to the immediate ending of detention for children and families that:

1. It would increase the numbers of children trafficked, so that individual asylum seekers could avoid detention by appearing to be a family unit
2. Families may abscond, fearing removal
3. Detention may still be needed at the end of the process, immediately before families are removed, if a voluntary return has not been possible

In respect of the first reason and in the absence of a thorough risk analysis, Barnardo's are unaware of any evidence to support the view that such practice would be widespread. The reality that a few individual asylum seekers might act in this way should not be allowed to deflect the government from ending detention. In any case we believe that measures can be put in place to prevent increased trafficking, and to better identify and support victims of trafficking. Child trafficking should be identified when children and families first come to the attention of immigration officials. The UKBA needs to increase awareness through safeguarding training<sup>36</sup>, so that children who are victims of trafficking are identified and protected from harm.

### Absconding

There is little evidence that families abscond. David Wood, UKBA Strategic Director for Criminality and Detention Group, who is leading this Review, stated to the Home Affairs Select Committee<sup>37</sup> that absconding is '*not our biggest issue*' because '*it is not terribly easy for family units to abscond*'. Barnardo's agrees with this analysis. Our experience of working with asylum seeking families, including those whose applications have failed tells us that the families have usually made ties to the community, and their children regularly attend local schools. Moreover, such families rarely have the financial means to abscond. Evidence from Australia does not suggest that ending detention will lead to a significant rise in absconding.

### Detention immediately prior to forced return

Barnardo's would be concerned if families were routinely detained at the end of the process, prior to a forced return. Former immigration Minister, Phil Woolas MP, told Parliament in October 2009: '*Families with children are detained to effect their departure from this country when they have no legal right to remain here. They are detained only as a last resort and for as short a time as possible.*'<sup>38</sup>

Yet we know that children are routinely detained for significant periods, and more are released from detention than removed. In the most recent inspection report of Yarl's Wood, the then Chief Inspector of Prisons, Dame Anne Owers stated '*some children and babies had been detained for considerable periods – 68 for over a month and one, a baby for 100 days – in some cases even after social workers had indicated concerns about their and their family's welfare. Detailed welfare discussions did not fully feed into submissions to Ministers on continued detention.*'<sup>39</sup> The Immigration Minister, Damian Green MP, stated in a recent speech to Parliament on this issue that '*of the 1,068 children who departed from detention in 2008-09, only 539 were removed and 629 were released back.*'<sup>40</sup>

<sup>35</sup> Intercollegiate briefing paper: Significant harm – the effects of administrative detention on the health of children, young people and their families [www.rcpch.ac.uk/doc.aspx?id\\_Resource=5829](http://www.rcpch.ac.uk/doc.aspx?id_Resource=5829)

<sup>36</sup> All UKBA staff are undertaking e-learning and further training in safeguarding as part of the implementation of the s.55 Borders, Citizenship and Immigration Act 2009 duty.

<sup>37</sup> Oral evidence given to the Home Affairs Select Committee in their inquiry on *The Detention of Children in the Immigration Service*, 16 September 2009, HC 970i (Question 25)

<sup>38</sup> HC Hansard, 12 October 2009, Col:534W

<sup>39</sup> Yarl's Wood full unannounced follow up inspection, 9-13 November 2009; inspection report published on 24 March 2010. This extract is taken from the introduction [http://justice.gov.uk/inspectors/hmi-prisons/docs/Yarls\\_Wood\\_2009\\_rps.pdf](http://justice.gov.uk/inspectors/hmi-prisons/docs/Yarls_Wood_2009_rps.pdf)

<sup>40</sup> HC Hansard, 17 June 2010, Col:231WH

Barnardo's would not welcome, but could understand and accept, the strictly exceptional and short term detention of children immediately prior to removal and where there was evidence that a family would not cooperate with removal. But it would be vital to ensure that such detention was not used routinely and for longer than a few days. This will require a significant culture change within the UKBA about the treatment of children and families to ensure the least possible harm is done to the child, and to ensure that practice changes in line with policy intention. There would need to be significant safeguards in place, and transparency to ensure that this ultimate sanction happened in very few cases, if at all. We would welcome the opportunity to discuss how this might be achieved.

The Government should consider a range of options that could be used with families depending on the risk posed. This could include increased reporting and electronic monitoring, for example where an adult in the family wears an electronic tag.<sup>41</sup> We would like to see a multi-agency panel consider the risks and options for each family on a case by case basis, so that any measures are proportionate to the risk, and consider the impact on the safety and welfare of children in the family.

### **A child and family approach**

Barnardo's would like to see a child and family centred approach in any alternative process. This could draw on models of good practice in early intervention with families in the UK, and on models from abroad.

Barnardo's is aware of the evidence of overseas models from countries such as Australia, Sweden and Belgium. There seem to have been some successes, and we hope lessons can be translated into the UK context. We are particularly drawn to the case management model used in Australia, where vulnerable asylum-seekers are allocated a case manager who works with them until their case is resolved, but has no decision-making role. The intervention is modelled on social work principles, being client driven, with an action plan to meet the family's welfare needs, alongside providing support in understanding and making decisions during the asylum process. This can help to remove any barriers to asylum outcomes. In Australia, community based programmes have reported high levels of compliance with reporting requirements – in the three years following the release of families with children from detention, less than 1% absconded<sup>42</sup>. Case managers can work with the family if an asylum claim is refused, to provide information and support on voluntary returns. Barnardo's believes that this model could be used for all families with children, with the intensity of support varied according to the level of need and an assessment of the individual family.

This approach, if transferred to the UK, could learn from different family interventions such as the role of the lead professional, family group conferences (FGCs) and Family Intervention Projects (FIPs).

### **Conclusion**

In summary,

1. The Government should act swiftly to honour its commitment to end the detention of children
2. Any alternative process be assessed to ensure compatibility with the duty to make arrangements to safeguard and promote the welfare of children under s.55 Borders, Citizenship and Immigration Act 2009.
3. Any alternative enforcement measures must be proportionate to the risks posed
4. To reduce the risk of additional trafficking greater efforts should be made to identify trafficking when children and families first come to the attention of immigration officials.
5. Barnardo's would not welcome but would accept, the strictly exceptional and short term detention of children immediately prior to removal and where there was evidence that a family would not cooperate with removal. But it would be vital to ensure that such detention was not used routinely and for longer than a few days. There would need to be significant safeguards in place, and transparency to ensure that this ultimate sanction happened in very few cases, if at all.
6. The Government should consider a range of options that could be used with families depending on the risk posed. This could include increased reporting and electronic monitoring, for example where an adult in the family wears an electronic tag.<sup>43</sup> We would like to see a multi-agency panel consider the risks and options for each family on a case by case basis, so that any measures are proportionate to the risk and consider the impact on the safety and welfare of children in the family.
7. Barnardo's would like to see a child and family centred approach in any alternative process. This could draw on models of good practice in early intervention with families in the UK, and on models from abroad.

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<sup>41</sup> Section 36(8) Asylum and Immigration (Treatment of Claimants etc.) Act 2004 provides for the electronic monitoring of adults

<sup>42</sup> DIAC Submission to the Joint Commission on Migration Inquiry in Immigration Detention Sub 129c, Q41, Oct 2008 cited in International Detention Coalition (2009) *Case management as an alternative to immigration detention - the Australian experience* <http://idcoalition.org/wp-content/uploads/2010/02/a2daustraliabrief1feb2010.pdf>

<sup>43</sup> Section 36(8) Asylum and Immigration (Treatment of Claimants etc.) Act 2004 provides for the electronic monitoring of adults

## 8. BEDFORD BOROUGH COUNCIL

Dear David

### **Review into ending the detention of children for immigration purposes**

Thank you for your recent letter and for the invitation to comment, express views and participate in the Review. Three areas are highlighted. We are not in a position to comment on the first since this is an area we are rarely involved in.

- How can we promote and improve the current voluntary return process to increase the take up from families who have no legal right to remain in the UK? What do you believe the UK Border Agency's role is here and is there a role for others engaging with families around this option?

We feel that information about the voluntary return process should be consistently provided at a much earlier stage than is currently the case. There is a real role for voluntary/third sector organisations in promoting the benefits of this process.

- If a family chooses not to leave the county, with or without support from UKBA, what might an alternative family returns model look like? How should UKBA respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules?)

We are concerned that in some circles there appears to have been discussion about the possibility of children from families that choose not to leave the country being placed in care. Not only does the Council have fundamental objections to the separation of children from parents when there are no concerns about the parents' care of the children, (both from a legislative perspective in terms of a breach of Article 8 of the European Charter of Human Rights, and in terms of potential breaches of the General Social Council Code of Ethics), but we would also have serious concerns about the potential serious impact on the Council's resources should this separation be enforced once the family have been transported to Yarl's Wood Immigration Removal Centre. There would also be some complex legislative issues around determining the local authority area in which the family "ordinarily reside" at the point that any children would need to be accommodated.

We do feel that expansion of the current pilot project in Scotland, coupled with more proactive promotion of assisted return packages and more substantive support, is a possible way to increase voluntary return.

We hope these comments are helpful and are content for the comments to be published.

Yours sincerely  
Chris Hilliard  
Executive Director for Children's Services, Schools and Families



## 9. BRITISH AFGHAN WOMEN'S SOCIETY

Hi there,

I do fully understand the issue and to control the numbers or prevent more children from coming or being sent to UK, I suggest;

- As Afghan children are the highest number (as we hear) it will be very useful and cost effective for charity organisations such as ours who have years of experience and know the background of the arriving children to work with the BA in some sort of partnership to be included in the process from start/application process up to placement or deportation.

If you are interested in a meeting or full proposal, we would be happy to do that.

- As we already work with Afghan youth including unaccompanied children, We would also suggest to run/manage Specially Designed Youth Hostels with low cost as a Social Enterprise as a Pilot and guarantee that it would be far much cheaper than the ones managed or run by big businesses and with huge costs involved.

Looking forward to hear from you.

Regards

Zarghona Rassa  
British Afghan Womens Society (BAWS)  
Website- [www.britishafghanwomen.org](http://www.britishafghanwomen.org)



## 10. BRITISH RED CROSS

June 2010

### **UK Border Agency: Review into ending the detention of children for immigration purposes consultation**

The British Red Cross welcomes the opportunity to contribute to this review into ending the detention of children for immigration purposes.

#### **Background on the British Red Cross:**

The British Red Cross helps people in crisis, whoever and wherever they are. We are part of a global network that responds to conflicts, natural disasters and individual emergencies. We enable vulnerable people in the UK and abroad to prepare for and withstand emergencies in their own communities, and when the crisis is over we help them to recover and move on with their lives.

In the UK we work with refugees and asylum-seekers in a variety of contexts at all stages of the asylum process. Our work includes the provision of Tracing and Messaging services in Immigration Removal Centres (IRCs) and projects that work with separated asylum-seeking and refugee children. We are guided by the principle that refugee and asylum-seeking children should be treated as children first and foremost when addressing their needs. It is important that consideration is given to both children and families to ensure that families stay together in a safe and secure environment. While we welcome this review and its emphasis on ending the detention of asylum-seeking children, we recognise that children are detained for other immigration purposes, for example, families overstaying their period of legal right to remain in the UK. We hope that this review will also cover their circumstances. Our comments in this submission are based on our experience of our work with asylum-seeking and refugee children.

We recognise that the detention of anyone in an immigration context is complicated and that there are challenges for the Government in finding a balance between enforcement and a humanitarian and efficient approach. Similarly, there are challenges within the voluntary sector when addressing issues of removal (to which detention is often linked), such as maintaining trust and confidence when working with clients. However, we welcome this opportunity for a constructive discussion with the Government about how we may address our concerns within the overwhelmingly positive context of the decision to end detention of children.

#### **Response of the British Red Cross to the Consultation**

##### **Q.1 How can we improve our engagement with families in dealing with asylum applications? For example do we need to review the contact arrangements with those families and their access to legal representation?**

Overall British Red Cross would like to see an improved engagement with families from the initial stages of their asylum application through to either their being granted leave to remain or their leaving the UK. Based on the evidence of our work we believe that if asylum-seekers are better informed from the outset about the asylum process and the options open to them that they are more likely to engage in decisions about their future. Such information would include ensuring families have access to high-quality legal advice and representation.

A comprehensive package of support to asylum-seeking families at the beginning of the application process, which includes voluntary sector organisations in providing advice, welfare and emotional support would be a very effective way of engaging with families. Instead of detention, families should remain in the community and be assigned a caseworker that gives support on: families' rights within the asylum process, access to interpreters, legal representation, counselling and health care. Using such a case management approach effective models have been developed in Sweden and Australia to providing alternatives to detention. Evaluations suggest it is successful approach in both providing support and securing compliance with immigration decisions, even when the decision is deportation.<sup>44</sup>

As well as support at the beginning of the asylum process, engagement with asylum-seeking families could be improved at the end of the process, both in the case of successful applications and those who have been refused. In our extensive work with destitute asylum-seekers and refugees we have seen how easy it is for both accepted and rejected asylum-seekers to fall out of the system at this point in the process. In a very short space of time families are presented with having to make momentous decisions, such as where they are going to live, whether to return home or lodge a fresh asylum claim. Often the options presented regarding accommodation or Section 4 support entail moving to a different town where they have no links. The practical considerations take precedence as the struggle to survive becomes paramount. Poor access to legal advice at the beginning of the process means that many families have no idea why their case failed and what their options are, and this must be addressed.

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<sup>44</sup> 'Alternatives to child immigration detention', Standard Note SN/HA/5591, Melanie Gower 14/06/10.

In our report 'Not gone, but forgotten'<sup>45</sup> we describe the effects of destitution and how people drop out of the system and thereafter find it harder to engage. We also note alarmingly how many of the destitute clients that we work with have dependent children (almost a quarter).

Not to support refused asylum seekers who are unable to work or support themselves will make them and their children destitute. This is not only contrary to humanitarian principles, but may also result in exploitation, illegal working, prostitution, rough sleeping and other desperate measures which will put increased pressure on other services (e.g. police, mental health, local authorities, charity and faith organisations). Consequently British Red Cross believes that refused asylum seekers should continue to be supported until they leave the country. This will improve the welfare of children, mitigate against families going underground and encourages compliance. It is also important to recognise the specific circumstances facing unaccompanied and separated children, including those who are detained due to disputed age. British Red Cross works with asylum seekers for whom age is contested. Where there is a dispute about the age of a child there needs to be a timely, holistic assessment by an independent agency to ensure children are not inadvertently detained.

**Q.2 How can we promote and improve the current voluntary return process to increase the take up from families who have no legal right to remain in the UK? What do you believe UK Border Agency's role is here and is there a role for others in engaging with families around this option?**

The current system does not sufficiently support voluntary return by families and does not take into account the specific circumstances of those affected. The limited or swift withdrawal of support means refused asylum seekers face a cliff edge. The overwhelming majority of asylum seekers we support in such circumstances are facing an up-hill struggle to maintain their basic dignity and in some cases survival.

The implied policy of forced destitution as a means of ensuring return does not seem to be effective in ensuring sufficient numbers of voluntary returns. In fact, in the UK the take-up rate of voluntary returns is small. Of those who were repatriated in 2007, only 1 in 5 left voluntarily. This compares poorly to other countries, such as Sweden, Estonia, Australia and Canada who have schemes with more than 80% voluntary returns. It is also expensive with forced removals costs are on average ten times more than a voluntary return (£10,000 compared to £1,000).<sup>46</sup>

The British Red Cross believes that an alternative would be to ensure an end-to-end support structure until the applicant is either removed or granted leave to remain, which could be time limited to 6 months from a negative decision being made. In doing so, this would ensure that all families are treated in a humane way until they are removed or given leave to remain. This would enable the option of voluntary return to be more realistically pursued. This would put a focus on helping the family to overcome the barriers and to reduce their fears of return.

**Q.3 If a family chooses not to leave the country, with or without support from UKBA, what might an alternative family returns model look like?**

An alternative family returns model should be based on a case management approach with arrangements in place for access to legal aid and high-quality legal representation so that asylum seekers feel they have had a fair hearing and are clear about their options. A case management approach would involve families being assigned a caseworker to work with them to plan for possible return, including practical and emotional support. Engagement with the family to discuss options for voluntary return would take place with the family in their existing accommodation in the community and would be part of a support package that started at the beginning of the asylum process.

**Q.4 How should UKBA respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)?**

British Red Cross accepts that the UKBA has the right to enforce the removal of families, and that in very exceptional circumstances this may require the use of special accommodation provision. However, transferring families to other accommodation is likely to be extremely disruptive and should only be used as a last resort and as an alternative to detention. It is also unclear why such a transfer would be any easier to enforce than a direct removal. Withdrawing support from families creates a humanitarian need by making people destitute. The evidence of our work shows that doing so does not encourage people to return to their country. Rather they struggle to survive in a state of destitution in the UK with all the humanitarian suffering that entails. They also find it harder to engage in any process that will determine their future. We believe that maintaining them within the system is much more likely to encourage voluntary return.

Where the UKBA believes that someone is not taking sufficient steps to leave the UK the response should be to enforce removal in a humane way – rather than to make the parents and children destitute and recreate another trauma for the individuals to add to the initial experience of leaving their own country.

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<sup>45</sup> Published June 2010

<sup>46</sup> Asylum Matters, Restoring Trust in the UK Asylum System. Centre for Social Justice Report, 2008

Initial assessment of asylum seekers, better decision-making and support throughout the application process, including access to high quality legal advice, would encourage transparency and trust in the system, which in the case of the Swedish and Australian models below has improved compliance with immigration decisions.

**We would also be keen to have any relevant evidence or research on alternatives to detention in other jurisdictions.**

### **Sweden**

The Swedish model is a holistic casework based model, which assesses and addresses the needs of asylum seeker families with children. Instead of detention, families are dispersed to regional refugee centres, which are flats with a central office or families are free to live in private accommodation, but they must be registered with the centre to which they report on a monthly basis. Each asylum seeker is assigned a caseworker who gives support on the family's rights, access to interpreters, legal representation, counselling and healthcare. Reviews of the system suggest it is successful in both providing support and securing compliance with immigration decisions, even if the asylum application is refused.<sup>47</sup>

### **USA**

The Appearance Assistance Program (AAP) was a three year test of community supervision for people in immigration removal proceedings from 1997-2000. The AAP demonstrated that detention is not necessary to ensure high rates of appearance at immigration court hearings. According to the report by the Vera Institute evaluation on the project<sup>48</sup>, 91% of participants in the programme attended all required hearings and AAP support almost doubled the rate of compliance with final immigration decisions.

### **Australia**

The Asylum Seeker Project in Melbourne started in 1997 and like the Swedish model was also a holistic, casework based model aimed at meeting the needs of asylum seekers. Families were assigned a caseworker, who was a social worker, to support on protection and welfare needs, provision of housing, cash support, advice and access to quality legal representation, healthcare and education.

An evaluation of the Asylum Seeker Project in 2003 revealed that between 2001 and 2003, 43 % cases received immigration status (permanent or temporary), 57 % of cases had their claims refused and left the country and 0% of clients absconded. Since then it is reported that compliance with immigration decisions remains exceptionally high for this project.<sup>49</sup>

The above three alternatives to detention indicate that attendance at immigration hearings and compliance with final immigration decisions improves where families are supported by trained social work caseworkers, given continued material and emotional support, and given adequate access to legal advice and representation. British Red Cross believes the casework management principles behind these are the best alternative to detention of children for immigration purposes.

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<sup>47</sup> Research Paper on Alternatives to Detention: Practical alternatives to the administrative detention of asylum seekers and rejected asylum seekers by Ophelia Field (Policy Officer, ECRE), with the assistance of Elsa Seguin. September 1997

<sup>48</sup> 'Testing community supervision for the INS: an evaluation of the Appearance Assistance Program', The Vera Institute 08/01/2000 Eileen Sullivan, Felinda Mottino, Ajay Khashu, Moira O'Neil

<sup>49</sup> Alternatives to immigration detention of families and children paper for the All Party Parliamentary Groups on Children and Refugees, July 2006.

## **11. CAMBRIDGESHIRE COUNTY COUNCIL 16+ TEAM**

To the Review Team:

I offer the following comment on behalf of CCC:

"CCC is mindful of different approaches in other countries - notably Australia, whose immigration control is now ordinarily managed without resort to the detention of children and families who are, instead found and retained in accommodation within the community whilst their asylum application is being considered.

Adopting such an approach within the UK would seem a progressive step and one which could reduce the perceived negative impact upon the health well being of children and adults currently held in detention centres.

The removal of individuals should happen only when all rights are exhausted and that the removal process should be managed in an open and transparent manner to prevent any potential compromise of human rights".

Dave Hill

Strategic Development and Commissioning Manager  
16+ Team and Asylum seekers  
Cambridgeshire Children and Young People's Services

## **12. PARISH OF CATHAY'S, CARDIFF**

I am writing on behalf of the Parish of Cathays, Cardiff in response to the review of concerning the ending of the detention of children for immigration purposes.

We are a parish in the Church in Wales with two churches, St Michael's & All Angels and St Andrew and St Teilo's. We were privileged to welcome Jonathan Cox of Citizens for Sanctuary earlier in the year to talk to us about Faith & Sanctuary.

As part of this talk, he showed us a video clip of their experience of trying to take Christmas gifts to the children in Yarl's Wood Detention Centre. This and the rest of his talk made a big impression on us as a group and therefore we would like to respond to this review.

We greatly welcome the committee of the new government to end the detention of children for immigration purposes. Doing so has been a blot on the good name of this country, especially when people have been taken from their homes in the middle of the night and missed out on schooling and suffered additional trauma to that which they were trying to leave behind.

One reason given for detaining families or individuals is the risk of them absconding and being lost to the system. Citizens for Sanctuary cite evidence that families are at low risk of such absconding because they wish to keep their children in school. I hope that this will be taken into consideration in the review. I would also like to say that I would rather have someone vanish from the system than that we should lock up innocent (and often already traumatized) children.

Another issue of concern is that the commitment is only to end the detention of children for immigration purposes, not ending the detention of families. End Child Detention now points out that this leaves open the possibility of detaining parents and taking their children into care. We agree with them that this would be replacing one type of state sanctioned cruelty with another.

As Christians, we follow a Lord who himself sought sanctuary in Egypt as a small child, having fled from the desire of King Herod to kill him. Thus we should always be ready to welcome those seeking sanctuary in fleeing oppressive regimes. The UK, though increasingly a secular state, has a long Christian heritage and still has an established church in England. In light of this, we should set a better example to other nations in care for those seeking sanctuary and welcome them not vilify them and lock them up.

Dr Carys Underdown  
on behalf of  
Parish of Cathays

## 13. CENTRE FOR APPLIED CHILDHOOD STUDIES UNIVERSITY OF HUDDERSFIELD

July 1<sup>st</sup>, 2010

Damian Green MP  
Minister of State for Immigration  
House of Commons  
London SW1A 0AA

Dear Minister

### **Review into Ending the Detention of Children for Immigration Purposes**

The Centre for Applied Childhood Studies undertakes research and policy and practice development which contribute to the well-being of children and young people nationally and globally. We have extensive experience of promoting rights and freedoms that enable social progress and better standards of life for all children, including children affected by immigration controls. As a Centre of expertise in the field of children and asylum we would like to take the opportunity to engage with the UK Border Agency consultation process for the *Review into Ending the Detention of Children for Immigration Purposes*. We make the following points for your consideration:

1. We welcome the Government's review of the detention of children for immigration purposes since this is in line with the Government's stated commitment on ending the detention of children and should result in changes to policy and practice to ensure compliance with the Convention on the Rights of the Child in respect of this issue
2. The UN Committee on the Rights of the Child has raised concerns about the detention of children and the UK government has received much criticism for this policy. The UK is the only State party (signatory to the UNCRC) that discriminates against a section of its population of children in this way. Ending the detention of children for immigration purposes would address these concerns
3. International and national human rights organisations, including for example, the Children's Commissioner for England and Her Majesty's Chief Inspector of Prisons have repeatedly stated that detention is not in the best interests of the child. There is a strong body of research and broad consensus that detaining children subject to immigration control is harmful both physically and psychologically
4. There is no evidence base to justify the detention of families and there is no research that suggests that families who are not detained are at increased risk of either disappearing or circumventing asylum proceedings at any stage of the process, including pending judicial review or other legal appeals
5. The Centre asserts a belief in fundamental inalienable human rights and in the inherent dignity and worth of children. The Centre recognises that children seeking asylum or dependents on asylum claims are forced to migrate and claim asylum in another country. Many of these children do not intend to remain in the UK and a significant number did not choose to leave their homeland. The detention of these children is unnecessary and represents a violation of the rights of a particularly vulnerable group of children
6. We welcome the fact that this review will take account of existing international, EU and Human Rights obligations. Within the Universal Declaration of Human Rights, the UN has proclaimed that children are entitled to, "special care and assistance" and we urge the Government to act decisively in ensuring that asylum-seeking children (who are particularly vulnerable), be provided with accessible and appropriate care and assistance
7. We would draw your attention to the 1999 United Nations High Commissioner for Refugees, whose guidelines relating to the detention and asylum assert that child refugees should not be detained
8. We also wish to highlight Article 3 :1 of the Convention on the Rights of the Child (1989): 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. This is a fundamental principle of UK child welfare legislation and we ask the Government to ensure that the approach to harmonising domestic legislation with the CRC be extended to immigration law, policy and practice
9. The Government's stated aim in the policy document 'Every Child Matters' is for 'every child, whatever their background or their circumstances, to have the support they need to: be healthy; stay safe; enjoy and achieve; make a positive contribution; achieve economic well-being...' In considering alternatives to

detention, these goals and outcomes should inform the development of services for asylum-seeking children thus ensuring that asylum-seeking children are not subject to discriminatory treatment.

10. In considering alternative approaches to detention we ask you to take into account the specific points below:
  - 10.1 The detention of children and families should cease immediately; the practice is harmful to children; breaches compliance with international human rights agreements and there is no evidence that non-detention leads to negative outcomes for immigration control purposes
  - 10.2 Reporting arrangements have regularised asylum processing and this is preferable to detention. However, it should be noted that reporting requirements are often problematic for families, intrusive with regards to family life and there is little evidence that frequent reporting is either necessary or beneficial for immigration control purposes. We therefore recommend that the reporting system be reviewed and revised to ensure that the requirements be applied in a way that does not create further hardship for children and families
  - 10.3 In revising the reporting system we suggest the early identification of those people seeking asylum who do not require a constant form of control (and thus should be exempt from reporting requirements) as this would improve efficiency and cost effectiveness within the system
  - 10.4 Individual citizens or groups (such as a relative or friend, NGOs, church groups or networks) could act as guarantors for families seeking asylum who do not need State monitoring and act as a supportive link at hearings and all official appointments.
  - 10.5 We suggest that in cases in which such controls are deemed necessary, reporting requirements be integrated with the case owner system in order to enable reporting arrangements to take into account any specific needs or difficulties. This raised level of contact with the case owner would allow families to access information and details about the asylum case and its progress, as well as allow a meaningful exchange of information regarding difficulties or concerns. Individuals who have asylum cases outstanding have an incentive to stay in contact with case owners.
  - 10.6 An integrated, community-based approach which involved both casework and a welfare focus would also support and encourage compliance with asylum process
  - 10.7 This integrated approach might also improve the current voluntary return process by increasing the take-up from families who have no legal right to remain in the UK
  - 10.8 We recommend closer cooperation and partnership working with the children's social care voluntary sector who could play a significant contractual role with authorities by supervising and supporting individual cases
  - 10.9 We reject the use of electronic tagging as an alternative approach to enable authorities to track people. The stigmatisation of children and their families has a negative effect on asylum seekers within their communities. We are unaware of any evidence that electronic surveillance has an impact on reducing absconding rates
  - 10.10 We reject the use of accommodating asylum-seeking families in ways and locations that result in their isolation from the wider community. We feel there are both short and long-term benefits to the integration of children and families within the UK population from the very start of their asylum process
  - 10.11 Many other countries have alternative approaches to detention and we suggest that these should be explored to see what benefits such approaches may have for the UK context. Some examples include:
    - Sweden- families with children are initially accommodated in a reception centre where their health and support needs are assessed, before being dispersed to regional 'refugee centres': flats organised round a central office. Each asylum seeker is assigned a caseworker who has a key role in explaining the determination process and their client's rights within it; ensuring that the application is handled properly and that the client is able to access interpreting and legal representation; and providing referrals to counselling and health care. People seeking asylum are required to visit the caseworker at least once a month, when they receive a case update, their subsistence allowance and a review of their needs and risks assessments. Reviews of the system suggest it is successful in both providing support and securing compliance with immigration decisions, including return. Detention is very rarely used, and the maximum detention period for children under 18 is three days, with a possible extension to six days in extreme circumstances.

This system is reported to have brought significant cost reductions in the treatment of asylum-seekers.

- Canada - the state-funded Failed Refugee Project, run by the Greater Toronto Enforcement Agency, provides counselling and practical assistance to asylum-seekers whose claims have been refused. Clients of the project are given a 30-day period to plan their return and to organise their affairs. In 2001-02, 60% of the project's clients returned to their country of origin after this period, and a further 20% after a follow up visit from the project. Thus, overall 80% of the project's clients returned without any need for punitive measures, detention or enforced removal. The British Columbia and Yukon Regional Enforcement Agencies trialled this approach with similar results.
- Melbourne - A comprehensive welfare-based casework approach to working with asylum-seekers, including asylum-seekers whose claims have been refused, is that employed by Hotham Mission in Melbourne. The state-funded Bail Programme works with people who have no family or other person to provide surety. Clients are released without bond to the programme and required to comply with regular reporting and unannounced visits. The programme reported a 91.6% compliance rate for 2002-03. However there is also evidence that bail without restrictive conditions is equally effective. Several homeless shelters report that 99% of residents complied with the full asylum procedure.

11. Families who cannot be returned- Children and families should not be forced to return to situations where there is a risk of harm, such as those that exist within a conflict or post-conflict zone or country. The health and welfare needs of families and children can also impact on their safe return and an assessment of all family members should be undertaken. Children in particular must have their needs considered and the best interests of the child should underpin the assessment. We suggest the following alternatives to detention for families who cannot be returned: a) granting temporary leave to remain for a minimum of 6 months for people who have no option to return because of the situation in their country of origin and b) granting temporary or indefinite leave as appropriate for families who cannot be returned for welfare reasons.
12. Of particular concern is the plight of unaccompanied children who reside in the UK without the care and protection of primary care-givers and suffer socially and psychologically as a result of separation from their parents or guardians. Social services have a duty of care for unaccompanied children. We suggest that in cases in which young people are identified as being in need of monitoring for immigration purposes, there be closer cooperation with social services to ensure that reporting requirements take into account the welfare of the child. We also recommend that in granting temporary or indefinite leave for unaccompanied children up to the age of 18 years or 21 years that proper care and consideration be given to ensuring that they are not returned to situations where there is a risk of harm at the end of this period.

We look forward to reading the outcome of the review and trust that this will result in improvements in the care and protection of asylum-seeking children.

Yours sincerely  
Professor Adele Jones



## **14. CHILDREN'S COMMISSIONERS FOR ENGLAND, SCOTLAND, WALES AND NORTHERN IRELAND (JOINT RESPONSE)**

### **Alternatives to the detention of children for immigration purposes: A contribution to the review from the UK Children's Commissioners**

#### **1. Introduction**

- 1.1. The UK Children's Commissioners welcome the announcement to end the detention of children and the invitation to contribute to the review.
- 1.2. The UK Children's Commissioners have been unanimous in opposing the detention of children for immigration purposes recognising that such detention is damaging. As a result we wish to assist the Government in delivering on their commitment to end the detention of children for immigration purposes.
- 1.3. We accept that the State has the right to control its borders and that this may mean requiring children and their parents to leave the UK when they no longer have that right. When this becomes necessary children and young people's safety, welfare and well-being are paramount. Our standard for assessing the appropriateness of any system must be the accepted standards set out in the UN Convention on the Rights of the Child.
- 1.4. The Aim of the Review as expressed in the Terms of Reference is to consider how the detention of children for immigration purposes will be ended. The review will make recommendations based on its findings. The Review will consider seven broad matters set out under headings in the Terms of Reference. We consider each of these headings in turn.

#### **UKBA's current approach to dealing with asylum applications from families, including the contact arrangements with those families and the families' access to legal representation.**

#### **2. Reporting**

- 2.1. The potential of 'reporting', as a mechanism for supervising a family in the community appears to be under used. From our discussions with families in detention it is clear that there is room for improved contact arrangements from the start of the asylum process and that detention has sometimes been used because contact has broken down. We do not agree that the breakdown of a reporting arrangement is necessarily good evidence of an intention to abscond as is sometimes assumed. Families may fail to report for a number of reasons – e.g. illness of a family member, lack of money for a fare and so on.
- 2.2. Reporting mechanisms need to be developed that are more mutually beneficial to both the family and UKBA. One feature of such an arrangement would be flexibility and consideration of the individual needs of the family – including childcare needs and arrangements around school times, proximity of the reporting venue from the family's accommodation and so on. UKBA would benefit from discussing the families particular needs and situation in establishing reporting arrangements. Because of the severe financial constraints on asylum seeking families we suggest UKBA should meet the costs of the reporting arrangements agreed.
- 2.3. We would also like to see further consideration of the venue and location of where asylum seeking families need to report. Consideration should be given to increasing the number of reporting venues for families, including the use of settings not located in enforcement offices or police stations.
- 2.4. The quality of the contact that takes place at the reporting venue is also something that needs to be considered. To be of greater use in ensuring compliance, reporting should be used as more than a mechanism for checking a family's whereabouts. It could also be a useful forum to exchange information between UKBA and the family.

#### **3. Access to legal representation**

- 3.1. We are pleased that the Terms of Reference for the review include consideration of access to legal representation. Returns of failed asylum seekers, whether involving detention or not, are more likely to be resisted where the subject has not had the opportunity to fully present their claim to asylum to the authorities. Because of the complexity of asylum, this requires competent, high quality legal representation to be guaranteed at the outset of the claim in order for the applicant to be able to fully put their case. We believe that evidence from the Solihull pilot points in the direction that those who have been through a fair process – as the scheme to guarantee early representation resulted in applicants being more prepared to return on a voluntary basis. The UNHCR points out that the front-loading design has allowed for decision-making to be based on more evidence and subsequently has led to better quality decisions.<sup>1</sup>
- 3.2. We therefore propose that UKBA guarantee that every family is able to access good quality legal advice prior to their asylum interview and decision. The proposal that families are dealt with by specialist asylum teams within UKBA should be complemented by an instruction permitting such teams to operate a more flexible timescale for determining the asylum application to allow representation to be secured and arranged.
- 3.3. We further propose that the 'merits test' for controlled legal representation at appeal in England and Wales is reviewed – at least in the case where families are concerned. There is precedent for this in as much as the merits standard for unaccompanied children on appeal is currently lower. The same standard could be applied to family cases.
- 3.4. We believe that these measures would help to address some of the fundamental problems that currently serve to impede a fair and quick process. These barriers include:



- a. The postcode lottery in legal representation that means some vulnerable clients such as unaccompanied children are not able to secure legal help in meeting the strict timetable for submitting evidence and attending interviews.
  - b. In England and Wales, a Legal Aid system that compounds the lack of representation available through a financial incentive to make conservative decisions concerning case management by law firms providing controlled legal representation under an immigration contract.
  - c. In Scotland there is a considerable variation in the quality of legal representation. The Scottish Legal Aid Board (SLAB) with the support of Scottish Refugee Council is currently conducting research into the access to justice asylum seekers currently have, with specific focus on the timing of legal representatives' interventions and the impact the speed of the process has on access to justice and on availability of funding. We recommend that their findings are taken into consideration when reviewing access to legal representation in Scotland.
- 3.5. Difficulty in securing appropriate representation leads to many families having to attend court unrepresented or having to allow the appeal to be determined in their absence and on the papers. Both of these are highly unsatisfactory arrangements and result in a significant number of families making further representations, including judicial review, to prevent removal later on. We therefore suggest that the proposals set out in 3.3 and 3.4 above are considered as part of the solution to this issue.

#### **Quality of initial decision making**

- 3.6. We propose that, in parallel with improved access to legal representation, UKBA consider ways of improving the quality of decision making and the decision-making abilities of case owners in line with UNHCR recommendations made during the Quality Initiative project. We propose that the UKBA consider ways of implementing all recommendations made in all six reports to the Minister within the Quality Initiative Project. Improved initial decision making will strengthen the perception of fairness of the asylum process in asylum-seeking families and a perception of an improved decision-making process is likely to reduce the number of appeals.

#### **Consideration of the differences in the relevant systems in the four countries**

- 3.7. We would ask that any new models are developed in close consultation with devolved governments and civil society organisations, so that new processes are compatible with local structures, legislation and practices.

#### **The current circumstances in which children are detained**

- 3.8. We are pleased that recognition has been given to the wide variety of families who are at risk of detention. More needs to be known about the different circumstances detained families find themselves in. Therefore we encourage the Government to work alongside organisations that support asylum seeking families in the community or in detention to provide a detailed map of those at risk of being detained. This will enable more effective tailored solutions to their particular situation. While the Children's Commissioners are not in a position to provide this detailed analysis our work has highlighted two issues.
- 3.9. First, the Children's Commissioner for England has regularly encountered overstaying families while visiting Yarl's Wood. In the process of these encounters it has become clear that overstaying families are themselves not a homogenous group having in common only that they are unlikely to have had contact with UKBA prior to coming to notice as overstayers. It is clear that a full understanding of the nature of the overstaying will be important in deciding on the departure of an overstaying family or indeed, considering whether there is a valid application for them to make to remain. Each family will have different circumstances which need considering and the risk of them absconding may vary widely.
- 3.10. We believe that one way of addressing some of these issues is to secure legal representation for an overstaying family. This may well be a way of giving them an investment in remaining visible and could give further options to UKBA in the longer term such as self check in or assisted departure.
- 3.11. Second, we recognise that careful consideration will need to be given to those subject to deportation proceedings who have served criminal sentences and are awaiting deportation. Reuniting the family in immigration detention has been used in the past. Where a parent subject to immigration control has been separated from a child on account of being criminally convicted the separation is not for an 'immigration purpose' and we make no comment on it. It should be possible to deport a parent at the end of their sentence and reunite them with their child at the airport. The child will have been in care prior to this. It is of course important that contact is maintained with the parent during his or her criminal sentence. We see no justification for using immigration detention to extend the length of detention of someone who has been convicted of an offence, let alone have their children join them in detention for apparent administrative convenience.

#### **4. All relevant baseline data and statistics**

- 4.1. We support the collection of comprehensive and robust data, and stress that this is used in an objective way to inform policy. For example, figures that show of the 1,068 children and young people<sup>2</sup>'s leaving detention in 2008-9, only 539 were removed while 629 were released back into the community<sup>2</sup> highlights the rationale for the government's current approach and intention to end detention.

4.2. Furthermore we recommend that in addition to the statistical data being collected that greater attention is paid to qualitative evidence from children and young people that can be used to inform practice and assess progress in the quality of experience. We propose that this is done by funding independent research and wide dissemination of its findings.

<sup>1</sup> UNHCR Quality Initiative project, Sixth Report to the Minister, para 2.1.3.  
<http://webarchive.nationalarchives.gov.uk/20100503160445/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcreports/qualityinitiative/unhcr-report-6?view=Binary>, accessed on 30/06/2010

<sup>2</sup> Hansard HC 17 June 2010: Column 231WH

## **5. UKBA's initiatives on implementing alternatives to the detention of children, including the Glasgow pilot**

5.1. The starting point for any alternative to detention should be consistent with the position we set out in the report of the Children's Commissioner for England *The Arrest and Detention of Children Subject to Immigration Control*:

"UKBA should develop community-based alternatives to detention, which ensure that children's needs are met, and their rights not breached, during the process of removal. We acknowledge that the UKBA needs to take a risk-based approach to immigration. However, we do not believe that this needs to be incompatible with acting in the best interests of the child as required by Article 3 of the UNCRC."<sup>3</sup>

5.2. Serving removal directions in the community is far preferable to serving them at the point of arrest. We would like to see a system where families were supported through the period between service and departure perhaps by a 'case manager' (see below). It will be important to allow sufficient time for the family to realistically 'close' their lives in the UK and this might also point to the advantage of having a case manager involved.

5.3. The risk of a family absconding is something that will have to be considered and, where necessary, ameliorated. Again, we would point to a case management or community supervision model as preferable to technological solutions such as electronic monitoring which inevitably stigmatise asylum seekers.

5.4. As a result we welcome the Minister's recent statement that:

*"The UK Border Agency would therefore set removal directions while the family is in the community, giving the family time to submit further representations and to apply for a judicial review if they wish to do so as well as giving them time to make plans for their return. The arrangements would place greater emphasis on self check in or escorting to the airport."*<sup>4</sup>

5.5. The review made specific reference to the A2D project in Ashford, Kent and current pilot in Glasgow. The Office of the Children's Commissioner for England has visited both projects, and Scotland's Commissioner for Children and Young People has visited the Glasgow pilot – we will comment briefly on both below (5.6 and 5.7). The comments on the Kent pilot are the views of the Children's Commissioner for England alone and the Commissioners are aware that the full formal evaluation of the Glasgow pilot is yet to be published.

5.6. In relation to the Kent pilot, the Office of the Children's Commissioner for England agrees with the current Minister for Immigration that the project was not allowed to run for long enough, was not well resourced and could not provide an answer to the questions around developing a sustainable alternative.<sup>5</sup>

<sup>3</sup> 11 MILLION, op cit., Recommendation 1.3

<sup>4</sup> MP's debate – Alternatives to Child Detention, 17 June 2010

<sup>5</sup> Hansard, HC Borders Citizenship and Immigration Bill, Second Reading, 2 June 2009; Column 217

5.7. The Glasgow Pilot has been better resourced and planned but has yet to be properly evaluated. One early positive result from the project has been that awareness of Assisted Voluntary Return has spread and there has been greater take up of this outside of the project itself. In addition the Minister was able to report some initial data to Parliament on 17<sup>th</sup> June.

5.8. Despite disappointing figures for those directly involved in the project we await the full evaluation. In undertaking this evaluation we believe that there is a need to address a number of factors:

- a. The motives of those placed in the pilot scheme need to be assessed (our hope is that the pilot has reinforced the benefits of voluntary return and addresses any unresolved concerns about a family's safety upon their return).
- b. The impact of requiring families to leave the accommodation they have occupied in the community and live in dedicated accommodation. The feedback we have received suggests that by being asked to move to a different accommodation families focus on the practicalities of that move and are unable to start thinking about returning to their country of origin.
- c. The effectiveness of entry into the schemes only being at the point that the family is 'appeal rights exhausted'.
- d. The dependency of AVR schemes on the wider asylum process to which families may or may not have had access compared to systems that focus exclusively on removal and return.

5.9. The Commissioners will be very pleased to support projects that can demonstrate evidence of effectiveness across these criteria.

## **6. Models of good practice from other jurisdictions and relevant current research**

- 6.1. Ambitious reform to asylum and detention processes have taken place in other countries such as Australia, Sweden and, most recently Belgium. Worthwhile 'alternatives' have also been experimented with in Canada and the USA at various times. The UK can learn from the experience of other jurisdictions but because of significant differences in matters such as how families are accommodated and cared for elsewhere, it is not possible simply to import a model. Rather, we suggest that *approaches* are considered for adaption to a British model.
- 6.2. A common feature in many of the experiments with alternatives to detention is community based case management. A recurring feature of such models is the allocation of a case manager who is independent from the decision maker and whose function is to guide the migrant through the asylum or immigration process. The case manager makes sure that the applicant understands the process they are going through, has access to the necessary legal advice and representation and can direct the individual to where their welfare needs can be met.
- 6.3. Case management involvement from the start of the migrant's application process would seem to be important. By assisting with the practical difficulties that face the migrant, it would seem possible to open up a dialogue which encourages consideration of all immigration outcomes. Part of this would be access to information and support about assisted voluntary return in the event of the failure of a protection claim.
- 6.4. In Sweden such a model has been in existence since 1997. Asylum seekers live in the community and meet on a regular basis with an assigned caseworker. The caseworker's role extends through ensuring that they understand their rights and obligations, ensuring they have legal representation and carrying out welfare and risk assessments which are communicated to decision makers. Many of the workers come from a social work background.
- 6.5. Australia introduced a similar model to Sweden more recently. Migrants who are identified as vulnerable are provided with a case manager who remains allocated to them until their case is resolved. The case manager provides an ongoing assessment - including of the person's welfare needs and barriers to immigration outcomes, practical support and recommendations to decision makers but has no direct decision making role themselves.
- 6.6. Both the Australian and Swedish experiences have resulted in reduced reliance on detention. In both countries the model is used on all migrants (subject to a risk assessment) and not simply for families. Sweden consequently makes little use of detention. It is reported that 76% of asylum seekers refused in Sweden return voluntarily – the highest levels of voluntary return in Europe.<sup>6</sup> Australia has closed the majority of its mainland detention centres. According to Australian Government statistics 94% of people on community based case management programmes complied with their reporting requirements and did not abscond.<sup>7</sup> 99% of families did not abscond and 67% of those not granted a visa to remain departed voluntarily.
- 6.7. Belgium ended the detention of children in families in October 2009. Families are placed instead in open housing units allowing them to lead a more normal life. They receive advice and assistance from a 'returns coach' who assists them consider the option of voluntary return. Initial government statistics indicates 79% of families remained in contact with their coach throughout their stay. Unlike in similar UK experiments in Ashford and Glasgow, the coaches have the ability to discuss options for stay with the families and in practice have recommended that families are routed out of the programme.<sup>8</sup> However their overall results are less impressive than those in Australia and Sweden.
- 6.8. The Belgium experience more closely resembles the model attempted in the A2D experiment in Ashford, Kent and in the Glasgow pilot in as much as families are transferred to a special housing unit after refusal. This is thought to be traumatic for the family and inhibits their ability to engage with the process. Flemish Refugee Council reports that insufficient structure and support for the 'coaches' to ensure the welfare of children in the housing units.

<sup>6</sup> International Detention Coalition, *Detention Reform and Alternatives in Australia* (2009)

<sup>7</sup> International Detention Coalition, *ibid*

<sup>8</sup> Flemish Refugee Council, *An Alternative to Detention of Families with Children* (December 2009)

6.9. It is interesting to note that the more successful approaches adopted in Australia and Sweden have engaged with migrants in an end to end process rather than simply after a refusal of the claim. These approaches seem to allow a relationship of trust to be built up between migrant and case worker which seem to have contributed to the eventual higher levels of voluntary returns.

## **7. How the current voluntary return process may be improved to increase the take up from families who have no legal right to remain in the UK**

7.1. In the Parliamentary debate from June noted above the Minister stated:

*“The need for better contact management and more active discussion of a families options if their claim is rejected and their right to appeal a decision has been exhausted. Discussions with a family member might need to be backed up by improved support from NGO’s partners and other workers.”*<sup>9</sup>

- 7.2. Information about returning voluntarily to the country of origin can and should be included in the context of a more co-operative relationship between the family and UKBA predicated upon better contact management. We would welcome and support such moves that must learn from previous attempts that have been both unsuccessful and distressing.
- 7.3. We would also welcome the commissioning and publication of research into the outcomes for families who have been returned to their countries of origin. The availability of independent analysis of this sensitive issue will make it easier for such information to be communicated to families by UKBA case owners, IOM, legal representatives and organisations working to support asylum seeking families. The two possible outcomes of the asylum claim and their consequences, including return options, should be carefully communicated from the very beginning, without prejudice to the outcome of the asylum claim or any appeals.
- 7.4. This is consistent with our position on this matter, set out in *The Arrest and Detention of Children Subject to Immigration Control*, where the Children’s Commissioner for England stated that:  
*“Information to support voluntary departure should be delivered when families appeal rights are exhausted, recognising that they are unlikely to be open to return whilst their claim is outstanding. Ongoing face to face opportunities to identify and address barriers to departure and appropriate support should be provided for families unable to remain.”*
- 7.5. We reiterate this as a practical suggestion that could be integrated into contact management with the family. If this proposal is accepted then the family’s legal representative must be informed beforehand of the purpose of the appointment with the family. This would assist the discussion between the family and UKBA since the representative may be able to explain the options prior to the discussion. Prior information to the representative may also reduce the risk of distrust or distress that may be caused if information is sprung on a family unexpectedly.
- 7.6. We acknowledge that timing of discussions about voluntary return is important but have challenged the appropriateness and effectiveness<sup>10</sup> of the current arrangements where we understand that information is provided ‘throughout the process’.
- 7.7. Information is best provided in a fitting fashion at an appropriate time. For example, while it may seem appropriate for some discussion or provision of information about voluntary return to be shared prior to decision, this might be interpreted as bias towards a negative outcome if the source of the information was also the decision maker. Similarly it would, in our view, be inappropriate to seek discussions before the family has had the opportunity to consider and exercise any appeal right.
- 7.8. Therefore, an appropriate solution is for a post appeal interview with the UKBA case owner to become a standard part of contact management with the applicant.
- 7.9. Finally, we would like consideration to be given to how IOM and its partners deliver information about VARPP and any practical issues that arise for families in attending IOM offices such as travel costs.

<sup>9</sup> *Hansard*, HC 17 June 2010; Column 213WH

<sup>10</sup> UKBA response to 11 MILLION, 12 August 2009

## **8. How a new family removals model can be established which protects the welfare of children and ensures the return of those who have no right to be in the UK, outlining the key process changes, rule or legislative changes that would be required to implement the new model**

- 8.1 We support the development of a system that safeguards and guarantees a fair asylum process for every child and young person with such safeguards as guaranteed competent representation.
- 8.2 Even with such safeguards, albeit that they are not in place currently, we would anticipate that there will be a small number of families who would not avail themselves of the assistance available for returning and may resist removal.
- 8.2 This raises the question of how UKBA can remove those who no longer have a right to be here without recourse, in the case of families, to detaining them.
- 8.3 We note the observations of the Home Affairs Select Committee enquiry into children’s detention which understood the need for UKBA to have recourse to detention in order to effect removal while insisting that its use was minimised. We concur with the Committee that without a power to ‘detain’ – in the sense of any deprivation of liberty, UKBA may find it impossible to carry out any kind of enforcement activity. It should be borne in mind that arresting a person and placing them in the back of a van while transporting them to an airport is, in law, ‘detention’.
- 8.4 We think that as the final stage in a graduated process deprivation of a child’s liberty may continue to be necessary in order to effect the removal of some families. Where this happens, we would want to ensure that, in line with Article 37 (b) of the UNCRC, the arrest and detention of the child is used only as ‘a measure of last resort’ and ‘for the shortest appropriate period of time.’

- 8.5 It may be worth discussing what we would consider to be 'the shortest appropriate period of time' in this context. An arrest may take place in a city some way from the airport from which the family will be departing. During transportation, the child will be detained. If the family is not released at the airport to continue the journey unassisted by an escort then detention can be said to continue. For it to be the shortest *appropriate* period the flight arrangements will have been carefully planned to ensure that detention of the child is kept to a minimum.
- 8.6 In the light of the above considerations, and in a context where the existing detention centres for families are decommissioned, it is likely that short-term holding facilities could become used for holding more families. The current rules in short-term holding facilities make them very unsuitable for families with children. This has been noted in the reports of the HMIP and we propose an urgent review of those rules.
- 8.7 More or less the 'shortest appropriate period of time' in this context equates to removal on the same day as arrest to avoid overnight detention. It will be recalled that 'same day removals' were abandoned by the immigration service after the tragic death of Joy Gardiner who jumped from a window to her death to avoid her imminent removal. That case highlighted the dangers of same day removals and acts as a reminder as to the other 'limb' of Article 37 (b) - that any child's arrest and detention must be as a 'measure of last resort'.
- 8.8 We would want this interpreted as the family having had notice of the removal and time to challenge it if necessary and to prepare for their departure. This accords with the Minister's declared intention to set removal directions while families are in the community.
- 8.9 There will be debate over what is an appropriate 'notice' period to a family between the issuing of removal directions and the actual date of departure. This needs to be tailored to the individual family and the country and the particular circumstances they face as well as issues such as how long they have been in the UK for. The time given has to be adequate erring on the side of generous and will need to take account of the child's best interests and in particular proximity to examinations and the need to arrange for travel vaccines and prophylaxis and for adequate time for medication to become effective. There must also be time for the family to close down its affairs in the UK in an orderly manner, pack and arrange for belongings to be transported, discuss the assisted returns package with IOM, make contact with family or friends in the country of origin. We understand that in Belgium families are given around six week's notice of removal.
- 8.10 We would also seek guidance from the Convention on the issue of whether it can be appropriate to separate children from their parents to effect compliance with removal. Article 9.1 requires that *States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.*
- 8.11 It would be hard to comply with Article 9.1 in taking a parent into detention while leaving a child in another's care pending removal of the whole family. We would therefore want to exclude removal options that relied on separating children from their parents.

## 9. Conclusion

- 9.1 We appreciate that welfare of children in the asylum and immigration systems presents significant challenges and is a difficult area of public policy. We appreciate the recognition that a number of organisations will need to work together to develop solutions that are durable in the long term.
- 9.2 Discussion of 'family removals' can not take place in isolation from the broader discussion about a fair, transparent asylum determination system. This paper has addressed only some of the issues that this area of policy and practice raises. However, we do set out a positive approach and set of principles that we believe should underpin the changes the government decides to implement.
- 9.3 We urge that there is an ongoing dialogue between the government, through UKBA, and stakeholders with a concern for this area of policy beyond the formal end of the review. The UK Children's Commissioners would welcome such an opportunity in order that the views, interests and well-being of children are at the forefront of new policy, practice and procedure.
- 9.3 If there are no 'quick fixes' to the problems that have led to the current debate then there is also a pressing need to end the detention of children to avoid the continuing damage we know that it causes. We urge the government to do so swiftly while the new arrangements are being put in place.

## 15. CHILDREN'S RIGHTS ALLIANCE FOR ENGLAND (CRAE)

### Review into ending the detention of children for immigration purposes

The Children's Rights Alliance for England (CRAE) is a coalition of statutory and voluntary organisations and individuals that seeks the full implementation of the United Nations Convention on the Rights of the Child (CRC) in England. Our vision is of a society where the human rights of all children and young people are recognised and realised.<sup>1</sup>

#### Summary

CRAE welcomes the commitment from the coalition Government to 'end the incarceration of children for immigration purposes once and for all'<sup>2</sup>, and the announcement that the review will take account of international, European and human rights obligations. CRAE believes that the detention of children for immigration purposes violates their fundamental human rights and must be ended immediately. It is manifestly at odds with the UK's human rights obligations towards children and the UK Border Agency's duty under Section 55 of the Borders, Citizenship and Immigration Act 2009 to promote and safeguard the welfare of children.

Our submission to this review is informed by the UK's human rights obligations to children under international law, and by the principles agreed by the Refugee Children's Consortium<sup>3</sup> (of which CRAE is a member) with regard to ending the immigration detention of children:

- The detention of children must end now, as it is clear that detention harms children. Children and their families should be released immediately.
- Children and their families should never be separated for immigration purposes.
- Ending the detention of children is not dependent on establishing "alternatives to detention" projects or new processes for families.
- Discussion on policies and practice on returns are not needed to end the detention of children.
- Discussions that focus on finding solutions to the problems at the end of the process need to consider a family's entire experience of the asylum and immigration process. The provision of good quality legal advice throughout is crucial.

#### Terms of the review

The stated aim of this review is to consider 'how the detention of children for immigration purposes will be ended'. CRAE welcomes the review and the immediacy with which the Government has initiated it, but it is deeply regrettable that the Government has not seen fit to suspend its current policy of detaining children for immigration purposes pending the outcome of the review.

In order to ensure a comprehensive and meaningful review, the detention of all children subject to immigration control in all its forms must be explored, including detention in immigration removal centres, at short-term holding facilities, at UK Border Agency offices, police stations, and while being transported between locations or awaiting removal at airports. It is also crucial that the review retains its focus on ending the detention of children. Following comments made by Immigration Minister Damian Green MP in a recent Westminster Hall debate that the review will look at '...the actual levels and at how to prevent such detention by improving the current voluntary return process'<sup>4</sup>, it seems there has already been a shift towards focusing on returns rather than on ending the detention of children.

#### The current situation

In late 2008, the UK Government formally removed its wide-ranging immigration reservation to the CRC, which limited the application of all the rights in the CRC to children subject to immigration control. However, the removal of the immigration reservation did not result in substantive government action to protect and promote the human rights of these children, which would have included – among other things – ending the detention of children for immigration purposes. It remains the case that asylumseekers are the only individuals in the UK that may be detained without judicial scrutiny – an anomaly which has attracted concern and criticism from the Council of Europe's Human Rights Commissioner, Thomas Hammarberg.

In 2009, 1,065 children entered detention for immigration purposes, and of these only 520 children were subsequently removed.<sup>5</sup> An inspection report by HM Chief Inspector of Prisons following her visit to Yarl's Wood immigration removal centre in November 2009 commented on decisions to detain children:

*What was particularly troubling was that decisions to detain, and to maintain detention of, children and families, did not appear to be fully informed by considerations of the welfare of children, nor could their detention be said to be either exceptional or necessary. Over the past six months, 420 children had been detained, of whom over half had been released back into the community, calling into question the need for their detention and the disruption and distress this caused.*

*Some children and babies had been detained for considerable periods – 68 for other a month and one, a baby, for 100 days – in some cases even after social workers had indicated concerns about their and their family's welfare.*

*Detailed welfare discussions did not fully feed into submissions to Ministers on continued detention.*<sup>6</sup>

In her report, the Chief Inspector questions the justification for detaining children '...with the inevitable distress and disruption to their lives that this entailed...'<sup>7</sup>, noting that despite efforts by the immigration removal centre, 'the fact of detention clearly and adversely affected children's welfare'.<sup>8</sup>

Consecutive visits by the Children's Commissioner for England to Yarl's Wood in 2008 and 2009 highlighted significant concerns about the safety, health and welfare of children in immigration detention. Having listened to children's views and feelings about their detention on four separate occasions, the former Children's

Commissioner, Professor Sir Al Aynsley-Green, stated that ‘my contention remains that detention is harmful to children and therefore never likely to be in their best interests. There is a growing body of evidence...that documents that detention has a profound and negative impact on children and young people...I will continue to urge that the detention of all children should cease.’<sup>9</sup>

The introduction of Section 55, placing a duty on the UK Border Agency to have regard to children’s safety and welfare was welcomed by the UN Committee on the Rights of the Child and seen as a significant step forward in legislative protection for refugee and asylum-seeking children<sup>10</sup>, yet the step-change that Section 55 should have prompted in immigration and asylum practice and the treatment of children has not occurred. This review offers the Government the opportunity to address this and ensure that Section 55 and the best interests of children form the overriding principles in all immigration and asylum processes affecting and relating to children. Detention facilities cannot give children the protection and care they need; they cannot adequately support and promote their development, nor uphold their rights under domestic and international human rights law, however well-intentioned. These facilities are quite simply never appropriate environments for children, and the negative effect of this type of incarceration on children’s physical and emotional health has been well-documented:

*We were taken to Yarl’s Wood. It’s a detention centre, but it is no different to a jail...I missed my teachers and just being at school and doing normal things with my friends. I was in Yarl’s Wood for three months...I saw how the other people suffered from being there. How they’ve just got pain in their eyes...We applied for bail five times. Every time they said no. Then on 15 November, five escorts arrived, one woman and four men, and the woman searched our bodies in front of the waiting men. They took us to Heathrow. During the journey I was thinking: What are my friends doing? Will I see my school again? Why do I have to go to a country I don’t know? The plane moved a bit, but it stopped and we were sent back to Yarl’s Wood, but then we were taken to Bedford Hospital...I am making a new start and one day I will show everyone what I am capable of. But I will never forget Yarl’s Wood.*<sup>11</sup> (Testimony from a 15 year-old girl locked up in an immigration removal centre)

### **Human rights obligations to children**

UNHCR Guidelines on Detention state that asylum-seeking children should not be detained.<sup>12</sup> The UN Committee on the Rights of the Child is clear about the detention of children for immigration purposes:

*Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.*<sup>13</sup>

*The Committee is concerned that the detention of these children is incompatible with the principles and provisions of the Convention.*<sup>14</sup>

Article 37 of the CRC states that ‘any arrest, detention or imprisonment shall be used only as a measure of last resort and for the shortest appropriate period of time’ – a provision that applies equally to all children who have been deprived of their liberty, including those in ‘immigration institutions’.<sup>15</sup> This includes the right not to be detained arbitrarily or unlawfully, the right to prompt access to legal advice, and the right to challenge the legality of detention before a court.

The UK has been consistently and severely criticised by international human rights bodies for its failure to ensure that the principle of the best interests of the child (Article 3, CRC) is integrated into all immigration legislation and policy affecting children. In its most recent examination of the UK Government, the UN Committee on the Rights of the Child made several significant recommendations for government action in relation to the detention and return of asylum-seeking children, including:

- Ensuring the detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest possible time
- Considering appointing guardians for unaccompanied or separated children
- Giving the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum.<sup>16</sup>

The UN Human Rights Committee, in its 2008 examination of the implementation of the International Covenant on Civil and Political Rights in the UK, stated:

*The Committee remains concerned that the State Party has continued its practice of detaining large numbers of asylum-seekers, including children...The State Party should review its detention policy with regard to asylum seekers, especially children...It should also ensure that asylum-seekers have full access to early and free legal representation, so that their rights under the Covenant receive full protection.*<sup>17</sup>

The Council of Europe’s Human Rights Commissioner Thomas Hammarberg, in his memorandum following visits to the UK in 2008, called for the detention of children in the context of asylum and immigration to be ‘expressly proscribed by law, and take place only in exceptional circumstances which should be precisely detailed in the law’ in accordance with the ECHR and the CRC.<sup>18</sup>

Where children are detained in “exceptional” cases, the UN Committee on the Rights of the Child has set out the requirements for that detention, which must be ‘governed by the best interests of the child’ and fulfil Article 37 of the CRC:

*...The underlying approach to such a programme should be “care” and not “detention”...Children should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel, and their guardian. They should also be provided with the opportunity to receive all basic necessities as well as appropriate medical treatment and psychological counselling where necessary. During their period in detention, children have the right to education which ought, ideally, to take place outside the detention premises in order to facilitate the continuance of their education upon release. They also have the right to recreation and play as provided for in article 31 of the convention. In order to effectively secure the rights provided by article 37 (d)...*



*unaccompanied or separated children deprived of their liberty shall be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative.*<sup>19</sup>

Research, including evidence from children and families, has clearly shown that immigration detention in the UK does not meet these standards for children. In addition, a recent case in the European Court of Human Rights found that where the conditions of detention and the effect of detention on the physical and mental health of detainees are sufficiently adverse, this may in itself constitute a breach of the prohibition against torture, or cruel, inhuman or degrading treatment or punishment if the deterioration is significant.<sup>20</sup>

### **Alternatives to detention**

In the terms of reference for the review, the Government has indicated its intention to explore alternative models for family returns. CRAE does not believe that ending the detention of children is dependent on establishing “alternatives to detention” projects or new processes for families. There is no evidence that families are systematically at risk of absconding if they are not detained, with the education and health needs of children, links to the community and the desire to be granted status in the UK all working against this.

The UN Committee on the Rights of the Child’s General Comment on unaccompanied and separated children sets out principles for providing care and accommodation for refugee and asylum-seeking children that should inform the Government’s thinking with regard to alternatives to detention. They include:

- Children should not be deprived of their liberty
- Children arriving with adult relatives should be allowed to remain with them unless contrary to the child’s best interests

- Care arrangements should be regularly supervised and assessed by qualified persons to ensure the physical and mental health, safety, and development of the child (including access to education and opportunities).<sup>21</sup>

Any alternatives considered by the Government must take these principles and the provisions of the CRC as their starting point for children and families. The only acceptable alternative to detaining children is preserving their liberty. Proposed “alternative models” such as ‘separating different members of a family and reuniting them before departure, so that some family members stay in the accommodation they are used to’ shows a fundamental misunderstanding of the principle of the best interests of the child as set out in Article 3 of the CRC.<sup>22</sup>

Furthermore, imprisoning a child to avoid separating him or her from parents or family members is never likely to be in the best interests of the child – treatment of families in contact with the asylum and immigration system must always be directed first and foremost by the best interests of the child. Indeed, the Council of Europe’s Human Right Commissioner has commented on the excessive strain that detention puts on the ‘personal and family lives of detainees’.<sup>23</sup>

Article 8 of the ECHR provides the right to respect for private and family life, and Article 9 of the CRC provides that a child has the right not to be separated from his or her parents ‘against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child’. This test is unlikely to be met in this context – a child should only be separated from his or her parents if this is demonstrably in the child’s best interests – never for immigration purposes.

Ensuring returns is a continuing preoccupation of the review of immigration detention of children. Human rights law does not make returns impossible; however, it does require that they be carried out in a manner which respects the dignity, integrity, human rights welfare and safety of the individual concerned. The UK’s human rights obligations with regard to returning children to their country of origin are clear: ‘return to the country of origin shall in principle only be arranged if such return is in the best interests of the child...’.<sup>24</sup> Despite this, concerns remain about the robust nature (or lack thereof) of welfare assessments that are carried out prior to return. The UN Committee recommended in its 2008 examination that action be taken by the Government to ‘ensure that when the return of children occurs, this happens with adequate safeguards, including an independent assessment of the conditions upon return, including family environment’.<sup>25</sup>

The Committee is clear that ‘non-rights based arguments such as those relating to general migration control cannot override best interests considerations’ in asylum processes and arrangements for return of children.<sup>26</sup> However, there is still no information publicly available about the policies and procedures in place to ensure there are adequate safeguards for children returning to their originating country, including whether an independent assessment of the conditions upon return (and of the family environment awaiting the child) is routinely carried out. This makes it impossible for human rights organisations and others to scrutinise the relevant processes and to monitor the treatment of children subject to immigration control.

### **Access to legal representation**

The terms of reference of the review refer to the availability of effective legal representation for families. Access to good quality legal advice and representation, and prompt access to the courts, is a critical element of protecting children and families from unnecessary and ongoing detention, and from unlawful, unsafe and unreasonable removals or voluntary returns. Families are currently detained when many still have outstanding matters to be considered in their particular case, and many more have no or poor legal representation. In its concluding observations of 2002, the UN Committee highlighted its concerns around this issue, recommending that the UK Government ‘ensure the right to speedily challenge the legality of detention’, and ‘carry out a review of the availability and effectiveness of legal representation and other forms of independent advocacy for unaccompanied minors and other children in the immigration and asylum systems’.<sup>27</sup> This theme was repeated by Thomas Hammarberg, the Council of Europe’s Human Rights Commissioner, in 2008, who urged the UK Government to

systematically review 'the provision to every child of legal advice'. This review of detention must take account of the accessibility and availability of legal representation for children and families – including access for children to independent advocates and guardians.

### Conclusions

Immigration removal centres and other forms of detention are more often than not viewed by children as prisons. Children rightly regard themselves as being "locked up", a situation which has a negative and far-reaching impact on their development, welfare, and ability to realise their human rights. Concerns over the clarity of government statistics in relation to the number of children locked up and the length of their detention have muddied the waters and made it difficult to determine the scale of the problem, despite significant evidence directly from children and families of the extremely negative impact of detention on children's well-being.

The Government has decided to retain the current policy position of locking up children pending the outcomes of this review, a move that CRAE believes is unnecessary and threatens to undermine the good intentions behind the Government's commitment. In this interim period, urgent action must be taken to ensure that children in immigration detention have access to the same rights and protection for their welfare, including access to independent advocacy, as all other children in the care of the state. This must apply regardless of whether children are unaccompanied minors, in detention with their families, or the subject of age-disputes.

This review itself must fulfil its stated aim to end the detention of children for immigration purposes – and to end it purposefully, absolutely and immediately in all its forms. It must address and remedy the failure of the UK Border Agency to safeguard and promote the welfare of children, and substantively address the particular vulnerabilities of those in detention who are subject to age-disputes. The Government must ensure that the review's recommendations comply with its obligations to children under human rights and refugee law, and that compliance with these standards is routinely monitored. Any new processes put in place must be rights-based, transparent, and subject to judicial oversight and, most importantly, based on the principle of the best interests of the child as set out in Article 3 of the CRC. This precludes the separation of a child from their parents for immigration purposes. The review must first result in a change in policy, then in practice (through the proper implementation of Section 55 and the decommissioning of facilities and resources that support the detention of children), and finally in law – in order to ensure that no return to the detention of children for immigration purposes is possible in the months and years to come.

Sam Dimmock

Head of Policy and Public Affairs

Children's Rights Alliance for England

**30 June 2010**

1 CRAE is one of the largest children's rights coalitions in the world. Not all of our members necessarily support all the contents of this submission

2 House of Commons, Debate on the Queen's Speech (Prime Minister David Cameron), 25 May 2010: Hansard Column 49

3 The Refugee Children's Consortium is an alliance of children's, refugee and human rights NGOs across the UK.

4 Westminster Hall debate: Alternatives to child detention (Immigration Minister Damian Green MP), 17 June 2010: Hansard Column 211WH

5 Home Office, *Control of Immigration: Quarterly Statistical Summary - United Kingdom, October to December 2009*

6 HM Chief Inspector of Prisons (2010), *Report on a full unannounced follow-up inspection of Yar's Wood Immigration Removal Centre, 9-13 November 2009*, page 5

7 Ibid, page 19

8 Ibid, page 5

9 Children's Commissioner for England (2010), *Follow up report to the arrest and detention of children subject to immigration control*

10 UN Committee on the Rights of the Child (2008), *Concluding observations: United Kingdom of Great Britain and Northern Ireland*, paragraph 70

11 Testimony from a 15 year-old girl, Centre for Crime and Justice Studies (2009), *Criminal Justice Matters*

12 Office of the United Nations High Commissioner for Refugees (1999), *UNHCR's guidelines on applicable criteria and standards relating to the detention of asylum seekers*

13 UN Committee on the Rights of the Child (2005), General Comment No.6: *Treatment of unaccompanied and separated children outside their country of origin*, paragraph 61

14 UN Committee on the Rights of the Child (2002), *Concluding observations: United Kingdom of Great Britain and Northern Ireland*, paragraph 49

15 UN Committee on the Rights of the Child (2007), *General Comment No. 10: Children's rights in juvenile justice*, paragraph 11, footnote 1

16 UN Committee on the Rights of the Child (2008), *Concluding observations: United Kingdom of Great Britain and Northern Ireland*, paragraph 71 (a) (c) (e)

17 UN Human Rights Committee (2008), *Concluding observations: United Kingdom of Great Britain and Northern Ireland*, paragraph 21

18 Council of Europe Commissioner for Human Rights (2008), *Memorandum following his visits to the United Kingdom on 5-8 February and 31 March – 2 April 2008 – Issues reviewed: Asylum and Immigration*, paragraph 74

19 UN Committee on the Rights of the Child (2005), General Comment No.6: *Treatment of unaccompanied and separated children outside their country of origin*, paragraph 63

20 Muskhadzhiyeva and others v Belgium (application no. 41442/07), European Court of Human Rights; *Bensaid v United Kingdom* [2001] 33 EHRR 10

21 UN Committee on the Rights of the Child (2005), General Comment No.6: *Treatment of unaccompanied and separated children outside their country of origin*, paragraph 40  
22 Westminster Hall debate: Alternatives to child detention (Immigration Minister Damian Green MP), 17 June 2010: Hansard Column 213WH – 214WH  
23 Council of Europe Commissioner for Human Rights (2008), *Memorandum following his visits to the United Kingdom on 5-8 February and 31 March – 2 April 2008 – Issues reviewed: Asylum and Immigration*, paragraph 50  
24 UN Committee on the Rights of the Child (2005), General Comment No.6: *Treatment of unaccompanied and separated children outside their country of origin*, paragraph 84  
25 UN Committee on the Rights of the Child (2008), *Concluding observations: United Kingdom of Great Britain and Northern Ireland*, paragraph 71 (f)  
26 UN Committee on the Rights of the Child (2005), General Comment No.6: *Treatment of unaccompanied and separated children outside their country of origin*, paragraph 86  
27 UN Committee on the Rights of the Child (2002), *Concluding observations: United Kingdom of Great Britain and Northern Ireland*, paragraph 50 (a) and (f)

## 16. CHILDREN'S SOCIETY

See 4. Bail for Immigration Detainees.

## 17. DISABILITY ACTION, ISLINGTON

I am gravely concerned that detention can only damage the mental health and well being of children and unaccompanied minors.

When people, especially children, are already in unfamiliar and unsettling surroundings it can not be at all positive to compound the sense of isolation and fear by detaining them in such centres. I believe this will inevitably lead to long term problems for the child and that in doing this we are essentially thwarting any hope of that child experiencing a normal life. I think also, from a selfish point of view, our society needs to be concerned that children who are incarcerated, even in detention senses can suffer long term damage and this can later manifest itself in anti social behaviour and crime. We must do better to stop this happening.

We urge you rather to leave the responsibility for housing children seeking asylum/pending resolution of appeals to the local authority to either house the child themselves or seek foster parents

Thank you

Liz Mercer

Web: [www.daii.org](http://www.daii.org)

Disability Action in Islington (DAII) is an organisation run by and for disabled people. We provide free information, advice, user-involvement and peer support services for disabled people, and a range of training and consultancy services to the voluntary, statutory and business sectors. We work to raise awareness of disability equality issues and promote a more accessible and inclusive environment. All DAII projects and services are based on the social model of disability.

For more information, please visit our Website: [www.daii.org](http://www.daii.org)

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## 18. DISPLACED PEOPLE IN ACTION, WALES

### DPIA's response to the review into ending the detention of children for immigration purposes

Sian Summers, Chief Officer

DPIA

1<sup>st</sup> July 2010

DPIA welcomes the government's commitment to "*end the detention of children for immigration purposes*". However we maintain that it would be counter-productive to rush through alternatives which will neither decrease the risk of harm to children nor improve the way children are dealt with within the immigration system. Notwithstanding this we maintain that ending the detention of children is not dependent on establishing "*alternatives to detention*".

#### Alternative approach

DPIA maintains that any alternative to detention should not be based on an assumption that families with children will abscond if they are made aware that they are facing removal. Also the assumption that because families do not take up the option of voluntary returning that they are actively resisting leaving the UK should also be avoided. Alternatives therefore should be considered bearing in mind that there is no evidence that families with children will abscond and no evidence to suggest that if families are resisting leaving the UK.

DPIA maintains that an alternative approach to family returns must be underpinned by a commitment to reviewing the whole decision making process to improve quality and fairness. The most preferred alternative to detention is to increase the willingness and ability of those whose claims have been unsuccessful to return to their countries of origin. This will only be possible if families and the voluntary/community/faith organisations have confidence in the asylum determination process. The proportion of voluntary returns in European countries is significantly higher than the UK which suggests that the current asylum process in the UK needs to be addressed. The policy of making asylum seekers destitute also does nothing to encourage voluntary return.

It would be difficult for the voluntary, community and faith communities to embrace any new approach to removals whilst there are significant numbers of families who are appeals rights exhausted yet still have protection concerns. DPIA has considerable concerns over the quality of decisions made especially due to the lack of access to good quality legal representation, and in Wales, in particular, asylum seekers are often left without any representation at all. There are many other issues which prevent asylum seekers from having a fair hearing such as the "culture of disbelief", lack of access to medical and expert country reports, inadequate time to prepare the case, questionable country of origin reports and inadequate interpretation and translation. In order to address these concerns we refer the reader to the report "Asylum Matters, Restoring Trust in the UK Asylum System" by the Centre for Social Justice. We would wholeheartedly support and suggest that the recommendations from within this report be implemented.

The most appropriate approach with regards to end of process would be one of case support and contact management which was ongoing prior to the asylum applicant becoming appeal rights exhausted. Various models of case support and contact management have been developed, primarily in Sweden, Australia and in Belgium. The idea behind these models is that increased and improved contact between asylum seekers and decision makers would increase the confidence in the decision making process.

A constant feature of these models which we would endorse would be the involvement of an independent third party, for example a support agency caseworker. The caseworker would be assigned to the asylum seeker from the beginning of the asylum process to the end and would be responsible for ensuring that the asylum seeker has access to legal advice and that their welfare needs are being met. By meeting these needs, thereby reducing the stress and pressure on the asylum seeker, the caseworker can begin to develop a relationship throughout the process which will enable them to communicate the differing outcomes which the asylum seeker will encounter. The caseworker could pass on information on the voluntary return option in an appropriate way at an earlier stage within the asylum process.

The caseworker could work intensively with the asylum seeker following a final negative asylum decision to help them understand and address (if possible) the concerns expressed by the asylum seeker about returning home. The caseworker would coordinate with the IOM, and other agencies as necessary, as well as communicating with the Home Office who would be working on the process of conducting a risk assessment for forced removal. Asylum seekers should have access to legal representation throughout this period.

Families should be continued to be supported within their dispersal address, on section 95 support, whilst work is undertaken with them to consider their options for assisted returns. Children should also have an opportunity to discuss their concerns, and the removal and reintegration arrangements, with an independent person who has experiencing of working with children.

The "reintegration assistance" should always be tailored to individual circumstances in order to ensure that it is appropriate to meet economic, social network and psychosocial needs. Thorough plans which meet an individual's needs should be developed whilst liaising with the appropriate agency in the country of origin (IOM/Red Cross).

There should also be opportunities for asylum seekers to access "reintegration assistance" in the UK. For example the group of unaccompanied minors with whom we work have stated that they would feel more prepared to return home if they had developed skills which they could use to support themselves upon return.

The Hotham Mission in Melbourne is an example of the case support and contact management approach.

Following a period of two months if families have not taken the option of voluntary removal a forced removal may be deemed necessary following risk assessment. Prior to the removal directions UKBA should undertake the risk

assessment and the caseworker should liaise with the legal representative to ensure that there are no outstanding legal issues. The Caseworker is able to empower asylum seekers to make the few decisions that they can whilst also being able to advocate for them.

Families should be given at least 6 weeks' notice of removal which takes into consideration children's schooling and the opportunity for arrangements to be made.

Alongside the caseworker approach UKBA could adapt existing reporting mechanisms to make them more meaningful, positive and a two way process. The reporting arrangements should not however be over-cumbersome and be reasonably frequent (no more than one report per week). Crucially the reporting should be child friendly. Asylum seekers should not be expected to travel long distances to report and get paid travel costs. There should be exemptions for asylum seekers in certain circumstances such as pregnancy or ill-health.

In circumstances where removal is impossible we would encourage UKBA to use discretionary leave and not leave families in limbo which would also have a detrimental effect on their children.

#### Alternative approaches to which we are opposed

We would be vehemently opposed to any proposals which looked to separate children from their parents, except of course when it is in the best interests of the child. We maintain that any separation of children would in fact constitute a breach of Article 8 ("right to family life).

We would also argue that the supported accommodation model is inappropriate and ineffective. Both the UK pilots failed to promote voluntary return and caused disruption and upset to the children who were taken there. The casework management approach suggested would be far less disruptive for the children and far less costly.

We are also opposed to same day removals due to our concerns over the quality of decision making as we maintain that this would mean that people with protection concerns would not have the opportunity to appeal against decisions. Also Ministers made a commitment following the tragic death of Joy Gardner that people will not be removed on the same day. To replace the detention of children with the re-introduction of a policy associated with this tragedy would be unacceptable and would not meet commitment to a humane and dignified approach to returns for families with children.

## 19. EDINBURGH CITY COUNCIL

### Review into Ending the Detention of Children for Immigration Purposes

#### Response to the Terms of Reference from the City of Edinburgh Council

The Review will consider:

1. the UK Border Agency's current approach to dealing with asylum applications from families, including the contact arrangements with those families and the families' access to legal representation;

Comment: The UKBA current process (New Asylum Model) is still a slow process when legal appeals are built in. There are a large number of legacy cases still to be resolved and it is these that potentially are the most difficult from a human rights perspective – in practical terms an amnesty for legacy cases except where serious offences have been committed could create a very different context and could go some way to creating a different climate in which planned returns would operate in.

2. the current circumstances in which children are detained;

Comment: As a point of principle no child should be detained or separated from their parent(s) unless there are child protection issues that would indicate that separation should be considered. Have alternatives to detention prior to return home been considered – e.g. escorted hotel / hostel stay the night before a flight. Children cannot be accommodated by local authorities in such circumstances as there would be no legal basis to separate them from their parents.

3. all relevant baseline data and statistics;

Comment: Agreed

4. the UK Border Agency's initiatives on implementing alternatives to the detention of children, including the current Glasgow pilot;

Comment: What other alternatives are there; as far as we are aware there have been no successful returns from the Glasgow pilot

5. models of good practice from other jurisdictions and relevant current research;

Comment: Agreed – they should be widely disseminated when identified. We believe that there is scope to explore new models for practice.

6. how the current voluntary return process may be improved to increase the take-up from families who have no legal right to remain in the UK;

Comment: Attractive incentives need to be built into this process with relocation support grants available and letting people consider this. Should successful returnees be contacted to explore what worked for them and could they be used to allay fears for other's who are due to be returned.

7. how a new family removals model can be established which protects the welfare of children and ensures the return of those who have no right to be in the UK, outlining the key process changes, rule or legislative changes that would be required to implement the new model.

Comment: The best interests of the children should be paramount – this needs to be accepted by all involved in the process to reduce the potential trauma of the process. The children's parents need to understand that the way they behave can have a significant impact on their children's welfare and can either reduce or increase the trauma that they may experience; this may be a cultural issue but a model of humane enforcement is required. This latter point needs to be agreed by all involved with the family – UKBA, lawyers, voluntary organisations, health staff, teachers and social workers - and collusion should be avoided. Can a new model of supportive joint working be developed from this focussing on the child's best interests with a lead professional being identified to work with the parents and children on the inevitability of return. This might be more cost effective. This would be a model of support to make the move rather than one of enforcement. This would not be a soft option but rather a different way of going about the business of removal.

The Review will take account of:

- existing international, EU and Human rights obligations;

Comment: There is a difficult balance to be struck between supporting enforced returns and ensuring the legal process has been exhausted – however false hope can be built up through the legal process and that is not always helpful. The current model is a criminal model and not a supportive model designed to help parents to reduce trauma of the return to their country of origin (and the process of achieving that) for the sake of their children.

- the UK Border Agency's statutory duty to make arrangements to take account of the need to safeguard and promote the welfare of children as it carries out its functions (section 55, BCI Act);

Comment: Local authorities have a duty of care to all children living in their area. That can include a duty to protect them from harm including trauma.

- equality obligations;
- current financial constraints;
- the requirement for robust statistical data;
- the need for a risk assessed approach in dealing with individual families;

Comment: Social workers use risk assessment models in child protection and this model could be developed to include enforced returns. The demands in Scotland and the different approaches we have tried in child care might lend itself to this being trialled; building on work already done in lead professional reports

- the need for an implementation timetable.

Comment: Should alternative models (once identified and agreed) be trialled first in different parts of the UK?

**25 June 2010**



## 20. END CHILD DETENTION NOW

### **End Child Detention Now: Submission to the Home Office Review into ENDING THE DETENTION OF CHILDREN FOR IMMIGRATION PURPOSES. 28 June 2010**

#### **Background**

End Child Detention Now is a citizens' campaign formed in 2009 with the sole purpose of ending the immigration detention of children in the United Kingdom. End Child Detention Now is coordinated by a group of unpaid volunteers who include media professionals, academics, teachers and voluntary sector consultants with experience of direct work with families who have been in immigration detention in the UK.

During the course of the campaign, End Child Detention Now has secured nearly 5,000 signatures on the No10 Petition website calling for an end to child immigration detention in the first seven months, together with hundreds more handwritten signatures which have been twice presented to No 10 Downing Street. With the support of former MP Chris Mullin, End Child Detention Now has helped to secure the signatures of 121 MPs from all parties in support of Early Day motion 139 in the last parliament calling on the then Labour government to end the immigration detention of children. We have coordinated letters opposing the detention of children that have been published in the national press and signed by major faith leaders, and prominent writers and actors. We also continue to collaborate with numerous allied campaigns, religious organisations, child welfare bodies, and refugee and asylum support organisations.

#### **Summary**

We are conscious that a number of other agencies and organisations have direct experience of working with detained asylum seeker families, so in what follows we reprise the key evidence that has been presented in the last twelve months on the significant harm that even short periods of detention can have on children and young people. We agree with Dr Julian Huppert, MP for Cambridge, in the recent House of Commons debate on alternatives to child detention when he said,

**'The main alternative that I can think of to detaining 1,000 children a year is not to detain them'.**

That must be our starting point. It is for the UKBA and the other national and local government bodies along with relevant charities, voluntary agencies and campaign organisations to develop humane alternatives that keep this objective at the front of all the review's deliberations.

We argue that the lack of adequate legal representation for families who wish to make an asylum claim or appeal against a refusal of asylum lies and the long delays in resolving cases lies at the root of the problem. Another issue is the lack of contact with families or information on assisted voluntary return prior to the issuance of removal notices.

We note the absence of a 'children's rights first' culture within the UKBA, despite the provisions of Section 55 of the 2009 Borders, Citizenship and Immigration Act and the appointment of a Children's Champion. This problem has been exacerbated by an institutional culture within the Home Office, the UKBA and among previous ministers of state that the maintenance of a detention regime is an essential deterrent against those who may make unfounded asylum claims in future.

End Child Detention Now believes that all those involved in considering alternative arrangements to detention must agree a clear distinction between the need to ensure the welfare and best interests of the child and the UK government's legitimate objective in maintaining an effective asylum and immigration policy.

As Sir Al Aynsley-Green has stated, this requires a change of mindset from a culture of 'deny, detain, deport' to one which removes the adversarial aspect of case management, grants leave to remain to those who require the United Kingdom's protection and supports and compassionately facilitates the return of those who do not.

#### **The Current Circumstances in which Children are Detained**

Mr Keith Vaz, the former and newly elected Chairman of the Home Affairs Select Committee citing his Committee's report on child immigration detention, told the House,

On average, such children spend more than a fortnight-15.58 days-in detention, but detention for up to 61 days is not uncommon. On 30 June 2009-the last date for which the Home Affairs Committee had information on children in detention-10 of the 35 children in detention at that time had been held for between 29 and 61 days (Hansard 17 June 2010 Col 214 WH).

Her Majesty's Chief Inspector of Prisons found that at least a third of child inmates are detained for more than a month. The Immigration Law Practitioners Association found in each of the years 2004 to 2007 that a number of children had been detained in excess of 100 days with one child having spent a shocking 190 days in detention. The former Children's Commissioner for England has also stated that, '[w]e remain very concerned at the length of detention experienced by significant numbers of children and are not convinced that this is always "for the shortest appropriate period of time" as required by the UNCRC'.

Damian Green has stated that in some cases we may still have to have recourse to holding families for a short period before removal-where keeping the family together is seen as being in the best interests of the children, which of course must be the paramount concern (Hansard 17 June 2010 Col 214 WH).

The UN Convention on the Rights of the Child does not stipulate a time limit beyond which it would be unreasonable to hold a child, but the government must take account of the overwhelming medical evidence that even quite short periods of detention can cause long-term anxiety, behavioural problems, and psychological trauma.

#### **Harm to Children**

There is authoritative, irresistible and mounting evidence from the Children's Commissioner for England, The Independent Monitoring Board for Yarl's Wood, health professionals, welfare and rights groups, academics and inspectorates that children are being consistently and routinely harmed in detention.<sup>1</sup> Particular examples include but are not limited to

- The practice of seizing families in dawn raids, which can severely traumatise children. One child we know of, aged 3 when detained, is still terrified of uniformed men eighteen months after the event. Other direct testimonies collected by 11 Million and Bail for Immigration Detainees confirm that children exhibit anxieties of this nature long after their release.
- Being transported in security vehicles lacking any hygienic facilities. We know of a case where two siblings aged 18 months and 2 years were held for 16 hours in a locked van prior to deportation to Turkey.
- Being imprisoned. Removal centres have the appearance and procedures of prisons and are perceived by children as such. The perimeters are surrounded by electric fences and razor wire. Children are routinely and compulsorily photographed, fingerprinted and searched. In Yarl's Wood, to get to their rooms, children have reported having to pass through several locked doors.
- A lack of parental control over meals and mealtimes and a lack of sterilizing equipment for bottle-feeding. Some children and babies experience weight loss in detention.
- A lack of provision for children with special needs.
- Inadequate educational facilities for children who are detained for more than a few days. Having just two classes covering all year groups from reception to Year 12 severely compromises the learning development and educational opportunities of all children.
- Inadequate health care. The former Children's Commissioner for England reported in his last visit to Yarl's Wood last year that while some provision had improved, the standard of health care available to children and families in detention falls below that available in the NHS, and that oversight of health standards was poor or non-existent.<sup>2</sup>
- The effect of detention on parents. Adults who are detained may have been imprisoned, tortured and raped in their country of origin. Being held in a secure facility can be extremely distressing, causing steep decline in mental health and parenting ability. The impact of this change in their parents can be very upsetting to children.
- Safeguarding failures. A recent report by the Local Safeguarding Children's Board with responsibility for Yarl's Wood IRC found that safeguarding arrangements for the children were ineffective and none of the agencies involved in the administration of the facility gave adequate weight to the particular vulnerability of children in detention.<sup>3</sup>

In short, immigration removal facilities like Yarl's Wood have created an institutional detention culture in which the human and welfare rights of the child and his or her parents have come a poor second to the operational and administrative priorities of the UK Border Agency and its contractors.

The head of this review and of Detention and Criminality at the UKBA, Mr David Wood, told the Home Affairs Select Committee last year that the threat of absconding was not the primary reason for the detention of families. Deterrence appears to be the main concern:

I do feel that our immigration policy would be in difficulty if we did not have the ability to detain them [families] because it would act as a significant magnet and pull to families from abroad to come to the United Kingdom because, in effect, once they got here they could just say, 'I'm not going'. Whilst issues are raised about absconding, that is not our biggest issue. It does happen but it is not terribly easy for a family unit to abscond. We and a number of other organisations are troubled by the fact that the current review is still very much framed in terms of what is best for maintaining a tough message to would-be future asylum applicants rather than securing the best interests of the children who happen to be in the care of the United Kingdom's authorities *regardless of their or their parents' immigration status*.

The Home Affairs Select Committee quite rightly described Yarl's Wood as a prison, and it should be a priority of the new coalition administration to close its doors to children and families for good.

### **Family Separation**

We are concerned about the new government's mixed messages on separating families. In the House of Lords, Dame Pauline Neville-Jones said

We certainly aim not to separate families from children or children from families. The noble Lord is quite right, and I think the House would agree, that this is not an ideal form of detention. I cannot say categorically how we will work it out, but the aim is certainly to keep families together (Hansard 2 Jun 2010 : Column 253).

But Immigration Minister, Damian Green, later stated in the Westminster Hall debate there will remain difficult cases where solutions will have to be found and where enforced removals are likely to continue. That approach could involve separating different members of a family and reuniting them before departure, so that some family members stay in the accommodation they are used to. However, I recognise that that approach would be hugely contentious and has its own practical difficulties (Hansard 17 Jun 2010: Column 214)

It is regrettable that Mr Green did not take the opportunity to rule out separation of families from the range of alternatives that the review will consider, as End Child Detention Now wrote in an article for The Guardian on 28 May 2010, the forcible separation of children from their parents would be to substitute one form of state child abuse with another, and would not only be contrary to article 8 of the European convention on human rights, it would be opposed, one would hope, by every local safeguarding children board and director of social services in the country

– not least because it would make social workers complicit in damaging rather than protecting the welfare of the child.

### **Assisted Voluntary Returns**

In Sir Al Aynsley-Green's most recent report on Yarl's Wood Immigration Removal Centre—which he continues to describe as 'no place for a child'—the then-Commissioner notes that of the ten families interviewed in relation to Assisted Voluntary Return (AVR), 'only two families remembered receiving information about voluntary departure'. He also confirmed that, 'some families reported being arrested at the same time as being served with the notice from the court that their appeal had been dismissed. This clearly does not provide the window for reflection on AVR called for in our recommendation...'

The 11 Million report concurs with the research literature and our own experience in confirming that many families first learn that their initial asylum application has been rejected when they are arrested and served with a removal notice.<sup>6</sup> Families detained in this manner are generally booked onto planes within 48 hours. There is no question of being able to accept resettlement support.

A typical example is the case of a mother from Turkey whose release from Yarl's Wood we were eventually able to secure. Mrs A was detained on a Monday by UKBA officials without her young son following which she fell into a catatonic state. She continued to be separated from her 2-year-old son for a period of 4 days, and was only reunited with him in detention on the Thursday of that week. They were booked onto a plane to Turkey for the following Monday at 6.55am. At no time was an offer of assistance with resettlement made. She and her son now have indefinite leave to remain.

### **The UK Border Agency's initiatives on implementing alternatives to the detention of children, including the current Glasgow pilot**

An independent report into the Kent pilot study found that the evaluation, which was a core part of the project, was poorly conceived and executed.<sup>7</sup> The current Glasgow pilot is welcomed, but we are concerned that the criteria for success are still dependent on securing voluntary removal rather than whether families are remaining in the accommodation provided for them (i.e. not absconding).

The previous government appeared to be lukewarm in its support for the Glasgow Pilot and the UKBA has been far from enthusiastic hitherto about its success given that none of the four families, as Meg Hillier admitted in the recent Westminster Hall debate, had chosen to return voluntarily while she was in office (Hansard 17 Jun 2010 : Column 227WH).

Sir Al Aynsley-Green rightly warned the Home Affairs Select Committee that the Glasgow Pilot was too limited in terms of its evaluation criteria and small in terms of the number of families involved to extrapolate its success or failure in a UK wide context.

### **Models of good practice from other jurisdictions and relevant current research**

Where children and families are treated with humanity and dignity and are allowed to remain in the community, the evidence from Australia shows that there is a higher degree of compliance and voluntary return rates. Australia previously detained more than 4,000 from 2000 to 2005. Since 2005, however, the Australian government has used community based case management for these groups. Case managers work with clients to explore all possible options and outcomes, and also in partnership with community agencies and legal representatives. Figures from the Hotham Mission Asylum Seeker Project pilot show a 99% compliance rate.

Sweden also has a system of casework where families reside in flats located around a central office. This system has been reviewed as successful in terms of cost, providing support and ensuring compliance.<sup>9</sup> However, such a system would only be appropriate in the case of newly arriving families seeking asylum who are subject to the current fast track process. Where a *prima facie* case for asylum or international protection is found, families should be allowed to have their cases decided within the community at large and their children allowed access to regular educational, welfare and health services.

### **Lack of Legal Support**

In 2008, the European Commissioner for Human Rights, Thomas Hammarberg, expressed deep concerns at the serious reduction of legal aid provided to asylum seekers in the United Kingdom.<sup>10</sup> It is therefore encouraging that the new government has rightly identified the issue of families' access to legal representation as an important factor in improving the current system.

But at the same time the government has refused to intervene to save the largest provider of free legal advice to asylum seekers and migrants in the UK—Refugee and Migrant Justice—from closure due to a cash flow crisis that is a direct result of changes to legal aid payments that have been imposed by the Legal Services Commission. Over 900 unaccompanied minors and thousands of vulnerable families now have no legal representation, while other publicly funded law firms simply do not have the capacity to absorb such a massive case-load, meaning that families could be returned to danger without having had the opportunity to put their case properly before an immigration tribunal or to appeal against a decision.

As Mike Lewis, Chief Executive of the Welsh Refugee Council recently wrote in a communication to End Child Detention Now, 'The loss of this excellent organisation leaves a gap which it will be hard to fill.' The Archbishop of Canterbury, Dr Rowan Williams believes 'Lives will be put at risk and there are likely to be many more miscarriages of justice - which are already common in our asylum system.'<sup>11</sup>

Outside London the provision of publicly funded legal support to asylum seeking families and unaccompanied minors is sparse to the point of non-existence, and the closure of RMJ's regional offices simply spells disaster for

families who have nowhere else to go. As Dr Susan Mitchell, the vice-chair of Refugee Action York and a consultant psychiatrist who has worked with victims of torture says  
Access to the specialist legal representation that RMJ has provided is an essential element of a fair and just asylum system. The RMJ office in Leeds has provided invaluable help to asylum seekers in York and we fear for those in the future who may now have nowhere else to turn for this potentially life- saving support.  
The intended consequence of the NASS dispersal policy means that the vast majority of asylum seeker families have been placed outside the capital. The government must therefore put in place measures to ensure that every family who is making an asylum claim has access to an independent case worker (on the Australian and Swedish models) and appropriate legal advice that is tailored to the complexities of the individual case and not the 'one size fits all' model currently favoured by the LSC which makes it impossible for lawyers to discharge their responsibilities to clients in a professional manner in many cases.  
ECDN believes that by ensuring the availability of early good quality legal advice and independent case management, the government will actually save money in the long term by avoiding lengthy and expensive detention and legal costs resulting from appeals against poor initial decisions and screening interviews.

### **Conclusion**

The review into *Ending The Detention of Children for Immigration Purposes* offers a unique and welcome opportunity to move away from the previous government's policy of treating parents who refuse to return voluntarily after their asylum claims have been dismissed as being solely responsible for their family's enforced detention. Even those families whose claims can be properly dismissed have a right to be treated with compassion and dignity while arrangements are made for their return, and this is even more true for children who are caught up in a complex and bewildering system through no fault of their own.

Too often, previous governments have seen ensuring the right to sanctuary and the maintenance of effective immigration and border controls as mutually exclusive. But evidence from other jurisdictions shows that a respect for human rights, due process and the best interests of the child can co-exist within a system of effective immigration control.

This requires a culture shift in the treatment of asylum seeking families away from one of automatic disbelief. Instead families need to be given assurance that their accounts of persecution will be properly heard, and that if they are in need of sanctuary and protection that this is given in a timely and humanitarian manner.

Parents and their children who are deemed not to require the protection of the United Kingdom should be given an early and full explanation of that decision and proper access to good quality legal support in order to challenge it. Where the courts confirm that there is no well founded fear of persecution or case for international protection, and where the Secretary of State has determined that there are no compassionate grounds to grant leave to remain, families should be supported in preparing for their eventual return.

Asylum applicants returned to their country of origin or a third country under the Dublin regulations should have the opportunity to report ill treatment after their return and have the right to make a future asylum claim on the basis of new evidence of persecution or the threat of chain *refoulement* to ensure that the United Kingdom is complying with its obligations under the 1951 Refugee Convention.

End Child Detention Now [ecdn.org](http://ecdn.org)

C/o Dr Simon Parker, Department of Politics, University of York, YO10 5DD, U.K.

1 Independent Monitoring Board, Yarls Wood Immigration Removal Centre 2008 Annual Report, pp.11-12, HMIP (2008) see above, HMIP (2009) *Report on an Unannounced Short Follow-up Inspection of Tinsley House Immigration Removal Centre, 13-15 July 2009* (London, HM Chief Inspector of Prisons), Aynsley-Green, A. (2005) *An Announced Visit to Yarls Wood Immigration Removal Centre 31st October 2005*, available at:

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Lorek, A., Ehntholt, K., Nesbitt, A., Way, E., Githinji, C., Rossor, E. And Wickramasinghe, R. (2009) 'The Mental and Physical Health Difficulties of Children Held Within a British Immigration Detention Center: A Pilot Study', *Child Abuse and Neglect*, 33:573-585.

2 11 MILLION, The Children's Commissioner for England's follow up report to The Arrest and Detention of Children Subject to Immigration Control 2, February 2010.

3 <http://www.telegraph.co.uk/comment/personal-view/7837282/Yarls-Wood-immigration-centre-treated-children-in-a-shameful-way.html>

4 Oral evidence submitted to the Home Affairs Committee, 16 September 2009, available [www.parliament.the-stationery-office.co.uk/pa/cm200809/cmselect/cmhaff/970/09091604.htm](http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmselect/cmhaff/970/09091604.htm) Accessed 02.03.2010

5 11 MILLION, The Children's Commissioner for England's follow up report to The Arrest and Detention of Children Subject to Immigration Control 2, February 2010.

6 For example BID (2009) *Out of Sight, Out of Mind: Experiences of Immigration Detention in the UK* (BID).

7 Nandy, L. (2009) *An Evaluative Report on the Millbank Alternative to Detention Pilot* (The Children's Society and BID).

8 International Detention Coalition (2009) *Case Management as an Alternative to Immigration Detention: The Australian Experience* available at [www.idcolaition](http://www.idcolaition) Accessed 07.10.09

9 Bercow, J., Dubs, A. And Harris, E. (2006) *Alternatives to Immigration Detention of Families and Children* a Discussion Paper for the All Party Parliamentary Groups on Children and Refugees (No Place for a Child Campaign).

10 Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visits to the United Kingdom on 5-8 February and 31 March-2 April 2008. <https://wcd.coe.int/ViewDoc.jsp?id=1339037&Site=CM>

11 <http://news.bbc.co.uk/1/hi/uk/10208666.stm>

## 21. THE “FOUNDATION” ORGANISATION

**From:** Charles Broxholme  
**Sent:** 25 June 2010 1:51 PM  
**To:** Child Detention Review  
**Cc:**  
**Subject:** detention

As above – whilst I believe that detention of children is not ideal I wonder how this will affect the ability of enforcement to ensure removal of families.

I don't believe in the current economic climate that any measure that affect enforcement targets and removal from the UK should be introduced.

The election of a coalition government gave a clear message that this issue is of paramount importance to a large number of the populace and I believe that short periods of detention should not be an issue.

After this mandate from the electorate anything which places further barriers to removal will not be welcomed and will be controversial.

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## 22. GLASGOW CITY COUNCIL, SOCIAL WORK SERVICES

### What lessons can we pass on from the Family Return Project at this stage to inform the review on ending the detention of children?

At this stage, the Family Return Project (FRP) is not delivering on two of its key outcomes: promoting voluntary return and preventing children from going into detention. However, there has still been valuable learning from the project which has been noted below.

#### Background

The Family Return Project is based upon the principle that if families at the end of asylum process are better informed about their position then they are more likely to take up voluntary return, and thus avoid detention. The project therefore aims to ensure that families are aware of their position within the asylum system; the lack of options to remain in the UK; the reality of enforced removal if they choose not to return home voluntarily and about the support that is available if they do return home voluntarily. The model we have developed is social-work led and residential (families are moved from their mainstream asylum support housing into the project).

Outreach has been offered to two families where FRP staff have engaged with the families in their existing accommodation. There is scope to develop this further. Initial indications from the evaluation on the children's experience show that they have felt the loss in friendships in the local community when they have moved. However there is a balance to be struck as the change of accommodation is a clear indication that the family are at the end of the asylum process. This will continue to be monitored further.

#### Outcomes to date

The aims of the pilot project as expressed in the evaluation specification are:

1. To increase the proportion of families opting for voluntary return.
2. To develop a model that will encourage families to take up voluntary return and therefore reduce the need for forced removal and detention<sup>50</sup>.
3. To maximise the welfare of children and minimise the distress and uncertainty to children at the end of the asylum process.
4. To provide this at no increased cost over and above the cost of detention and forced removal<sup>51</sup>.
5. To provide greater understanding of which factors are helpful in enabling families to make a choice to return voluntarily; and to identify potential barriers to taking up this option.

As of yet the pilot project has not delivered on the first aim of increasing the proportion of families opting for voluntary return. However the **workers within the project and the evaluators are learning about the barriers to return, which is invaluable in developing models to promote voluntary return** including developing this existing model. They have also had real achievements in terms of **promoting the welfare of families and minimising the distress and uncertainty of children at the end of the asylum process**. Some of the softer outcomes that stakeholders may wish to mention include:

- In some cases where families have refused to take up voluntary return they have been detained for a short period prior to removal. FRP staff visited one family in Dungavel and reported that the work they had done with them in the project **had prepared them for this possibility and they were not so distressed about being in detention**.
- The increased independent scrutiny on the end of the process has led to vulnerable cases being identified by UK Border Agency. For example, one family was referred to the Project but significant mental health and child protection issues were identified at this time that had not previously been uncovered. The family was not moved into the Project and the child protection and mental health issues are now being addressed. **Hence the project is promoting the welfare of families at the end of the process**.
- The project has led to teachers being better informed about the position of children that they teach that are being prepared to return home. Project workers engage with schools and this gives teachers and children the opportunity to say goodbye to their classmate and help prepare them to return home. **This reduces the distress felt both by the child who is returning to their home country and the rest of their school**.
- The project has led to closer working relationships between UK Border Agency staff and FRP staff. **It is felt by UK Border Agency that this has enhanced their staff's knowledge of social and welfare**

<sup>50</sup> Reducing the numbers of children going into detention in absolute terms was not included as a key aim for the purpose of evaluation because it was recognised that the pilot is too small-scale and there are too many external factors for this to be realistic.

<sup>51</sup> This is being measured by the main evaluator, who will report on it later in the project's life.



**issues affecting families at the end of the process**, which helps them deal with the removal process in an increasingly sympathetic manner. The multi-agency case meetings have also led to better communication and partnership working between a range of agencies including education, health and social work.

- FRP staff and UK Border Agency staff have a level of trust between the two staff groups. There is frequent and ongoing communication and any difficulties that arise can be dealt with through negotiation and agreement.

### **What could be improved about the existing model?**

The Family Return Project was designed to fit with the New Asylum Model. The idea behind it was that as families start to receive decisions and exhaust their appeals rights more quickly then we would have a group of fully refused asylum seekers who had had less time to put down roots in Glasgow and who may therefore be more willing to take up voluntary return. However, the families who have entered the project to-date have been in the country for a number of years (they are mostly new asylum model cases, but are amongst the oldest of these cases). The evaluator has identified that length of stay in Glasgow is one of the main barriers to voluntary return for people in the project. **In order to test the principles behind the project and increase its efficiency we could seek to identify only newer cases for the project.**

Other key barriers to voluntary return identified by the evaluator are the state of 'denial' that most parents were in and the 'word of mouth' within the asylum seeking community suggesting that there will be a way for the family to stay. The project's designers recognised from the outset that in order to tackle these issues the project would need to prompt a cultural shift within Glasgow whereby asylum seekers and their host communities would realise that asylum cases would be dealt with quickly and that refused asylum seekers would be removed from the country if they do not depart voluntarily. **This kind of cultural shift takes time to establish, and the pilot project is perhaps too small-scale to achieve this on its own.** (Consideration could be given to extending the project at this stage, either on a residential or an outreach basis. However, given the levels of stress experienced by FRP staff within the project it is more sensible to test the principles behind the model by placing newer cases into the project first. We should aim to ensure we can protect the welfare of professionals working within the project before any expansion.)

Part of the stress on the FRP staff is that they are at different stage from the families being referred. The social worker want the best outcome for the families and this would be through a voluntary return supported by IOM (International Organization for Migration) However the families who are referred are absolutely focused on a positive legal outcome which would allow them to stay in the UK, however unlikely that may be.

The other key barrier identified by the evaluator is the extensions of the appeals procedure, often through judicial review. The problem in this respect is that an asylum seeker's appeal rights are never fully refused because they can lodge repeated judicial reviews at any point. This is something that the UK Border Agency is currently looking to address, and this should be encouraged. If more effort is put into ensuring that asylum seekers feel they have had proper recourse to justice and that the right decision is delivered first time (for example by rolling out the principles of Solihull Early Legal Advice Pilot) then refused asylum seekers are perhaps less likely to lodge repeated judicial reviews.

This is a key barrier to families considering voluntary return. Families will continue to put in legal challenges about the decision on their asylum claim. While this action is being pursued (eg fresh representations, fresh claims) families cannot consider a voluntary return or any of the work related to it (i.e. preparing their children) as they will put all their focus on the legal process.

### **What lessons can we pass on to future models?**

Promoting voluntary return is the key to developing an asylum system where detention is not necessary. The Family Return Project has not yet delivered the key to achieving this, but Scottish stakeholders have learned a lot of lessons in the process of developing and running the project, which can have wider application:

- Refused asylum seekers do not depart voluntarily because many believe that if they remain in the UK long enough they will eventually be granted leave to remain. Ending what the evaluator calls a 'culture of denial' depends upon a whole-systems-approach with asylum seekers being moved through the asylum process (including the appeals process) quickly, receiving the right decision on their asylum application as soon as possible and if they are refused being encouraged to return (or being removed) quickly.
- The "culture of denial" could also be tackled by ensuring that asylum seekers understand the legal process fully and have a good opportunity to present their case. The Solihull Early Legal Advice Pilot provided additional legal support at the start of the process, which led to people having a better understanding of their position and to cases being resolved more quickly with fewer going to appeal. Wider application of this initiative could not only reduce expenditure on the appeals process, but could also help promote



voluntary return because refused asylum seekers are more likely to understand why their case has been turned down and why further attempts to appeal are likely to be unsuccessful.

- Working with children to ensure they are aware of their families' position and prospects can minimise the distress they experience at the end of the asylum process whether their parents decide to opt for voluntary return or whether they end up being detained briefly before an enforced removal. It also gives them an opportunity to say goodbye to existing friends and identify things to look forward to in their home country. Engaging with children in this way should only happen with the parents consent. There can be a conflict where the parents' believe they are protecting their children by not allowing FRP staff to talk about their immigration status and what may happen to them in the future. Without the parent's permission the children cannot be given an opportunity to talk through their anxieties and about their country of origin as part of the preparation for a return. As a result children can be left unsure and unclear about what is happening to them (initial results from evaluation have examples of this)
- The negative impact upon social work staff involved in the project of failing to promote voluntary return and prevent detention can not be underestimated. Staff involved in similar projects should be encouraged to focus on the wide range of outcomes they can achieve including promoting the welfare of families at the end of the process. The recognition of the challenges to social work staff in the Project has led to a mentor being put in place for the staff group.
- FRP staff work towards engaging with families and building up a level of trust with them to start to address issues that families find very hard to face i.e. about a return to their country of origin. There is a constant balance to be struck in trying to help and support families in the process but at the same time FRP staff must be honest with the parents about the choices that they make and the consequences for them and their children while they are at the end of the asylum process.
- FRP staff do have to clearly define their role that they are not UK Border Agency staff and they do not have any influence on the decision on the families asylum claim. Despite the difficulties families have been both accepting and welcoming to the FRP staff group.

This paper is based on informal observations and an interim evaluation report. As the project develops the findings of the evaluation will be made available to all stakeholders. A learning event in September will be a key opportunity for all stakeholders to learn more about the outcomes of the project and the observations of the evaluators.

## 23. THE GREATER LONDON AUTHORITY

### Response to the UK Border Agency's review into the ending of the detention of children for immigration purposes

We welcome the coalition's commitment to end the detention of children for immigration purposes, and the opportunity to contribute to this review.

In recent years as many as 2000 children have been detained annually, many of whom will have been living in London. Evidence clearly shows that detention is incompatible with the best interests of children, and the priority should now be to ensure that the detention of children for the purpose of enforcing immigration rules should be eliminated or reduced to the absolute minimum, both in terms of the number of children taken into custody with their families, and in terms of the length of time for which they might eventually be detained. Successfully eliminating or drastically reducing the detention of children would:

- Ensure that the welfare of children remained paramount
- Reduce costs by limiting the number of expensive enforced removals
- Reduce the use of incarceration, however brief, to enforce immigration rules.

In order to achieve this, we believe that the UK Border Agency should do the following:

**1. Ensure that the asylum system delivers:**

- **Speedy and high quality decisions on asylum claims**
- **Timely and high quality legal advice to support the decision-making process**
- **Appropriate levels of support, accommodation and access to health, education and other services while asylum claims are being processed.**

We believe that these measures would ensure that families who may eventually be removed do not remain in the UK longer than necessary, that they understand and have confidence in the asylum decision and feel safe, secure and otherwise prepared for the return to their home country.

**2. Provide high-quality, independent casework support (in addition to legal advice), based on successful practice from other countries and learning from the experience of pilots in the UK, from day 1 of the asylum process, so that families, including children, fully understand from the outset the possible outcomes of the asylum system, including voluntary return, enforced removal and refugee status or discretionary leave to remain, the basis on which these decisions are reached and the implications in terms of their right to remain in the UK.**

Experience has shown that asylum seeking families often receive conflicting advice and information on the asylum system and possible outcomes. We believe that early and sustained advice from a trusted, authoritative source would counter this and enable more families to opt for voluntary or assisted return and reduce the need for enforced removals.

**3. Evaluate current voluntary return programmes in the UK to identify key factors in decisions to return so that these can be included and supported in the future voluntary return offer.**

Take up of existing voluntary return offers in the UK is limited but we believe that the experience of these programmes can help identify and strengthen those elements that contribute most to voluntary returns. The success of any new approach must be founded on an approach that supports families in making the decision to return and assists with the practicalities of return. Removal of support for families who have exhausted all appeal rights (the S9 pilot) has not been effective in encouraging returns, and both the removal of support and other measures to enforce compliance with the immigration rules by leaving the UK, including forced removal, are likely to be detrimental to the interests of children.

**4. Implement successful approaches used in other countries.**

UKBA is actively examining international evidence and the approach to returns in other countries. Along with the review of UK pilots and the experience of the voluntary and assisted returns programme in the UK, evidence from other countries should inform the development of alternatives to enforced removal and detention.

**5. Focus the new approach on newly arrived families and consider alternative measures along the lines of the current Case Resolution programme for families who have already been in the UK for some time.**

Any new approach will depend on early intervention and will not be effective for families already here, as shown by the low numbers of returns from existing pilots. Including other families in the Case Resolution programme would be the most cost-effective way of safeguarding the welfare of children in these cases.

**6. Take into account cases where all appeal rights are exhausted but families cannot return due to security conditions in the country of origin, no safe route of return, lack of travel documents, ill health, etc.**

Families who cannot return may be left indefinitely in a kind of limbo, with no right to settle and only limited support under S4. Long-term reliance on S4 support is not conducive to child welfare and may contribute to already high levels of child poverty in London. The new approach should consider solutions such temporary leave to remain with permission to work that would better balance the competing priorities of immigration control, child welfare and cost.

**7. Seek stronger support from refugee communities and other civil society stakeholders in developing alternatives to detention.**

In return for its commitment to end detention, the government should ensure that stakeholders support the new approach by helping families to make informed choices that consider voluntary return when all right of appeal has been exhausted and safe return is an option. Civil society stakeholders, including refugee communities themselves, are often in a position to help families make a realistic assessment of their options that could lead more families to opt for return and avoid enforced removal.

**8. Explore creative alternatives to detention.**

The review period is too short for the development of radical new approaches, but in addition to examining current practice both in the UK and abroad to ensure that the new approach maximizes voluntary return, the review should also explore practical responses to the fact that the enforced removal of children is not feasible where families and children do not cooperate with the process. Here again, innovative thinking is needed to balance the priorities of immigration control, child welfare and cost, so that families and children are not left in a long term limbo where neither voluntary return nor enforced removal is likely, and the interests of children are not served.

Richard Barnes, Deputy Mayor of London, Chair of the London Strategic Migration Partnership  
[Richard.Barnes@london.gov.uk](mailto:Richard.Barnes@london.gov.uk)

Pamela Chesters, The Mayor of London's Advisor on Health and Youth Opportunities  
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## 24. GREATER MANCHESTER IMMIGRATION AID UNIT

Review into ending the detention of children for immigration purposes:

We make the following response:

1. No child in the UK should be detained for immigration purposes under any circumstances whatsoever. The detention of children is completely unacceptable and must stop.

This is not conditional, it is an absolute. It is an inhumane practice.

2. UKBA can improve their engagement with families by making sure that any family claiming asylum has access to high quality legal immigration advice, before the substantive interview. Research consistently shows that where families claiming asylum have access to high quality advice the outcome of their cases is generally better in terms of quality of decision and cost effectiveness.

3. People will not return home if they live in fear of the consequences. It is not enough to say that an asylum claim was not proved when a family has had no access to proper representation, or that, for example, a family should return to a country where it is known that HIV treatments are not available.

Yours sincerely

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Denise McDowell  
Director  
Greater Manchester Immigration Aid Unit

## 25. GUILDFORD BOROUGH COUNCIL, WESTBOROUGH WARD

Dear Sirs

I believe that the detention of children for immigration purposes is wrong. Children cannot be held responsible for the fact that they have come into the country and to effectively imprison them without trial cannot be right. Many of the children involved have already faced situations which will have a profound impact on their lives. Some have seen family members abused, injured and even murdered by officials of the government of their own country. Being locked up by officials of this country when they arrive can only compound the damage which will have been caused by their earlier experiences.

I trust that a more humane solution to the issue of child immigration can be found and that we can deal fairly with youngsters who are already victims.

Yours faithfully

**Fiona White**  
**Borough Councillor - GBC Westborough Ward**  
**County Councillor - SCC Guildford West**

## 26. IMMIGRATION LAW PRACTITIONERS ASSOCIATION (ILPA)

ILPA Submission to the UK Border Agency Review into ending the detention of children for immigration purposes:

### Introduction

1. ILPA is a professional association with around 900 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous Government and other stakeholder groups including the National Asylum Stakeholder Forum and its children subgroup.
2. ILPA has produced best practice guidance and undertaken research in connection with children and immigration, including *When is a child not a child? Asylum, age disputes and the process of age assessment* (May 2007), *Child first, migrant second: Ensuring that every child matters* (February 2006) and *Working with children and young people subject to immigration control: Guidelines for best practice* (November 2004). ILPA currently operates a refugee children's project, to provide training, guidance and other support to legal and other practitioners working with asylum-seeking children.
3. For ease of reference, 'the UK Border Agency' is used in this response to refer to the UK Border Agency and its predecessors (the Border and Immigration Agency and the Immigration and Nationality Directorate).
4. We are grateful for the opportunity given on 30 June 2010 to meet the Minister and officials to discuss the Review<sup>52</sup>. We have sought to reflect some of the discussions at that meeting in this response, though inevitably lack of time has restricted the degree to which we have been able to do so.

### Overview of context and legal standards

5. On 12 May 2010, the Government published its initial coalition agreement. That agreement included the following commitment:

*"We will end the detention of children for immigration purposes."*

6. That commitment was restated when, on 20 May, the Government published the full agreement. Shortly thereafter, on 25 May, in the address on the Queen's Speech, the Prime Minister emphasised that commitment when he said:

*"...after the Labour Government failed to act for so many years, we will end the incarceration of children for immigration purposes once and for all." (Hansard, HC 25 May 2010 : Column 49)*

7. The Government is right to have made this commitment, and right to highlight the failure by the previous Government over so many years to end the practice of detaining children for immigration purposes. Detention is harmful, and there is now a significant body of expert evidence attesting to the particular harms it causes to children. Harmful effects are both immediate and long-term. These include harm to children, parents and families. The Royal College of General Practitioners, Royal College of Paediatrics and Child Health, the Royal College of Psychiatrists and the UK Faculty of Public Health describe both the generally harmful effect of detention upon children and particular harms arising from inadequate health and welfare provision in UK immigration removal centres:

*"Almost all detained children suffer injury to their mental and physical health as a result of their detention, sometimes seriously. Many children experience the actual process of being detained as a new traumatising experience. Psychiatrists, paediatricians and GPs, as well as social workers and psychologists, frequently find evidence of harm, especially to psychological wellbeing as a result of the processes and conditions of detention. Reported child mental health difficulties include emotional and psychological regression, post traumatic stress disorder (PTSD), clinical depression and suicidal behaviour. Specific physical consequences include weight loss and inadequate pain relief for children with sickle cell disease. Children in detention are also placed at risk of harm due to poor access to specialist care, poor recording and availability of patient information, a failure to deliver routine*

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<sup>52</sup> Steve Symonds, ILPA Legal Officer represented ILPA at the meeting at 1530 hours with the Minister and David Wood, UK Border Agency Strategic Director for Criminality and Detention and Kristian Armstrong, UK Border Agency Children's Champion.

childhood immunisation, and a failure to provide prophylaxis against malaria for children being returned to areas where malaria is endemic.”<sup>53</sup>

8. The Children’s Commissioner has also recently stated<sup>54</sup>:

*“There is a growing body of evidence, not least from the medical Royal Colleges, that documents that detention has a profound and negative impact on children and young people.”*

9. In 2007, the Joint Committee on Human Rights recorded concerns of Her Majesty’s Inspectorate of Prisons and Her Majesty’s Chief Inspector of Prisons that “*detention itself compromises the welfare and development of children*” yet the inspectorate “*do not routinely find any evidence that the interests of the child are considered at all in making [the] initial detention decision*”<sup>55</sup>. The Committee concluded:

*“258. We are concerned that the current process of detention does not consider the welfare of the child...”*

*“259. The detention of children for the purposes of immigration control is incompatible with children’s right to liberty and is in breach of UK’s international human rights (sic) obligations...”*<sup>56</sup>

10. The UK’s immigration reservation to the 1989 UN Convention on the Rights of the Child (“the 1989 Convention”) was withdrawn in November 2008. At the time, the UK Border Agency undertook no systematic review of its practices and policies so as to ensure compliance with the UK’s obligations; and the previous Minister for Immigration stated that, apart from the code of practice on safeguarding children<sup>57</sup>, which had been introduced around that time, “*no additional changes to legislation, guidance or practice are currently envisaged*”<sup>58</sup>. That constituted a profound lack of understanding of the obligations under the Convention. The current Review provides some opportunity to reverse that. In relation to the detention of children, the following obligations are key:

- Article 3.1 requires that the “*best interests of the child shall be a primary consideration*” in all actions concerning children. It must be recalled that this sets a general standard stretching across all areas. It does not, as has sometimes been suggested by the UK Border Agency, set the limit of the UK’s obligations. It is not sufficient, as has been done in the past, to rest engagement with the Convention standards upon the indefinite article to suggest that immigration control is, or is always, another primary consideration to be given equal weight in the UK Border Agency’s actions.
- Article 9.1 requires that “*a child shall not be separated from his or her parents against their will, except where competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child*”. This entails a particularly strong example of where an approach that merely seeks to balance the UK Border Agency’s interest in immigration control with the best interests of the child is not permissible. Separation of children can only be permitted where to do so is necessary, and that necessity must be for the singular purpose of achieving the best interests of the child.
- Article 2.2 requires that “*the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members*”. Use of detention as a means of deterrence or coercion is impermissible insofar as this constitutes punishment of or discrimination against the child. Similarly, reducing or excluding the child’s rights, including such rights as access to legal representation and access to the courts by such practices as reducing the notice to be given of a family’s removal, is impermissible insofar as this is used as a form of deterrence or coercion.
- Article 12.2 requires that “*the child shall in particular be provided the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly, or through a representative or*

<sup>53</sup> Intercollegiate Briefing Paper: Significant Harm – the effects of administrative detention on the health of children, young people and their families, December 2009. The paper is available at:

[http://www.bbc.co.uk/blogs/thereporters/markeaston/images/intercollegiate\\_statement\\_dec09.pdf](http://www.bbc.co.uk/blogs/thereporters/markeaston/images/intercollegiate_statement_dec09.pdf)

<sup>54</sup> Executive Summary to the Children’s Commissioner for England’s 17 February 2010 follow up report to *The Arrest and Detention of Children Subject to Immigration Removal*, see:

[http://www.childrenscommissioner.gov.uk/content/publications/content\\_394](http://www.childrenscommissioner.gov.uk/content/publications/content_394)

<sup>55</sup> Joint Committee on Human Rights Tenth Report of Session 2006-07, *The Treatment of Asylum Seekers*, 30 March 2007 HL 81-I/HC 60-I (paragraphs 239 and 243)

<sup>56</sup> *ibid*

<sup>57</sup> This has now been withdrawn with the coming into force of section 55 of the Borders, Citizenship and Immigration Act, but had been introduced under section 21 (now repealed) of the UK Borders Act 2007.

<sup>58</sup> *Hansard*, HC 24 November 2008 : Column 825W (*per* Phil Woolas MP)



*an appropriate body*". Excluding, whether by policy or practice, a child's opportunity to be heard in connection with his or her removal, or that of his or her parents, is impermissible.

- Article 37 prohibits unlawful or arbitrary detention of children. It further sets standards such that any detention of a child is only permissible "as a measure of last resort", must be "for the shortest possible time", is only permissible if the child is "treated with humanity and... dignity..., and in a manner which takes into account the needs of persons of his or her age" and must ensure "prompt access to legal and other appropriate assistance" including access to the court.

11. Since the withdrawal of the reservation to the 1989 Convention, the UK Border Agency has been made subject, by section 55 of the Borders, Citizenship and Immigration Act 2009, to the requirement "to have regard to the need to safeguard and promote the welfare of children" ("the section 55 duty"). ILPA commented upon a draft of the UK Border Agency guidance produced in support of the section 55 duty<sup>59</sup>:

*"The emphasis in this guidance is on maintaining and justifying existing policies and practices with some added considerations about children in that continuing practice. It does not place children at the centre. It is of concern that the Guidance is generally couched in negative terms, about what is permissible rather than what is best practice and reads more about preserving the primacy of immigration functions rather than promoting the welfare of all children, especially in the sections concerned with detention and removal and about asylum processes. Detention is antithetical to child safeguarding and their welfare. The Guidance remains silent on the role of the UK Border Agency and the Secretary of State for the Home Department in the manner in which proceedings involving children are conducted before the appellate tribunal and courts."*

12. Improvements were made to the guidance before it was brought into force. Nonetheless, the general concern remains that the UK Border Agency has responded to the section 55 duty by adopting a manner that is essentially defensive of prior policy and practice of the UK Border Agency rather than instructive of new obligations to safeguard and promote the welfare of children<sup>60</sup>. We note that the Chief Executive of the UK Border Agency, and other senior officials, have publicly stated their recognition that what is needed is 'a change of culture'<sup>61</sup>. Regrettably, the UK Border Agency has not, to date, taken the opportunity to fully embrace that need, as is evidenced by the tone and substance of much of the guidance. The UK Border Agency's response to the Government's commitment to end the detention of children provides another opportunity to address this need. For reasons discussed in this response, current signs, including the terms of reference for this Review are not encouraging.

## **Timeframe**

13. Having regard to the compelling and uncontested<sup>62</sup> evidence as to the harm being caused to children in detention and the domestic and international legal standards by which the UK Border Agency is now bound, it is a matter of profound concern and regret that the Government has to date failed to give effect to its stated aim. The Minister for Immigration, Damian Green MP, recently stated in debate in Westminster Hall on 'Alternatives to Child Detention':

*"I should emphasise that the UK Border Agency is fully determined to replace the current system with something more humane, without compromising on the removal of people who have no right to remain in the UK. We are talking about alternatives to detention and not about ending removals. Until the review is completed, current policies will remain in place, with one exception. ...the detention of*

<sup>59</sup> ILPA's response to draft statutory guidance on section 55, Borders, Citizenship and Immigration Act 2009 (children's welfare) of August 2009 is available in the 'Submissions' section of the ILPA website at [www.ilpa.org.uk](http://www.ilpa.org.uk)

<sup>60</sup> A very recent and stark example of this is demonstrated by the following, apparently standard, paragraph appearing in a reasons for refusal (or asylum) letter: 'Consideration has been given to the needs and welfare of your child as required under Section 55 of the Borders, Citizenship and Immigration Act 2009. It is not considered that removing you and your child from the UK would amount to a breach of Section 55.' The paragraph tells the recipient nothing as to what was considered in relation to the child's safety and welfare, nor anything as to the reasons why the writer concluded that removal entailed no breach of the section 55 duty. Presumably, however, the writer considered there to be some importance in the inclusion of this paragraph; and the inference we would draw is that the writer (and/or whoever has produced this standard paragraph) considered it prudent to protect the decision to refuse asylum and give notice that the recipient and child are to be removed without any consideration as to whether or how the section 55 duty applied in the instant or any instant case.

<sup>61</sup> The Chief Executive, Lin Homer, emphasised this point at a roundtable discussion organised by the UK Border Agency on the afternoon of 11 April 2008, at which ILPA was represented by Steve Symonds, ILPA Legal Officer. That roundtable was to consider the code of practice requirement under section 21 of the UK Borders Act 2007 (*op cit*).

<sup>62</sup> We recall that when the previous Minister was asked as to the Home Office's assessment on the health and emotional wellbeing of children relating to immigration detention, he listed various matters that he said went to the issue of children's health and wellbeing but was unable to provide any assessment of these children's health and wellbeing because he said 'It is not possible to provide the information requested without examination of individual records at disproportionate cost.' (Hansard, HC 22 March 2010 : Columns 60-61W)



*children overnight at Dungavel immigration removal centre in Scotland has been ended as a precursor to such practice ending across the UK.” (Hansard, HC 17 June 2010 : Columns 211-212WH)*

14. Our understanding from the plain words of the Government’s coalition agreement is that this Government is firmly decided that the detention of children must end. Our understanding, moreover, is that the Minister is personally determined that this must be so. Indeed, we acknowledge that, at the meeting of 30 June 2010, the Minister demonstrated that determination by both his willingness to listen and his contribution to the discussion. We welcome that determination as it is in accordance with both the compelling and uncontested evidence of the serious harm that detention does to children and the domestic and international legal obligations upon the UK. Why then is the UK Border Agency continuing to detain children?

15. The terms of reference for the UK Border Agency review state:

*“The Review’s aim is to consider how the detention of children for immigration purposes will be ended. It will make recommendations on its findings... The Review will take account of... the need for an implementation timetable.”*

16. The impression given by the terms of reference is that the ending of detention of children is contingent on the UK Border Agency finding alternative options for returns. If this impression is correct it is to be deplored. Even if the commitment to end the detention of children remains absolute, as it is plainly stated to be in the coalition agreement, it is nonetheless to be deplored that the realisation of that commitment continues to be delayed, and it appears to be envisaged will be delayed further after the review for the purpose of developing “a new approach to family removals”<sup>63</sup> and pursuing “an implementation timetable”. The terms of reference make no express reference to any disaster that would befall the UK Border Agency or the UK if the detention of children were to end now, nor make any express suggestion that any review of asylum and immigration processes, including as concerns returns, cannot be satisfactorily conducted while not detaining children.

17. At the 30 June 2010 meeting, it was suggested that an immediate end to the detention of children risked that later criticisms of the UK Border Agency regarding returns and removals of families may lead to pressure for the detention of children to be reintroduced. As expressed at the meeting, we hope that the Minister and the UK Border Agency are sufficiently committed to end the detention of children because in all likelihood there will be public criticisms from some quarters. In this regard, we urge that an immediate end would more strongly signal such commitment and, in the longer run, assist the UK Border Agency and the Minister to deal with any such criticism. It was also suggested that ending the detention of children risked encouraging more trafficking of children. However, deterring trafficking is best achieved by measures to identify and prosecute traffickers. Moreover, the detention of a child for the purpose of deterring others is not only potentially seriously harmful to that child but also unlawful for reasons addressed elsewhere in this response.

18. In evidence to the Home Affairs Committee in September 2009, David Wood, who is the UK Border Agency Strategic Director for Criminality and Detention Group and the person leading the current review, stated:

*“The families we detain are those who refuse to leave the United Kingdom, those who have not left voluntarily and that is why we detain them. I do feel that our immigration policy would be in difficulty if we did not have that ability to detain them because it would act as a significant magnet and pull to families from abroad to come to the United Kingdom because, in effect, once they got here they could just say, ‘I am not going.’ Whilst issues are raised about absconding, that is not our biggest issue. It does happen but it is not terribly easy for a family unit to abscond.”<sup>64</sup>*

19. There is no justification in any of this for delaying the ending of the detention of children. It is simply unlawful for the UK Border Agency to be using the detention of children and families as a deterrent to others not to come to the UK. This is contrary to the UK Border Agency’s statutory duties to safeguard and promote the welfare of the individual child in respect of whom it is acting and contrary to the obligations of the UK under the 1989 Convention, as briefly discussed in the preceding section. In particular, it is to disregard the direct nature of the UK Border Agency’s obligations under the 1989 Convention and section 55 to the individual child’s best interests, safety and welfare; and, in so doing, fails to respect the dignity of the child. On its face, it also suggests penalty or punishment of the child by reason of his or her parent’s status or actions.

<sup>63</sup> Hansard, HC 17 June 2010 : Column 212WH (per Damian Green MP)

<sup>64</sup> Oral Evidence given by Dave Wood, Strategic Director, Criminality and Detention, UKBA to the Home Affairs Committee, The Detention of Children in the Immigration Service, on 16 September 2009, HC 970-i (Question 25)

20. However, it is surely correct that absconding by families “*is not terribly easy*”<sup>65</sup>, and to the extent that this may be influencing the UK Border Agency to delay the ending of the detention of children it is irrational. We would be grateful for an opportunity to consider any evidence the UK Border Agency may have – none was presented to the Home Affairs Committee – as to its assertion that this may, in some cases, be a risk. It is, in any event, necessary to recall that the relevant question is whether whatever risk is considered in any such cases would necessarily be made real simply by ending the detention of children now while giving whatever further thought to asylum and immigration processes as may be needed. Having regard to that question, ILPA does not consider there to be any credible need for the ongoing delay.
21. In short, the detention of children should be ended immediately. As the Prime Minister recognised in addressing the House on the Queen’s Speech, the harming of children in the UK’s immigration detention estate has gone on for far too long. Moreover, that the UK Border Agency continues to be afforded the convenience of resorting to harming children in this way can do nothing to infuse any urgency in its wider consideration of asylum and immigration processes. It is more likely to encourage the view that delay in such consideration will be tolerated, in turn continuing the delay in ending the detention of children. Meantime, children continue to suffer potentially serious and long-lasting harm.

### **Further thoughts on the terms of reference for the Review**

22. The terms of reference for the Review set out seven numbered matters which the Review will consider and a further seven matters of which it will take account. Some observations on these are given below under discrete subheadings.

The UK Border Agency’s current approach to dealing with asylum applications from families, including contact arrangements with those families and the families’ access to legal representation

23. The primary concern of the UK Border Agency ought to be to ensure that those who are entitled to be granted leave to remain in the UK, whether because they are refugees or for other reasons, are granted such leave. Currently, the UK Border Agency is extraordinarily inefficient and ineffective at identifying those – whether separated children, families or single adults – who are entitled to asylum. It has displayed similar inefficiency and ineffectiveness at recognising others, in respect of whom enforced removal or deportation is unlawful. The same can be said of the UK Border Agency’s failure to acknowledge and rationally address the circumstances of those whom it cannot remove. The result has been a great deal of UK Border Agency activity aimed at the removal of persons who it would be unlawful to remove or who it is not reasonably practicable to remove and who should not be subjected to attempts at removal<sup>66</sup>.
24. In relation to this, it is necessary to highlight and comment upon somewhat tired refrains that have emanated from the UK Border Agency over recent years. One such refrain was echoed by the then Minister for Immigration, Phil Woolas MP, in his statement reported by *The Times* on 24 March 2010<sup>67</sup>:

*“The sad fact is that some illegal immigrants refuse to comply with the decision of the independent courts and return home voluntarily.”*

At heart, this is the same position that in 2007 was put by the Government to the Joint Committee on Human Rights in response to the Committee’s recommendation regarding support for refused asylum-

<sup>65</sup> We also have concerns that where the UK Border Agency refers to ‘absconding’ it is not clear that this necessarily means anything more than missing of a reporting event. There is a very great difference between a person or family not attending a reporting event, not attending a port for the purpose of a return and vacating their last known address and going to ground. Criticisms made of the Millbank pilot and the UK Border Agency’s evaluation of that pilot were set out in an independent evaluation produced by The Children’s Society and Bail for Immigration Detainees. These included that ‘*Statistics about the number of families who refused to go to the pilot, or who left Millbank, have not been released. However, it is clear that some UKBA case owners recorded people as absconders when they had in fact notified UKBA about where they were. For example, two families we interviewed had left Millbank in order to return to their asylum accommodation and had immediately notified the school and the local authority. In one case the ‘absconding’ family had also notified UKBA.*’. A copy of that evaluation is available at : [http://www.childrenssociety.org.uk/resources/documents/media/17148\\_full.pdf](http://www.childrenssociety.org.uk/resources/documents/media/17148_full.pdf)

<sup>66</sup> Some cases have come before the courts. Among the more recent and egregious examples to have done so are *N v Secretary of State for the Home Department* [2009] EWHC 873 (Admin) and *Muuse v Secretary of State for the Home Department* [2010] EWCA Civ 453. In the former case a gay asylum-seeker was removed to Uganda without forewarning and without his legal representatives’ knowledge. Subsequent to the ruling that the Home Office had acted unlawfully, he was returned to the UK on the order of the High Court. He was then found to be a refugee by the Asylum and Immigration Tribunal. In the latter case, a Dutch national of Somalian origin was unlawfully detained for more than four months by reason of the UK Border Agency’s determination to deport to Somalia a man who insisted he was a Dutch national and whose Dutch driving licence, identity document and passport were each available to the UK Border Agency.

<sup>67</sup> *Baby held at Yarl’s Wood for 100 days, says chief prison inspector*, see <http://www.timesonline.co.uk/tol/news/uk/article7073354.ece>

seekers<sup>68</sup>. ILPA gave a detailed response to the position put by the Government highlighting *inter alia* several factors why it is unsafe to conclude that because someone has been through the appeals process, and their appeal dismissed, it is necessarily appropriate or lawful to expect them to return to their home country. Those factors included inadequacy in the provision of legal aid, failures by the UK Border Agency in its decision-making and later changes in the decisions of the courts as to the law and country situations. The ILPA response remains publicly available on our website<sup>69</sup>. However, we note here that the quality of decisions of the courts is, in significant part, determined by the quality of preparation in the cases which appear before them and the quality of submissions presented to them. If the UK Border Agency fails to focus appropriately on the real issues in the case (as contrasted to a scatter-gun approach in refusal letters, cross-examination and submissions) and fails to put all and only relevant matters before the court, or if legal representatives fail or are unable to take full instructions from appellants or fail or are unable to provide the court with the relevant evidence and legal material in a sufficiently structured and focused manner, the fact of a previous independent decision from the court may prove of neither comfort nor value to an appellant whose appeal is dismissed despite his or her having well-founded fears of persecution or other human rights violation if returned or some other good claim to remain in the UK.

25. Another such refrain was repeated by David Wood in his evidence to the Home Affairs Committee in September 2009<sup>70</sup>:

*“The reasons that some [families] end up there [in detention] longer is they create new judicial reviews and other legal processes, a lot of which are spurious, the NAO found earlier this year, which would accord with our own view. Over 90% of judicial reviews do not even get leave for hearing.”*

26. We regret that, to a degree, these reflections were repeated at the meeting of 30 June 2010. We provided some answer at the meeting, and now provide a little more. There are various reasons why a judicial review application may not proceed to an oral hearing or a grant of permission. These include that the application may be withdrawn. Many applications are withdrawn, and one reason for this is that the UK Border Agency has conceded that its decision, against which the judicial review is brought, cannot stand. In other cases, applications are withdrawn on agreement with the UK Border Agency or Treasury Solicitors that time will be given for the person to submit further representations through newly acquired legal representation, or on a similar basis even without such agreement. ILPA has long sought from the UK Border Agency data giving some breakdown of the applications which do not proceed to oral hearing or a grant of permission. The most that has been forthcoming has been data for 2006 and 2007, indicating that a large proportion of judicial review applications are withdrawn<sup>71</sup>. It is clear that the UK Border Agency's repeated and unqualified reference to this 90% figure (and similar figures) misrepresents the true picture.

27. Whether in relation to children, families or single adults, these statements are reflective of the continued 'culture' at the UK Border Agency<sup>72</sup>. That culture is likely causative of, and in turn further embedded by, such factors as the UK Border Agency's enthrallment with targets for removals and deportations and its equal fascination with 'pull factors' and deterrence. While the willingness or ability of the UK Border Agency to respond rationally and reasonably to the situation of individual cases continues to be so heavily skewed by these and other factors, it seems likely that it will continue to waste considerable time, money and credibility in pursuing removals of children, families and others where such pursuit is impractical or unlawful. If the focus of this Review is, as appears to be the case from its terms of reference viewed as a

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<sup>68</sup> Joint Committee on Human Rights Seventeenth Report of Session 2006-07, *Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers*, 5 July 2007 HL 134/HC 790, see the response to the Committee's recommendation no. 10

<sup>69</sup> ILPA's Memorandum to the Joint Committee on Human Rights following the publication of the Government's response to the Committee's Tenth Report of Session 2006-07, *The Treatment of Asylum Seekers*

is available in the 'Submissions' section of the ILPA website at [www.ilpa.org.uk](http://www.ilpa.org.uk) (see paragraphs 5 to 5(i))

<sup>70</sup> Oral Evidence given by Dave Wood, Strategic Director, Criminality and Detention, UKBA to the Home Affairs Committee, The Detention of Children in the Immigration Service, on 16 September 2009, HC 970-i (Question 25)

<sup>71</sup> There are no satisfactory figures available. However, the National Audit Office report *Management of Asylum Applications by the UK Border Agency*, 23 January 2009 (to which David Wood referred in his evidence to the Home Affairs Committee – see previous footnote) reported that over a four months period from January 2008 to April 2008 approximately 225 judicial reviews were brought on average per month. In response to a freedom of information request by ILPA, the UK Border Agency disclosed by letter of 5 June 2009 that it had no figures available to address the detail that ILPA had requested (in an attempt to properly address what was happening with judicial review applications) but supplied figures for 2006 and 2007 showing that 831 and 997 applications respectively relating to asylum had been withdrawn in those years and a further 353 and 535 respectively relating to non-asylum immigration had been withdrawn in those years.

<sup>72</sup> The most recent and high profile spotlight upon this was provided on 2 March 2010 by the oral evidence of Louise Perrett, a former UK Border Agency caseowner, to the Home Affairs Committee. A transcript of her oral evidence is available as Ev 1 to the Committee's Twelfth Report of Session 2009-10, *UK Border Agency: Follow-up on Asylum Cases and E-Borders Programme*, 7 April 2010 HC 406. The Committee recorded in its report (paragraph 7) the UK Border Agency's commitment to investigate the allegations made by Ms Perrett. We are not aware of any conclusion or report of those investigations.

whole, on returns and removals rather than the entirety of asylum and immigration processes, it seems all the more likely that the situation described here will remain.

### **The current circumstances in which children are detained**

28. In addition to the preceding paragraphs, we highlight three matters in relation to this matter.
29. Firstly, it is necessary for the UK Border Agency to reflect further on its immigration practices and policies more generally than mere consideration of the asylum process as indicated by the previous (*"The UK Border Agency's current approach to dealing with asylum applications..."*). The matters outlined under the preceding subheading apply in other immigration processes, such as deportation processes and processes dealing with overstayers or curtailing leave.
30. Secondly, it is necessary for the UK Border Agency to address the ongoing situation of separated children (often referred to as unaccompanied children), who are subjected to detention, either because insufficient opportunity has been given for them to state or confirm their age prior to a decision to detain them or because of inadequate or erroneous age assessments. While unaccompanied children continue to be detained the aim of the Government to end the detention of children will not be realised. The current situation has been very recently described by the Harmondsworth Independent Monitoring Board<sup>73</sup>:

*"...UKBA's attitude to age disputes is not primarily defined by a desire to protect children, and there is a culture of disbelief when a detainee claims to be under 18, which compounds the distress of genuine children. The agency has been slow to engage with Hillingdon Council at an appropriate level to speed up age assessments and is disinclined to take responsibility for the fact that it may be detaining children."*

This is yet further evidence of the failure of the UK Border Agency to effectively embrace (or properly acknowledge) its section 55 duty. It is of particular concern given that the management information that has been shared over recent months by the UK Border Agency with the Detention Users Group has consistently shown that a significant number of separated children are detained, and that such detentions are not unique to any one immigration removal centre or any particular set of circumstances<sup>74</sup>.

31. We were pleased that the issue of age disputes was expressly raised at the 30 June 2010 meeting. We do not here repeat the findings of ILPA's May 2007 report on this subject<sup>75</sup>. We highlight, however, as was said at the meeting that the proper application of the benefit of the doubt by the UK Border Agency ought to be the primary means by which the detention of children, whose age is disputed, is avoided. It was again raised by the UK Border Agency that there were child protection issues raised by the risk of allowing an adult, claiming to be a child, into a child setting. However, as was said in response, there are very immediate risks to a child's welfare of wrongly detaining him or her as an adult in an immigration removal centre with other adults. Moreover, in the former situation, the setting is one immediately within the purview of children's social services, where there is expertise on children's welfare and direct attention to the children in that setting. The same cannot be said for the reverse situation where a separated child is detained.
32. Thirdly, the UK Border Agency must ensure that detention is ended – not merely at Immigration Removal Centres – but also at other places of detention whether within the UK Border Agency detention estate (e.g. short-term holding facilities) or outwith that estate (e.g. police stations).

### **All relevant baseline data and statistics**

33. ILPA would be grateful if such baseline data and statistics are made publicly available generally or to ILPA. ILPA has, with others, long sought an improvement to the baseline data and statistics that are made available<sup>76</sup>. A key reason for that is to ensure that dialogue between the UK Border Agency and ILPA is better informed on both accounts and may accordingly be more effective. It is also so that ILPA can more effectively play its part in holding the UK Border Agency to account by e.g. identifying earlier any trends

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<sup>73</sup> Harmondsworth Independent Monitoring Board, Annual Report for 2009, May 2010

<sup>74</sup> It had initially been suggested that such cases may be peculiar to Oakington immigration removal centre and a result of a practice whereby 'lorry-drop' cases were generally screened at that centre. The management information, however, indicates that this was not correct.

<sup>75</sup> *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.

<sup>76</sup> ILPA has, *inter alia*, raised these matters at the National Asylum Stakeholder Forum and Detention Users Group. ILPA also participated in a workshop hosted by the UK Border Agency with members of Home Office Migration Statistics in November 2008.

that may need investigation.<sup>77</sup> We recall that Liam Byrne MP, then Minister for Immigration, when introducing the UK Borders Bill to Parliament at Second Reading emphasised:

*“If the IND [now UK Border Agency] is to become a stronger agency, it must be more open and accountable not only to this place but to the public.” (Hansard, HC 5 February 2007 : Column 591)*

Damian Green MP, now Minister for Immigration, endorsed that approach in Committee:

*“I was interested in and, in part, gratified by the Minister’s response. He recognises the need for better oversight than exists at present or will be available through this Bill.” (Hansard, HC UK Borders Bill Public Bill Committee, Fifth Sitting 6 March 2007 : Column 144)*

34. As regards the currently available data, we concur with the Minister’s view that the data amply demonstrates that, judged by its own terms and aims, the current policy on detaining children has failed:

*“Detention under the system that we are getting rid of was not necessarily effective. Of the 1,068 children who departed from detention in 2008-09, only 539 were removed and 629 were released back” (Hansard, HC 17 June 2010 : Column 231WH)*

On the face of these figures, the disruption, distress and harm caused to some 60% of these children was ineffective and wholly unnecessary however the decision to detain them is judged. This is not the reason why we advocate for the immediate cessation of detention, but it provides clear support for our position. We note that the figures, of themselves, give no support for the contrary position. In particular, the figures say nothing about the relative efficacy of detention of the remaining 40% of these children.

The UK Border Agency’s initiatives on implementing alternatives to the detention of children, including the Glasgow pilot

35. ILPA considers that these initiatives suffer from the fundamental flaw that they have been established in isolation from consideration of the asylum process<sup>78</sup> as a whole and, accordingly, have operated in circumstances where the problems identified above (viz. “UK Border Agency’s current approach to dealing with asylum applications...”) remain endemic. We recall the Minister’s observations upon the predecessor to the Glasgow pilot at Millbank, Ashford:

*“I rise as a constituency Member, because the alternative-to-detention project that the Government started took place in my constituency and was pursued, at best, halfheartedly. It did not clearly engage any particularly serious part of the Government’s thinking—if, indeed, it was a serious alternative to detention. I suspect that Members from all parts of the House want desirable alternatives to detention, but they have never been properly set out or tried. The experiment in my constituency was nothing like long enough, well resourced enough or serious enough to answer the question about whether we can have a proper alternative.” (Hansard, HC Borders Citizenship and Immigration Bill, Second Reading 2 Jun 2009 : Column 217)*

We suggest that, at least in significant part, the inadequacies to which he there pointed were a result of the misguided focus at the heart of both pilots on returns and removals rather than considering the entirety of the asylum process in which both were engaged.

Models of good practice from other jurisdictions and relevant current research

36. ILPA is aware of, but not familiar with, models operating in Australia, Belgium and Sweden. However, ILPA is of the view that if the fundamental flaw highlighted under the preceding subheading remains not addressed it is unlikely that initiatives, whether inspired by models from other jurisdictions or not, will prove effective. We note the following taken from an International Detention Coalition briefing paper summarising key elements of the Swedish model<sup>79</sup>:

*“The Swedish case management role introduced in both community and detention contexts was premised on a rights and welfare-based framework. The caseworker is responsible for informing*

<sup>77</sup> This, in particular, has been raised by ILPA in relation to the detention of age-disputed children at the Detention Users Group.

<sup>78</sup> The pilots of which we are aware, formerly in Millbank, Ashford and currently in Glasgow, each relate specifically to refused asylum-seekers.

<sup>79</sup> International Detention Coalition, *Case Management as an alternative to immigration detention*, June 2005 (page 5). The paper is available at:

<http://idcoalition.org/wp-content/uploads/2009/06/casemanagementinaustralia.pdf>

*detainees of their legal rights and ensuring these rights are upheld, including access to legal counsel and the right to seek asylum.”*

37. We are not in a position to comment on the success or otherwise of the Swedish model. However, we note that, insofar as the International Detention Coalition briefing paper accurately summarises the model, it records explicit recognition in the Swedish model that it is key that legal rights are upheld and the means to upholding such rights are available. It must be noted that the degree to which models, whether in Sweden or elsewhere, are transferable may be dependent upon the degree of proximity or difference between the settings in which such models operate and the UK’s asylum and immigration processes, including the UK’s legal aid, tribunal and court systems. Nonetheless, the acceptance that accessibility and recognition of legal rights is key is, on its face, supportive of the observations made in preceding paragraphs.

How the current voluntary return process may be improved to increase the take-up from families who have no legal right to remain in the UK

38. ILPA has nothing to add to the foregoing paragraphs, which are relevant to this matter. However, we stress that focus upon returns rather than on asylum and immigration processes as a whole is likely to prove ineffective. It is to repeat past mistakes.

How a new family removals model can be established which protects the welfare of children and ensures the return of those who have no right to be in the UK, outlining the key process changes, rules or legislative changes that would be required to implement the new model

39. ILPA has nothing to add to the foregoing paragraphs, which are relevant to this matter. However, we stress that focus upon removals rather than on asylum and immigration processes as a whole is likely to prove ineffective. It is to repeat past mistakes.

### **Existing international EU and Human rights obligations**

40. We shall not recapitulate the various international standards by which the UK is bound in relation to asylum-seekers, migrants and children. However, we recall that we have earlier in this response provided the UK Border Agency with a summary of certain of the relevant Articles of the 1989 Convention. We note, too, that the European Court on Human Rights has frequently given attention to the 1989 Convention when addressing cases before it involving children. A particular example is given by the *Case of Maslov v Austria* where the Court considered the State’s obligations under Article 40 of the 1989 Convention to be of particular relevance in consideration of the Article 8 claim brought before the Court in connection with deportation proceedings against Maslov<sup>80</sup>.

The UK Border Agency’s statutory duty to make arrangements to take account of the need to safeguard and promote the welfare of children as it carries out its functions (section 55, BCI Act)

41. As we have indicated above, quite apart from this Review, the UK Border Agency urgently needs to reconsider this duty and its response to this duty. The UK Border Agency needs to stop portraying or understanding this duty as a threat to its purposes in respect of immigration control, rather than a useful guide, in particular, to the extent of its jurisdiction and powers in the exercise of immigration control where child safeguarding and welfare duties of other statutory agencies are in play<sup>81</sup>.

### **Equality obligations**

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<sup>80</sup> ‘The Court considers that, where expulsion measures against a juvenile offender are concerned, the obligation to take the best interests of the child into account includes an obligation to facilitate his or her reintegration. In this connection the Court notes that Article 40 of the Convention on the Rights of the Child makes reintegration an aim to be pursued by the juvenile justice system (see paragraphs 36-38 above). In this court’s view this aim will not be achieved by severing family or social ties though expulsion...’ Grand Chamber 23 June 2008, Application No. 1638/03 (paragraph 83)

<sup>81</sup> A recent example of the failure, in practice, of the introduction of the section 55 duty to bring the UK Border Agency into the family of public authorities bound by the twin duty under section 11 of the Children Act 2004 is given by the UK Border Agency’s introduction in September 2009 of its asylum process guidance on Family Relationship Testing (DNA). This actively encourages the bizarre and improper situation whereby an official of the UK Border Agency, suspecting an adult and child at the Croydon Asylum Screening Unit not to be related as claimed, to seek the adult’s consent to the taking of a DNA swab of the child. This has been explained as a response to fears regarding the safety and welfare (potentially trafficking-related) of the child. How the UK Border Agency considers that an adult who is not the true parent or legal guardian of the child is competent to give consent on behalf of the child remains unexplained. Why the UK Border Agency does not simply make an immediate referral to social services, or if there are more pressing fears to the police, is equally inexplicable.



42. The primary consideration as regards this matter must be Article 2.1 of the 1989 Convention:

*“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”*

43. Having withdrawn its immigration reservation to the 1989 Convention it must now be clear that a child’s immigration status, or that of his or her parent, does not permit of any divergence from a full and equal application of the Convention rights in respect of that child<sup>82</sup>. Recognition of this ought to underpin acceptance that the section 55 duty sets the same standards for the UK Border Agency as are established by section 11 of the Children Act 2004 for other public authorities.

### **Current financial constraints**

44. ILPA’s primary concerns are with the safety and welfare of children in immigration processes, with the legality and fairness of such processes and with the availability of appropriately competent and expert legal advice and representation throughout such processes.

45. Nonetheless, we note that financial constraints strongly favour the position outlined in this response that detention of children should end immediately. As the Minister has observed:

*“...nothing is as expensive as detention.”* (Hansard, HC 17 June 2010 : Column 234WH)

This is not the reason why we advocate for its immediate cessation, but it is clear that doing so would save money.

46. Finally, it is impossible in the current climate to ignore the fact that financial constraints can only be addressed by ensuring an holistic consideration of asylum and immigration processes. As we have reminded the UK Border Agency on several occasions<sup>83</sup>, its practices and policies can and do have immediate impacts upon legal aid costs and the costs of tribunal and court proceedings. We recall the following statement of the Minister, when in opposition:

*“I seek to minimise the effect on the public purse, as would the Minister, and to maximise the speed at which people go through the system, because delay promotes both injustice and expense. As I was saying, experiments in this country, and many experiments overseas, have revealed that if someone receives decent legal advice at the start of the process, their case will not only be concluded more quickly but will be much less likely to go to appeal. If they then end up being removed from the country, they are more likely to accept the situation.”* (Hansard, HC Borders Citizenship and Immigration Bill Committee, Sixth Sitting 16 Jun 2009 : Column 189)

We concur with the Minister’s view that measures that give effect to appropriately competent and expert legal advice and representation at the earliest possible stage of these processes are most likely to contribute to better quality decision-making on the part of the UK Border Agency, and that better quality decision-making, which includes focussed (rather than scatter-gun) decision-making and reasons, would contribute to reduced costs – whether because an appeal is unnecessary or is more focused. However, we recall that circumstances (including law, policy, country situations, court and UK Border Agency appreciation of country situations and available evidence) change and the availability of appropriately competent and expert legal advice and representation is not limited to early stages. Practices based upon such misapprehensions can and do compound the cost of later processes by creating situations where the opportunity for fair and just consideration of changed circumstances is left to last-minute recourse to judicial review.

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<sup>82</sup> This was the position prior to the formal withdrawal since the reservation was itself unlawful as contrary to the object and purpose of the Convention: see CRC/C/15/Add.34 15 February 1995 *Concluding observations of the Committee on the Rights of the Child : United Kingdom of Great Britain and Northern Ireland* and CRC/C/15/Add.188 9 October 2002 *Concluding observations of the Committee on the Rights of the Child : United Kingdom of Great Britain and Northern Ireland*, Joint Committee on Human Rights Seventeenth Report of Session 2004-2005, *Review of international human rights instruments*, 23 March 2005 HL 99/HC 264 (paragraph 46 *et seq*). See also the Committee’s Tenth Report of Session 2002-03, *The UN Convention on the Rights of the Child*, 24 June 2003 HL Paper 117, HC 81 (paragraph 81 *et seq*) and Seventeenth Report of Session 2001-02, *Nationality, Immigration and Asylum Bill*, 21 June 2002 HL 132, HC 961 (paragraph 16 *et seq*).

<sup>83</sup> e.g. at meetings of the National Asylum Stakeholder Forum. In September 2008, ILPA presented a written briefing to NASF on ‘Challenges facing [legal] practitioners’, which outlined several matters among which the need to address impact on legal aid was a recurring theme.



## The requirement for robust statistical data

47. ILPA observes that, for reasons addressed above, any statistical data available to the UK Border Agency should be shared. Statistical data can certainly be of value, but such data is of value only to the extent that it is correctly interpreted and the risks of incorrect interpretation of such data are seriously compounded where the data is not shared and any interpretation can only be derived from one or limited perspectives.
48. In the same way that there is no need for a timetable to end the detention of children (see below), there is no need for the collection of robust statistical or any other data in order to do so.

## The need for a risk assessed approach in dealing with individual families

49. It is unclear what is meant by this. ILPA generally has no objection to the assessment of risks, provided such assessment is based upon proper evaluation of evidence, having regard to the views of children and families offered in proceedings that provide independent legal advice and representation so that such views can properly be considered to be informed. As regards risks to be assessed, critical risks include the risk of persecution or other human rights violation on return, and the risk to the safety and well-being of the child. Risks that have no place in these considerations include speculative and non-evidenced risks or assertions of risk, and risks associated with the impact of treatment of an individual child on the behaviour of others.

## The need for an implementation timetable

50. ILPA has nothing to add. We refer to the preceding section entitled 'Timeframe' and stress that, for reasons there given, there is no reason why the detention of children, and the harm that it causes, should be continuing. There is no need for a timetable for the ending of the detention of children. It can and should end now.

## Further observations

51. In this section we will address matters arising directly or indirectly from statements made by the Minister during the course of the Westminster Hall debate on 17 June 2010, and which we have not addressed or addressed fully in preceding sections of this response. In that debate the Minister gave some indication of matters actively under consideration by the UK Border Agency at this time. Firstly, however, we note that, if the detention of children were to be ended now, as we advocate here, there would be no difficulty in the UK Border Agency conducting a formal consultation on specific proposals or options so that ILPA and others can provide responses directly addressing such matters as may be under consideration. That would be far preferable to the current Review, of which the terms of reference, while made public, fail to set out with any clarity just what it is that the UK Border Agency is considering.
52. The Minister has said that:

*"Clearly there is a need to achieve faster and better decision-making on family asylum cases."*  
(*Hansard*, HC 17 June 2010 : Column 212WH)

Later in the debate the Minister referred to the pressing need to resolve the legacy backlog<sup>84</sup>. We agree with the Minister as to that. However, the Minister should be aware that backlogs are now growing in the New Asylum Model<sup>85</sup>. Generally, we do not demur from the Minister's intention that decision-making in family cases should be faster and better provided those aims are pursued together; and where in an individual case faster does not permit of a better decision then slower decision-making will be necessary. There is nothing to be gained by rushing to unsafe decisions, in which nobody can have any confidence and which may lead in the long term to delay and litigation that might have been avoided.

53. The Minister noted his ongoing interest in "*the provision of early legal advice*" as piloted in 2007-2008<sup>86</sup>. We wish to make two observations. Firstly, we must caution that "*collaboration*" with the UK Border Agency can never properly be the role of a legal representative in our adversarial legal system. However we certainly acknowledge that there is much to be gained from UK Border Agency decision-makers identifying what are truly issues of contention in relation to a claim and giving time to legal representatives to address those issues before making decisions on the asylum claim. Secondly, while we support the provision of early legal advice and representation, the fundamental need is that those passing through

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<sup>84</sup> *Hansard*, HC 17 June 2010 : Column 232WH

<sup>85</sup> We have written to Hugh Ind, UK Border Agency National Lead for Protection on 11 June 2010 in connection with this.

<sup>86</sup> *Hansard*, HC 17 June 2010 : Column 213WH

asylum and immigration processes have access to appropriately competent and expert legal advice at all stages. As we have indicated above, circumstances do change and whatever improvements may be made to initial decision-making it cannot be ruled out that further submissions may need to be made in an individual case. We recall that at the 30 June 2010 meeting there was a general consensus among participants as to the importance of the availability of legal advice and representation and the need for this to be provided as early as possible, to be of appropriate competence and expertise and for the provision of this to be sustained through asylum and immigration processes.

54. The Minister referred to:

*“...the need for better contact management and more active discussion of a family’s options if their claim is rejected and their right to appeal a decision has been exhausted. Discussions with a family member might need to be backed up by improved support from NGOs, partners and other workers.” (Hansard, HC 17 June 2010 : Column 213WH)*

We do not demur from the general thrust of these observations, though would caution against oppressive contact management which may foster both distrust and distress. We recall, prior to the Millbank and Glasgow pilots referred to elsewhere in this response, the UK Border Agency conducted a pilot named ‘Clannebor’ which, from our recollection of concerns raised by other stakeholders e.g. at meetings of the National Asylum Stakeholder Forum Case Resolution subgroup<sup>87</sup>, caused immense and unnecessary distress to a number of families subjected to it. We note the Minister’s express reference to discussions after decisions and appeals. We agree that caution must be exercised as regards the timing of such discussions. General information may be unsuitable or inappropriate prior to decision on an asylum claim, as it may suggest a particular bias towards a negative outcome. While information may be appropriate after an asylum decision, it may be inappropriate to seek discussions at this stage as an asylum-seeker bringing an appeal is entitled to consider that he or she may reasonably direct himself or herself to that appeal. As regards information that may be provided, we would urge that this is initially provided via any legal representative. It would be appropriate for a legal representative to have advance notice of any intended discussions. This has several advantages. It may assist any discussion, since the legal representative may be able to explain any options prior to discussions. It may also reduce the risk of distrust and distress that is often caused when individuals or families are invited to attend meetings or discussions with the UK Border Agency, of which they have little or no information that they understand and about which their legal representative is able to provide no assistance or comfort since, if contacted, he or she often knows less than the individual and can only guess at the range of events or risks facing the individual at the upcoming meeting.

55. As regards discussions of families’ (and others’) options, we note that legal representatives can and should, though their ability to do so effectively is now severely compromised by what has happened to the legal aid regime, advise on such options. This is not to suggest that there is no role for others to play. However, it is necessary that independent third parties seeking to play a role recognise their own limitations. It is one thing to advise a family as to what are the standard options available to persons in the family’s situation. It is quite another to provide advice or encouragement as to the taking of any particular option. To do the latter, any adviser needs to be fully conversant with the family’s asylum or immigration case and the relevant law and policy standards applicable to that case<sup>88</sup>. Otherwise, any such advice they may give is improper and may be harmful since, without this knowledge, they cannot know whether any particular option is truly advisable. Moreover, it is not sufficient that such third parties may possess knowledge of the family’s case and relevant legal and policy standards. Advising in such circumstances, if there is a legal representative, is to act in a way that fundamentally compromises the relationship between the client and his or her legal representative; and, ultimately, may lead to a situation, which deprives the client of such representation.

56. The Minister referred to the option that:

*“The UK Border Agency would therefore set removal directions while the family is in the community, giving the family time to submit further representations and to apply for a judicial*

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<sup>87</sup> It was discussed at the October 2007 meeting of the Case Resolution subgroup. The minutes of the next meeting record some concern that the minutes of the October 2007 had not adequately recorded the concerns that had been expressed. The October 2007 minutes record: ‘There was widespread concern about children being asked to attend case conferences, which could be seen as an intimidating environment especially where children are unaware of their immigration status. Other issues raised included legal representatives and voluntary sector caseworkers not having a full understanding of the initiative. Also, families have been reported to be feeling singled-out because they had received a pink questionnaire. There was a suggestion that the initial letters should also be worded differently. Other communications issues were again raised.’

<sup>88</sup> If the advice is to touch on such matters as a person’s or family’s asylum claim, unlawful entry, any claim to be granted leave, removal or deportation, the adviser will need to be a qualified person for the purposes of provision of immigration advice or services under section 84 of the Immigration and Asylum Act 1999. Otherwise they may be committing a criminal offence.

*review if they wish to do so, as well as giving them time to make plans for their return.” (Hansard, HC 17 June 2010 : Column 213WH)*

ILPA would welcome such an approach. Such an approach would accord with the need for the UK Border Agency to ensure that a family facing removal has proper access to legal representation and the family's right of access to the court<sup>89</sup>. This approach will work best where a family has ongoing legal representation at the time such notice is given. It will be least likely to be successful where the family has no immediate legal representation, faces difficulties finding a legal representative with capacity to provide advice and has been without legal representation for several months or years such that there are difficulties finding or retrieving relevant casepapers even if a new legal representative is secured. As we have indicated elsewhere, these considerations show the pressing need for some closer working between Ministers and officials across the Home Office and Ministry of Justice because of the close relationship between asylum and immigration processes and legal aid in terms of justice, effectiveness and cost. As indicated previously, it is necessary that legal advice and representation is both available and of sufficient competence and expertise.

57. Finally, we note that the Minister indicated that consideration is also being given to options such as the separation of families and detention of families *“for a short period”*.<sup>90</sup> We have grave concerns at these indications. We recall that it has always been said by the UK Border Agency that detention is for the shortest possible time. The current policy on detention, whether of families or single adults, is explicit:

*“Detention must be used sparingly, and for the shortest possible period necessary.”*<sup>91</sup>

In his evidence to the Home Affairs Committee, David Wood stated:

*“...when we detain the children it is going to be for a short period of time...”*

Though he did continue:

*“...but some end up staying there longer...”*<sup>92</sup>

We do not understand how the clear and absolute commitment given in the coalition agreement can be met if there is to continue to be detention of some children. Moreover, if the policy position is to be no detention of children save as for a short period where the UK Border Agency consider that to be necessary, we do not understand how this position differs from the current position. Having regard to any or all of several factors – e.g. the harm caused to children, the ineffectiveness of detention in these cases and the considerable costs involved – we urge that the Government make good on its commitment and end this abhorrent practice.

58. We note the observation by the Baroness Neville-Jones, Home Office Minister of State:

*“We certainly aim not to separate families from children or children from families.” (Hansard, HL 2 June 2010 : Column 252)*

Not only is that a worthy aim, it is a legal obligation – as described above in the summary of relevant Articles of the 1989 Convention. The Minister in the Westminster Hall debate rightly drew attention to the best interests of the child *“as the paramount concern”*<sup>93</sup> in this regard. It is difficult to conceive of circumstances in which the interests of immigration control alone could provide circumstances where separation is in the best interests of a child. We note that at the meeting of 30 June 2010 others made clear their view that, if pursued, separating families would not prove to be an acceptable or effective response by the UK Border Agency to the ending of the detention of children.

59. We briefly draw attention to the urgent need for the UK Border Agency to address the circumstances of families split by imprisonment under the criminal justice system. Where sentence is completed, whether deportation is under consideration or being pursued, current practice habitually fails to have regard to the welfare of the child under the section 55 duty or address the best interests of the child under the 1989 Convention while maintaining the separation.

## **Conclusion and general principles**

<sup>89</sup> The right of access to the court in connection with removal processes is currently being litigated. ILPA has supported the claimant in that case with a witness statement which chronicles the history of this issue over recent years.

<sup>90</sup> *Hansard*, HC 17 June 2010 : Columns 213-214WH

<sup>91</sup> UK Border Agency enforcement instructions and guidance, chapter 55, section 55.1.3

<sup>92</sup> Oral Evidence *op cit* (Question 57)

<sup>93</sup> *Hansard*, HC 17 June 2010 : Column 231WH

60. The following principles, agreed by the Refugee Children's Consortium of which we are a member, may comfortably be drawn from the foregoing and hence we provide them by way of conclusion:

- Detention of children must end now, as it is clear that detention harms children; children and their families should be released immediately.
- Children and their families should never be separated for immigration purposes.
- Ending the detention of children is not dependent on establishing 'alternative to detention' projects or new processes for families.
- Discussions on policies and practice on returns are not needed to end the detention of children.
- Discussions that focus on finding solutions to the problems at the end of the process need to consider a family's entire experience of the asylum and immigration processes. The provision of good quality legal advice throughout these processes is crucial.

Sophie Barrett-Brown  
ILPA, Chair

2 July 2010

## 27. IMMIGRATION ADVISORY SERVICE (IAS)



### Immigration Advisory Service

Community Legal Advice and Representation for Immigrants and Asylum Seekers

David Wood  
Strategic Director  
Criminality and Detention Group  
1<sup>st</sup> Floor, Seacole  
2 Marsham St  
London SW1P 4DF

01 July 2010

Dear David Wood,

#### Review into ending the detention of children for Immigration purposes Response from the Immigration Advisory Service

I have been asked by my Acting Chief Executive Officer Margaret McKinlay to make submissions on behalf of the Immigration Advisory Service on this matter

You will know of course that the Refugee Children's Consortium, which draws together a number of organisations both from the immigration advice sector and from asylum and immigration NGOs, has campaigned on this issue for some time. IAS forms part of that consortium through our organisational membership of the Immigration Law Practitioners Association (ILPA).

We were glad to see a commitment from the coalition government to end the detention of children. We are therefore concerned that any children would continue to be detained during a process of review such as this Ministerial review. The Consortium has produced clear evidence that detention harms children, and also that separating children from other family members for immigration purposes is harmful to the whole family.

We would therefore urge that early measures are taken to cease these practices. We do not believe that this should depend on establishing 'alternatives to detention' or other end-of-asylum processes for families. Nor should ending the detention of children, or separation of families for immigration purposes, depend on further discussions on returns policies and procedures.

In relation to these latter discussions, our very broad experience of advising in immigration and asylum cases over many years supports our view that good quality legal advice and representation is essential for any client's understanding of the immigration or asylum process, and of their acceptance or otherwise of any final decision.

Yours sincerely

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## 28. INDEPENDENT MONITORING BOARD FOR GLASGOW & EDINBURGH

### Child Detention Review

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This short submission is made by the Independent Monitoring Board (“IMB”) for the non-residential Short Term Holding Facilities at Glasgow & Edinburgh Airports and the Glasgow Reporting Centre.

We have supported the conclusions of a submission from the Heathrow IMB. That submission correctly noted that our IMB was appointed recently (it became operational on 1 February 2010) and that the Holding Rooms which it monitors are not open 24/7. Indeed, the Airport Holding Rooms are open daily for 12 hours only and the Reporting Centre Holding Room is open only during normal office hours, Monday to Friday.

We were not invited to “the event for Scottish partners” on 14 June referred to in David Wood’s letter of 10 June, so were not privy to the discussions which took place although we have read the newspaper and BBC website reports and the reports of statements made to the Scottish Parliament.

We understand that a decision has been made by the Immigration Minister that there will be no further detention of families with young children at Dungavel IRC. We have read that, although there will be no overnight stays, families detained in Scotland for removal may still be taken to Dungavel for initial processing, whatever that may mean. We have been unable to ascertain from either UKBA or G4S personnel if this is correct.

Our concern is that if families with young children resident in Scotland detained for removal are not to be taken to Dungavel they – and very young children in particular - may be faced with a very long and tiring transfer from the Glasgow Reporting Centre to eg Yarl’s Wood IRC, a journey of some 400 miles. We consider that such a journey, if uninterrupted by an overnight stay en route, would be quite unacceptable.

A stay at Dungavel before removal south did at least have the benefit of allowing friends to re-unite families with their possessions which may have been left behind after an Enforcement Visit. It will be important, therefore, that good arrangements are made to ensure that families’ possessions and effects follow them satisfactorily to wherever within the UK they may be transferred before their ultimate removal from the UK.

1 July 2010

## **29. INDEPENDENT MONITORING BOARD, HEATHROW**

### **Review into ending the detention of children for immigration purposes**

**(June 2010)**

This submission is made by the Independent Monitoring Board (“IMB”) for the non-residential Short Term Holding Facilities at Heathrow. The conclusions are supported by the Scottish Board monitoring at each of Glasgow and Edinburgh airports: its exposure to the issues is very recent and the holding rooms at each of Glasgow and Edinburgh are not open 24/7.

#### **A. Summary**

A1. The review needs to consider the detention of children for immigration purposes at ports, because it can be for a considerable period.

A2. In our view children should not be detained during the period of secondary examination.

A3. If the review concludes that detention during secondary examination cannot be avoided, then vastly improved accommodation should be provided and the custodial atmosphere must be significantly less overt than it is now. We believe that the current detention facilities at Heathrow (and, we suspect, at other ports) are wholly unsuitable places in which to accommodate children.

A4. In any event, the UK Border Agency must modify its procedures impacting upon children in order to minimise the period of secondary examination.

#### **B. Our background and locus**

B1. The Heathrow IMB has been monitoring since April 2007. Our remit is to monitor the welfare, treatment and well-being of adults and children detained at Heathrow for immigration purposes and their movement within its perimeters. We make regular unannounced visits sometimes during the day, sometimes in the evening and occasionally during the night. Overtime we have developed knowledge of:

- detention of children for immigration purposes at Heathrow
- the environment and physical conditions in which they are detained there and
- processes which can contribute to their length of detention there.

B2. We welcome the review and the opportunity to contribute.

#### **C. The fact of detention at Heathrow**

C1. We acknowledge the need for the UK Border Agency to make diligent inquiries when presented with a family or an unaccompanied child at the border control post. We do not claim to know the full range of possible inquiries but are aware that they include testing the reality of the stated reason for requesting entry as well as the reality of the claimed family relationship and trying to establish the real age of the young applicant for leave to enter.

C2. We recognise these inquiries, made during the process of secondary examination, can and often do, take time.

C3. We do not accept that the UK Border Agency consistently discharges its immigration and asylum functions at Heathrow having regard to the need to safeguard and promote the welfare of children (section 55: BCI Act). The length of time many are detained, the environment and conditions in which they are detained and procedures which can contribute to length of detention each militate against the child's welfare.

#### **D. The detention environment and conditions**

D1. The holding rooms at Heathrow are qualitatively different in some degree but all share the same basic characteristics: no proper facilities for sleep, no proper facilities for personal hygiene, no natural light, poor ventilation, air temperatures which veer from the very hot to the very cold and cannot be regulated. Seating is secured to the floor, in one location by chains.



D2. There are Family rooms in terminals 1, 3 and 5, spaces off the main holding room. The family “room” in terminal 3 is in reality a cupboard measuring 5m x 3m. There are 2 holding rooms in terminal 4: there is dedicated space for children in one of them in the sense that in the corner there is a rug on the floor and a toy box. None of the family “rooms” is large enough to allow a child space to run around. The fact that these four family “rooms” (in one case, cupboard and in another the corner of a holding room, but not separated from it), are part of the general detention area is patent, despite provision of toys, child-friendly posters, and some children’s books (mostly in English). The facility contractor provides a travelling cot in each location with a sheet and blanket, nappies and a range of baby food, but not food apt for children generally.

D3. These family spaces at Heathrow have been created over the last 3 years. We suspect that they may be an improvement on what is available in other non-residential short-term holding facilities at ports. Nonetheless they are not suitable spaces in which to accommodate children, whether travelling in a bona fide family group, or alone. They also cannot accommodate more than one family at a time.

D4. Their unsuitability might be objectively tolerable if detention time in these conditions was very short. It is often, not.

D5. We attach our last annual report to Ministers (“the Report”) and draw attention to paragraph 4.3 and paragraphs 8.1 to 8.6 and in particular to the case studies cited.

## **E. Processes which can contribute to length of detention in these unsuitable conditions**

E1. Access to interpreters. Delay can have a substantial knock-on effect on length of detention in the unsuitable conditions at Heathrow. We draw attention to our case studies in paragraph 6.7 of the Report, one about a family, the other about an unaccompanied child.

E2. Asylum applicants at Heathrow typically include families and unaccompanied children. The Asylum Intake Unit’s opening hours are between 09:00 and 20:00 on weekdays and between 09:00 and 17:00 at weekends. In our observation asylum applicants detained at Heathrow either shortly before, or after the AIU closes for the day, end up spending the night (and inevitably more than that) in holding room conditions.

E3. We draw attention to our second case study in paragraph 6.11 of the Report. The UK Border Agency has since told us that families do not have to be referred to the AIU.

E4. The NAM office’s opening hours are between 08:00 and 20:00 on weekdays, 08:00 and 19:00 on Saturdays and 09:00 and 16:00 on Sundays (last referral by 15:00). These opening hours also contribute to the length of time asylum applicants who have to be referred to NAM for initial routing and accommodation, continue to be detained in holding room conditions.

E5. Then there are the transport arrangements for asylum applicants directed to NAM designated temporary accommodation. The UK Border Agency’s contracted service provider, Transport Plus, calls at Heathrow (if the service is ordered) at 14:00 and 21:00. Transport Plus will call at other times, if the out-of-usual-hours service is booked by the Agency but we have rarely known this happen. Our observation is that the wait for Transport Plus collection also contributes to length of detention in holding room conditions. We draw attention to the family case study cited in paragraph 6.14 of the Report.

E6. The interface with Social Services. We recognise that some cases must properly be referred to Social Services. We also recognise that when SS accept responsibility for the care of the child, the UK Border Agency cannot require SS’ immediate attendance at Heathrow. However, whilst the child may be being kept safe whilst detained at Heathrow, the wait for SS to collect the child can add to length of detention in holding room conditions, with all and sundry. We draw attention to our case studies cited in paragraph 8.6 of the Report.

## **F. Comment on our case studies**

F1. The case studies we have referred to earlier in this submission were drawn from a raft of examples we garnered when monitoring over the year commencing 1 February 2009.

F2. We continue to monitor the welfare of detained children: here are 2 recent case studies:

- From May 2010: 2 female adults travelling with 3 children aged 6, 8 and 13 were detained close to midnight: asylum seekers: we believe they were accommodated in the family cupboard. Work on their cases started the next morning. Outcome later in the day was that they had been accepted for routing and initial NAM accommodation and were to be collected by Transport Plus on the evening run, circa 21:00. The transport did not arrive: apparently it had not been booked. The group was ultimately detained for 30 hours, including 2 nights. So, long detention in wholly unsuitable conditions, process (legitimate) and then

the wait for transport seemingly exacerbated by muddle and (whilst we do not know the answer to this point) seemingly no attempt made to accommodate the group for the second night in a non-detention setting.

- From June 2010: a child detained for 20 hours, including overnight: travelling on false documents giving her age as 21. Immigration was concerned: the Paladin team was alerted and interviewed her the next morning: she was in fact 17, Social Services accepted responsibility for her and she was temporarily admitted to their care. So safe-guarding considerations to the fore, and rightly so, but she was still detained in holding room conditions with strangers.

F3. Our careful monitoring observations paint a grim picture. We are not child psychologists, but it is not that hard to imagine what being locked up with strangers, some of whom are angry, others sometimes weeping, not knowing whether it is day or night, not knowing what is going to happen next or when you will be let out, might feel like to a child. We meet and spend time with some of these children.

## **G. Our conclusions**

G1. The pending Short-Term Holding Facility Rules will impose a maximum period for which anyone (and not just families and unaccompanied children) may be detained in non-residential short-term holding facilities. Border Force at Heathrow has been working to the intended time limit. The monthly statistical data on length of detention (prepared for the UK Border Agency and made available to us) demonstrate the challenge the time limit will impose, as do our cited case studies. In our opinion the time limit, once it becomes a matter of law, will not “solve” the problem.

G2. Children should not continue to be detained for immigration purposes at ports. [It should not be inferred that we support their continued detention in immigration removal centres.] That said, we do not ignore the imperative of due diligence by the UK Border Agency in making inquiries during the secondary examination process, including of the sorts to which we have referred in paragraph C1.

G3. The nub of the issue, as we see it, is that families and unaccompanied children are detained whilst under secondary examination, some Home Office referral points are not operational during the night, and the detention environment and conditions are wholly unsuitable for anyone spending more than a very short time in it and most particularly for families and unaccompanied children.

G4. The need for inquiry through secondary examination surely becomes apparent when the family or the unaccompanied child presents at the Border Control post, although the extent of those inquiries will not necessarily be immediately obvious nor, we suspect, could a reliable risk assessment be made then. The practice of detaining pending the outcome of secondary examination, in conditions which should not be tolerated in the UK in 2010 - which we suspect may be “better” in parts of Heathrow than at other ports - must cease in the interests of the child subjected to them.

G5. This means accommodating the bona fide family or the unaccompanied child elsewhere during secondary examination. We recognise this change has resource implications, financial and other, including deployment of immigration case-working officers and interpreters to the other location(s).

G6. Ideally, the other location(s) should be non-custodial: we recognise the risk that some may simply scarp.

G7. The other location(s), whether or not custodial, must be fitted out with the child’s interest and well-being the primary consideration: so, for example, natural light, space in which to play and run around, proper sleeping and washing facilities, toys, food and drinks of the sorts likely to appeal to children, DVDs, TV, reading matter, separation from unrelated adults.

G8. If the Review concludes that children should continue to be detained during secondary examination, albeit in a much better environment than is currently available, then the custodial aspects must be less overt than now. This change should include deployment of custodial staff with proven skills in interacting with children, custodial staff not in uniform nor in casual wear in dark colours and a physical distance between the child and the locked doors.

G9. Whether or not the other location(s) is/are custodial the UK Border Agency must review and modify its procedures, to which we have referred in section E: they can and do add to the period of inquiry and secondary examination and, currently therefore, to length of detention in wholly unsuitable circumstances.

### 30. INDEPENDENT MONITORING BOARD, TINSLEY HOUSE

As discussed on the telephone with Pernille this morning please see the final paragraph extracted from a letter from Stephen Edell, Chair of IMB Tinsley House.

*'Finally, you ask for our views on alternatives to detention. You mention the need to strike an appropriate balance between the 'Section 55 safeguarding duty' and the enforcement of immigration rules. We would point out that the requirement of Section 55 is not just to 'safeguard' but to 'promote the welfare' of children and stress that this should be taken into account as far as possible in deciding alternatives. We have found in the course of our visits that children who have been some years at school in the UK are particularly distressed at being uprooted and detained. In our view, such detention cannot be said to be consistent with promoting their welfare. For all families with children we feel that the alternative of tagging, once they have been given removal directions, is much more acceptable, as well as being more cost effective.'*

### 31. INTEGRATE – LEEDS ORGANISATION

Dear Sir/Madam,

I was pleased to come across this review on the detention of children in UK detention centres. I feel strongly that the criteria for detaining people accused of immigration offences needs to be addressed. Why is it that a murder suspect can only be held for four days, a terror suspect for 28 days and an immigration suspect indefinitely? How is it justifiable to hold people without trial, neither released on bail nor deported, indefinitely?

Similar questions are applicable for children too: How is justifiable that children who, themselves, have committed crimes, been tried and convicted are not held in prison with adults yet children who are younger than the minimum criminal age may be held indefinitely when they have not committed crimes themselves? I know that the intention is to hold families for as little time as possible, but the effects of such detention, no matter how short, on the mental and emotional well-being of children is enormous.

Please ensure that the government ends child detention as soon as possible.

Many thanks,

Chris Verney.

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## 32. INTERNATIONAL ORGANISATION FOR MIGRATION (IOM)

### IOM submission to the Child Detention Review

22 June 2010

IOM UK has some practical and cost-effective suggestions to improve engagement with families and increase take-up of Assisted Voluntary Returns.

Before setting out those suggestions, here is some of our experience with regard to migrant families in the UK:

- **Motivations and barriers against the decision to return:** Since 1999 IOM UK has assisted more than 34,000 people to return home from Britain under assisted voluntary return schemes. Some 79% of these returnees have been single men. They made the decision to return because of push factors (realistic fear of compulsory removal; fear of detention; actual detention; destitution; exploitation etc.) and of pull factors (urgent need to see a dying relative; family reunion especially with children; a desire to return 'home' to a more familiar cultural environment etc.). Overall, migrant families are subject to both weaker push factors to motivate them to return home (they have a perception that they are far less likely to be compulsorily removed or detained and are more likely to be sustained by housing, benefits, health services and education) and to weaker pull factors drawing them home (the core family is together already; the social support assists in the overcoming of cultural alienation). Since the education of children is often one of the key factors motivating families to stay in the UK, families with school-age children are likely to be least receptive to the idea of a return. The older the children are, the more they become strong advocates within the family (whatever the desires of the parents) of staying in Britain: they do not wish to leave their friends or a cultural environment which is much more familiar to them than their 'home' culture.
- **Communicating the benefits of assisted voluntary return:** Because UKBA has inevitably been identified throughout migrant families' experience of asylum/immigration policy as being associated with the 'push' factors, the families are wary of contact with the authorities and distrustful of information from such a source even if it is not forced upon them. In the early stages of a migrant family's stay in the UK, Social Services (and, in particular social workers) have had the role of assisting the family to stay and integrate into British society. This means that when the option of voluntary return is brought up it may not be presented in the most positive and fully informed manner. The emphasis of both the social workers and the families may well be on the submission of appeals and applications for Judicial Review. IOM is best placed to communicate directly to migrant families the option and benefits of assisted voluntary return.

There is concrete evidence to support such a statement. The UKBA Alternative to Detention project in Ashford only returned one family in nine months; The Families Return Project in Glasgow has yet to arrange a single return; and the Clan Ebor project in Yorkshire and Humberside failed to see the return of any of its 60-family caseload.

The **AVRFC (Assisted Voluntary Return for Families and Children)** programme which, with UK Government funding, IOM launched on 1 April 2010 has to date received applications from 315 individuals within families - of which ten were from Scotland - and arranged for the departure of 27 individuals (with a further 31 booked to travel in the near future). The target for the programme over a full 12 months is for the departure of 600 individuals. Clearly, if this is what can be achieved in such a short time, if funding is continued to be made available, IOM is likely to exceed this target by a wide margin – to deliver a very marked reduction in costs to the British taxpayer. Since IOM has offices worldwide we were able to conduct, on UKBA's request, a global survey of country-specific family needs upon return. The outcome of this survey has been included in the new percentage reintegration approach for AVRFC, which is not only much more flexible, but also contains innovative components such as house repair, child care and education as well as medical and psychosocial support. In other words, a family friendly reintegration package has been tailored that is likely to ensure sustainable return and that can be promoted to migrant families from early stages on. IOM has, through its communication with diaspora communities, through diaspora media, nationally and regionally with NGOs and other relevant stakeholders, made strenuous efforts to explain its independence from UKBA. In so doing, the aim has been to overcome fear and suspicion and build up confidence in AVR as a real *voluntary* option. The difference in the outcomes of the various projects given above indicates the validity of this approach.

**Below are some proposals on how to improve engagement with families and increase take-up of AVR:**

#### **1) Give housing (and other Compass) providers a contractual obligation to distribute IOM AVR material.**

IOM UK, through its branch offices, has been working closely with a number of housing providers to include AVR material (including family 'Stories of Return') in their 'welcome packs' for new migrant families. By distributing

IOM AVR material alongside information about local health services, schools, etc. the housing providers will make the families aware from the start about the option of voluntary return. Certainly, they are unlikely to be very receptive shortly after arrival in the UK to information about a programme designed to assist them to go home, but some familiarity with the concept as early in the asylum application process as possible is bound to be helpful at later stages. It would be useful to make this a UK wide contractual obligation, so that the level of information is not dependent on ad hoc relationships with particular housing providers, but rather is standardised across the country.

**2) Give housing providers a contractual obligation to facilitate communication with the local IOM office.**

IOM offices work well with particular housing providers to offer periodic drop-in 'surgeries' on their premises. From IOM's perspective, for a voluntary return to remain voluntary it is necessary for prospective applicants to have the choice as to whether they will attend a presentation on AVR or not. Housing providers can provide 'neutral ground' to arrange periodic presentations by IOM on the subject of AVR. It would be useful if all housing providers in the UK could be placed under a contractual obligation to facilitate such sessions, publicise them in advance and generally provide their clients with information on Assisted Voluntary Return to enable them to communicate with the local IOM office.

**3) Incorporate a briefing for failed asylum seekers by an independent impartial body into the Compass contracts.**

There is a clear gap in the 'end of process' for asylum seekers whose applications are refused. It may be cost effective for the Government to incorporate a briefing for failed asylum seekers by an independent impartial body into the Compass contracts currently under review. The briefing would clearly explain the implications of refusal and the options available, including AVR. These briefings could be given by a range of bodies, including local authorities or immigration solicitors. Access to information on AVR and signposting to IOM should be incorporated into the asylum process via the new Compass system.

**4) Ensure that an IOM AVR presentation is always offered by a trusted advocate to those asylum seekers who are awaiting the outcome of a Judicial Review.**

Families applying for Judicial Review while in detention can often become embroiled in a cycle of detention and release. Owing to the uncertainty of the time it will take for a Judicial Review to be heard families are released from IRCs to return to their accommodation only to find themselves back in detention several months later. IOM is best placed to contribute to breaking this cycle if it is invited (by a trusted advocate- e.g. NGO, social worker, independent legal advisor etc.) to give first hand information about the options for a voluntary return. IOM will always respond to such a request if it is clear that the family involved has given their consent to the presentation.

**5) Build still greater flexibility into the AVRFC programme to allow an element of 'explore and prepare'.**

Generally, IOM does its best to arrange the return of all family members as a unit. However, it might be advantageous to have a father, mother or eldest son returning in advance of the rest of his or her family. This would enable him/her to make preparations for the return of the remaining family members, and make contact with the local IOM mission to start discussions on the Individual Return Plans and the best use of the post-arrival Reintegration Assistance. IOM could make this a 'marketing' point in its communications.

**6) Introduce a family mentoring scheme.**

IOM should be able to identify returnee families in key countries who would be prepared (for a small fee to cover their expenses) to act as 'mentors' to those in the UK considering taking up a voluntary return. Then, via phone or Skype at a venue where the family feels comfortable, and via the IOM office abroad they would be able to speak family-to-family in their own language about the problems they encountered and overcame, the way the AVR programme was delivered and how it assisted them with a more 'sustainable' return. The 'mentor' scheme already existed for individuals, and thus adapting it to the family context could be done with little extra administration or cost. IOM could also set up regional live video conferences so that families in the UK could see as well as speak to mentoring families in the country of return. Printed stories of return are very useful, but video stories are better and live interaction is the most effective way to offer reassurance and to build confidence in Assisted Voluntary Return.

### 33. JOINT COUNCIL FOR THE WELFARE OF IMMIGRANTS (JCWI)

#### RESPONSE BY THE JOINT COUNCIL FOR THE WELFARE OF IMMIGRANTS TO THE UK BORDER AGENCY REVIEW ALTERNATIVES TO CHILD DETENTION

Joint Council for the Welfare of Immigrants (“JCWI”) is an independent, voluntary organisation working in the field of immigration, asylum and nationality law and policy. Established in 1967, JCWI provides legally aided immigration advice to migrants and actively lobbies and campaigns for changes in immigration and asylum law and practice. Its mission is to promote the welfare of migrants within a human rights framework.

##### Introduction

We welcome this opportunity to input into this review in the light of the Coalition commitment to ending the detention of children for immigration purposes.

Our brief submission on this review is split in three sections. In part one we set out seven undisputed facts about the detention of children. These show that the practice of detaining children is inhumane, ineffective and costly. As such we believe that it should be brought to an end (even in exceptional cases) forthwith.

In part two we set out an approach that could address UKBA’s immigration control concerns whilst simultaneously respecting human rights principles. In short we advocate a ‘case management approach’ broadly structured along the lines of the ‘Swedish model.’ This would entail leaving all immigrant families with children *within their communities* until such time as they are either removed or voluntarily depart. A menu of different options would be available for the UKBA - reporting, the use of bonds/sureties, and electronic tagging in very high risk cases (this menu would exclude the separation of children from families for immigration purposes). These powers could be deployed on a case by case basis on the basis of risk, and according to statutory rules rooted in human rights principles.

In part three we argue that unless the case management approach is embedded into broader structural reforms it is unlikely to be successful from the point of view of cost effective immigration enforcement. Accordingly the above reforms need to be accompanied by: (a) a rolling ‘regularisation scheme’ that could cater for families who have been in the UK for a number of years or who cannot be returned in the foreseeable future, (b) an improvement in the initial decision making process in relation to asylum applications, (c) an appropriately funded legal aid system and (d) the heeding of advice by international agencies i.e. UNHCR about the safety of certain countries in the context of the removal of migrants from the UK and (e) a careful reconsideration of the detention provisions in the Draft Immigration Bill. These provisions considerably expand the scope for detention of children.<sup>1</sup>

##### i. The use of administrative detention in relation to immigrant children

There is extensive literature and research on the detention of children for immigration purposes. Seven key points to emerge from this are:

- The UK detains a substantial number of children for immigration purposes – 1000 per annum<sup>2</sup>
- Under half of the children that are detained are actually removed, and 629 of them are placed back into the community<sup>3</sup>
- Children are frequently not detained as a last resort and for the shortest time possible<sup>4</sup>
- The evidence is that detention harms children and babies<sup>5</sup>
- The justification for detention – the prevention of absconding/ a general deterrent tool does not stand up. There is no evidence that families with children systematically disappear<sup>6</sup>, and recent research now shows that domestic policies are insignificant in influencing destination choices - at least in the case of asylum seekers<sup>7</sup>
- Detention is expensive. The cost of detaining a family for between 4-8 weeks can lie in the region of £20,000.<sup>8</sup>
- Detention of children for immigration purposes raises significant concerns from the perspective of the UK’s international human rights obligations,<sup>9</sup> and the principles that underlie these. It does contribute meeting the outcomes for children under the Every Child Matters Framework.

In the light of the above our view is that children, including those cases involving age disputes should simply not be incarcerated for immigration purposes. In the case of the latter there should be no detention at least until such time as there has been an independent assessment of adulthood - this may involve awaiting the outcome of legal proceedings.

##### ii. Alternatives

Whilst we realise that at least one potential option would be to separate children from either one or both parents, we do not believe that this is a satisfactory or desirable option in any circumstances. This would be contrary to the spirit, and in some cases the text of international human rights obligations. It can also be expected to generate similar levels of hardship, entail significant cost, and generate legal challenges.

We are aware that there is a more general move towards ‘case management oriented approaches’ as a replacement for detention in countries such as Sweden, Australia and Belgium. These have widely been considered to offer a more effective and humane approach than the status quo in the UK.

Variations on the case management approach have been trialled in the UK. The general feeling has been that they have - at least from the point of view of facilitation of voluntary removal been unsuccessful. This in part arguably stems from the fact that they were initiated at the end of the process rather than at the outset as in the cases above, were not embedded in wider structural reforms of the immigration/asylum system, and as BID and the Children's Society point out were badly organised with large scale confusion about referrals.<sup>11</sup>

Our preferred option would be a 'case management' model that leaves families with immigrant children within their communities rather than in secure centre/semi secure centres. Case owners would have a menu of options available to them. These would include powers for electronic tagging, reporting restrictions, and bonds/sureties. These could be deployed on a case by case basis according to risk, but also according to published rules and guidelines that are rooted in a human rights framework.

As with other case management approaches the possibility of voluntary return could be built into the asylum process. In our view in order for this to be successful discussions about this would need to be built into the asylum process from the inception of cases. So far as the take up of voluntary reform goes, this could only ultimately be successful if it were accompanied by wider structural reforms that engender trust by immigrants in the immigration and asylum system more generally so that it is seen to be fair.

### iii. Wider structural changes

We believe that if UKBA is to ultimately deal effectively with the issue of detention of children - and immigration enforcement more generally in a cost effective, human rights friendly way it must examine the broader structural failings in the present system. These are the cause of much difficulty, and give rise to the need detention and others modes of enforcement. This in itself could form the basis of a lengthy paper, however four key points are:

- The need for an on-going regularisation scheme confined to families with children in cases where they have remained in the UK for several years
- The improvement of initial decision making in asylum cases through extending early access to legal advice. This could be achieved through the extension of the Solihull Early Access project, and through the exploration of an independent decision making body as is the case in Canada
- The need for adequately funded legal services, with appropriate payment mechanisms with a view to ensuring that cases can be adequately prepared thus minimising the need for costly appeals, and the deployment of immigration enforcement powers during those processes
- The generation of greater trust in the immigration system. To some extent this could be achieved by the above, but it also requires heading advice on returns by international agencies e.g. by the UNHCR. The most effective case management system in the world will not facilitate voluntary return to countries like Iraq. It also requires a re-examination of the criminalisation of asylum through e.g. prosecution for the use of false papers etc.
- The need to review the provisions in the Draft Immigration Bill as these significantly expand the opportunities for detaining children.

1 See submissions by JCWI on part 5 of the Draft Immigration Bill available at <http://www.jcwi.org.uk/Resources/JCWI/JCHRANDDRAFTBILLSUBS02%2003%2010.pdf>

2 Home Affairs Committee, *the Detention of Children in the Immigration System*, HC 73, 29 November 2009, p.3.

3 HC Deb, 17 June 2010 C230WH.

4 11 Million, *The arrest and detention of children subject to immigration control*, April 2009.

5 Royal College of Paediatrics and Child Health, *Intercollegiate Briefing Paper: Significant Harm- the effects of administrative detention on the health of children, young people and their families*, December 2009.

6 Home Affairs Committee, *the Detention of Children in the Immigration System*, HC 73, 29 November 2009, para 3, p.5.

7 H Crawley, *Chance or Choice, understanding why asylum seekers come to the UK*, Refugee Council, January 2010.

8 Home Affairs Committee, *the Detention of Children in the Immigration System*, HC 73, 29 November 2009, p.7, para.12.

9 UN Convention on the Rights of the Child (1989), Arts 37, 3.1.

10 *A v London Borough of Croydon & Anor; M v London Borough of Lambeth & Anor* [2009] UKSC 8.

11 The Children's Society, *An evaluative report on the Milbank Alternative to Detention Pilot*, May 2009



## **34. JOINT JUSTICE AND PEACE GROUP, GLASGOW PARISHES OF ST ALBAN'S AND ST LEO'S**

### **Review into Ending the Detention of Children for Immigration Purposes**

This is a submission on behalf of the St. Albert's & St. Leo's Joint Justice & Peace Group. Our group represents the parishes of St. Albert the Great and St. Leo the Great which are located in the south of Glasgow with total congregation numbers of around 400 people. We have read the Terms of Reference of the Review and our response takes account of these.

The detention of asylum seekers in general, and of children in particular, is something which has been of great concern to Justice & Peace groups within Scotland, as well as to many other organisations. We have experienced firsthand the detention and deportation of members of our congregations, and we have heard the testimonies of asylum seekers, both parents and children, of their experiences with the current systems and procedures, and the evidence of those who work with them on a daily basis. What we have heard is heartbreaking and unacceptable in a society with any claim to be civilised.

It is unacceptable that:-

- Families should live in fear of being detained
- Children should be afraid of our police
- Families should be detained without any opportunity to collect their belongings
- No account should be taken of the health requirements of families
- That children should witness their parents being treated as criminals
- That families whose claims for asylum have not been dealt with for many years due to failures of our systems should be deported without consideration for the impact on the children who have grown up in this country
- That action should be taken without consideration of the impact on the health, welfare and future of children

We have read the submissions by the British Refugee Council, Outcry and the Refugee Children's Consortium, and we support their proposals for reform of the current systems. In particular we strongly support the principles that:-

- The detention of children should end now
- There should be no question of separating families as there is no evidence that families are likely to abscond
- The end of detention should not be delayed as the government considers alternative arrangements/processes. The pressure should be on UKBA to come up with acceptable alternatives.

We ask that our system for dealing with asylum seekers should be one of which we can be proud, one which is consistent with our proud history of offering sanctuary to the oppressed and persecuted.

## 35. JESUIT REFUGEE SERVICE UK

**From:** Louise Zanre  
**Sent:** 30 June 2010 12:15 PM  
**To:** Child Detention Review  
**Subject:** Review into ending the immigration detention of children  
**Importance:** High

Dear Mr Wood,

I am attaching a recent report produced by Jesuit Refugee Service Europe looking at detention conditions across 23 countries and the impact detention has on the vulnerability of detainees. An executive summary is also attached.

The report's findings are important as they are based on interviews with 685 detainees across those countries, 28 of whom were aged between 10 and 17 at the time of the interview. It therefore has a lot to say about the impact of detention on the vulnerability of the detainee. The analysis of the interviews has found a lot of congruity of experience of vulnerability regardless of which country the person was detained in. So the findings should be used as a base analysis of such experience despite the fact that in the UK permission to undertake the research was formally denied by the UKBA (so no interviews with detainees were held here, although interviews with partner organisations were).

We are waiting for hard copies of the reports to arrive from Brussels. Please let me know if you would like to have hard copies sent to you on their arrival.

We look forward to hearing of the outcome of the review.

Yours sincerely

Jesuit Refugee Service UK

### BECOMING VULNERABLE IN DETENTION EXECUTIVE SUMMARY

#### INTRODUCTION

The objective of the DEVAS project was to investigate and analyse vulnerability in detained asylum seekers and irregular migrants: both the way in which pre-existing vulnerable groups cope with detention, and the way in which detention can enable vulnerability in persons who do not otherwise possess officially recognised vulnerabilities and special needs.

In partnership with NGOs in 23 EU Member States, JRS-Europe oversaw the collection of 685 one-on-one interviews with detainees. The size and scope of the sample reveals that, despite the diversity of personal circumstances of the detainees, detention does have a common negative effect upon the persons who experience it. In addition to detainees, project partners interviewed detention centre staff and other NGOs operating within the centres, and conducted a survey of asylum and immigration laws in their respective countries. This data is included within each of the national reports. This study builds on previous reports and projects that investigated vulnerability in detention. It analyses the situation of individuals and groups that possess officially recognised special needs, such as minors, young women with children, the elderly and persons with medical illness. But this study also analyses the situation of detainees who often go unnoticed: young single men, persons without stated physical and mental health needs, and persons in prolonged detention. Most importantly, this study pushes the discussion on vulnerability and detention one step further because its results are based exclusively on the voices of detainees. Thus the understanding of vulnerability that emerges from this study characterises the experiences of detainees as they told it themselves.

#### BASIC INFORMATION

The average detainee in the sample is male, single, 30 years old and likely to be from West Africa, South Asia or the Middle East. But women do consist of almost one quarter of the sample, of which many come from not only West Africa but also Eastern Europe and Eastern Africa.

The data shows that, at an average of 3.56 months at the time of their interview, asylum seekers experience the most prolonged periods of detention in the sample. They were detained for one month longer than irregular migrants. Of those detained for five to six months, 78 percent are asylum seekers. Taking the entire sample into account, the average duration of detention at the time of interview is 3.01 months. Detainees were kept for as little as one day, or for as long as 31 months.

#### POSSESSION OF INFORMATION

Asylum seekers are less informed about the reasons for their detention than irregular migrants are. One-third of female asylum seekers do not know why they are detained; and almost 40 percent of asylum seekers detained for more than three months contend to know little about why they are detained. Forty percent of asylum seekers are uninformed about the asylum procedure. Awareness of detention increases with age: one-third of minors do not know why they are detained, and 76 percent of asylum-seeking minors are uninformed of the asylum procedure. Women, especially those aged 18 to 24, possess less information about detention, and their immigration/asylum

status, than men do. Persons kept for more than three months in detention know less about the circumstances of their detention, and the details of their respective cases, than persons detained for less than three months; 85 percent of persons detained for four to five months describe a need for more information on their situation.

### **SPACE WITHIN THE DETENTION CENTRE**

Detainees overwhelmingly feel negative about the conditions of the detention centre. Many complain of unsanitary toilet and shower facilities, and unhygienic kitchens. A large number of detainees equate their detention centre to that of a prison.

Asylum seekers and long-term detainees more frequently complain of overcrowded conditions than others do. Moreover, detainees kept for more than three months say they have little access to private space within the detention centre.

### **RULES WITHIN THE DETENTION CENTRE**

The strict regimes found in many detention centres have a profound negative impact on detainees' lives. The fixed eating times, recreation hours and mandatory nightly curfews lead detainees to feel as if they are in prison. A great number of detainees describe rules that keep them isolated in their cells more than anything else. Consequently, many detainees report to sleep excessively during the daytime, leading to insomnia at night. Isolation and inactivity leaves other detainees feel degraded and undignified.

The "informal" rules are just as important as the "formal" rules. Detainees describe an atmosphere where certain persons receive more favour from the staff, and thus benefit from more relaxed rules. This creates an atmosphere of arbitrariness, uncertainty and mistrust. It also makes certain detainees more vulnerable to other, more socially dominant, detainees.

### **DETAINEES' INTERACTION WITH STAFF IN THE DETENTION CENTRE**

Detainees are more frequently in contact with security staff than any other staff. The manner in which detainees interact with staff is good. But detainees are critical about the way the staff supports their daily needs in detention. Language is an important factor in detainee-staff relations. Minors and women in the study especially report having experienced discrimination for not being able to speak the language of the staff.

### **SAFETY WITHIN THE DETENTION CENTRE**

Detainees attribute their safety to the security guards, but their lack of safety to co-detainees. Nevertheless, incidents of physical and verbal abuse occur at the hands of staff as well as other detainees. Incidents of physical abuse were recorded in three quarters of the EU Member States; and incidents involving verbal abuse were recorded in 19 Member States. Minors, women aged 18 to 24 and asylum seekers frequently report being victims of both forms of abuse. The living conditions have an impact on detainees' sense of safety. Excessive noise, unhygienic conditions and the prison-like atmosphere are widely reported factors that make detainees feel unsafe.

### **ACTIVITIES WITHIN THE DETENTION CENTRE**

Prolonged inactivity is inherent within the situation of detention. Detainees have little to do unless the staff organises something for them to do. The resulting boredom increases levels of psychological stress. Most notably, detainees aged 18 to 24 – in particular women – report high levels of inactivity in the detention centre. Detainees have greater access to sedentary and physical activities, rather than those that would engage their intellectual capacities. Television watching, rudimentary sports activities and general time spent outdoors is more widely available than educational and religious/spiritual activities. Even books are not available to a significant minority of detainees. More than anything, detainees either want activities that enable them to connect to the 'outside world', or they want nothing at all.

Asylum seekers and minors especially wish for greater access to the Internet and telephone.

When asked which activities they would like to have, a startlingly large minority of detainees said that they want "freedom" or "nothing".

### **MEDICAL CARE IN THE DETENTION CENTRE**

Detention centres are generally only able to provide very basic medical care to detainees, irrespective of their needs. Medical specialists such as psychologists, gynaecologists and dentists are largely unavailable. In fact, 87 percent say psychological services are unavailable to them. Language is a major factor here too. Detainees report an inability to speak with the medical staff because of language differences. Co-detainees are often turned to for help because other options do not exist. Minors frequently report experiencing difficulties in this regard.

Most detainees want improved medical care services. Over 90 percent of women aged 18 to 24 express a need for better medical care.

Many detainees report receiving only pain reducing medication for whatever medical need they express.

Persons kept for more than three months in detention are more frequently negative about medical care than those who are kept for fewer months. In fact, detainees who are negative about the quality of medical care are detained on average for one and a half months longer than detainees who feel positive about the medical care.

### **PHYSICAL HEALTH IN DETENTION**

The data shows that detention harms otherwise healthy people. While a number express having pre-existing conditions such as asthma, chronic pain or medical illnesses, most say they entered into detention in relatively good physical health. The living conditions of the centre, such as the lack of fresh air or the mere confinement to one location, and the psychological stress associated with detention all bring harmful physical health consequences. Physical health deteriorates as detention endures. Whereas one quarter of people detained for one month describe their physical health as being poor, 72 percent of people detained for four to five months say they have very poor physical health. Younger detainees more frequently report poor physical health than older detainees do. Minors and women aged 18 to 24 frequently describe negative physical health impacts than when compared to others.

### **MENTAL HEALTH WITHIN THE DETENTION CENTRE**

Detention brings very negative consequences for detainees' mental health. Almost half of the entire sample describes their mental health as being poor in detention.

The mere situation of detention itself is a primary determinant in the negative mental health consequences described by detainees. Many were unable to provide specific reasons for these impacts. Instead, they more frequently described being "shocked", "fearful" and "depressed" at their situation of confinement. Detainees' psychological stress is also a consequence of the poor living conditions, the self-uncertainty of their situations and their isolation from the 'outside world'. Their inability to establish a perspective of their future, due to a lack of information and disconnection from the outside world, places a great deal of psychological stress upon their shoulders. This stress often leads to deeper anxiety and depression. Prolonged detention compounds the adverse mental health effects of detention: 71 percent of persons detained for four to five months blame their psychological problems on detention itself. Age and legal status are two important factors for how detainees mentally cope with detention at a personal level. Minors and detainees aged 18 to 24 frequently report negative mental health impacts. Asylum seekers express shock at their detainment – it being far from what they would have expected by coming to Europe. Irregular migrants express anxiety and uncertainty about what may happen to them post-expulsion. Seventy-seven percent of 'Dublin II' asylum seekers and 55 percent of 'rejected asylum seekers' report poor mental health in detention.

### **SOCIAL INTERACTION WITHIN THE DETENTION CENTRE**

The environment of detention has a negative impact on the level and quality of social interaction among detainees and between detainees and staff. The mix of cultures, nationalities and languages within the detention centre makes conflict inevitable. Prolonged detainees more frequently report negative social interactions than others. An absence of language skills makes certain detainees vulnerable to other, more dominant, social groups. Minors and detainees aged 18 to 24 are frequently witness to arguments and physical violence.

### **COMMUNICATION WITH THE 'OUTSIDE WORLD'**

Almost half of the entire sample admits that they do not have networks of family or friends in the host Member State. Detainees are more likely to receive support from strangers than from familiar persons. The telephone is the most widely used means of communication, and detainees' preferred method of communication. However many detainees say they are unable to use their personal mobile telephones – an important loss for detainees as their personal mobile telephones often contain important contact information.

Asylum seekers are particularly isolated from the outside world: approximately 80 percent do not receive any personal from family and friends, and over half do not have any family or friends in the host Member State. The data shows that the young detainees in the sample are particularly isolated from the 'outside world'. Up to 80 percent of minors, and almost half of women aged 18 to 24, do not receive any personal visits. In other cases, people kept for more than three months in detention are shown to be particularly isolated.

### **THE IMPACT OF DETENTION ON THE INDIVIDUAL**

A large majority of detainees express deep dissatisfaction over the quality of the food provided in the detention centre, and over half experience insomnia at night. Both conditions significantly contribute to the amount of psychological stress detainees feel. In particular, the quality of the food contributes to an overall sense of indignity among detainees.

Appetite and weight loss are very common. Prolonged detention exacerbates these negative effects. The situation of detention itself is the biggest difficulty detainees described coping with. The mere imposition of detention and all of its consequent effects are an insurmountable difficulty for many detainees. Everyone, regardless of age, sex, legal status and duration of detention, is affected. The difficulties of detention are daily present in detainees' lives; any changes of these difficulties are usually for the worse. The inability to establish a future perspective is crippling; in fact, 79 percent of detainees do not know when they will be released from detention. Remarkably, detainees hold positive perceptions of themselves despite the adversities they experience. But almost 70 percent say that detention steadily worsens their self-perception. When asked directly, most detainees do not admit to having special needs – but they readily point out the needs and vulnerabilities that others possess. Those who do admit having special needs are more likely to describe needs that are not officially recognised: language capacity, connection to family, possession of information and the ability to communicate with the outside world. According to detainees, language capacity and familial connections are two of the more important factors of vulnerability they perceive in others.

## WHAT DOES THIS STUDY SAY ABOUT 'VULNERABILITY'?

The data offers a story of detainees who not only have special needs such as medical problems, pre-existing traumatic histories and families to take care of, but also of detainees who *become vulnerable* to the negative effects of detention. Some detainees find that they can cope with the adversity posed by detention; others find that they are easily crippled. Some detainees find that detention does not negatively affect them until after one or two months; yet others find that detention harms them from the very first day.

The picture that emerges from the data is one of a detainee who is trapped and cannot escape, and is thus vulnerable to harm from the factors associated with detention. The detainee must therefore rely on their personal attributes, the people in their social network and the factors in their environment in order to free him or herself from that trap. Conversely, the same personal, social and environmental factors – or an absence of such factors – may actually hinder an individual's ability to reduce their level of vulnerability to detention.

## A NEW OUTLOOK TOWARDS VULNERABILITY IN DETENTION

Within the context of detention and the data that was collected for DEVAS, 'vulnerability' can be conceptualised as a concentric circle of personal (internal), social and environment (external) factors that may strengthen or weaken an individual's personal condition. Put differently, the presence or absence of these factors may either empower a detainee to cope with the negative effects of detention, or they may expose the detainee to further harm.

Factors interact with each other in a variety of ways, both positively and negatively. For example, the data findings show that detention centre staff members are an important part of detainees' social network. Discriminatory attitudes and inappropriate behaviour on the part of staff can have a detrimental affect on detainees' well being. Thus it would be important that staff members are sufficiently trained so that they can meet the needs of detainees in a dignified and humane manner. In another example, the study shows that the possession of information is important for detainees to understand their situation, to exercise their rights and also to organise plans for their future. The inability to receive understandable and clear information about their case, and to communicate with supportive networks in the 'outside world', may foster a deep sense of personal uncertainty, stress and despair within the detainee. All of these effects can lead to a deterioration of their mental and physical health. Personal factors can be defined as the *sum of the individual's personal sense of agency*. It is a set of determinants that an individual personally carries with him or herself, all of which may hinder or improve the individual's ability to cope with the adversities of detention. Language capacity, level of awareness of the asylum/immigration procedure and state of physical and mental health are shown to have the most influence over an individual detainee's ability to cope in the environment of detention. Social factors can be defined as the *sum of the individual's existing social network, and available means of communicating with that network*. It is made up of the persons, organisations or bodies in the detainee's life who may lessen or increase his or her level of vulnerability to the adversities of detention.

These social factors may also be labelled as 'external factors', in the sense that they are situated outside of the personal self. Yet they do not necessitate existence in the 'outside world', *per se* – such factors may also exist in the detainees' social network within the detention centre. The factors that seem to most influence detainees' personal situations are family, relatives and/or friend in the 'outside world', the 'outside world' (means of contact to), co-detainees and detention centre staff. Finally, environmental factors can be defined as *the sum of the determinants that exist in the individual's larger environment but that the individual cannot control nor influence, and which may still increase or lessen his or her level of vulnerability to detention*. Among those that seem to most influence detainees' level of vulnerability is the architecture of the detention centre, the terms and length of their detention and the living conditions in the detention centre.

## ASSESSING VULNERABILITY IN PRACTICE

The data shows that detention has the potential to harm many types of people: those with pre-existing special needs and otherwise healthy persons. It is important to stress that a person becomes vulnerable from the first day of their detention, as the individual's personal condition is instantly affected due to their disadvantaged and weakened position. Detainees' level of vulnerability fluctuates in relation to the characteristics that they personally possess, the factors in their social network and the determinants in their wider environment.

This method of understanding attempts to acknowledge the variety of factors that foster vulnerability in detained asylum seekers and irregular migrants. In practice, it shows that every person must be individually assessed for vulnerabilities and special needs that may make it difficult for them to cope in the environment of detention. This is the only way to ensure that detention does not cause unnecessarily harm to individuals and is not disproportionate to their actual situation.

## DEVAS RESEARCH IMPLICATIONS FOR THE ONGOING USE OF DETENTION

The data reveals that detention is implemented in a broad variety of cases and situations.

Everyone, from asylum seekers to irregular migrants, from minors to older persons, and from medically ill persons to the healthy, can be subject to detention irrespective of their special needs and vulnerabilities. Detention, as observed from the research, is used in a mostly indiscriminate manner with little deference to personal choice and preferences. The cases that were recorded demonstrate a situation where detainees can do little to alter their circumstances within the detention centre. They must accept the state of living conditions within the detention

centre, and cohabitation with persons of differing nationalities, cultures and even personalities and temperaments; and they must accept the restriction on their freedom to move about as they please, even within the confines of the detention centre. Although exceptions may exist in some Member States for persons with special needs, the 'average detainee' will find that he or she is unable to exercise a degree of personal choice and must therefore accept detention as one accepts a punishment, rather than an administrative procedure. The results show that persons with officially recognised needs, such as minors, young women and the medically ill, are indeed negatively impacted by detention. The adult environment of detention immediately puts minors at a disadvantage, especially if they are unaccompanied, because they are vulnerable to the behaviour of the staff and to the prison-like atmosphere of detention, for example. The data findings show that women, especially between the age of 18 and 24, especially suffer from adverse mental health impacts. The medically ill may not be able to receive the treatment they need because the detention centre only provides for basic medical care.

In almost every case, the study shows that detention has a distinctively deteriorative effect upon the individual person. Only in very few cases do detainees describe their personal situation as having improved after detention; and just as few say that detention has not impacted them whatsoever. The vast majority of detainees describe a scenario in which the environment of detention weakens their personal condition. The prison-like environments existing in many detention centres, the isolation from the 'outside world', the unreliable flow of information and the disruption of a life plan lead to mental health impacts such as depression, self-uncertainty and psychological stress, as well as physical health impacts such as decreased appetite and varying degrees of insomnia. The manner in which detainees see themselves is significantly impacted by detention. In this context, self-perception becomes an important indicator of the effects of detention because as an administrative measure, it should not bring such detrimental personal consequences.

The biggest implication from the DEVAS research is the way in which detention – frequently implemented as a tool of asylum and immigration policymaking for the EU and its Member States – leads to high rates of vulnerability in people. It calls into question the proportionality and necessity of detention in relation to the ends it seeks to achieve: that is, to systematically manage migration flows so that States may enforce their asylum and immigration policies. The research reveals that the human cost of detention is too high, regardless of the achievability of these ends because

□ The negative consequences of detention and its harmful effects on individual persons are disproportionate to their actual situations, in that they have committed no crime and are only subject to administrative procedures, and;

□ It is unnecessary to detain persons and thus make them vulnerable to the harmful effects of detention because non-custodial alternatives to detention do exist.

## **RECOMMENDATIONS FOR EU POLICYMAKING ON THE DETENTION OF ASYLUM SEEKERS**

The institutions of the European Union and its Member States have an important role to play in the way asylum seekers are received and treated within the territory of the EU. But the legal minimum standards that have been established at the end of the first phase of the *Common European Asylum System*, such as in the Reception Conditions Directive and Dublin Regulation, provide very little guidance for the implementation of detention, and for the treatment of asylum seekers with special needs. The DEVAS research findings allow us to put forth a series of recommendations that aim to further improve future *EU policymaking* on vulnerability within the context of detention for asylum seekers:

### **1. Asylum seekers should not be detained during the asylum procedure.**

It is not appropriate for asylum seekers to be detained because there should neither be a presumption that they have committed a wrongdoing, nor a presumption of rejection or removal while they are in the asylum procedure. Furthermore, the legal complexity inherent within the asylum procedure means that asylum seekers should access all means of support at their own volition; the closed environment of detention cannot provide this. The negative impacts of detention, and the vulnerabilities it creates, make the asylum seeker less able to present his or her case in an appropriate way, calling into question the fairness of the asylum procedure.

### **2. Non-custodial alternatives to detention for asylum seekers that respect their human dignity and fundamental rights should always take precedence before detention.**

Asylum seekers, due to the legal complexity of their situation and the asylum procedure, require a level of care and support that cannot be provided in a detention centre. In particular, detention cannot be implemented if there is no assessment of their special needs and vulnerabilities at the beginning, because it would then not be known how they might cope within the environment of detention. This is why non-custodial alternatives to detention should always take precedence.

### **3. A system of qualified identification of asylum seekers' special needs and vulnerabilities should be designed and implemented at ports of entry, be they land, sea or air, for the purpose of avoiding the use of detention.**

This identification should be done as soon as possible after entry. It can help to ensure smoother procedures at later stages, a more efficient use of State resources and a higher degree of safety and care for asylum seekers' potential vulnerabilities. Most importantly, an appropriate assessment of special needs and vulnerabilities can ensure that detention is not used for persons who may be particularly harmed by it.

**4. A qualified identification system should be individually based and holistic, taking into account the personal, social and environmental factors that are present within the asylum seeker's situation.**

Factors such as legal status, country of origin, marital status, the possession of information, the presence of supportive social networks and the state of physical and mental health highly impact detainees' level of vulnerability to detention. These and other factors should be assessed in order to determine an individual asylum seeker's vulnerabilities, and the types of concrete special needs he or she may possess.

**5. If the detention of asylum seekers cannot be avoided, and if all non-custodial alternatives have been exhausted, then detention should be subject to regular tests of necessity and proportionality; the duration of detention should be for as short a time period as possible.**

Criteria for the necessity of asylum seeker detention should adhere to the 1999

UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers.

Regular tests of necessity and proportionality should be conducted on a monthly basis by the relevant judicial authority.

**6. If detention cannot be avoided, then asylum seekers should be given appropriate and effective legal aid and/or assistance from the very first day of their detainment.**

The legal complexity of asylum procedures in the EU, mixed together with the precarious situation of asylum seekers, means that they may not be able to adequately fulfil all of the asylum procedures in a manner that serves their best interests – especially if they are in detention. Legal aid and/or representation are thus vitally necessary.

**7. Detained asylum seekers should be given regular and transparent access to all information concerning their asylum case and the terms of their detention, in verbal and written form, and in a language they can understand.**

The isolative environment of detention means that extra efforts should be made to inform asylum seekers as well as possible on all details that concern their situation.

The regular provision of information is a key step in lowering asylum seekers' vulnerability to the adversities of detention.

**8. Detained asylum seekers should be afforded all means of contact to the 'outside world'.**

Detained asylum seekers should be able to contact family, relatives, friends and other supportive persons who are in the 'outside world'. The DEVAS research shows that it can reduce psychological stress, and it can help prepare detained asylum seekers for their eventual release from detention.

**9. Detained asylum seekers should be given regular access to activities that engage their physical and intellectual capacities.**

The monotony of detention that comes as a consequence of its isolative environment can have a negative impact upon the physical and mental health of detained asylum seekers. Time spent in detention should not be 'wasted time'; instead, detainees should be afforded activities that help them to pursue their goals.

**10. Detained asylums seekers should be given regular access to appropriate and relevant medical care, including mental health care.**

Medical care, as well as mental health care, should be made available everyone in the detention centre. In the case that such care only exists outside of the detention centre, the staff should ensure that access remains unhindered and facilitated.

**RECOMMENDATIONS FOR MEMBER STATE POLICYMAKING ON THE DETENTION OF ASYLUM SEEKERS**

Member States can take steps toward improving the immediate situation of asylum seekers in their territory. They can do this by implementing current EU asylum law in a manner that best serves the interests of asylum seekers, and in a manner that narrowly restricts the use of detention.

**11. Article 18.1 of the Asylum Procedures Directive, "Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum", should be adhered to in all circumstances.**

Member States should make this principle applicable for reception conditions and for asylum seekers in the "Dublin system". It should be the one principle that applies to all circumstances. In this context, "detention" should be defined as confinement to a particular place and therefore also covering the situations at the port of entry.

**12. If detention cannot be avoided, then Article 18.2 of the Asylum Procedures Directive stipulating, "Where an applicant for asylum is held in detention, Member**



**States shall ensure that there is a possibility of speedy judicial review” should be strictly adhered to.**

Access to regular judicial reviews is important in order to continually determine the necessity and proportionality of detention. This is especially necessary for detainees to know when they will be released from detention. The data findings show that not knowing the release date places a great deal of psychological stress upon detainees. Therefore, such judicial reviews should be effective, transparent and should occur at least once per month.

**13. Detained asylum seekers should have regular access to visitors from the ‘outside world’, including the UNHCR, lawyers, civil society organisations and also family, relatives and friends.**

Alongside this, detained asylum seekers should have access to persons in their social network that help them cope with the negative effects of detention, e.g. spiritual/faith counsellors, psychosocial care providers – all of which may greatly limit the level of vulnerability asylum seekers may experience in detention.

**14. All guarantees and protections contained within the Reception Conditions Directive should be extended to asylum seekers in detention.**

This should include rights to information, medical care, education and vocational training. In the case of Article 14.8 allowing Member States to “exceptionally set modalities for material reception conditions different from those provided ... when the asylum seeker is in detention”, such modalities should include strong safeguards that monitor the level of vulnerability of detained asylum seekers.

**15. Health care provision – foreseen in Article 13 of the Reception Conditions Directive – should include sufficient resources to care for the mental health needs of detained asylum seekers.**

Access to mental health professionals such as social workers, psychologists and psychiatrists, should be afforded to asylum seekers who need such services; these services should be available from the first day of their detention.

**16. Detention centre staff persons should receive sufficient training in order to respond to the vulnerabilities and needs of detained asylum seekers.**

Article 24 of the Reception Conditions Directive – ensuring the necessary training of staff – should be implemented so they can be able to respond appropriately to asylum seekers’ concerns and needs. In particular, staff persons should be trained to identify signs of vulnerability within detainees.

**17. Access to translators and interpreters should be ensured for asylum seekers who need it.**

The inability to speak the same language as detention centre staff, the asylum authorities and even with co-detainees has a profound effect on one’s ability to cope with being in detention. Translators and interpreters can help detained asylum seekers with understanding the information that is given to them, and they can also help to maintain good relations between staff and detainees.

**RECOMMENDATIONS FOR MEMBER STATE POLICYMAKING ON THE DETENTION OF IRREGULAR MIGRANTS FOR THE PURPOSE OF REMOVAL**

Taking into account the elements within the Return Directive that relate to the detention of irregular migrants, the DEVAS research allows us to propose a set of recommendations that aim to improve government policymaking in this area. As the deadline for national transposition has not yet passed, it may be too early to indicate in which specific way EU policy should be improved since the common standards contained within the Directive have not yet been sufficiently tested in the Member States. Thus the main target of the following recommendations will be Member States’ efforts to transpose the Directive into their respective national legislation.

**18. Detention for irregular migrants should only be used as a last resort.**

The negative effects of detention are so great as to warrant its spare use. Detention should only be applied in cases of strict necessity, and in a manner that is directly proportionate to an individual person’s situation.

**19. Article 15.1 of the Return Directive stipulating “sufficient but less coercive measures” should lead to the establishment of non-custodial alternatives to detention that respect the fundamental rights and human dignity of individual persons and families.**

The optimal way to reduce people’s vulnerability to detention is to limit its use by instituting viable alternatives to detention. Only by removing persons from the closed and isolative environment of detention can they best prepare themselves for the possibility of return, but also for the possibility of legal residence within the Member State should the opportunity present itself.

**20. The criteria foreseen in Article 15.1(a, b) for the purpose of determining whether an irregular migrant should be detained should go beyond the “risk of absconding” and the hampering of the “return or ... removal process” to include a holistic assessment of the person’s level of vulnerability to detention.**

The DEVAS research shows that all types of persons are vulnerable to the negative effects of detention, irrespective of whether or not they possess officially recognised special needs. Holistic individual assessment criteria should include a review of the personal, social and environmental factors that are present in an individual’s

situation, such as their legal status, the presence of supportive social networks and their level of physical and mental health.

**21. If detention cannot be avoided, then it should be strictly set for “as short a time period as possible and only maintained as long as removal arrangements are in progress”, as laid down in Article 15.1 of the Return Directive.**

The DEVAS research shows that while detention carries negative consequences from the first days of its implementation, the personal circumstances of detainees deteriorates as the time period of their detainment endures. Alternatives should be immediately sought when detention is no longer necessary or proportional.

**22. The situation of individual detainees and detained families should be reviewed at least once per month, using holistic assessment criteria to determine the personal impacts of detention.**

Ongoing assessments are the only way to ensure that harmful effects of detention are minimised as much as possible. Detention centre staff, especially social workers or staff who have received sufficient intercultural or psychosocial training within the context of detention, may be among those who conduct these assessments.

**23. The provision of information on “rules ... rights and obligations” in detention – as foreseen in Article 16.5 of the Directive – should be provided in a language the detainees can understand.**

Many of the persons interviewed for the DEVAS project have never before been in a situation of detention. The stress of detention and its isolative effects means that detention centre staff should make an effort to immediately inform detainees of all rules, rights and obligations. Language is a key factor of vulnerability because it facilitates communication and understanding. This is why it is important that such information be given in an understandable language.

**24. The provision of “legal assistance and/or representation” – as foreseen in Article 13.4 of the Directive – should be provided to all detainees at no additional cost, and in a language that detainees can understand. Such legal assistance and/or representation should extend to detainees who challenge the lawfulness of their detention.**

The DEVAS research shows that the legal complexities of detention can have an adverse affect on detainees because they are unsure of how to proceed and how to alleviate their situation. Legal assistance and/or representation is a key factor of vulnerability in detention; without it detainees are left disempowered and with further deteriorations in their mental health.

**25. Detained irregular migrants should have the opportunity to establish immediate contact with supportive persons or bodies in the ‘outside world’, as foreseen in Article 16.2 of the Directive.**

Detainees should be able to communicate by fixed-line and mobile telephone, especially since the latter often contains vital contact information that detainees need. Internet stations should be made available, as this would allow detainees to search for support if they lack a social network in the Member State.

Jesuit Refugee Service-Europe

Copies of the full report can be downloaded from: [www.jrseurope.org](http://www.jrseurope.org) [www.detention-in-europe.org](http://www.detention-in-europe.org) Date of publication: June 2010 Editor: Philip Amaral, *JRS-Europe*

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JRS-Portugal, JRS-Romania

Caritas Slovakia, JRS-Slovenia

The Spanish Refugee Commission

JRS-Sweden, JRS-United Kingdom

[www.jrseurope.org](http://www.jrseurope.org)

[www.detention-in-europe.org](http://www.detention-in-europe.org)

## 36. JUSTICECARE SOLUTIONS LIMITED

1 July 2010

### From Malcolm Stevens, Director of JusticeCare Solutions Ltd

#### Submission to the Home Office Review into the ending of detention of children for immigration purposes

1. Immediate removal of all children detained (for immigration purposes) in Yarl's Wood or any other place which is:-

- unregistered (within the meaning of The Children Act, 1989)
- unregulated (within the meaning of The Children Act, 1989)
- outwith the governance of the Government's department for children (previously DCSF now DfE) and its children's services Inspectorate (Ofsted)

1.1 Reports from the Children's Commissioner, Her Majesty's Inspectorate of Prisons and the Bedfordshire Local Safeguarding Children's Board are unanimous that children in Yarl's Wood Immigration Removal Centre (and similar establishments) are at risk of significant harm.

1.2 The latter confirmed that Home Office Ministers have been misled by inaccurate briefings, false reassurances and flawed processes about the welfare of children in detention from a UKBA which is ill-equipped, unqualified and inexperienced in safeguarding children. Looking after children is not UKBA's core business and for that reason, that responsibility should be located where looking after children is a statutory, core business.

1.3 My fear above all else about Yarl's Wood, is that there is potential there for parental suicide preceded by the unlawful killing of children. That potential is realised by extraordinary levels of anxiety and traumas, poorly assessed, largely unrecognised and not addressed to any level of competence either by the UKBA (its Family Detention Unit, its Contract Management, its Independent Social Workers and its Children's Champion) or its contractor SERCO. Not a single member of staff at Yarl's Wood is suitably qualified for this purpose. Policies and procedures are prison based rather than for children and families and as the Bedfordshire LSCB has reported, wholly unfit for purpose.

### 2. Transportation

Children and families should be conveyed in vehicles and with staff to the same specification as that currently contracted by the Home Office (currently with Reliance STM) since 1998 for transporting young offenders to and from Secure Training Centres and Secure Children's Homes i.e:-

- anonymous, comfortable, air conditioned family saloon vehicles
- one driver
- two escorts
- no handcuffs (or any other restraint)
- regular comfort stops, food, drink, entertainment suitable for children
- explanatory information suitable to children and families
- staff recruited, vetted, trained and accredited to work with children (to standards specified by the DfE)

### 3. Restriction of Liberty decisions to detain children and families

3.1 Decision to restrict liberty or impose family supervision orders (see para 4 below) should be taken only by Family Courts not by Home Office officials and/or ministers.

3.2 This will enable courts to decide whether the due processes have been followed with legal representation to families and the appointment of a Guardian ad Litem for the child to ensure that any decisions taken by the court takes into account the welfare of the child.

### 4. Alternatives to detention

#### (i) Court ordered decisions only

Restriction of liberty decisions or imposition of family supervision orders (with or without additional conditions) should be the jurisdiction of courts of justice, with appropriate rules, evidential proceedings and legal representation. It is suggested that local Family Courts would be most suitable for these purposes – with Guardians ad Litem available to assist the courts in their consideration of children's welfare.

(ii) Detention as a 'last resort'

Courts would be required to ensure that restriction of liberty decisions are made commensurate with comparable Restriction of Liberty decisions in respect of children elsewhere within The Children Act 1989 (Section 25) i.e:-

- as a last resort in the sense that all else has been tried, comprehensively, and found to have been unsuccessful
- never because alternatives may not be available at any given time
- for the shortest possible time

(iii) Family Supervision Orders

As an alternative to detention, these will require families with children (and without) to be placed under the supervision of a supervising officer, who may be an officer of a local authority children's services department or an appropriately qualified (i.e approved by the General Social Work Council) officer of the Home Office, with appropriate conditions of residence and/or contact.

(iv) Family Supervision Orders – additional conditions

- reporting (to the supervising officer) on a weekly or daily frequency
- night curfews
- travel restriction
- increased levels of surveillance and monitoring
- electronic voice recognition – telephone based system to verify location. (NB. This is NOT the same as electronic tagging. It has been tested by the Home Office in 2001 and judged fit for the purpose of monitoring the compliance of supervisees and families.
- additional conditions of residence – to require a family to reside at an agreed alternative address, e.g:-
  - foster placements suitable for whole families - within the meaning of The Children Act, 1989...with appropriate registration/approval/inspections etc
  - bed and breakfast accommodation (or similar self contained accommodation) for the purpose of looking after families which require less intensive supervision (again with appropriate registration & inspection)

(v) Enforcement

a) Supervising officers will be required to refer any failure to comply with the terms or additional conditions of a Family Supervision Order back to the Court.

b) The Family Court will have a range of options for dealing with breach proceedings e.g:-

- no formal action
- variation of conditions
- impose more restrictive conditions
- detain family
- detain parents and agree alternative arrangements for child(ren) as may be suggested by the parents, their extended family, the supervising officer, the local children's services or UKBA .....

On each occasion appropriate welfare advice from a Guardian ad Litem (from CAFCASS) will be available to courts.

4. Conclusion

4.1 The intention of these proposals is to bring to the immigration operational task the same mindset which sees thousands of offenders, and others with social difficulty, being supervised quite effectively in the community, thereby avoiding the negative experiences and adverse outcomes (the consequence of living in institutions) whilst sustaining positive community links with health, education and social services.

4.2 Whenever services and resources are required to supervise or look after children and families, those services, without exception, should be regulated, approved and inspected to the relevant standards as prescribed by children's legislation (mostly The Children Act, 1989). There can be no exceptions in the UK's commitment to safeguard children, whoever and wherever they are.

4.3 Transferring responsibility for decision making (to restrict liberty &/or to place families under formal supervision) from Home Office immigration officials and Ministers to the courts of justice (the Family Court is

suggested) ensures that decision making and evidence are transparent, open to challenge and legal representation. The welfare of children can be properly addressed and represented and court decisions advised by existing Guardians ad Litem from the (national) Children and Family Court Advisory and Support Service (CAFCASS).

**Malcolm Stevens**  
**Director**  
**JusticeCare Solutions Ltd**

## 37. KENT COUNTY COUNCIL

Dear Mr Wood

Thank you for the opportunity to respond to the national review into ending the detention of children for immigration purposes. Recent reports published by the Children's Commissioner for England have evidenced the damaging impact of detention on children and their families so we welcome the opportunity to inform the development of alternative approaches. This response is sent on behalf of the Kent and Medway Strategic Network on Migration, which is a sub region of the South East Strategic Partnership for Migration. We welcome the chance to comment on the ending of detention for children in families. We submit the following responses in relation to the questions posed by the review.

- **How can we improve our engagement with families in dealing with asylum applications? For example, do we need to review the contact arrangements with those families and their access to legal representation?**

Many of the alternatives to detention projects already developed rely on a twin track approach in terms of communication with families. These suggest that not only do the immigration authorities need to have closer contact with the families and, from the beginning, make clear that one outcome for their asylum claim may be return to their country of origin, but that there also needs to be the involvement of external caseworkers to ensure that families understand the range of outcomes from the asylum process. It is important that messages about the range of outcomes are repeated throughout the asylum process and accompanied by information about support for voluntary return. Access to high quality legal representation is essential so that families receive realistic and accurate advice relating to appeals.

Tight conditions around reporting or contact with families by the immigration authorities may be necessary but if contact reporting is used for families, this will need to be relatively near their place of residence to ensure that children's education and well-being is not affected.

- **How can we promote and improve the current voluntary return process to increase the take up from families who have no legal right to remain in the UK? What do you believe UK Border Agency's role is here and is there a role for others in engaging with families around this option?**

Kent has experience of an alternative to detention project, Millbank, set up in a Kent town. The Millbank project was managed by a voluntary organisation but also included representatives from other statutory agencies e.g. Education and Health. Over the 10 months of the project, a number of families were housed in a hostel type supported accommodation centre and encouraged to consider voluntary return to their country of origin. The following are some of the learning points we would wish the review to take into account when considering alternatives to detention and how best to promote voluntary return:

- The families in the Millbank project had already been in the UK for some time. This meant that they had already developed links and roots in the UK, making it harder for them to consider leaving.
- Robust referral procedures need to be established, communicated and clearly understood, especially to avoid conflicting priorities, for example, between achieving enforcement and removals targets and voluntary return.
- It also did not allow for a start to end case management process to be developed in which families had been made aware at the very start of their asylum claim that voluntary return was an option, if their claim was not successful.
- The families were taken from a familiar environment and the children, therefore, lost familiarity, friends, support networks and routine. An impact for the children was disruption to education as a result of movement to a new location. For the adults, too, this was a major change in lifestyle and may have made it more, not less, difficult to make major decisions such as opting for voluntary return.
- The project costs approximately £1 million for the block booking of the assessment centre for a year. Whilst recognising that this entails high expenditure, alternatives to detention that do not use a reception type approach would be less so. The cost should also be set against the cost of enforced removals which is approximately £37,000 per removal.

Extrapolating from this project, we would suggest that projects concentrating on achieving voluntary returns should focus on families who are relatively newly arrived in the country and that the whole process should be reviewed from end to end to ensure that the option of voluntary return is always both apparent and available

to them.

Alternative to detention projects would work best when the families have good relationships with a worker unrelated to UKBA. This casework support could be provided by an independent voluntary agency. Use could be made of appropriate web based tools to enable families to talk with those who have already accepted voluntary return in order to help inform their decisions.

Projects also work best when all agencies are engaged from the outset in design and implementation. UKBA may like to consider establishing a national steering group, perhaps aligned to the Voluntary Returns Steering Group, involving all relevant agencies to steer alternatives to detention and to replicate this model locally when projects are being developed in particular areas.

We would recommend that the learning from Millbank and the Family Returns Project in Glasgow is thoroughly taken into account in future modelling.

Future models should also take into account the distinction between operating an alternative to detention and promoting voluntary return.

The remarks above apply to families who are engaged in the asylum process. We recognize that the issues for other families who have no right to stay in the UK are different.

- **If a family chooses not to leave the country, with or without support from the UK Border Agency, what might an alternative family returns model look like? How should the UK Border Agency respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)?**

Whilst recognising that there may be times when families will not leave voluntarily, we feel that any method used to achieve removal from the UK must hold as its focus, the following safeguarding principles.

Safeguarding and promoting the welfare of children is defined in the guidance to section 11 of the 2004 Act (section 28 in Wales) and in *Working Together to Safeguard Children* as:

- protecting children from maltreatment;
- preventing impairment of children's health or development (where health means 'physical or mental health' and development means 'physical, intellectual emotional, social or behavioural development');
- ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.

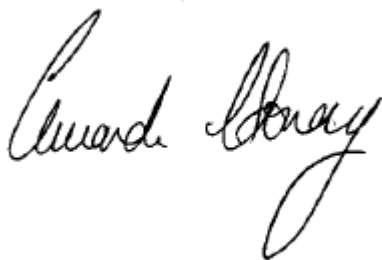
Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children Issued under section 55 of the Borders, Citizenship and Immigration Act 2009 includes the following principles.

- Senior management commitment to the importance of safeguarding and promoting children's welfare;
- A clear statement of the agency's responsibilities towards children available for all staff;
- A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children;
- Service developments that take account of the need to safeguard and promote welfare and is informed, where appropriate, by the views of children and families;
- Staff training on safeguarding and promoting the welfare of child for all staff working with or in contact with children and families;
- Safe recruitment procedures in place;
- Effective inter-agency working to safeguard and promote the welfare of children,
- Effective information sharing

All these principles should be considered in planning any removal from the UK involving children and consideration should be given to involving colleagues from local Safeguarding Boards in the monitoring of projects that are focussed on the removal of families to ensure that children are safeguarded.



Yours sincerely

A handwritten signature in black ink, appearing to read 'Amanda Honey'. The signature is written in a cursive style with a large, looping 'A' and a long, sweeping tail on the 'y'.

Amanda Honey  
Managing Director, Communities

cc: Paul Carter, Leader of the Council  
Mike Hill, Cabinet Member – Community Services  
Rosalind Turner, Managing Director Children, Families & Education  
Mary Blanche, Policy Manager, Kent County Council

## 38. LAW CENTRE FOR NORTHERN IRELAND

### About Law Centre (NI)

Law Centre (NI) works to promote social justice and provides specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. The Law Centre provides advice, casework, training, information and policy services to over 400 member organisations in Northern Ireland. We are the main advisers on immigration law in Northern Ireland and facilitate the Immigration Practitioners' Group consisting of lawyers and voluntary sector organisations.

### Ending the detention of children for immigration purposes

Law Centre (NI) warmly welcomes the Government's commitment to end the detention of children for immigration purposes. Clear evidence shows that detention harms children.<sup>94</sup> The systematic administrative detention of children and families is unacceptable under any circumstances.

We would urge the Government to implement its change in policy without delay. In the Queen's Speech in May 2010, the Prime Minister outlined the commitment in urgent terms– '*we will end the incarceration of children for once and for all* – and yet no timeframe has been given.

The commitment to ending the detention of children does not go far enough as the Minister for Immigration has clearly indicated that powers will be retained to detain families for 'short periods before removal'.<sup>95</sup> No indication has been given as to what timescales are envisaged by 'short periods'.

The argument that families disappear if not detained is unfounded<sup>96</sup>: there is no established link between detention and effective removal. The NGO sector has consistently lobbied on this point for several years, and this has now been acknowledged by Minister Damian Green:

*Detention under the system that we are getting rid of was not necessarily effective. Of the 1,068 children who departed from detention in 2008-09, only 539 were removed and 629 were released back. There are clearly difficulties with the efficacy of removal and with taking away detention as an option-something that we are doing for all the reasons that have been advanced during the debate-but even with detention, more children were released back into the community than were removed. The old system was not particularly effective, and I am grateful to the right hon. Member for Leicester East for stating the actual figures, as they illustrate that fact tellingly.*<sup>97</sup>

The Government's commitment to ending child detention must be absolute. Those children who are currently detained must be released.

### Northern Ireland impact

The decision to end detention of children in Dungavel, although welcome, has led to a temporarily worse position for persons detained in Northern Ireland given the travel times from Belfast to the South of England via the Scotland ferry. While Dungavel will no longer be used for overnight detention, we note that it may still be used for 'initial health and welfare screening' prior to transfer to Yarl's Wood.<sup>98</sup> This gives rise to an unpalatable scenario of families being detained in Northern Ireland, transferred by van/ferry to Dungavel (a six hour journey) prior to transfer by van to Yarl's Wood (a nine hour journey).<sup>99</sup> Clearly, it is wholly unreasonable to require families with children to undertake this sort of journey in one day. Furthermore, the degree of distress and anguish that may be associated with such prolonged travel times may well engage the Article 3 threshold of inhuman or degrading treatment. The ten year old daughter of one Northern Ireland detainee describes being transported with her siblings and mother from Belfast to Yarl's Wood via Dungavel in freezing winter weather wearing just sandals on her bare feet:

'We didn't have time to get any clothes. I only brought two pairs of unders, and I didn't have any socks'.<sup>100</sup>

Sir Al Aynsely-Green, the former Children's Commissioner for England, confirms that the process of arrest and transportation is deeply distressing for children.<sup>101</sup> Therefore, there is a particular imperative for ending the practice of detaining children in Northern Ireland given the unacceptable journey times.

### Alternatives to detention

The Minister for Immigration has stated that before the Government closes Yarl's Wood for the detention of families it needs to find effective alternatives.<sup>102</sup> We believe that ending the detention of children is necessitated by

<sup>94</sup> Intercollegiate briefing paper compiled by Royal College of General Practitioners, Royal College of Paediatrics and Child Health, Royal College of Psychiatrists and the UK Faculty of Public Health, *Significant Harm: the effects of immigration detention on the health of children and families in the UK*, 8<sup>th</sup> December 2009. Available here:

<http://www.rcpsych.ac.uk/press/pressreleases2009/immigrationdetention.aspx>

<sup>95</sup> Hansard 17 Jun 2010 : Column 231WH

<sup>96</sup> See Home Affairs Select Committee Report, *The Detention of Children in the Immigration Detention System*, November 2009, HC 73

<sup>97</sup> Hansard 17 Jun 2010 : Column 231WH

<sup>98</sup> UKBA announcement on 19 May 2010 as available here:

[http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2010/may/04detention\\_of\\_children](http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2010/may/04detention_of_children)

<sup>99</sup> Even if the journey does not require a stop at Dungavel for screening purposes, the journey time is still extremely lengthy.

<sup>100</sup> *No place for children* Alice O'Keefe, *The New Statesman*, 13 December 2007.

<sup>101</sup> The report, referred to in the Westminster debate, is available here:

[http://www.childrenscommissioner.gov.uk/content/publications/content\\_394](http://www.childrenscommissioner.gov.uk/content/publications/content_394)

<sup>102</sup> Hansard 17 Jun 2010 : Column 211WH

standards of human dignity and human rights: it should not be dependent on establishing 'alternatives to detention'. Indeed, the straightforward alternative to detention is liberty.<sup>103</sup>

Notwithstanding our objection to linking the ending of detention to establishing alternatives to detention, we believe that there are models of good practice from other jurisdictions that could provide a useful template. In a comprehensive report in 2006, the UNCHR set out a series of alternatives to detention policies.<sup>104</sup> These guidelines may serve a useful starting point for developing a UK approach.

The 'Hotham Mission Asylum Seeker Project' in Melbourne, for example, is premised on a combined approach of effective legal representation and a 'case-management approach' incorporating housing and welfare support. The project is well established and has informed similar projects including the Swedish model, which builds on the principle of community-based support.<sup>105</sup>

The Swedish system perhaps serves as a useful comparison for the UK. In 2009, the number of asylum applications lodged in each country was not too dissimilar.<sup>106</sup> However, while Sweden has just 200 detention places, the UK has more than fifteen times the amount and media reports assert that the number of detention places is expanding.<sup>107</sup> Whereas detention is rarely used in Sweden, it constitutes a prominent place within the UK's immigration system. The Swedish approach raises questions about the necessity of the UK detention policies and may be a beneficial model for this review to consider.

A recent publication by Refugee Action Group suggests ways in which the Swedish model could be applied in Northern Ireland - the recommendations could also be of more general application in a UK-wide context.<sup>108</sup>

### **Alternatives to detention – the UK experience**

Alternatives to Detention is an official priority advocacy area for UNHCR and it plans to hold a Global Roundtable on this topic in December 2010. We would like to see the UK playing a key role in this event. However, we believe that the UK's approach to the concept of 'Alternatives to Detention' has hitherto been unduly restrictive. We would like to see the UK adopting a broader approach: Alternatives to Detention can (and should) be able to encompass the case-management approach as exemplified by the Hotham Mission project and the Swedish system.

We note that the UK's 'Alternatives to Detention' pilot projects (i.e. Millbank and Glasgow) have so far focused on the *end of the process* for refused asylum families. The evaluation by Bail for Immigration Detainees and the Children's Society noted:

*[An] alternatives pilot cannot work in isolation from wider system change because by the time those families had reached the end of the process they were not able to trust or engage with the process effectively.*<sup>109</sup>

This underscores the need for whole scale reform of the asylum system. Any attempts that focus only the end of the process are likely to be ineffectual until the current problems in the system are tackled. Any reforms of the system must address the quality of initial asylum decisions and access to quality legal advice. These issues are discussed below.

### **Separating children**

We are extremely concerned that the Minister for Immigration has indicated a willingness to separate different members of a family prior to removal.<sup>110</sup> We believe that the UK should not go down this avenue. Moreover, to do so may be incompatible with the statutory duty of s.55 Borders, Citizenship and Immigration Act 2009, and Article 8 of European Convention on Human Rights (ECHR). In addition, this practice would risk violating the UN Convention on the Rights of the Child which is clear on the issue of separating children from their parents:

*States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child.*<sup>111</sup>

Children should only be separated from their parents if there is a risk of significant harm to the child. Immigration purposes should not be used as a justification for separating children from their parents.

<sup>103</sup> See Refugee Children's Consortium *Briefing Paper for the Westminster debate on alternatives to child detention* on 17 June 2010. Available here: <http://www.welshrefugeecouncil.org/alternatives-to-child-detention/>

<sup>104</sup> UNHCR, *Alternatives to Detention of Asylum Seekers and Refugees* (Geneva: UNHCR, 2006)

<sup>105</sup> Details of the project can be found in John Bercow, Lord Dubs and Evan Harris, *Alternatives to immigration detention of families and children*, discussion paper for all-party parliamentary groups on children and refugees, July 2006.

<sup>106</sup> In 2009, Sweden received 24,194 applications whereas the UK received 29,840. See UNHCR, *Asylum Levels and Trends in Industrialized Countries 2009: statistical overview of asylum applications lodged in Europe and selected non-European countries*, 23 March 2010, pg 13

<sup>107</sup> See media reports of plans to increase UK's detention capacity from 3,100 to 3,730 with the extension of Harmondsworth. E.g. Guardian, *UK Detention Centre to double capacity*, 26 May 2010

<sup>108</sup> Refugee Action Group, *Distant voices, shaken lives: human stories of immigration detention from Northern Ireland* 2010. p21-23. The publication is available here: <http://www.refugeeactiongroup.com/download?id=MTg=>

<sup>109</sup> BID & Children's Society, *An evaluation report on the Millbank Alternatives to Detention Pilot*. Available here: [http://www.childrenssociety.org.uk/resources/documents/media/17148\\_full.pdf](http://www.childrenssociety.org.uk/resources/documents/media/17148_full.pdf)

<sup>110</sup> Minister Damian Green cited in Hansard 17 Jun 2010 : Column 211WH

<sup>111</sup> Article 9(1) UNCRC

## Wider reform of immigration detention

Wider reform of the UK's immigration system is urgently required. A recent letter to Ministers by Association of Visitors to Immigration Detainees (AVID) and endorsed by a number of refugee/human rights organisations highlights that:

*[The immigration system] is expensive, inefficient and damaging, unnecessarily depriving large numbers of their liberty indefinitely before releasing them. As such, it neither respects the civil liberties of those detained, nor meets the government's requirements for immigration control. Detention reform is therefore entirely consistent with this government's commitment to upholding civil liberties and making substantial cuts in public spending in lieu of the budget deficit.*<sup>112</sup>

We fully support AVID's recommendation for a moratorium on the opening of further immigration removal centres until an independent inquiry has fully examined the current use of detention.

It is inconceivable that the UK continues to operate a policy of indefinite detention for immigration purposes without judicial oversight. We urge the Government to introduce judicial oversight into the immigration detention system and to impose maximum time limits on detention. Evidence compiled by the UNHCR indicates that the UK is 'out of step' with most other European countries with regards to these two matters.<sup>113</sup> The lack of automatic judicial oversight in detention cases underscores the importance of ensuring that detainees have access to legal advice.

## Quality of asylum decisions.

It is essential that the quality of initial decision-making on asylum claims improves. Figures for the first quarter of 2010 show that 27% of asylum decisions were overturned on appeal, which supports our assertion that decision making is of poor quality.<sup>114</sup> Any post-decision measures relating to returns – whether designed to 'encourage' e.g. through monetary incentives or to 'deter/punish' e.g. through the use of detention or benefit sanctions – will be largely ineffectual in the current climate of poor quality decisions. The ongoing problem of administrative delays as well as the 'culture of disbelief' in the UKBA exacerbates the lack of faith in the system.

The Independent Asylum Commission found that 'refused asylum seekers will be more likely to accept refusal and take voluntary return if they feel that they have had a fair hearing'.<sup>115</sup> It is our assertion that improved decision-making would be an effective method of increasing the uptake of voluntary return.

## Access to quality legal advice and representation

Access to quality legal advice and representation is an essential component in ensuring that asylum seekers have a fair hearing. Council of Europe Human Rights Commissioner Thomas Hammarberg rebuked the UK for its asylum policy in September 2008 and referred to a particular concern about the 'serious reduction of legal aid provided to asylum seekers'.<sup>116</sup> The demise of Refugee and Migrant Justice (RMJ), the UK's largest specialist national provider of asylum advice that represented 13,000 applicants including nearly 1,000 children, leaves an enormous gap in the provision of asylum advice. In the wake of RMJ's collapse, the Government is urged to review the system of legal aid payments to ensure that other refugee organisations do not face similar risks. Quality legal advice is a critical component of the asylum system – it should not be regarded as peripheral.

As noted by the Independent Asylum Commission (above), better access to quality legal advice will assist the uptake of voluntary return.

However, we must caution that legal advice must be provided by independent, regulated Immigration Advisors if it is to be fair and effective. Information services offered by local authorities *cannot* be a substitute for individualized legal advice.

## Recommendations

Our recommendations are as follows:<sup>117</sup>

- The detention of children must end immediately and any detained children and families should be released. The ending of the practice in Northern Ireland is a particular imperative given the unacceptable journey times
- The outcome of the review should not result in children being separated from their parents for immigration purposes
- Ending the detention of children should *not* be dependent on establishing 'alternatives to detention' projects

<sup>112</sup> AVID letter dated 23<sup>rd</sup> June sent to Minister Damian Green and Home Secretary Teresa May.

<sup>113</sup> Other than the UK, only a handful of European countries allow de facto indefinite detention. See UNHCR 2006 paper, supra, n.10

<sup>114</sup> Home Office, *Control of Immigration: Quarterly Statistical Summary, Jan – March 2010*.

<sup>115</sup> Independent Asylum Commission, *Safe Return: The Independent Asylum Commission's Second Report of Conclusions and Recommendations – How to improve what happens when we refuse people sanctuary* (London: IAC, 2008), p3,

<sup>116</sup> Memorandum by Thomas Hammarberg following his visits to the UK on 5-8 Feb and 31 March – 2 April 2008, CommDH(2008)23, Strasbourg 18 September 2008

<sup>117</sup> These conclusions both reflect and build upon the Refugee Children's Consortium commitments outlined in their briefing paper.

In addition:

- The entire immigration detention system is in urgent need of review
- The quality of asylum decisions must be improved and administrative delays must be tackled
- Access to quality legal advice must be ensured throughout the asylum process (including during any periods of detention)
- Judicial oversight and maximum detention periods should be introduced into the system

## 39. LIBERTY

### Liberty's submission to the Review into Ending the Detention of Children for Immigration Purposes July 2010

#### About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

#### Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

1. Liberty is extremely pleased that the new Coalition Government has pledged to end the detention of children for immigration purposes.<sup>1</sup> Government should always strive to act in the best interests of the child – and detention on immigration grounds can never be said to be in the best interests of the child. The medical and psychological evidence is that detention has a profoundly negative effect on children. We therefore welcome the opportunity to submit our views to the Review into Ending the Detention of Children for Immigration Purposes undertaken by the UK Border Agency. We urge the Government to go further and end immigration detention on the grounds of administrative convenience for all – adults and children alike. We believe that the detention of adults and children for administrative convenience violates Article 5 of the *Human Rights Act 1998* (the right to liberty) and is unjustifiable.

#### Powers of detention

2. The *Immigration Act 1971* first provided the power to detain a person for immigration purposes,<sup>2</sup> which has been built on by subsequent legislation.<sup>3</sup> The law provides that a person (who doesn't have the right to enter the UK) may be detained while a decision is being made whether or not to admit the person (generally of relevance to people seeking asylum)<sup>4</sup> and when a decision is to be, or has been, made to remove the person.<sup>5</sup> There is no time limit on how long a person can be detained, and it is left to the Immigration Rules and Home Office Guidance as to when people are likely to be detained. Home Office guidance provides that detention must be used sparingly, and there is a presumption in favour of temporary admission or release (although the rationale given for this is that it is not an 'effective use of detention space' to detain people long-term, rather than a focus on the right to liberty).<sup>6</sup> We understand that notwithstanding this written guidance, in practice the UK Border Agency (UKBA) is routinely breaching its own guidelines and policies and detaining people when it is not necessary to do so. Liberty is currently intervening in a case before the High Court brought by the mothers of three children under the age of 12 who were detained unnecessarily (and who have since been released back into the community) in breach of UKBA's own policy to use detention sparingly. In addition, the guidance itself provides a number of exceptions allowing for detention, including:

□ when the 'detained fast track procedure' is adopted. Under this process people seeking asylum are detained for a week or more (and their claim for asylum determined) if a decision has been made that their case can be decided quickly and is suitable for 'fast-tracking'.

□ when a claim for asylum is dealt with as a 'detained non-suspensive appeal' case. Under this scheme a person will be detained for between 10 and 14 days while their asylum claim is determined, and at the end of this process the person has no right of appeal in the UK to an independent court or tribunal. People from certain listed countries (including countries such as Ghana, Nigeria, Liberia, Sierra Leone etc) will be automatically routed into this procedure, unless it can be shown (on arrival) that their claim is not clearly unfounded.<sup>7</sup>

□ when removal from the UK is considered 'imminent'. However, under the name of 'imminent removal' many people are detained for weeks, if not months, before removal. In fact, Home Office guidance provides that even if an appeal or other proceedings are ongoing a person may still be detained pending the outcome of such an appeal if the legal proceedings "*are likely to be resolved reasonably quickly*" (a phrase left undefined).<sup>8</sup>

□ when a person is considered likely to abscond.

□ when there is not enough information to decide whether or not to allow a person to be admitted or released.

□ when release is not considered to be 'conducive to the public good'.

□ while waiting for alternative arrangements to be made for the person's care.

3. It is clear then that for the majority of people seeking asylum in the UK, for those whose claims for asylum have failed, or for those who have breached a condition or overstayed their visa, detention is a standard part of the process. Every year thousands of people are locked up in immigration detention centres. Many are detained for some months and some are locked up for over a year. The vast majority of applicants for asylum will go through

the detained fast track or detained nonsuspensive appeals process meaning many will be detained throughout the entire immigration process.<sup>9</sup> Home Office guidance<sup>10</sup> states that the following people will not generally be considered suitable for detention and the detained fast-track procedure (although this doesn't exclude detention in exceptional circumstances):

□ unaccompanied children – however, the UK Border Agency can dispute the stated age of a person (see below), and unaccompanied children who are to be returned home can be detained on the day of removal.<sup>11</sup> Note this provision applies to children without parents or other guardians – children who are part of a family group can be detained on the same basis as other people liable to detention;<sup>12</sup>

□ the elderly, especially where supervision is required;

□ women who are more than 24 weeks pregnant – unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this;

□ those suffering from serious medical conditions or the mentally ill;

□ those where there is independent evidence that they have been tortured (note that a person would need to have 'independent evidence' of torture, yet torture victims who have fled persecution are very often unlikely to have any documentary evidence to prove their torture – and expert evidence of torture is difficult to produce in a day for those subjected to the detained fast track and non-appeal process);

□ people with serious disabilities; and

□ people identified as victims of trafficking.

### **The right to liberty**

4. The right not to be arbitrarily deprived of one's liberty has long formed part of

UK law – from the common law to the *Habeas Corpus Act* of 1679 to various statutes, including the *Human Rights Act 1998*, it is clear that liberty is an essential part of the rule of law and the British legal system. Article 5 of the *Human Rights Act 1998*<sup>13</sup> provides that everyone has the right to liberty and security of person and no one can be deprived of their liberty except in certain defined circumstances and in accordance with law. Any deprivation of liberty must also be necessary and proportionate. Detention for the purposes of immigration can only be lawful if there are proceedings in place for removal or deportation of a person, detention is reasonable in the circumstances and the Government is acting quickly and diligently in acting to remove the person.<sup>14</sup> Liberty does not believe that detention on the grounds of administrative convenience – which is used in the detained fast-track and non-appeals cases – can ever be justified and we believe it breaches the fundamental right to liberty.

### **Children in detention**

5. Under human rights law, children are given additional rights protection. In particular, the right to liberty has to be read in light of rights contained in the Convention on the Rights of the Child.<sup>15</sup> The Convention provides that in all actions concerning children, the best interests of the child should be the primary consideration, and no child is to be deprived of liberty unlawfully and arbitrarily with detention "*used only as a measure of last resort and for the shortest appropriate period of time*".<sup>16</sup> Originally the UK Government, on ratifying this Convention, entered a reservation to it relating to immigration law and the detention of children.

After concerted lobbying by a number of organisations,<sup>17</sup> the previous Government thankfully withdrew its reservation to the Convention on 18 November 2008. In addition, since 2 November 2009, section 55 of the *Borders, Citizenship and Immigration Act 2009* has placed a statutory duty on the Home Secretary to make arrangements to ensure that the UK Border Agency (UKBA) functions, and services carried out by third parties on UKBA's behalf, "*are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom*".

6. Under Home Office Guidance, there is a general presumption that children should not be detained for immigration purposes. However, Home Office policy does allow children in a family group to be detained according to the same criteria as adults. Home Office Guidance states:

*Families, including those with children, can be detained on the same footing as all other persons liable to detention.*<sup>18</sup>

We understand that prior to October 2001 Home Office policy was that families would only be detained to effect imminent removal – which in practice meant that very few families were detained and if they were it was for extremely short periods of time prior to removal. In October 2001 the Home Office, without any consultation or parliamentary or public debate, changed this policy to allow families – and their children – to be detained on the same basis as all adults. As far as we are aware this was not based on any research or evidence demonstrating that this change was even necessary (i.e. because of a higher rate of families absconding or not complying with conditions). We believe that this policy, which fails to give appropriate weight to the best interests of the child breaches the UK's human rights' obligations.

### *Number of children in detention*

7. It is clear that immigration detention is rarely, if ever, in the best interests of a child. Yet each year well over one thousand children are detained for administrative purposes for immigration control,<sup>19</sup> the majority being held in Yarl's Wood Immigration Removal Centre in Bedfordshire. In June 2010 the UK Border Agency, in response to a freedom of information (FOI) request from Liberty, stated that in 2009, 1065 children and young people were held



in immigration detention, with the average length of time in detention being 15.03 days.<sup>20</sup> Many children are detained for much longer periods than this, and as the former Children's Commissioner for England, Sir Al Aynsley-Green, has said:

*It must be noted that the average length of detention masks extreme lengths of detention experienced by some individual children. The Joint Chief Inspectors' report highlighted that greater numbers of children were being detained beyond 28 days.*<sup>21</sup>

In fact, in the information released to Liberty by the UKBA pursuant to our FOI request, the longest period of time a child was detained in 2009 was for a shocking 158 days. Further, no information can be given as to how many of those detained children were actually removed from the country following detention, as the Home Office advises that information as to the number of removals for those originally detained is not collected centrally and is therefore unavailable.

8. An inspection by HM Chief Inspector of Prisons of Yarl's Wood detention centre<sup>22</sup> in November 2009 found: *Decisions to detain, and to maintain detention of, children and families did not appear to be fully informed by considerations of the welfare of children, nor could their detention be said to be either exceptional or necessary. Over the past six months, 420 children had been detained, of whom half had been released back into the community, calling into question the need for their detention and the disruption and distress this caused. Some children and babies had been detained for considerable periods – 68 for over a month and one, a baby, for 100 days – in some cases even after social workers had indicated concerns about their and their family's welfare.*<sup>23</sup>

#### *Effect of detention on children*

9. A number of medical and other reports have demonstrated a clear link between immigration detention of children and extreme adverse effects on mental and physical health.<sup>24</sup> The Children's Commissioner for England has stated, after visiting one detention centre, that it was "*not possible to ensure that children detained in Yarl's Wood stay healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being*".<sup>25</sup> In a study published earlier this year, Matthew Hodes from the Academic Unit of Child and Adolescent Psychiatry at Imperial College Lo non found that medical evidence shows that the detention of children and adolescents: "*suggests this practice is associated with high levels of psychological distress, anxiety, affective and posttraumatic stress disorder, and deliberate self-harm*".<sup>26</sup> In a recent joint statement on children in immigration detention, the Royal College of Paediatrics and Child Health, the Royal College of General Practitioners, the Royal College of Psychiatrists and the Faculty of Public Health stated:

*Almost all detained children suffer injury to their mental and physical health as a result of their detention, sometimes seriously. Many children experience the actual process of being detained as a new traumatising experience. Psychiatrists, paediatricians and GPs, as well as social workers and psychologists, frequently find evidence of harm, especially to psychological wellbeing as a result of the processes and conditions of detention. Reported child mental health difficulties include emotional and psychological regression, post traumatic stress disorder (PTSD), clinical depression and suicidal behaviour.*<sup>27</sup>

10. In addition, the UN Committee on the Convention on the Rights of the Child lent international support for a review of current policy in September 2008 stating:

*The Committee is concerned that as also acknowledged recently by the Human Rights Committee, asylum-seeking children continue to be detained, including those undergoing an age assessment, who may be kept in detention for weeks until the assessment is completed.*<sup>28</sup>

11. Liberty has consistently pressed for reform of the law in this area. We are therefore extremely pleased that the Coalition Programme for Government announced its intention to "*end the detention of children for immigration purposes*".

This is an extremely important first step to making the immigration system more humane. However, it is also extremely important to ensure that such a commitment does not have unintended consequences (for example, the splitting up of families etc). We consider the alternatives to detention and our more detailed concerns below.

#### **Reform of the system of immigration detention for children**

12. The *Review into ending the detention of children for immigration purposes* was published on the Home Office website on 11th June. While the terms of reference state that the review is intended to run for six weeks (findings being reported to the Government by mid July) the period for public consultation spans less than three weeks. We assume that the shortened consultation period is motivated by efforts to move swiftly in this very important area. However, so far, the commitment to end the detention of children for immigration purposes does not extend to ending detention immediately – indeed the consultation paper makes no reference to the timeframe for ending detention. The Minister for Immigration, Damian Green MP, stated in Parliament that "*Until the review is completed, current policies will remain in place... before we close Yarl's Wood for the detention of families we need to find effective alternatives*".<sup>29</sup> While we understand and support the need for proper policy formation we urge the Government to end detention of children and their families within a tightly defined timeframe, building on the momentum created by the initial welcome announcement. Continuing to detain children for many months will mean that this shameful policy continues to punish some of the most vulnerable in our society. There has already been

several pilots to find alternatives to detention, numerous reports and case-studies and consistent pressure from campaigning groups over many years. The time has come to learn from the many projects, pilots and studies and draw the results together, rather than to experiment with new disparate alternatives and policy ideas which will delay the end goal of eradicating immigration detention for children altogether.

#### *Assisted Voluntary Returns*

13. Improving the process of Assisted Voluntary Returns (AVR) for families who have reached the end of the legal process is, we believe, an important part in reducing the number of families that are forcibly removed. The AVR process supports those who voluntarily agree to return to their country of origin. The assistance ranges from arranging international flights or helping families and individuals to obtain appropriate travel documents, to the final stages of reintegration into a country of return (including providing assistance with establishing a business, education, finding a job placement or obtaining vocational training etc).<sup>30</sup> We believe that there should be greater emphasis on AVR, but only once systemic obstacles to its effective operation have been addressed. To date, the AVR process has been flawed, with reports indicating that written information on AVR is only provided at the moment at which an asylum application is refused. There are also currently limited opportunities for face-to-face discussions about the options for AVR. Indeed, a report by the Children's Commissioner for England, Professor Sir Al Aynsley-Green, found that some families reported "*being arrested at the same time as being served with the notice from the court that their appeal had been dismissed. This clearly does not provide the window for reflection on AVR.*"<sup>31</sup>

14. There have been a number of pilots focusing on families and the AVR process. These pilot studies indicate that a change to the very final stages of a long and complicated process to facilitate AVR will not on its own minimise the number of forced removals and associated detention. The UKBA review of the 'alternative to detention' project in Kent, for example, concluded that one of the reasons for the project's lack of success<sup>32</sup> was the absence of early engagement with families who, consequently, did not fully understand that non-compliance with AVR could result in forced removal.<sup>33</sup> Similarly an independent evaluation conducted by The Children's Society and Bail for Immigration Detainees in 2009 reported:

*Listening to the stories of families in the pilot, it was clear they had felt unsupported during their time in the UK and were confused about this latest initiative. An alternatives pilot cannot work in isolation from wider system change because by the time those families had reached the end of the process they were not able to trust or engage with the process effectively.*<sup>34</sup>

#### *Better case management and access to legal representation*

15. Families will inevitably resist removal if they feel they have not had a fair hearing or if they consider there might be a further option or avenue for review of the decision. A family seeking asylum that comes to the UK after an often long, dangerous and arduous journey will obviously want to be sure that their case is properly considered. Consistent and guaranteed legal representation to assist an understanding of the process, better quality decision-making and a proper appeals process will all go some way to providing this assurance. Liberty urges the Government to support well resourced case management for refugee claimants, and the provision of sensitive and effective support for families from the very beginning of their arrival through to the determination of their claim. Such models have been developed in other jurisdictions with some success, including Australia and Sweden (although the model in Australia only applies to those on the mainland and not the thousands detained indefinitely on Christmas Island).<sup>35</sup> Access to legal aid and casework support for asylum seekers is essential to ensure claimants properly understand the legal process which will determine their futures. Given the high costs of detention<sup>36</sup> and forced removals, maintaining appropriate legal aid provision and ensuring the continuity of caseworkers on each individual or family application is not only fair and humane, it may also benefit the public purse.

#### *Forced removals*

16. The 2009 Report of the Children's Commissioner also highlighted a number of systemic problems associated with voluntary removal programs which lead to increased forced removals and pre-removal arrest and detention instead of the preferred voluntary departure. The Commissioner found these forced removals inevitably lead to considerable distress for the family and in particular for children.<sup>37</sup>

The Commissioner also found that there is a bureaucratic culture within the UKBA which focuses on enforcement and so blindly misses opportunities to engage with families.<sup>38</sup> Once there has been a final legal decision in relation to an individual's or family's application for asylum, a defined timeframe ought to be allowed in which families receive assistance and advice from the UKBA as well as independent sources so that they understand the decision which has been made and what steps they must now take. The Children's Commissioner, for example, noted that many arrested families expressed confusion and distress upon their sudden arrest, given prior to that they had been complying with all requests made of them, such as signing in regularly at an enforcement office and living at a specified address.<sup>39</sup> In the time between final refusal and departure there needs to be a measured, rational and respectful approach which allows families to facilitate a transition back to their country of origin. Changing the approaches to people seeking asylum from the outset will minimise the need for any detention whatsoever.

17. We do accept however that there will inevitably be individuals and families seeking asylum who will not accept the refusal of their claim and who will attempt to unlawfully remain in the UK. Nevertheless detention should only be used in exceptional circumstances and only once a family has been given time and support to consider AVR, as well as the opportunity to comply with any obligations imposed on them. Further, any detention must be tightly circumscribed – that is, for a short period of time before departure, preferably without an overnight stay. If you have a family otherwise complying with their obligations there is no reason they should not be able to remain in their accommodation pending removal.

#### *Splitting up of families*

18. Further, we do not consider it acceptable nor necessary to split families for the purposes of being able to detain parents but not children. We note in a recent debate in the House of Commons the Minister for Immigration stated, in the context of families refused leave to stay, that: *enforced removals are likely to continue. That approach could involve separating different members of a family and reuniting them before departure, so that some family members stay in the accommodation they are used to.*<sup>40</sup>

We do not consider the separation of children from their parents even for a short period to be an acceptable alternative to detention. The trauma for some children in being removed from their families may well be greater than the trauma of a very short period of detention. As we set out below, we do not believe that anyone should be detained in immigration detention – child or adult – any longer than is strictly necessary, and never for administrative convenience. It is clear that at present both children and adults are being detained for the purposes of removal weeks and sometimes months before their actual departure. In fact, as referred to above, HM Chief Inspector of Prisons reported in relation to Yarl's Wood Immigration Facility that

*"420 children had been detained, of whom half had been released back into the community, calling into question the need for their detention and the disruption and distress this caused"*. This type of unnecessary detention must stop, for children and adults alike. If families strictly need to be detained for a few hours or a day prior to removal, in most circumstances it might be less traumatic for children to remain with their families than be separated under this new non-detention policy. At all stages, the best interests of the individual child must be paramount in any decision taken.

#### **Age assessments**

19. We are concerned that any reform to the system of children in immigration detention does not lead to an increase in disputes over a child's age. Under UK law, an unaccompanied child asylum seeker is entitled to be looked after by the local authority as a child, rather than dispersed around the country with adult asylum seekers. Section 20 of the *Children Act 1989* provides that local authorities must provide accommodation to unaccompanied children under the age of 18.

Unaccompanied children will not be detained and should not be subject to the detained fast track and non-appeals process. All of these laws and policies are, however, dependant on the person being considered to be under the age of 18. In practice, when a young person arrives in the country or makes a claim for asylum and claims to be under 18, immigration officials make a preliminary determination on age based on physical appearance and demeanour. In a borderline case, the policy is to give the person the benefit of the doubt and treat him or her as a child. But the case will be later sent for assessment by the local social services authority to make that assessment.<sup>41</sup> If a person's physical appearance and/or demeanour very strongly indicates that they are significantly over 18 years of age and no other credible evidence exists to the contrary the person will be treated as an adult.

20. In practice the system of age determinations has led to a number of vulnerable children being incorrectly assessed as adults – leading them to be detained, provided with inadequate support and forcibly removed. Just a few months ago the Liverpool Local Government Ombudsman found that a 15 year old sex abuse victim was denied vital care as a result of a wrong age determination decision.<sup>42</sup> There have also been cases of 14 year olds being refused treatment as children and ending up living on the streets.<sup>43</sup> In November 2009, the Supreme Court held that the courts had to be the final arbiters of any age determination dispute.<sup>44</sup> This case (in which Liberty intervened at earlier stages) was brought before the Supreme Court after two young asylum seekers brought a joint appeal against Croydon Borough Council and Lambeth Borough Council. 'A' fled Afghanistan after his father was killed and he was forced to leave his home. Although a doctor calculated that he was 15 years old, Croydon Social Services claimed he was over 18 and refused to provide him with children's support. He became homeless. 'M' fled Libya in fear of political persecution and although the Asylum and Immigration Tribunal assessed him as under 18, Lambeth Borough Council denied him proper support after deciding he was an adult.

21. The process of age determination must be overhauled if the commitment to ending the detention of children is to be effective. We urge the Government to provide assurances that in an effort to end children in detention resort will not be had to greater disputes over the age of person's seeking asylum.

## **Unaccompanied child asylum seekers - Afghanistan**

22. It has recently been reported that there are plans for the UK to tender and fund a reintegration centre in Afghanistan to better enable the UKBA to forcibly return failed Afghani asylum seekers, including unaccompanied children.<sup>45</sup> The Government has confirmed that unaccompanied 16 and 17 year olds could be forcibly returned, with the reintegration centre being used to help these young people “*get back to a normal life*”.<sup>46</sup> The Minister for Immigration has described this as “*a constructive and creative response to the problem of unaccompanied asylumseeking children*”.<sup>47</sup> Concerns have been raised that the return of unaccompanied children is one part of the pledge to end immigration detention for children – because if children are returned, they won’t be detained. We accept that it is not Home Office policy to detain unaccompanied minors.<sup>48</sup> However, we are concerned that any push to end detention of children does not result in greater and potentially more harmful removals of children (or the splitting up of families). While unaccompanied child asylum seekers are not, as a matter of policy, detained and are entitled to be looked after by the local authority, as detailed above, there are often disputes over whether the person is a child. Home Office policy requires that if a local authority deems the individual to be an adult, the immigration authorities will allow that person to be detained as an adult and possibly removed to a ‘safe’ third country. We are very concerned that the proposed ‘reintegration centre’ is not used as a way to avoid our obligations to vulnerable children.

23. Liberty does not believe that it can currently be said to be in the best interests of any unaccompanied child to be forcibly returned to Afghanistan – which effectively remains a war zone. Section 55 of the *Borders, Citizenship and Immigration Act 2009* requires all immigration officers to discharge their functions having regard to the “*need to safeguard and promote the welfare of children who are in the United Kingdom*”. Sending a child alone to Afghanistan, many of whom have had family members killed or seriously injured and so have little, if any, support, can not be said to be ‘promoting the welfare’ of the child. The vast majority of unaccompanied minors from Afghanistan in the UK are boys – most of whom fled Afghanistan to avoid forced conscription to fight with the Taliban. Sending these boys to Kabul (where the centre is located – not, necessarily where their family members, if they have any, might be) with a limited period of support is likely to leave them extremely vulnerable once the support ceases – including vulnerable to conscription or recruitment by the Taliban and other militants. We strongly urge the Government to urgently review this proposal and give assurances that unaccompanied minors will not be forcibly returned to countries that remain unstable and dangerous.

## **Adults in immigration detention**

24. While ending the detention of children for immigration purposes must be an important and pressing priority, we are also concerned about the prolonged and unnecessary detention of vulnerable women and men. HM Chief Inspector of Prisons reported earlier this year that more than 10% of women detained at Yarl’s Wood had been held for over six months (many with no imminent prospect of removal) and the average length of stay was 34 days (and more than 50% were held for over one month).<sup>49</sup> For men detained in Harmondsworth, an inspection in January 2010 found that 52% of men were detained between 1 and 4 months and more than 10% of men had been detained for more than six months (with five men being detained for over two years and eight for over one year). The longest detention had been for three years and three months (because of a failure to obtain travel documents).<sup>50</sup> In addition, the recent report on Yarl’s Wood found that an improved and new focus on improving the environment and activities for children had led to a lack of attention to the needs of the majority population of women:

*Provision of activities for them was among the poorest seen in any removal centre. It had been inadequate at the last inspection, and had declined even further. The absence of activity added to the depression and anxiety of women, many of whom were spending lengthy periods at Yarl’s Wood.*<sup>51</sup>

25. While detention may be necessary in very time limited circumstances in order to effect removal, the fact that half of all women and almost 70% of all men are detained for more than one month demonstrates that detention is not only being used when strictly necessary. Liberty believes that in addition to improving the Assisted Voluntary Return programme for families (as set out above) and the immigration process to help ensure children are not detained, the Government must improve the system generally to heavily restrict immigration detention to no more than a few days at most (and only if demonstrated to be strictly necessary). In addition, the majority of asylum applications are now routed through the detained fast track and detained non-appeals process, requiring people to be locked up simply so they may be readily available for interviews. The right to liberty should not be abrogated on the basis of administrative convenience. We urge the Government to go further and apply the principle behind the decision to end detention for children to all people. Not only will this respect the vital right to liberty and ensure humanity is at the heart of the immigration process, it will save the taxpayer an enormous amount of money. It currently costs, on average, around £120 a day to detain just one person.<sup>52</sup> Given around 30,000 people are detained in immigration detention every year,<sup>53</sup> many of whom are detained for over a month, reliance on immigration detention has not only an enormous human cost, but also a major financial cost. Ending the immigration detention of children is an important first step which we hope is only the beginning. It is time for the system of immigration detention to be completely reviewed and revised.

**Anita Coles**

**Sophie Farthing**

- 1 See *The Coalition: our Programme for Government*, section 17.
- 2 See section 4 and Schedule 2 of the *Immigration Act 1971*.
- 3 See, in particular, section 62 of the *Nationality, Immigration and Asylum Act 2002* and section 10 of the *Immigration and Asylum Act 1999*.
- 4 See paragraphs 2 and 16(1) of the *Immigration Act 1971*.
- 5 See paragraphs 8-10A and 12-14 and 16(2) of the *Immigration Act 1971*. There are also powers to detain a person who is subject to deportation. A person can be deported if the Secretary of State considers it would be conducive to the public good or the person has been convicted of specific offences: see section 3 of the *Immigration Act 1971* and sections 32 and 36 of the *UK Borders Act 2007*. Deportation is separate from removal and we do not consider it in the context of these submissions.
- 6 See UK Border Agency, *Enforcement Instructions and Guidance*, Chapter 55, paras 55.1.3 and 55.3, available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/>
- 7 See section 94 of the *Nationality, Immigration and Asylum Act 2002*, and Home Office Guidance, 'DFT & DNSA – Intake Selection (AIU Instruction)', available at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/dfanddnsaintakeselection?view=Binary>
- 8 See UK Border Agency, *Enforcement Instructions and Guidance*, Chapter 55, para 55.14.
- 9 See Home Office Guidance that states that it is "*UK Border Agency policy that any asylum claim, whatever the nationality or country of origin of the claimant, may be considered suitable for DFT/DNSA processes where it appears, after screening (and absent of suitability exclusion factors), to be one where a quick decision may be made.*" And that there is "*a general presumption that the majority of asylum applications are ones on which a quick decision may be made*", Home Office Guidance, 'DFT & DNSA – Intake Selection (AIU Instruction)', paras 2.2 and 2.2.2.
- 10 See UK Border Agency, *Enforcement Instructions and Guidance*, Chapter 55, para 55.10.
- 11 *Ibid*, para 55.5.3.
- 12 *Ibid*, para 55.9.4: "*Families, including those with children, can be detained on the same footing as all other persons liable to detention*".
- 13 Article 5 of the European Convention on Human Rights as incorporated by the *Human Rights Act 1998*.
- 14 See *R v Governor of Durham Prison, ex parte Hardial Singh* [1984] 1 WLR 704 per Woolf J and *R (WL) v Home Secretary* [2010] EWCA Civ 111 at [11].
- 15 See *R (S) v Home Secretary* [2007] EWHC 1654 (Admin) at [41] and *R (Nukajam) v Home Secretary* [2010] EWHC 20 (Admin) at [71]-[72].
- 16 See Articles 3 and 37 of the *UN Convention on the Rights of the Child*.
- 17 See for example *Liberty's response to the Home Office Consultation: "Code of Practice to Keep Children Safe from Harm Whilst in the United Kingdom"* available at: <http://www.libertyhumanrights.org.uk/publications/pdfs/liberty-consultation-response-keeping-children-safe-from-harm.pdf>
- 18 See UK Border Agency, *Enforcement Instructions and Guidance*, Chapter 55, para 55.9.4.
- 19 See Home Office Statistics, *Table of Persons Entering Detention Held Solely Under Immigration Act Powers*, 2009.
- 20 UKBA letter to Liberty, 18 June 2010. See also Her Majesty's Inspectorate of Prisons, *Report on an unannounced full follow-up inspection of Yarl's Wood Immigration Removal Centre*, (9-13 November 2009), HE.16 (average time 16 days), available at: [http://www.justice.gov.uk/inspectors/hmiprison/docs/Yarls\\_Wood\\_2009\\_rps.pdf](http://www.justice.gov.uk/inspectors/hmiprison/docs/Yarls_Wood_2009_rps.pdf)
- 21 11 million report, '*The arrest and detention of children subject to immigration control: A report following the Children's Commissioner for England's visit to Yarl's Wood Immigration Removal Centre*', April 2009, page 44.
- 22 Yarl's Wood is the only immigration removal centre that holds only women, children and families.
- 23 Her Majesty's Inspectorate of Prisons, *Report on an unannounced full follow-up inspection of Yarl's Wood Immigration Removal Centre*, (9-13 November 2009), page 5.
- 24 A report published by the Children's Rights Alliance for England and the National Children's Bureau in 2007 highlighted the link between immigration detention and fear, distress, depression and physical sickness on the part of children subjected to it: *Meeting the obligations of the Convention on the Rights of the Child in England: Children and young people's messages to Government*, April 2007, p44-45, 70.
- 25 Cited at e.g. *Bail for Immigration Detainees, Obstacles to Accountability: Challenging the Immigration Detention of Families*, June 2007, p15.
- 26 Matthew Hodes, *The mental health of detained asylum seeking children*, (2010) 19(7) *European Child Adolescent Psychiatry*, 621-623, published online 30 January 2010.
- 27 See *Intercollegiate Briefing Paper: Significant harm – the effects of administrative detention on the health of children, young people and their families*, 10 December 2009, available at: <http://www.rcpsych.ac.uk/pdf/Significant%20Harm%20intercollegiate%20statement%20Dec09.pdf>
- 28 <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

29 See *Commons Hansard*, Thursday 17 June 2010, Col 211WH.

30 See UKBA website: <http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/workingwithasylum/>

31 11 million report, 'The Children's Commissioner for England's follow up report to: The arrest and detention of children subject to immigration control', February 2010, page 21, available at: [http://www.childrenscommissioner.gov.uk/content/publications/content\\_393](http://www.childrenscommissioner.gov.uk/content/publications/content_393)

32 Assessed by the low number of families who took up the offer of assisted voluntary return.

33 Para 2.1.8 of the *Review of the alternative to detention (A2D) project, May 2009*, cited in House of Commons Library, Home Affairs Section, Research Note, *ibid*, at page 5.

34 The Children's Society, *An evaluative report on the Milbank Alternative to Detention Pilot*, May 2009, cited in House of Commons Library, Home Affairs Section, Research Note, *ibid* at page 6.

35 We urge caution when cherry-picking from the approaches of other states, which have been developed in country-specific situations. Australian refugee policy, for example, routinely breaches the right to liberty and puts Australia in breach of its obligations under the Refugee Convention. In order to be useful therefore, any reliance on the Australian case management system as an example of how to approach alternatives for the UK ought to be placed in the context of the country's broader hostile approach to refugee claimants. In particular the fact that the majority of refugee claimants are held in detention on Christmas Island – where the normal migration laws do not apply. Case management schemes are not used on Christmas Island and therefore the scheme applies only to a proportion of all incoming claimants.

36 It has been estimated that it costs £120 per person per day to detain someone. See footnote 49.

37 Children's Commissioner's Report, *ibid*, at page 15.

38 *Ibid*, at page 14.

39 *Ibid*, at page 15.

40 The Minister goes on to recognise this "approach would be hugely contentious". *Hansard*, Thursday 17 June 2010, Col 213WH.

41 See UK Border Agency, *Enforcement Instructions and Guidance*, Chapter 55, para 55.9.3.1 and Lady Hale in *R (on the application of A) (FC) v London Borough of Croydon; R (on the application of M) (FC) v London Borough of Lambeth* [2009] UKSC 8 at [6].

42 See 'Ombudsman finds failed age-assessment denied 15-year-old asylum-seeker appropriate care', *Children & Young People Now*, 1 April 2010, available at: <http://www.cypnow.co.uk/news/ByDiscipline/Social-Care/994198/Ombudsman-finds-failedage-assessment-denied-15-year-old-asylum-seeker-appropriate-care/>

43 See 'Practice Panel: young asylum seeker on the streets after dispute over age between Home Office and local authority', *Community Care*, 18 September 2009, available at: <http://www.communitycare.co.uk/Articles/2009/09/18/112638/age-assessment-disputeleaves-young-afghan-asylum-seeker-destitute.htm>

44 *R (on the application of A) (FC) v London Borough of Croydon; R (on the application of M) (FC) v London Borough of Lambeth* [2009] UKSC 8.

45 See 'UK to deport child asylum seekers to Afghanistan', *Guardian*, 7 June 2010.

46 See *Lords Hansard*, 10 June 2010, column 744-5, answer by The Minister of State, Home Office (Baroness Neville-Jones) to a question asked by Lord Roberts of Llandudno.

47 See *Commons Hansard Debates*, 17 June 2010, column 214WH, Westminster Hall debate on Alternatives to Child Detention, Minister for Immigration (Damian Green).

48 See UK Border Agency, *Enforcement Instructions and Guidance*, Chapter 55, para 55.10.

49 Her Majesty's Inspectorate of Prisons, *Report on an unannounced full follow-up inspection of Yarl's Wood Immigration Removal Centre*, (9-13 November 2009), HE.22 and see Appendix II.

50 See Her Majesty's Inspectorate of Prisons, *Report on an announced inspection of Harmondsworth Immigration Removal Centre* (11-15 January 2010), paragraphs 3.20 and 3.24.

51 Her Majesty's Inspectorate of Prisons, *Report on an unannounced full follow-up inspection of Yarl's Wood Immigration Removal Centre*, (9-13 November 2009), page 5.

52 See *Lords Hansard*, 4 February 2010, Column WA 67, answer by Lord West of Spithead to question asked by Baroness Warsi "The current average cost per bed at night in the UK Border Agency's detention estate is £120". Available at: <http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100204w0002.htm>

53 See, in 2009, Home Office Statistics, Table of Persons Entering Detention Held Solely Under Immigration Act Powers, 2009.



## **40. LOCAL GOVERNMENT ASSOCIATION, ASSOCIATION OF DIRECTORS OF SOCIAL SERVICES, ASSOCIATION OF DIRECTORS OF CHILDREN'S SERVICES, CONVENTION OF SCOTTISH LOCAL AUTHORITIES, WELSH LOCAL GOVERNMENT ASSOCIATION (JOINT RESPONSE)**

### **Review into Ending the Detention of Children for Immigration Purposes Joint Response from ADASS/ADCS Asylum Task Force, COSLA, LGA and WLGA**

This response has been informed by the separate responses of the No Recourse to Public Funds Network and the Regional Migration Partnerships

#### **Key points**

1. Local government welcomes and fully supports the commitment from the UK Government to end the detention of children for immigration purposes and is keen to work with UKBA, alongside other key stakeholders, to identify alternative ways of encouraging families who have exhausted the appeals process to return to their country of origin. COSLA has already contributed to joint initiatives that encourage voluntary returns including the Informed Returns Initiative and the Family Return Project. Some early learning from this as well as an interim report are available from either COSLA or Glasgow City Council which could help inform other potential processes. We also have welcomed the move from UKBA to work with the International Organisation for Migration and the NRPF Network to try and improve the Assisted Voluntary Return Programme. We welcome the move to develop pilots with local authorities before any UK roll-out and look forward to a transparent and outcome focused evaluation process.
2. We very much support the wish to look at alternatives to detention. However, any future arrangements must ensure that the safeguarding, welfare and health needs of children are met, reflecting both local authorities' statutory safeguarding duties and the UK Border Agency's own duty to protect the wellbeing and security of children.
3. Local authorities have seen an increasing number of children being referred to social services departments on account of the destitution faced by families where the parents do not have access to public funds or, in some cases, UKBA Section 95 or Section 4 (Immigration and Asylum Act 1999) asylum support. In many cases, support under section 17 of the Children Act 1989 and the Children (Scotland) Act 1995, including accommodation and subsistence, has had to be provided. Therefore, any additional financial burden that may fall to local government as a consequence of any change to policy must be fully costed and resourced by UKBA.

#### **Review question 1: How to improve engagement with families in dealing with asylum applications? For example, should the contact arrangements with those families and their access to legal representation be reviewed.**

4. We recognise that there will need to be clear processes in place to ensure that immigration legislation can be enforced and that families do not put their children at risk by remaining in the UK unlawfully. We recognise the particular difficulties involving removing people, particularly those who have lived in the country for some time, who have reached the end of the formal asylum process but fail to return home.
5. We feel that a more effective focus, both in terms of cost and eventual outcome, would be the development of a whole-system, community based, outcome-focused, multi-stakeholder approach.
6. Consideration should be given to the successful experiences of other international processes, in particular from the Family Return Project (an alternative to detention project) in Scotland, Sweden, Australia, and the principles of supervised casework in the American Assisted Appearance Program. In addition, the development of any future model could build on the lessons learnt from other UKBA projects such as Clan Alba and Ebor and the Millbank project in Kent.
7. Ensuring that people have access to high quality, timely and consistent legal advice and representation will help increase their confidence in the process and assist in understanding the consequences of a negative decision. We would argue that access to legal advice is an important requirement for those going through the asylum process – as demonstrated in recent successful UKBA pilots - and will also help ensure that correct decisions are made the first time, reducing the need for appeals and legal challenges to decisions made.
8. A UN study found certain factors influence the effectiveness of *any* particular measure, for example reducing absconding and/or improving compliance. These did include legal advice - but also included ensuring asylum seekers understand their rights and obligations, the provision of adequate support, and screening for family/community ties or use of community groups to create guarantors/sponsors. It also concluded that alternative measures are less expensive than detention.



**Review question 2: How can the current voluntary return process to increase the take up from families who have no legal right to remain in the UK be promoted and improved? What is the UK Border Agency's role is here and is there a role for others in engaging with families around this option?**

9. Families must be informed as soon as possible after arrival about the possibility of a negative asylum decision and about the options for supported return. All the organisations involved in supporting families need to work together to ensure that parents make decisions that are in the best interests of their children. This could centre on recognising the limitations faced by parents in being able to care for their children in the UK; looking at all the options available that will keep the family together; and options that will give the children the best opportunity to thrive in the long-term. This also should involve working with parents to ensure children are kept informed throughout the process and are prepared if a return is to be the final outcome.
10. Where there have been no legal or practical barriers to return home, there has been success in working with families to return voluntarily through the International Organisation of Migration (IOM). The assisted voluntary return scheme should be promoted and fully explained at an early stage of the process, both by UKBA staff and other agencies supporting asylum seeking families to make them aware of this option -and the fact that a negative decision will require them to leave the country. Information on the Assisted Voluntary Return (AVR) scheme should be made available from all agencies, with a particular focus on support agencies, so that it is received from an independent source and is not seen to be linked to the asylum process. It then should be reiterated as an option throughout the process. The AVR scheme must retain full levels of funding to remain a viable option to families.
11. However, we would not support the use of social services for the purposes of immigration advice and wider support. Pressure on services is already extremely tight and the capacity is not available in the system to provide services other than to those who need it under the definitions set out in the Children Act 1989 and the Children (Scotland) Act 1995.

**Review question 3: If a family chooses not to leave the country, with or without support from the UK Border Agency, what might an alternative family returns model look like? How should the UK Border Agency respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)?**

12. A greater understanding of why the reasons some Appeal Rights Exhausted (ARE) families refuse to comply is needed and should form the basis of developing ways in which these can be successfully addressed. It is believed that an 'end-to-end', multi-agency approach, as noted in point 7 above, which has clear options and possible outcomes for the families concerned outlined from the start would increase understanding and trust the process and thus ensure compliance.
13. Any change in policy/practice must include an assessment of how it likely it is to bring about compliance and how it will reduce the risk of families absconding. There was little evidence following the evaluation of the S9 pilot that removing support encourages returns - families preferred to 'disappear underground'. We still feel that it is unlikely, therefore, that any future proposals to reduce or remove support as a mechanism to encourage failed asylum seekers to leave will prove to be effective. In addition, if support is simply removed, local authorities will have to 'pick up the pieces' and provide support to those with no recourse to public funds.
14. The speed and quality of the initial decision making process is also key and the forthcoming review of asylum support should provide a good opportunity to improve this. The longer a family remains in the UK and the number of legal challenges that can be made on a decision will impact on the willingness of the family to engage with the returns process and possibly to abscond. The initial decision-making process also needs a realistic and ongoing assessment of whether or not an individual or a family can actually be returned. Many cases will not be able to be removed by UKBA as, for example, the situation in their country of origin is still too dangerous to facilitate returns; there may not be a safe route of return; they cannot obtain travel documents; or they may be too ill to travel etc.
15. We recognise that whilst voluntary return will always be the preferred option, enforced removal will continue to be a necessary part of implementing immigration law in the UK and will be required where all other avenues are exhausted. Where this is the only course of action, discussions should take place with key stakeholders, including local government, prior to action being taken so that consideration can be given to both how the removal should best occur and how to manage wider messages and any impact on the community etc. This could be under-taken via the mechanism of a formal, multi-agency partnership body. However this is ultimately constructed, how organisations work together before such action is required definitely needs improvement, particularly with regards to information sharing around and to ensure that children's needs remain paramount.
16. While it is accepted that removal of families that do not wish to leave can be extremely difficult, it is suggested that UKBA must put more resource and effort into increasing the removal rate of failed asylum seekers. A more proactive removal and enforcement policy to address key issues in removing unsuccessful asylum seekers is needed to reinforce the message that not complying does have consequences.

17. The stability that is required before a family leaves the UK, either voluntarily or enforced, can be delivered without the need for detention as part of a coordinated and child-focused response. Whatever alternative model is chosen, the following are suggested as principles that should underpin the development of policy that aims to end the detention of children for immigration purposes:

- Any policy developed should pay due regard to the United Nations Convention on the Rights of the Child.
- There should be recognition of the equality of legislation (immigration law and legislation governing children's rights) and as such the Children Act 2004 and the Children (Scotland) Act 1995 should be taken into account when any future policy is made to ensure compliance.
- The physical and mental health and well being of the child should be of paramount importance, as well as the need to "safeguard and promote the welfare of the child".
- Therefore, keeping families together should be a key concern – removing the child from the care of the family should only occur when the safety of the child is in doubt and should not be due to reasons relating to immigration law or policy.
- Further clarity is also needed whether the new policy will be applied to age-disputed asylum seekers and visa-overstaying families, in addition to those who came to the UK to claim asylum.

17. There is a concern that families may still view having to move to a hostel type environment – if this is a possible alternative - as a form of detention and therefore undesirable, placing them in a position where they abscond, with the resulting concerns about the vulnerability and safeguarding of children. Local authorities may have to pick up cases where children go missing or are owed a duty of protection, particularly if families are moved from other areas into one in their jurisdiction. There are other possible effects upon families; for example where children will not be able to attend their usual school and the possible impact on parents if they are unable to meet their legal obligations to ensure their children attend school. As noted above, local government would be keen to work with UKBA, alongside other key stakeholders, to identify alternative ways of encouraging families to return to their country of origin and to exploring these specific issues further.

#### **18. Policy divergence in Wales**

- The policy context for issues affecting children and young people is different in some aspects in Wales and this must be taken into account in the development of changed policy. While immigration law is a non-devolved matter, many of the agencies that are responsible for the care and support for children and young people in Wales are devolved and work within a devolved policy context. One example of this is that the Assembly Government is currently pursuing legal powers to impose a duty upon Welsh Minister to have due regard to the rights and obligations of the UNCRC when making decisions of a strategic nature about how to exercise their functions. While we await the final wording of the Legislative Competence Order, this could mean the expectations for children could be different for those who reside in Wales. The lack of access to appropriate legal representation for asylum seekers is an issue in Wales and in some areas, such as Wrexham, the provision is non-existent.

#### **19. Policy divergence in Scotland**

- There are different policy and legal contexts to consider in Scotland and these often conflict with attempts to remove refused asylum seekers. Managing the system so that cases are dealt with quickly would ensure families are less likely to have integrated significantly into the host community by the time they are fully refused. When this does not happen it creates a significant barrier to return.
- The separate legal system in Scotland is an area which needs to be addressed if more refused asylum families are to be returned voluntarily. This is the most consistently significant factor that affects parent(s) ability to consider and plan for a voluntary return. Families will continue to put in legal challenges on the outcome of their decision on their asylum claim. When families submit either fresh representations or a fresh claim they cannot look at the possibility of return as their total focus and belief is placed in a positive legal outcome. Any work that has been done with the family about a planned return is immediately lost as the focus goes on to a legal outcome rather than a possible return to their country of origin.
- In Scotland the use of hostel type accommodation for families by local authorities happens only as a last resort and is time-limited to 14 days under the Unsuited Accommodation (Scotland) Order 2004.
- The government may wish to consider placing limits on the use of detaining children, while they develop alternatives. This could include limiting the use of detention to families who are immediately removable and for a short, limited period of time. Children should not, under any circumstances, be transported from Scotland to Yarlswood to be detained.
- It may be appropriate to make the decision to detain subject to external review.
- There are lessons that can and should be learned from the Glasgow Family Return Project. Whilst there have not been any families who have departed voluntarily thus far significant learning about the barriers to return and methods to protect the welfare of children and vulnerable adults at the end of the process has taken place. The project has been designed to evolve based on feedback from both staff and evaluators

and so the model will be further refined over the next eighteen months. This feedback is available already from COSLA or Glasgow City Council staff.

Chris Spencer - Corporate Director, Education & Children's Services

London Borough of Hillingdon

Mhoraig Green - COSLA

Emma Jenkins - Local Government Association

Naomi Alleyne -

Welsh Local Government Association

## 41. LONDON DETAINEE SUPPORT GROUP

### London Detainee Support Group submission to the Working Group on Ending the Detention of Children for Immigration Purposes June 2010

1. We believe that, in considering alternative returns models for families, it is vital to distinguish between short-term and long-term strategies. In the short-term, the urgent priority is to end the detention of children and families now, without separating families. The development of alternative returns models will be a complex and challenging process, requiring significant time and investment. We welcome the acknowledgment of this complexity in the principles of the review. It will not be acceptable to delay ending the detention of children while such a model is developed. The following consideration of long-term options should be read with this in mind.
2. Discussion of an alternative family returns model cannot be separated from the questions of improving the asylum system and voluntary return process. Indeed, the implications of all three questions extend beyond families to all groups of irregular migrants. It is vital that learning on improvements for families be developed in the proposed review of the asylum system. A broad review should identify an overall vision for a more efficient, fair and humane system for processing applications and where necessary enforcing returns.
3. Key aspects of good practice for this vision have already been developed and piloted by the UKBA. The Solihull Pilot has demonstrated that early access to high quality legal advice generates improved decision-making and improved perceptions of the process from all involved, including asylum applicants. The key worker and Glasgow pilots both incorporate elements of international good practice in managing and supporting asylum seekers and migrants. However, to date these remain isolated pilots. It is vital that the learning from these pilots be developed into an overarching model that can inform all aspects of the process.
4. The review should study the learning from other jurisdictions where ambitious reforms of detention and asylum processes have taken place. However, there should be no question of the wholesale importation of other models, as the specific UK situation and good practice already implemented will need to be at the heart of any reformed system. Nevertheless, the learning from international models clearly demonstrates the need to develop trust and dialogue with migrants, in the context of high quality decision-making and transparently fair processes.
5. Various models of community-based case management have been developed around the world, primarily in Sweden, Australia and most recently Belgium. These models should be evaluated in the context of the UK situation. Elements of good practice may be appropriate to incorporate into holistic reform of the British system.
6. A common feature of these models is the presence of a case manager, separate from the decision-maker, who is a constant point of contact to guide the migrant through the immigration or asylum processes. The case manager ensures that the migrant understands these processes, has access to appropriate legal advice and can meet her welfare needs. By reducing the stress placed on migrants in this way, it is possible to initiate a dialogue with migrants to encourage them to consider all immigration outcomes as they pass through the process. Access to information and support on voluntary return is a part of this. Migrants whose immediate needs are met are more able to engage with difficult choices regarding the limited options available to them.
7. In Sweden, asylum seekers live in the community and meet regularly with an assigned caseworker from a social work or human services background. The caseworker informs asylum seekers of their rights and ensures that they are upheld, including access to legal advice. They also ensure clients' health and welfare through drawing up case plans and risk and needs assessments, which are communicated to the government to inform decision-making.
8. Australia has in recent years introduced a case management model similar to that of Sweden. Migrants identified as vulnerable are allocated a case manager, who works with them until their case is finally resolved. The case manager role provides ongoing assessment, support and recommendations to decision-makers, but has no decision-making role. The role assesses welfare needs and identifies barriers to immigration outcomes.
9. In Australia and Sweden, these models are not restricted to families or children but are applied to all migrants, subject to a risk assessment. These models have allowed a radically reduced reliance on detention. Sweden makes relatively little use of detention, and 76% of refused asylum seekers return voluntarily, the highest levels in Europe. Australia has shifted its approach to detention for migrants on the mainland, closing the majority of its detention centres and generally using detention as a last resort to enforce imminent removal, and not at all for families. According to government statistics, 94% of people on community-based case management programs complied with reporting and did not abscond. 99% of families did not abscond. 67% of people not granted a visa to remain voluntarily departed. (For all statistics and references, see "Detention reform and alternatives in Australia", International Detention Coalition, June 2009.)
10. In Sweden and Australia, these impressive results were achieved through processes of culture change in the respective immigration departments in 1997-8 and 2005-6. Both countries had extensive government and independent review processes and developed a detention reform agenda and implementation plan. Both centred on ensuring a client-focused service which ensured all individuals were treated fairly, with dignity and that their migration outcomes would be managed in a timely and fair process. These culture changes were essential to the development of trust in the system that was necessary for the successful outcomes.
11. Belgium ended the detention of families with children in October 2009. Instead families are placed in open housing units, and allowed to lead a normal life. They receive assistance and advice from a "returns coach", who explores their options for voluntary return. Initial government statistics show that 79% of families remained in contact with the coaches throughout their stay in the housing units. However, overall results have been less impressive than in

Sweden and Australia. (“An Alternative to Detention of Families with Children”, Flemish Refugee Council, December 2009.) Concerns remain that sudden transfer to the housing units is traumatic for families and inhibits their ability to engage with the process, while there is insufficient structure and support for coaches to ensure the welfare of children in the housing units.

12. The learning from these models highlights the need for engagement with migrants to be end-to-end and to encourage migrants to think constructively about all immigration outcomes, not simply voluntary return. In Sweden and Australia, trust relationships are developed, which contribute to the levels of eventual voluntary return. All immigration outcomes are considered in working towards a resolution of the case, including possibilities of stay, travel to a third country or voluntary return. The disappointing results of the Millbank pilot demonstrate the drawbacks of engaging with migrants post-refusal with an exclusive focus on voluntary return. The Belgian pilot constitutes an intermediate example, as it also involves post-refusal discussion of return only, and early results are unspectacular. However, in practice the returns coaches do discuss options for stay with clients, and frequently make recommendations for families to be rerouted off the project. This appears to be the reason for the relatively positive trust relationships that have developed.
13. The Australian use of case management has generated substantial savings for government. Even leaving aside the costs of enforced removals, the savings on reduced use of detention are substantial. Detention costs on average AUS\$45,000 per year (£26,000), while the cost of welfare, legal and voluntary return services under the Community Care Pilot for the most vulnerable individuals was less than AUS\$15000 per year (£8,800), i.e. less than a third of the cost of detention.
14. The development of effective models for managing and returning migrants will require time and investment. There can be no quick solutions to these complex problems. Although substantial set-up costs will be involved, huge benefits and savings can be achieved through reduced reliance on detention for all groups of migrants. Voluntary returns cost a small fraction of enforced returns and detention, and efficient transparent decision-making can lead to earlier take-up of voluntary return. Holistic reform to asylum and detention systems must encourage the active participation of migrants in understanding and where possible making choices, within the context of fair and transparent processes. This must aim to reduce the use of detention.
15. Under the present system, many asylum seekers and migrants are detained unnecessarily, often for excessive periods. Keeping migrants in detention for months or years before eventually releasing them is a massively inefficient use of resources and causes untold damage to the individuals affected. This use of detention, combined with poor quality asylum decision-making, makes it impossible to achieve the humane and efficient outcomes seen elsewhere. Holistic reform of the whole asylum and detention system can bring great benefits to the welfare of migrants and to the international reputation of the UK.

## **Background**

London Detainee Support Group (LDSG) was established in 1993 to improve the welfare of immigration detainees in the London area. LDSG is a registered charity (1065066). LDSG provides emotional and practical support to immigration detainees, primarily in Harmondsworth and Colnbrook Immigration Removal Centres, near Heathrow Airport. A pool of around 40 volunteer visitors support individual detainees through regular visits. A team of five full-time staff and ten office-based volunteers assist detainees with casework and referrals, including covering the detainee free-phone. The Leaving Detention Advice Project advises and represents detainees in applying for bail addresses from the UK Border Agency, which can enable them to seek their release from detention and avoid subsequent destitution. Regular on-site advice workshops are held in both centres, providing accessible advice and building relationships with hard-to-reach detainees. LDSG leads the “Detained Lives” campaign against indefinite immigration detention.

LDSG does not work with families in detention, so is not able to comment in detail on the needs of children, beyond that they should not be detained. This conclusion follows from our experience of the damage caused by detention even to adults. Other than on this point, the above comments should be taken as referring to all detainees.

LDSG is the Western Europe contact member of the International Detention Coalition (IDC, [www.idcoalition.org](http://www.idcoalition.org)). The IDC is a network of more than 200 non-governmental organizations, faith-based groups, academics and individuals that provide legal, social, medical and other services, carry out research and reporting, and undertake advocacy and policy work on behalf of refugees, migrants, and asylum seekers. These groups and individuals, who are from more than 50 countries, have come together to form the International Detention Coalition to share information and promote good practices relating to the use of detention by governments. LDSG’s expertise on international practice derives from our participation in IDC.

Jerome Phelps, Director, LDSG, [www.ldsg.org.uk](http://www.ldsg.org.uk), [www.detainedlives.org](http://www.detainedlives.org)

## 42. MANCHESTER CITY COUNCIL

### Review into Ending the Detention of Children for Immigration Purposes

- Response from Manchester City Council

Nicola Rea

Head of Service,

Asylum, Refugee and Migration Services

#### **How can we improve our engagement with families in dealing with asylum applications? For example, do we need to review the contact arrangements with those families and their access to legal representation?**

1. Better legal advice at the beginning of the process would encourage families to have a more realistic view of their options at the end of the process.
2. Having a specific caseworker assigned to each family from start to finish may build trust and speed up the application process as they will be aware of issues exclusive to that case. They would also be able to push returns as a viable option. Although this is meant to be the case, it does not always happen in practice.
3. Reduce the length of time that families have to wait to find out about success/refusals to reduce impact on children, e.g. settling at school and making new friends etc, and reduce the community links that are made by the family, which does impact on the response to return at the end of the process. Although decision making time is quicker than it used to be, there is still room for improvement.
4. Ensure that comprehensive documentation relating to the entire process is correctly translated and provided at the start so that the family is fully informed and know what to expect, encouraging the families to be realistic in their expectations.

#### **How can we promote and improve the current voluntary return process to increase the take up from families who have no legal right to remain in the UK? What do you believe UK Border Agency's role is here and is there a role for others in engaging with families around this option?**

1. Informing service users about voluntary return should be part of the COMPASS process. Encouraging voluntary return should also be part of the COMPASS process when a service user receives a negative decision.
2. One of the main difficulties with voluntary return is the length of time IOM take to return people. If service users have chosen voluntary return, it can still take several months to go through checks etc. This needs to be shortened in order to encourage swift removals.
3. The length of time service users have remained in the country is a barrier to removal, resulting in a state of mind that they will always live here. A change in emphasis needs to be developed and resourced in order to ensure that families really believe that they will be removed from the UK if they get a negative decision. Whilst this is currently the rhetoric, it rarely seems to happen in reality. This in turn will bring about a cultural shift whereby the service users actually believe that they will be removed at the end of the process. Removal needs to be timely, i.e. as close to the end of the process as possible. Where the family have been here for the shortest time possible from initially presenting to getting a negative decision and ultimately being removed, the whole process should be easier without the intervention of community lobbyists and local campaign groups. When families put down roots in communities it is much more difficult to ensure a quick, sharp exit. Manchester City Council does not believe this can be affected by not allowing families to integrate into local communities, but most significantly by the length of time they remain. The longer it takes the greater the likelihood that the family will submit a request to stay under article 8 HRA.
4. Service users need to be informed of the returns process from the very beginning of their claim for asylum. This information needs to be consistent and should be shared with Local Authority frontline staff, Voluntary organizations and other stakeholders. The current process should be evaluated and reviewed and stakeholders should be allowed to feedback suggestions and recommendations.

5. Voluntary Sector organizations should be utilized more to brief/counsel service users about returning and provide updates on any developments/improvements in their country of origin to get them used to the idea of going back. It should also be considered that some Voluntary Sector organizations oppose removals, therefore, it is important to engage with them and encourage them to contribute to a process which is fair and just to get their buy-in.
6. For those who have lost identity and travel documentation ensure replacements are provided swiftly. Do not leave it to the applicants to secure replacements as this may delay the process.
7. Manchester City Council also believes that engaging with the child and discussing returns with them is important, so that they are aware and prepared for the eventuality of return. This information will decrease stress levels and help the child engage better with the process.

**If a family chooses not to leave the country, with or without support from the UK Border Agency, what might an alternative family returns model look like? How should the UK Border Agency respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)?**

1. Manchester City Council have concerns around families absconding rather than leaving the country, whilst UKBA are actively working with them to try and engage them in the returns process. This would make the family very vulnerable with regard to the children educational needs, the family's health care needs, and the potential abuse of the family in the illegal working / sex industry in order to provide for the family. These are very big safeguarding concerns for the LA.
2. If Caseworkers are able to build a relationship of trust with families, reasons for not wanting to return may be ascertained at an early stage. This will provide the opportunity to allay any fears/ address any issues and increase the chances of the family returning voluntarily.
3. We do not agree with possible alternatives to detention such as split removals and detention of the head of household to encourage the rest of the family to return. We have concerns regarding these options as we believe splitting the family is detrimental to the wellbeing of the child, and should not occur. The issue of the separation of children should be considered and regard given to the conflict between child law and immigration law as well as the Human Rights Act and UN Convention of the Rights of the Child.
4. The welfare of the children involved needs to be safeguarded so we believe that UKBA must ensure the child is fully briefed about the situation and reassured.
5. Another option is same day removals. Manchester City Council believes same day removals should not occur as it allows for no organisation by the family for immunizations, luggage, informing the child as to what is happening, last minute appeals etc.
6. There have been discussions at national meetings suggesting the tagging of adults as a potential alternative. Manchester City Council believes this would need piloting to ascertain the effect this has upon the behaviour of the family. There is a potential that they may remove the tag or send their children away so that they can not be removed etc, but it is a more humane option than splitting the family or removing head of household.
7. Manchester City Council do not believe that withdrawing support if the family refuses to leave (Section 9) is a viable option as an alternative to encourage them to leave the country. This has safeguarding implications for both vulnerable adults and children. The North West were involved in a Section 9 pilot in which some families left their children to be taken into care, rather than leaving the country, and we do not wish to see a repeat of this.
8. Any alternative returns model must ensure that staff have full training on how to undertake Human Rights Assessments under HRA 1998 and how to work with families without breaching the Children Act 1989.



There should be clear and concise guidance set out to ensure that practices are consistent across the Country. UKBA needs to be mindful of Local Authorities duty of care to Children and vulnerable adults and thus the resource implications involved.

9. Taking the above into account, Manchester City Council believes that it is very difficult to ensure removal of some families without a period of time in some form of controlled accommodation. Whilst the safeguarding of children is paramount, Manchester City Council believes that a very short period of time, such as 72 hours, in a centre where the family can be appropriately prepared for travel and any last minute difficulties may be addressed may be a suitable alternative to detention. This would ensure inoculations are administered; a sufficient supply of medication is given if needed; the situation and future is sensitively discussed with the child; issues such as luggage are dealt with whilst the family are still in the country and any last minute legal challenges are dealt with quickly and effectively, whilst ensuring that the family does not abscond.

## 43. MEDICAL FOUNDATION FOR THE CARE OF VICTIMS OF TORTURE

### REVIEW INTO ENDING THE DETENTION OF CHILDREN FOR IMMIGRATION PURPOSES

#### RESPONSE of the MEDICAL FOUNDATION for the CARE of VICTIMS of TORTURE JUNE 2010

#### INTRODUCTION

The Medical Foundation for the Care of Victims of Torture (MF) has been working with torture survivors for 25 years. Our reach is national and we have centres in London, Birmingham, Glasgow, Manchester and Newcastle. In addition to diverse therapeutic services on offer to torture survivors, the provision of medico-legal reports for asylum applications both pre-decision and post-refusal is a cornerstone of the work the Foundation undertakes to meet the needs and support the rights of torture survivors in accordance with international human rights standards.

The view of the Medical Foundation is that the detention of children must end immediately and in this submission we set out the context of our clients in the UK asylum system and why it is that survivors of torture should not be detained. This submission is in three parts: part I sets out our general concerns about how survivors fare in the asylum system and part II addresses the specific experiences of children, young people and families who are clients of the Medical Foundation and who have been detained. Part III sets out the international and domestic law framework in which the Government in deciding new detention policy that affects torture survivors should have in its decision making matrix.

#### **I. CONSIDERING A TORTURE SURVIVORS ENTIRE EXPERIENCE OF THE ASYLUM PROCESS**

It is important to consider a torture survivor's entire experience of the asylum process in situating any discussion about the use of detention or any alternative to detention. Torture survivors are not appropriately identified early on in the process, their claims are not deemed credible, they are required to report more frequently than appropriate to their status as torture survivors, and they do not get receive the legal support, care and treatment they need and should be accorded. Detaining a survivor of torture, let alone a child, young person or a family, impedes their rehabilitation as survivors of torture. The following is a brief overview of our concerns about the asylum system as they relate to the issue of detention.

##### **1. Current Detention Policy**

Torture survivors should only ever be detained in 'very exceptional circumstances'<sup>118</sup> UKBA officials have, through the medical sub-group of the Detention User Group, confirmed that there is no guidance as to what this means and what the exceptionality threshold is. The Rule 35 system is routinely failing to release torture survivors from detention despite the responsibility to release a child if it appears that detention is detrimental to the mental health or well being of a child. In 2008 alone there were more than 400 referrals to the MF from detainees for medico-legal reports which indicate that there are serious concerns about survivors of torture being wrongly routed into detention.

##### **2. Identification of survivors as early in the process as possible**

UKBA current policy is not to ask asylum seekers whether they have in fact been tortured. If an asylum seeker volunteers this information during the SEF interview it is our understanding based on the cases that MF clinicians have reviewed, that this is not followed up at the interview with probing questions and in a context that will heighten the possibility for a survivor to disclose fully the circumstances in which they have been tortured. If a survivor of torture does not disclose at the earliest opportunity (as defined by UKBA) then this often works to their prejudice in advancing their claim to protection. Case owners will often adjudge in cases of late disclosure that the person claiming asylum lacks credibility and may refuse their claim. This compounds the experience clinicians have found of the 'culture of disbelief' that is pervasive within UKBA. Research<sup>119</sup> demonstrates late disclosure is attributable to a fear of state officials and intense feelings of shame.

##### **3. UKBA Decision making challenges**

In addition to the myriad of concerns that are well recognized about the quality of decision making in the asylum system, there are particular concerns about how medical evidence is used. It is a very serious concern that, in relation to torture survivors, case owners do not consider medico-legal reports in a manner that is appropriate to the scope of their duties and within their qualifications. The MF sees with increased frequency refusal letters where case owners substitute their own unqualified opinion on medical matters. This manifests in either suggesting

<sup>118</sup> Section 55.10 of the Enforcement Instructions and Guidance

<sup>119</sup> Cohen J 'Errors of recall and credibility: Can omissions and discrepancies in successive statements reasonably be said to undermine credibility of testimony?' *Medico-Legal Journal*, 2001; Ball, O, 'As if the past had not occurred' 2002 Medical Foundation for the Care of Victims of Torture [www.arrival.practice.com](http://www.arrival.practice.com)

alternative causes for scars or suggesting that the impact of an injury could not have been as described by the asylum seeker. This is a contradiction in UKBA policy that '*caseworkers must avoid making clinical judgments about medical evidence*'<sup>120</sup> Case owners also frequently misapply the Istanbul Protocol<sup>121</sup> and undermine the expertise of Medical Foundation clinicians, for example, by claiming that GPs are not qualified to make psychological and psychiatric assessments.

#### **4. Lack of legal representation**

Access to specialist and quality legal representation for torture survivors is precarious following Refugee and Migrant Justice's (RMJ) closure in June 2010. Some 300 Medical Foundation clients are represented by RMJ. The paucity of legal representatives who are qualified and have the specialist knowledge and ability to work with our particular group of clients is of growing concern. A number of our clients who had been represented poorly in the past were referred to RMJ as they had developed an expertise representing torture survivors. Clinicians working with children and families have regularly encountered representatives who have not had the necessary experience and expertise in representing torture survivors who feel they have not had adequate access to justice. The uncertainty of a Client's claim being processed through the asylum system is highly stressful to the client and clinicians have a concern that worries in relation to an asylum claim, how it is being presented and then considered impedes effective rehabilitation.

#### **5. Lack of training of all UKBA staff who come into contact with torture survivors**

Article 10 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT)<sup>122</sup> states:

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

States therefore have a positive duty in this regard. As such, all staff and contractors involved in any alternative to detention model or proposed short-term detention when families are in the process of being forcibly removed should be appropriately trained and systematic reviews should be regularly undertaken to ensure that the UK meets its obligations under the CAT.

## **II. EVIDENCE THAT DETENTION HARMS CHILDREN AND IMPEDES THEIR REHABILITATION AS SURVIVORS OF TORTURE**

### **Physical and Psychological Health issues affecting children and families while in detention and after release from detention.**

The Medical Foundation has considerable experience of working with children and families who have been detained and then released and, families who were receiving therapeutic treatment and then were detained in order to remove them to their country of origin. The following case studies from across the Medical Foundation show the human cost of the current approach to detention of children, young people and families:

- During a dawn raid by UKBA of one family in their home, one of the children was so traumatised by the experience that he had to be sectioned under the Mental Act and separated from his family who were taken into detention.
- A child with a serious heart condition, who was being treated under the NHS pre-detention, was not believed by staff in the medical centre in Yarlswood to have a health problem. She collapsed soon after arriving at the detention centre and required emergency hospital treatment.
- A mother who was an accepted torture survivor, in the process of removal at an airport, was beaten by security staff in front of her children. All of the children suffered psychological harm which resulted in an out of court settlement by UKBA for unlawful detention and the impact the detention had on the mental health of the whole family. The family eventually was granted indefinite leave to remain in the UK.
- This case illustrates the tragic effect of detaining a toddler and transporting her in a cage in a truck from one detention centre to another. A single mother and her 8 month old daughter were referred by a health visitor to the Medical Foundation. Following an assessment, the family have been attending regular therapeutic sessions. The mother and daughter had been detained on several occasions. The last time, in

<sup>120</sup> Asylum Policy Instruction. 'Medical Foundation'

<sup>121</sup> United Nations guidelines on documenting torture

<sup>122</sup> Ratified by the UK government on 7 January 1989

2008, they were detained for 13 days, 2 days in Dungavel and 9 days in Yarlswood, the daughter was almost two years old. Following the detention, the daughter could not bear for the door to the therapy room to be closed. She would start crying and try to open the door. If she wasn't able to open it, she would scream and have trouble breathing. The mother also reported that her daughter had difficulties falling and staying asleep, and would often wake up screaming. She was no longer able to sleep in her own bed and insisted on sleeping with her mother. The mother thought that not being able to tolerate closed doors was a result of being transport in a security truck from Dungavel to Yarlswood. During the journey, her daughter had wanted the guards to open the door to the cage in the truck. She became extremely distressed and inconsolable when they had not done so.

- An entire family had been detained in Dungavel for two days and in Yarlswood for 5 days. After release they were assessed at the Medical Foundation. Two days after the assessment the father was removed from the country. This had a devastating impact on his wife and three young children. His wife became very depressed and anxious and the children were lost without their father, not understanding what had happened to him and why he would choose to go back to their country. The 4 year old became very attached to the mother, not being able to be separated from her. He would hold no eye contact and would cry when spoken to. The 7 year old's behaviour deteriorated at school, he was reported to be argumentative and absent minded. The 9 year old tried to take care of the mother and siblings, taking on a role well beyond his years, and was also reported to be absent minded in school. Mother and children continued to have to report in to UKBA and the children were petrified of doing so. On one occasion the UKBA asked the mother why her husband was not there to report, which the mother felt this was extremely cruel and felt they were being mocked. Ten months later the family received indefinite leave to remain. Eventually, a year later, the father was allowed to re-join his family. In an effort to support this family following their detention they attended two weekly therapeutic sessions at the Medical Foundation for two years.

**Observations from the clients of the Children, Young People and Families team at the Medical Foundation illustrate that there are a number of outcomes when vulnerable people are detained.**

Our case work is based on over two decades of work in this area involving hundreds of cases. The following illustrates how children, young people and families are affected when they are detained. The impact of detention is highly detrimental to the rehabilitation of children, young people and families. It can significantly impede their physical and psychological capacity to recover:

- Children who have been detained find the experience dehumanizing and criminalizing. This experience of detention leads to a cycle of fear in which both their experience of torture and the trauma associated with their journey to the UK is relived.
- Following detention children suffer from increased sleep problems, increased and repeated periods of tearfulness, bed wetting and soiling, being scared of any adult in a uniform.
- Children who are separated from their parents during detention experience hyper arousal, anxiety, fear of separation and reluctance to attend school, poor concentration at school, and the desire to accompany parents when they report in at UKBA in fear of their parents being detained.
- Children whose parents were on suicide watch while detained experience severe detriment to their psychological well being and their ability to sleep having been disturbed by the checks through the night by detention staff.
- The requirement to report frequently has traumatised children who are fearful of staff and the prospect of being detained whilst reporting. This results in the psychological symptoms described above. Furthermore, the lack of consistent application across reporting centers of the Medical Foundation reporting concession<sup>123</sup> for torture survivors makes it extremely difficult to pursue the rehabilitation work which is necessary to a survivor of torture. The concession is meant to ensure that Medical Foundation clients report less frequently. This concession is sometimes ignored with the result that clients who are in therapy are required to report weekly with their children. Most importantly, their asylum support may be cut if they do not bring their children to each reporting session.

The human cost of detaining children, young people and families is clear from the cases noted above. Professional bodies basing their conclusions on clinical research are clear about the effect administrative detention has on the health of children, young people and families that must be taken into account in any discussion about ending detention. The Intercollegiate Briefing Paper from the Royal College of Paediatrics and Child Health, the Royal College of General Practitioners, the Royal College of Psychiatrists and the Faculty of Public Health<sup>124</sup> sets out clearly why it is that detention is not appropriate and if it is to continue what safeguards should be in place and what standards medical professionals should be working to. The Medical Foundation broadly supports the recommendations of the intercollegiate body and especially that professionals working with torture survivors in particular should be competent to respond to the physical and mental health needs of this group. The guidance in

<sup>123</sup> Contact management policy, process and implementation (CMPPI) , June 2005, Version 4

<sup>124</sup> Intercollegiate Briefing, 'Significant Harm- the effects of administrative detention on the health of children, young people and families' December 2009

Every Child Matters<sup>125</sup>, Getting it Right for Every Child<sup>126</sup> and Child and Young People: Rights to Action<sup>127</sup> should be observed by all professionals working with children.

### III. THE BASIS IN INTERNATIONAL AND DOMESTIC LAW FOR THE RIGHTS OF CHILD TORTURE SURVIVORS TO REHABILITATION

A right to health care and rehabilitation for children survivors of torture is enshrined in the UN Convention on the Rights of the Child<sup>128</sup>. Article 39 states:

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. *Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.*”(emphasis added)

The realisation of this right is essential in any alternative to detention model that is considered. International health practitioners have noted that,

“The practical realization of torture survivors’ established right to rehabilitation remains problematic...Hobbled by shame, trauma, and lack of knowledge of what rehabilitation is possible, torture survivors are often poorly equipped to assert their needs. Many health care workers underestimate the value of treatment. Furthermore, access to entitlements for treatment usually varies according to whether the survivor is a citizen, an undocumented immigrant or refugee, or a person with a work, tourist, or student visa.”<sup>129</sup>

“Although the CAT recognizes that torture can be purely psychological in character and bans “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted”, many policy makers and citizens underestimate the profound and intentional damage psychological forms of torture can produce. The psychological consequences for the individual can be more disabling than residual physical disabilities. They include nightmares and inability to sleep or rest, depression, anxiety, panic attacks, thoughts and acts of suicide, cognitive impairments, memory loss, difficulty concentrating, depression, post traumatic stress disorder, inability to form intimate social relationships, and the propensity for explosive rage. Even after the memories of the pain of a physical assault have abated or disappeared altogether, torture survivors tell their therapists of intrusive memories of mock executions and watching or hearing the torture of others.”<sup>130</sup>

Section 55 of the Borders, Citizenship and Immigration Act 2009 places a statutory duty on UKBA to safeguard and promote the welfare of children in carrying out its functions. In carrying out this duty it is essential to consider the welfare of children in the context of their health needs, amongst other considerations, and their right to rehabilitation. Dr Burnett, a lead doctor working at the Medical Foundation, has published evidence based research detailing the specific health needs of torture survivors<sup>131</sup>.

### RECOMMENDATIONS

<sup>125</sup> HM Government (2004) Every Child Matters

<sup>126</sup> Scottish Executive (2007) Getting it Right for Every Child

<sup>127</sup> Welsh Assembly (2004) Child and Young People: Rights to Action

<sup>128</sup> Ratified 15 January 1992

<sup>129</sup> Douglas A. Johnson and Steven H. Miles ‘As Full Rehabilitation as Possible’: Torture Survivors and the Right to Care’ in the *Swiss Human Rights Book* (Switzerland: Vol 3, 2009)

<sup>130</sup> Dr. Jose Quiroga and Dr. James M. Jaranson, ‘Politically-Motivated Torture and Its Survivors: A Desk Study Review of the Literature’, in 15(2–3) *Torture: Journal on Rehabilitation of Torture Victims and Prevention of Torture* (Copenhagen: International Rehabilitation Council for Torture Victims (IRCT), 2005).

<sup>131</sup> **Burnett** A, Peel M. ‘The health of survivors of *torture* and organised violence.’ *BMJ* 2001;322:606-9. Cited in Francois, G., Hambach, R., van Sprundel, M., Deville, W., Van Hal, G. (2008). Inspecting asylum seekers upon entry--a medico-ethical complex. *Eur J Public Health* 18: 552-553; Bogner, D., Herlihy, J., Brewin, C. R. (2007). Impact of sexual violence on disclosure during Home Office interviews. *Br. J. Psychiatry* 191: 75-81; Norredam, M., Mygind, A., Krasnik, A. (2006). Access to health care for asylum seekers in the European Union--a comparative study of country policies. *Eur J Public Health* 16: 285-289; Adams, K. M, Gardiner, L. D, Assefi, N. (2004). Healthcare challenges from the developing world: post-immigration refugee medicine. *BMJ* 328: 1548-1552; McCarthy, J., Frank, A. (2002). Post-traumatic psychological distress may present in rheumatology clinics. *BMJ* 325: 221-221 ; Hodes, M., MacDonald, B K, Mummery, C J, Heaney, D (2001). Health needs of asylum seekers and refugees. *BMJ* 323: 229-229

UKBA should always, in exercising its duties under section 55 of the Borders, Citizenship and Immigration Act 2009, take account of Article 3 of the UNCRC and the Committee on the Rights of the Child, General Comment No 6 on the treatment of unaccompanied and separated children outside their country of origin. The Committee emphasised the principle of non-discrimination on the basis of the child's status, that the principle of the best interests of the child should be a primary consideration in all actions concerning children and that in implementing Article 24, which requires States to recognise the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health, the UK government should be striving to ensure that *no* child, including those who have survived torture, is deprived of his or her access to health care as children who are nationals.

Any model that is finally adopted as an alternative to detention should incorporate the UK government's obligations under CAT and the UNCRC. This ensures that the rights of torture surviving children and their families are protected in domestic law. Torture surviving families who have exhausted their appeal rights and who may be returned to their country of origin should be guaranteed appropriate and adequate rehabilitation services upon return to their home countries and if not available then return to that country should not be considered.

One alternative to detention model that should be considered is a model in the USA piloted by the Vera Institute of Justice in New York in contract with the INS from 1997 to 2000. In this pilot program, which was called the Appearance Assistance Program, the Vera Institute supervised the release of asylum seekers and other non-citizens. In order to be released to supervision, participants were required to report regularly in person and by phone. Their whereabouts were monitored. Participants were also provided with information about the consequences of failing to comply with U.S. immigration laws. Participants in a less intensive program were given reminders of court hearings and were provided with legal information, and referrals to lawyers and other services. The Vera Institute pilot project reported an appearance rate of 93 percent for asylum seekers released through its appearance assistance program. It also concluded that the cost of supervision was 55 percent less than the cost of detention. The Vera study found that: 'it costs the INS \$3,300 to supervise each asylum seeker who appears for hearings compared to \$7,300 for those detained.' Based on its research, the Vera study concluded that, 'Asylum seekers do not need to be detained to appear for their hearings. They also do not seem to need intensive supervision.'

Any alternative to detention model which has a reporting requirement should continue to adhere to the current policy<sup>132</sup> for torture survivors that while they are receiving treatment at the Medical Foundation, discretion should be exercised that families attract a low reporting frequency and are not required to bring their children with them to report as this has been shown to have a detrimental impact on the rehabilitation of these children

The Medical Foundation as a member of the Refugee Children's Consortium supports and endorses the RCC's position:

1. Detention of children must end now, as it is clear that detention harms children; children and their families should be released immediately.
2. Children and their families should never be separated for immigration purposes.
3. Ending the detention of children is not dependent on establishing "alternatives to detention" projects.
4. Discussion on policies and practice on returns are not needed to end the detention of children.
5. Discussions that focus on finding solutions to the problems at the end of the process need to consider a family's entire experience of the asylum and immigration processes. The provision of good quality legal advice throughout these processes is crucial.
6. Access to good quality legal advice and representation and proper access to the court is critical in the asylum process.

The Medical Foundation is also a member of the Wales Strategic Migration Partnership (Asylum Seekers, Refugees and Migrants) and endorses their submission. The Medical Foundation has contributed to the Scottish Refugee Council's submission and endorses their position.

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<sup>132</sup> Contact management policy, process and implementation (CMPPI) , June 2005, Version 4  
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## 44. MEDICAL JUSTICE

Review into ending the detention of children for immigration purposes:

### **Response of Medical Justice, July 2010**

**Medical Justice** is a charity that sends independent volunteer doctors to visit immigration detainees, including children, in order to write medicolegal reports documenting scars of torture and/or provide independent medical advice in instances where appropriate healthcare has been denied.

Many detainees we deal with are survivors of violence, torture and abuse who, as a result may be suicidal or suffer from mental illness. Most fear persecution if removed from the UK. Most are released from detention after intervention by Medical Justice.

The government's decision to end the detention of children for immigration purposes is welcomed and acknowledges that the harm caused to children by detention cannot be justified.

We appreciate that the Review seems to deal with two main objectives of the government ; firstly to end the inhumanity of detaining children, and secondly to retain a tough stance against claims to stay in the UK that have no merit and not to give any impression that anyone will get to stay who is not entitled. The UK Borders Agency (UKBA) have asked for input on three areas ;

#### **1. "How can we improve our engagement with families in dealing with asylum applications? For example, do we need to review the contact arrangements with those families and their access to legal representation?"**

Yes, joined-up improvements throughout the "asylum process" (e.g. to availability of adequate quality legal representation) will improve engagement with families and may reduce the number of families subject to removal.

#### **2. "How can we promote and improve the current voluntary return process to increase the take up from families who have no legal right to remain in the UK? What do you believe UK Border Agency's role is here and is there a role for others in engaging with families around this option?"**

UKBA can do more to promote voluntary return programmes, access to which is currently blocked to some families. We have great concerns about the role of "others" getting involved in returns initiatives.

#### **3." If a family chooses not to leave the country, with or without support from UKBA, what might an alternative family returns model look like? How should UKBA respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)?"**

Responding with the use of detention is ineffective, expensive and damaging to children. Government statistics reveal that 55% of the approximately 1,000 children detained each year are subsequently released from detention. It is therefore apparent that detention is not of itself an effective form of securing removal.

Improvements in operational competence by the UKBA would achieve far more in terms of securing removals than the harmful expensive, and frequently pointless use of detention. From a numbers point of view detention of children adds very little and therefore can simply be abolished. Similarly, introducing draconian alternatives such as removing different family members at different times, separating family members from one another, and little/no notice removals etc will continue the inhumanity of the process and would therefore be contrary to the underlying intention of the measure in ceasing the detention of children.

**About the detention of children:** Yarl's Wood Immigration Removal Centre, run for profit by Serco on behalf of UKBA, is the main detention centre for women and children in the UK. Characterised by riots, hunger strikes, self-harm, suicide, racism, assault and medical abuse of detainees ; Yarl's Wood has been described as no place for a child. Diane Abbott MP described how children "*have almost certainly been brought into detention in traumatic circumstances, such as after a morning raid, and they find themselves locked up for reasons they can scarcely comprehend and locked up, in their view, is what they are*"<sup>1</sup>

**Medical Justice volunteer doctors have seen 134 children from 104 families in detention.** Their nationalities included Afghani, Cameroonian, Congolese, Iranian, Iraqi, Sri Lankan, Sudanese, and Yemeni.

#### **Of 134 detained children dealt with by Medical Justice volunteer doctors;**

- 34% witnessed or experienced violence during a "dawn raid", or whilst at a detention centre, or during an attempt to remove them from the UK
- 57% developed medical concerns in detention (e.g. vomiting, loss of weight, developed fever, etc.)
- 46% of the cases involved a failure by the detention centre healthcare unit to adequately treat, or refer medical condition whilst in detention
- 33% cases where detention has had a noticeable, detrimental effect on their child's behaviour
- 25% cases where a child has been separated from their family in the detention process
- 37% cases where a doctor has raised concerns about no, inadequate, or inappropriate immunisations before a removal was going to take place



Medical Justice believes immigrant children must be afforded the same rights and protection as any other child in the UK. Immigration detainee children are the only children in the UK are imprisoned arbitrarily and indefinitely, with no judicial oversight, despite not being accused of any crime.

### **Detention does not make sense, is never acceptable, continues to damage children and should end today**

- 1. Detention of children and of families with children is damaging to the child and to the family**
- 2. Detention of children violates UK's legal obligations towards children**
- 3. Detention of children violates government policy to detain only in "exceptional circumstances"**
- 4. Detention serves no purpose as UKBA accept that there is negligible risk of families absconding**
- 5. Detention of children is very expensive**
- 6. Detention of children is Inefficient – 55% of families are later released again**
- 7. "Alternatives" are not needed to end detention of children today**
- 8. Children are detained because of their parents' immigration status**
- 9. It is inappropriate to detain children as a deterrent to others not to come to the UK**
- 10. Detention of children carries with it a significant reputational cost to the UK**

### **Case Study – mismanagement of a child's serious medical condition**

MB is a Nigerian teenage boy diagnosed in Nigeria with Sickle Cell disease, and had numerous attacks of malaria which induced Sickle Cell crisis. He is anaemic, and experiences severe pain; doctors advised him not to walk for more than five minutes at a time because of the pain that this caused him. MB was detained with his family in 2008. On arrival at Yarl's Wood his regular medication was taken off him and he was denied it thereafter. He was allowed codydramol to manage his pain but only if he walked a considerable distance from his room to the Healthcare Centre to get it. Due to the pain, he was unable to do so, and his medication chart showed that in detention he could only take about half of what he should have. The pain in his joints began to wake him up in the middle of the night, and a doctor in Yarl's Wood voiced concerns that he may have been going through a haemolytic crisis. MB has since been given leave to remain. His mother describes his treatment in Yarl's Wood IRC as 'inhuman'.

### **Government commitment to end detention of children yet children are still detained**

Regarding detention of children, Nick Clegg's letter to Gordon Brown<sup>2</sup> (see Appendix 1 below), published by the Daily Mail on 15th December 2009, asked; "*How on earth can your Government justify what is in effect state sponsored cruelty?*". After he became Deputy Prime Minister, the coalition agreement between the Liberal Democrats and the Conservatives<sup>3</sup> stated: "*We will end the detention of children for immigration purposes*". Prime Minister David Cameron later said "*after the Labour Government failed to act for so many years, we will end the incarceration of children for immigration purposes once and for all*"<sup>4</sup>, yet children are still being arrested and detained. The government seems to accept that detention of children is damaging yet it will not issue a date by when it will stop damaging children by detention.

### **Detention does not make sense, is never acceptable, continues to damage children and should end today**

#### **1. Detention of children and of families with children is damaging to the child and to the family**

Research on the effects of detention indicates that children suffer developmental delay, regression, posttraumatic stress disorder, and self-harm. A study published in "Child Abuse & Neglect: the International Journal"<sup>5</sup> found that the majority of children detained at Yarl's Wood were "experiencing mental and physical health difficulties related to being in detention".

In December 2009 the Royal Colleges of Paediatrics and Child Health, of General Practitioners and of Psychiatrists, and the UK Faculty of Public Health said they believe that "the administrative immigration detention of children, young people and their families is harmful and unacceptable and called on the Government to see this issue as a matter of priority and stop detaining children without delay."<sup>6</sup>

The Children's Commissioner reported that children find the process of arrest and transportation distressing, and that "Increasingly, children are separated from parents when transported to the centre."

The Commissioner also noted that "a mother informed the nurse at 11.20 pm that her five year old child had fallen earlier in the playground. The child could not lift her arm and was not seen by the GP until 2.05pm the next day and went to A&E at 7.02 pm," the next evening, and was found to have a fracture."<sup>7</sup>

In June 2010, the Telegraph reported that an investigation by Bedfordshire Local Safeguarding Children Board into sexual activity between unrelated children and other concerns at Yarl's Wood describes "a catalogue of safeguarding failures by Bedford Borough Council and Central Bedfordshire Council; by SERCO and SERCO Healthcare; by the Bedfordshire police; and by the UK Border Agency, the Office of its Children's Champion, its Family Detention Unit, its independent social workers and its contract management team.

The findings are made all the more poignant, as we now know, by the fact that repeated pleas by the mother of one of the children for independent investigation and specialist medical attention for her child were effectively dismissed by all agencies. In other words, the opportunity for therapeutic attention for her child, and others, was lost in the rush to effect their removal from the country."<sup>8</sup>

#### **2. Detention of children violates UK's legal obligations towards children**

In light of documented mental and physical harm caused to children, immigration detention is not reconcilable with UKBA's statutory duty to safeguard and promote the welfare of children (s.55 Borders, Citizenship and Immigration

Act 2009). David Wood, UKBA's Strategic Director for Criminality and Detention, who is leading this Review, refers to "recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules".<sup>9</sup> Some feel it is inappropriate to "balance" a child's welfare with the UKBA's desire to detain and that it reveals a certain UKBA willingness to be blind to the possibility of children's welfare being compromised. Our feeling is that UKBA's desire to detain takes precedent over a child's hope to be protected by UKBA's section 55 safeguarding duty.

### **3. Detention of children violates government policy to detain only in "exceptional circumstances"**

Article 37 of the UN Convention on the Rights of the Child states that "any arrest, detention or imprisonment [of a child] shall be used only as a measure of last resort and for the shortest appropriate period of time". That 55% 10 of children are released from detention, questions whether UKBA do only detain as a last resort. This concern is echoed in the HM Inspector of Prison's most recent report: "What was particularly troubling was that decisions to detain, and to maintain detention of, children and families did not appear to be fully informed by considerations of the welfare of children, nor could their detention be said to be either exceptional or necessary"<sup>11</sup> The Immigration Minister must personally authorise the detention of a child for longer than 28 days yet a former Immigration Minister informed the Joint Committee on Human Rights that "to date I have not refused any request for extended detention"<sup>12</sup>, suggesting that the policy to detain children has not received much in the way of scrutiny or been only used in the "exceptional circumstances" dictated by UKBA's Enforcement Instructions and Guidance<sup>13</sup>. "Over the past six months, 420 children had been detained, of whom half had been released back into the community, calling into question the need for their detention and the disruption and distress this caused. Some children and babies had been detained for considerable periods – 68 for over a month and one, a baby, for 100 days – in some cases even after social workers had indicated concerns about their and their family's welfare. Detailed welfare discussions did not fully feed into submissions to Ministers on continued detention."

### **HM Inspector of Prisons from its November 2009 inspection of Yarl's Wood**

#### **4. Detention serves no purpose as UKBA accept that there is negligible risk of families absconding**

David Wood, UKBA's Strategic Director for Criminality and Detention said to the Home Affairs Committee in September 2009 "Whilst issues are raised about absconding, that is not our biggest issue. It does happen but it is not terribly easy for a family unit to abscond."<sup>14</sup> The Centre for Social Justice notes that "The vast majority of asylum seekers currently detained do not pose a threat to security and studies suggest there is little risk of them absconding. 15

However, the Government is currently in the process of planning an increase in the capacity of the detention estate. We think this is an unnecessary waste of money."

#### **5. Detention of children is very expensive**

Detaining a family of four for between 4 and 8 weeks costs over £20,000 <sup>16</sup>. The Immigration Minister himself noted "nothing is as expensive as detention."<sup>17</sup> The average cost of a forced removal is £11,000 <sup>18</sup>

#### **6. Detention of children is Inefficient – 55% families released**

55% of detained families are later released – hardly a success in terms of efficiency. On release, most families go back to where they were living before they were arrested. Since this represents a slight majority, one might describe it as "the norm" and an existing alternative to detention. Inappropriate detention leads to judicial challenges; and millions of pounds have been paid out in compensation (see "Reputational cost to the UK" below) for unlawful detention, wasting resources such as court time, legal fees, interpreters, etc.

#### **7. "Alternatives" are not needed to end detention of children today**

The Immigration Minister's statement in the 17th June 2010 parliamentary debate<sup>19</sup> gave the impression that the ending of detention of children might be contingent on UKBA finding alternative ways of removing families from the UK. If this interpretation is correct, it is reprehensible, especially in light of medical evidence that detention harms children and that UKBA admit families do not generally abscond. UKBA have not provided any evidence of a potential national catastrophe if the detention of children were to be stopped now, or that finding alternative ways of removing families from the UK cannot take place subsequent to the ending of detention of children. No measures are needed to mitigate against any supposed "backlash" against the government for announcing an end to detention of children. There was no backlash then and, on the contrary, it was a popular move. In fact, many feel the public would feel deceived if it were widely known that children are still being arrested and detained.

#### **8. Children are detained because of their parents' immigration status**

Some feel that detention equates to a penalty or punishment of the child by reason of his or her parent's status or actions. Dr Julian Huppert MP noted that "The question was raised earlier whether we should punish children for the sins of their parents. I do not see seeking sanctuary in this country as a sin or something worthy of punishment."<sup>20</sup>

#### **9. It is inappropriate to detain children as a deterrent to others not to come to the UK**

David Wood said to the Home Affairs Committee in September 2009 "I do feel that our immigration policy would be in difficulty if we did not have that ability to detain them because it would act as a significant magnet and pull to

families from abroad to come to the United Kingdom because, in effect, once they got here they could just say, 'I am not going'".

The Centre for Social Justice notes that although "the causes of the fluctuation in numbers of applicants to the UK over the past 10 years are intertwined and complex, it is clear that they are mainly global. ...This surely dispels the myth that UK domestic 'pull factors' are the main reasons for people coming to the UK, or that creating a harsher experience has had much effect the other way."<sup>21</sup>

Diane Abbott MP notes that "The purpose of the detention centres, apart from expediting removals, was to act as a deterrent. There has been a strong feeling over the past 13 years that the grimmer and more exacting we made the regime for asylum seekers and immigrants, the less likely they were to come here.

However, people must recognise that, for better or worse, the push-factors behind people migrating and seeking asylum are very great, and the idea that turning the screw one more time will see numbers drop has proved false." The feeling was shared by Dr Julian Huppert MP; "Trying to control the people coming to this country by being as nasty as possible to them while they are here is not worthy of this country."<sup>22</sup>

In its 'Chance or Choice' report, the Refugee Council states that: "The single most important reason why these asylum seekers had ended up in the UK was because a decision to bring them here had been made by others. Agents played a very significant role in providing access to travel documents and facilitating the journey. Most only became aware that they were going to the UK after leaving their country of origin.

Some, including many of those who arrived as children, only found out that they were in the UK after their arrival. Some people wanted to go to countries other than the UK but were unable to do so."<sup>23</sup>

Given that UKBA have not provided any evidence that ending the detention of children would be a pullfactor, Medical Justice feels they should not be damaging children by detaining them.

#### **10. Detention of children carries with it a significant reputational cost to the UK**

"The Home Office has paid out at least £2 million in dozens of cases over the last three years where it has been proved immigrants, foreign prisoners or asylum seekers have been wrongly held. However, compensation has also been paid out in cases where suspected illegal immigrants were detained but it was later proved they were entitled to stay. The £2 million figures related to 121 individuals – an average payout of more than £16,000 each – but that based on information on a limited number of law firms and the true cost could be even higher. Home Office officials said they did not know how much had been paid out, because the figures were not collected. A Bolivian family was paid £100,000 last month and a Congolese family received £150,000."<sup>24</sup>

"At 8.30am our bags were loaded into a police cage van. We were taken into the van and told we were going to a very nice family detention unit, four hours away – "One of the best detention centres in the country." We were locked in the van. I felt like a criminal. During the first month, I became stick like because I couldn't eat. My lips were dry and red ... I felt dead inside. Soon I got bad diarrhoea. I tried to get in to see the nurse, but we had to wait two days. ... When we went to see the nurse, she just looked at me and said I looked OK, but my mum insisted. Then the nurse weighed me, and I had lost some weight. But she still said I was OK. There was sickness everywhere: chickenpox, urinary tract infections, flu, diarrhoea and fever. Health staff didn't seem to care." \_\_, **now 14**

#### **Notes**

##### **The government implied no detention would create a trafficking pull factor**

A previous Minister, Meg Hillier, claimed that "An interesting issue in this area is the impact on human trafficking. Clearly, children are trafficked. If they are never detained, there is a risk that that could become a pull factor for those who have mal-intent towards children."<sup>25</sup> The Scotsman reported ; "Closing Dungavel detention centre to families and children would "end up with dead bodies in lorries in Calais" by boosting the human trafficking trade, immigration minister Phil Woolas claimed yesterday. Mr Woolas said the "horrible reality" of the modern world was that failed asylum-seekers and their families needed to be kept under lock and key to deter the trade in human traffic."<sup>26</sup>

Meg Hillier and Phil Woolas have offered no evidence that a trafficking problem has grown elsewhere in response to ending the detention of children. The 'genuineness' of family kinship is something that can be established at the start of the process rather than at the end, so the chances of ending up with spurious non-families clinging on by virtue of their "fake" children at the end of the asylum process would be remote.

##### **Many children in detention were born in the UK**

Many children were born in the UK, have never left the UK, have never been to the country they are being removed to, do not speak the language in that country and have no family there.

##### **Non provision of ant-malarials to children and pregnant women**

Some children have contracted malaria in their home country having been removed from the UK without having been provided with appropriate or any anti-malarials. UKBA breach their own policy on the provision of anti-malarials frequently, resulting in about 30+ judicial reviews in the High Court a year, the vast majority of which

are won by the detainee. For the sake of less than five pound's worth of medication, children's' health has been compromised and money wasted in legal fees and court time.

### **Unaccompanied children**

Significant numbers of unaccompanied children are detained.

### **Improvements throughout the "asylum process" may reduce the number of families subject to removal**

Medical Justice agrees with the Immigration Minister when he said that "There may have to be I think there will have to be-a number of changes at different points in the system, each contributing to the overall aim"<sup>27</sup>.

Alternatives to detention can only be contemplated if they are part of a determination process perceived to be fair and consider the family's treatment while they go through the process. Medical Justice believes that if UKBA makes improvements at key points in the "asylum process" then the relatively small number of families for whom UKBA considers forced removal would be even smaller.

The Minister said he wants to see "a fairer and more humane system". We share this sentiment and would add that any alternative that is established needs to prioritise the safety and well-being of children over enforcement interest. We emphasise that ending the detention of children is not dependent on establishing "alternatives to detention" projects, or new processes for families. The government ended child detention at Dungavel detention centre on 19th May 2010<sup>28</sup>, and in as such provided evidence that doing so is easily achieved, and uncontroversial.

### **Recommendations**

#### **Discussion on policies and practice on returns not needed to end the detention of children / families now**

*"The main alternative that I can think of to detaining 1,000 children a year is not to detain them. That, above all, is what I want to say. We simply should not detain them."* <sup>29</sup> Dr Julian Huppert MP

Recommendation : Release detained families at Yarl's Wood now

#### **Culture of disbelief, seemingly arbitrary targets on removals and spiralling use of detention soars**

Those working closely with asylum seekers were not surprised to read the Guardian's report that a UKBA locum case-worker claimed that "staff kept a stuffed gorilla, a "grant monkey", which was placed as a badge of shame on the desk of any officer who approved an asylum application."<sup>30</sup>

Sadly such reports chime with what seems like UKBA's preoccupation with targets for removals and deportations. A former Prime Minister stated that "the monthly rate of removals to exceed the number of unfounded applications by the end of 2005"<sup>31</sup> This was made a "Public Performance target" called "Tipping the Balance". A former Immigration Minister said ; "We now remove an immigration offender every eight minutes - but my target is to remove more, and remove them faster."<sup>32</sup>

Many feel the target is arbitrary as it disassociates immigration policy from individual protection needs, including those of children. As deportation targets were stated with seeming glee, use of detention spiralled ; despite a 72% fall in asylum applications between 2002 and 2007<sup>33</sup>, the use of detention increased by 106%.

Financial targets of local authorities should equally play no role in determining whether leave to remain in the UK is granted. Former Minister Meg Hillier revealed : "Resources were always an issue, but it was not as simple as that. Often, local authorities did not want cases decided as quickly as they could have been because of the challenge of then housing and providing for families. There had to be some negotiation so that families who were able to stay were properly provided for in local authorities"<sup>34</sup>

Arbitrary targets may encourage the refusal of asylum claims, or the arrest and detention of vulnerable families who may be considered as "low-hanging fruit" by a UKBA employee looking for meet targets.

Recommendation : Scrap all arbitrary targets on detention / removals

#### **Application decisions should be determined by an independent body**

As highlighted by the Centre for Social Justice, "One of the key problems with the current system is that the UKBA manages the whole system. It enforces border controls, oversees the support to asylum seekers as they go through the system and makes the decision in the first instance about who to accept as a refugee.

In short UKBA tries to combine the task of enforcer, supporter and decision maker while also administering the whole system. This makes for some unhelpful conflicts of interest, particularly when making the decision about the applicant's claim for asylum and also at the end of the process when managing integration, return or removal."<sup>35</sup>

The Lib-Dem manifesto says "Take responsibility for asylum away from the Home Office and give it to a wholly independent agency, as has been successful in Canada."<sup>36</sup>

Recommendation : an independent body should be established to determine families' claims

#### **Poor decision making**

28% of refused claims succeed on appeal<sup>37</sup> which is alarmingly high considering some claimants are denied legal aid for an appeal. It undermines confidence in the whole system and also wastes of taxpayers' money.



It further contributes to claimants waiting years in limbo, poverty and stress waiting for a decision. The Centre for Social Justice make the point ; “Great concern has been expressed by many organisations (such as ...UNHCR) about the poor quality of interpretation, a subjective approach to the appellant’s credibility, out-of-date or inaccurate Country of Origin information, poorly justified dismissal of evidence given by expert witnesses in support of asylum seekers and the pressure that politically motivated targets have placed on decision makers.”<sup>38</sup> Asylum interviews with children in the room can disadvantage families and damage children if they hear accounts of rape, torture, etc. Recommendation : UKBA must improve the quality of decision and interview environment

#### **UKBA officials wrongly claim a court finds everyone being removed to have no protection needs**

Some families have never had an opportunity to get their case heard in a court – for example, they are subject to an non suspensive appeal, were denied legal aid, etc. Recommendation : Ensure access to an independent immigration court for all claimants

#### **Medicolegal reports (MLRs) not considered properly**

MLRs are routinely not considered correctly as they are interpret by a UKBA caseworker who has no medical qualification. Repeated inquiries made to UKBA officials has not uncovered any different view.

Recommendation : UKBA must refer MLRs to a suitably qualified independent medic for interpretation

#### **Poor access to adequate quality legal representation**

“Many asylum seekers have lost trust in the system’s ability to deliver a fair hearing, mainly because of inadequate legal support, a lack of accurate translation and poor quality decision-making. ...The public has also lost confidence in the system and believes that it is too open to abuse; yet has very little understanding of the issues.” – Centre for Social Justice<sup>39</sup>. UKBA’s one and only position on the topic is that all those refused by the courts to have no protection needs. However, this does not take account of the fact that the quality of the court’s decision is in large part influenced by the quality of the claimant’s legal representative and of their submissions, including MLRs and other expert reports. A court’s decision may also have been influenced by inadequacy in the provision of legal aid. Many legal representatives are of poor quality and some claimants with a well founded fears of persecution or other human rights violation find their valid claim dismissed by a court.

The Lib Dem manifesto point “End deportations of refugees to countries where they face persecution, imprisonment, torture or execution”<sup>40</sup> was made for a reason; UKBA do removal people to countries where they do fear persecution. The Centre for Social Justice notes that “Legal advice is crucial to ensure a fair hearing during the decision-making process. Evidence from the Early Legal Advice Pilot in Solihull points to the way that more sustainable decisions are made when legal advice is more readily available saving a costly appeal process (50 per cent fewer decisions were appealed than in the control area of Leeds). The Early Legal Advice Pilot also recorded an increase in the percentage of positive decisions to 58 per cent compared to 29.5 per cent in the control area of Leeds “<sup>41</sup>

Recommendation : Roll-out Solihull programme to help ensure better / earlier access to quality legal advice

Recommendation : Ensure there is funding available for Medico Legal Reports for each child needing one

#### **Poor legal reps / changed circumstances leaves valid claimants exposed**

The Minister said “The UK Border Agency would therefore set removal directions while the family is in the community, giving the family time to submit further representations and to apply for a judicial review if they wish to do so, as well as giving them time to make plans for their return.”<sup>42</sup>. We agree, but say removal directions should be set at least 3 months in advance to secure quality legal representation and any medico-legal reports (MLRs) or other expert reports needed. A situation central to a claim (health, country situation, availability of a safe route, changes to an applicable law, UKBA country guidance / policy, etc) may have changed. The 3 month window would also enable the family time to properly consider voluntary return.

Recommendation : Set Removal Directions in the community at least 3 months in advance

#### **No independent quality assessment of a family’s suitability to be removed**

A panel of experts (including doctors / paediatricians) to give advice within 3 months advance notice of intended Removal Directions (or earlier if requested by the claimant) to advise the family if there are any other legal avenues that could be explored, to consider any asylum or human rights claim concerning the child, to advise on medical issues, provide information about availability of medical treatment in their country, etc. The panel should have the ability to get cases remitted / reconsidered, and provide access to quality legal representation. It should be accountable and monitored. It is essential that specialists on this panel are independent of UKBA.

Recommendation : Implement a panel of independent specialists for pre-removal assessment

#### **Denial of adequate / any legal aid**

At an individual case level, legal representatives can only provide legal aid if they assess a case as having a 50+% likelihood of being successful. The organisational as a whole must have a 40% success rate to retain its legal aid contract. The reality is that a family needs a more than 50+% likelihood of being successful as legal representatives

will be cautious, fearing they may lose their legal aid contract if they don't meet their own success targets. Many claimants are denied legal aid for their appeal and end up either paying private solicitors – often of poor quality – or are forced to represent themselves in court.

Recommendation : reduce the merits threshold for legal aid from 50% to 25% likelihood of success

### **Capacity of adequate legal representation**

As the amount of legal aid has been reduced per case, many good quality legal representatives have left the field, either not being prepared to make the quality compromises in their work they feel they may have to, or, not having the cash-flow from other areas of legal work to keep their business viable. The capacity of good quality legal representatives has reduced drastically. The capacity of poor quality legal representatives has meanwhile increased. This situation has been exacerbated by the closing of largest organisation in the field - Refugee and Migrant Justice (RMJ) – due to legal aid cash-flow issues. It is unclear how RMJ's 10,000 clients, including 900 unaccompanied children, will get legal representation.

Recommendation : increase legal aid funding and guarantee RMJ funding for at least 6 months

### **UKBA decisions can take years**

UKBA can quite literally take years to even acknowledge the receipt of a fresh claim, or even an initial claim. One of our Afghani unaccompanied child patients who had been detained was later granted indefinite leave to remain – his asylum claim was never acknowledged in the 5 years since he arrived in the UK, and he was never given a substantive interview. Decisions can take years and in the meantime claimants' lives become more rooted in the community, and more children may be born. The years of uncertainty of immigration status can lead to mental and physical health deterioration.

Recommendation : UKBA to make decisions in a timely fashion

### **A growing backlog of family cases that gets more difficult for UKBA to deal with over time**

The Lib-Dem manifesto says “We will let law-abiding families earn citizenship. We will allow people who have been in Britain without the correct papers for ten years, but speak English, have a clean record and want to live here long-term to earn their citizenship.”<sup>43</sup> Medical Justice suggests instead to implement the Joint Council for the Welfare of Immigrants (JCWI) regularisation programme proposal 'Recognising Rights Recognising Political Realities'<sup>44</sup> ; “if people can demonstrate a period of residency between two and seven years then they should be eligible for a gateway of temporary leave subsequently leading to permanent stay if they can meet specific criteria outlined in the report.”. About 1,000 children have been detained a year – perhaps involving only about 500 families a year, so just quietly give them visitors visas straight away, extend the visas and grant citizenship after two years. Further pragmatic measures to deal with this group of families – small but resource intensive – is to grant status to children who were born in the UK and subsequently also to their siblings and parents. For other families, especially those for whom travel documents cannot be secured or where a child or parents have an illness, more use of discretionary leave to remain could be made.

Recommendation : use various forms of discretionary leave to remain more widely with families

### **Asylum seekers criminalised by working illegally – families end up being subject to removal**

With no right to work or claim benefits, many refused asylum seekers become homeless and destitute. Some survive on Red Cross food parcels, but many feel forced to work illegally just to feed themselves and become criminalised and exploited. These people become very hard to reach. Some develop illnesses. Despite paying tax, some of those who feel forced to work illegally end up being prosecuted, put in prison, separated from their children, and becoming liable for deportation. Extending the right to work would decrease the numbers of families subject to removal. The Lib-Dem manifest says : “Allow asylum seekers to work, saving taxpayers' money and allowing them the dignity of earning their living instead of having to depend on handouts.”<sup>45</sup>

Recommendation : Allow asylum seekers to work

### **Withdrawal of support to encourage asylum seekers to return to their home country does not work**

The Centre for Social Justice notes “Research commissioned by the Home Office as to why people chose the UK to claim asylum, points to colonial links, family ties and a belief in Britain having a fair judicial system as the main motivators for choosing the UK to claim asylum (when a choice is possible), rather than any knowledge of the welfare system or employment opportunities. Despite this, misguided attempts to reduce apparent incentives for asylum applicants have resulted in policy withholding access to vital services, such as secondary healthcare, from refused asylum seekers.”<sup>46</sup> Deliberately making a family destitute is inhuman, especially if this is in order to enforce Section 9 ; taking a child “in to care” because the family is destitute. State enforced destitution makes prospects of removal more remote and is therefore counterproductive anyway. “Invariably the voluntary and faith sectors have stepped into the gap providing a lifeline to the most vulnerable of these individuals. Their compassion, professionalism and dedication to the plight of asylum seekers has saved many asylum seekers from starvation, serious illness or suicide.”<sup>47</sup>

Recommendation : Do not reduce or withdraw a family's support at any stage in the “asylum process”.

### **Reporting conditions / accommodation**

Given that families do not generally abscond, any restriction that is perceived to have similarities with Control Orders (e.g. curfews, restricted rights of association and obligations to gain Home Office approval, or restrictions on electronic possessions) could possibly be as damaging to a family as detention in terms of isolation, feelings of criminalisation, access to legal advice, access of healthcare, etc.

Recommendation : Do not impose disproportionately harsh reporting / living conditions on families

### **Monitoring**

Electronic voice recognition is a suitable form of monitoring for families. Electronic tagging is not and we consider it to equate to virtual imprisonment. A curfew interferes with parenting and daily life. Issues that exist today include UKBA insisting that a family reports every day at a reporting centre, which can be quite some distance away, and there is no funding for travel costs. Also, criteria for who gets tagged. UKBA has not published any statistics on families absconding that would suggest anything other than electronic voice recognition monitoring would be required.

Recommendation : Implement electronic voice recognition as the standard means of monitoring families

### **Special accommodation encouraging voluntary return and avoiding detention**

This type of programme is where a family must move into monitored accommodation and there sustained efforts are made to persuade the family (some say amounting to coercion) to accept voluntary return. The failure of the Millbank project was described in the New Statesman; "The families told us that it was never made clear to them why they were being sent to Millbank: they were simply given 14 days to enter the pilot or have their benefits stopped; some had less than a week to make arrangements and take their children out of school. Some families did not know where they were going until they arrived at Millbank.

One mother was taken straight there after several months in Yarl's Wood detention centre; she arrived with her baby, scared and confused, and left the hostel soon afterwards."<sup>48</sup> Another programme is currently being piloted in Glasgow.

Past programmes aimed at getting families to accept return was "Clan Ebor" in 2007, which did not involved special accommodation. Families were reportedly threatened they would be prosecuted for non compliance. The Children's Society explained "Parents have been forced to bring their children regardless of whether they think they can handle it. ...Very young children are witnessing parents becoming visibly distressed and are not allowed to leave the room even when they become upset. One five year old child now thinks his mother is going to die because he is so confused."<sup>49</sup> Reportedly, many families that were subjected to Clan Ebor have since been granted leave to remain in the UK.

Prior to Clan Ebor was a programme whereby families were threatened with a Section 9 measure whereby accommodation and financial support would be withdrawn and their children taken into care as the family would then be destitute. This programme has since been deemed ineffective and scrapped.

Organisations who have been documenting details of these programmes describe the failures as being due to poor planning and design by the government, and that engagement with families was weak and their needs – e.g.

concerns regarding legal representation - were not addressed. There is concern amongst asylum support organisations that similar future programmes will fail due to poor design and that the government would use this as a justification to return to detaining children again as before.

Recommendation : Schemes similar to Millbank must be better designed / address legal representation etc.

### **Inappropriate detention**

The Centre for Social Justice states that "The vast majority of asylum seekers currently detained do not pose a threat to security and studies suggest there is little risk of them absconding. However, the Government is currently in the process of planning an increase in the capacity of the detention estate. We think this is an unnecessary waste of money."<sup>50</sup> Even though UKBA have never publish statistics on families absconding, and UKBA officials agreed that families do not pose a particular absconding risk, detention of families continues. Most families have later been released due to a variety of reasons, suggesting detention may have been inappropriate in the first place. Many children suffered inadequate healthcare and the use of Rule 35 reports (documents fitness to be detained and to fly) regarding children has been rare.

Recommendation : Release all detainee children now

### **Better voluntary return programme and access to it for those who want it**

Currently some families are arrested and given a refusal letter after they have been detained. Some families have not been aware of a voluntary return programme. Even if they did, they are excluding from being able to apply once detained. Some families want to return voluntarily but need financial help and have heard from others that the money offered through the voluntary return programme does not materialise in full. Better awareness of voluntary return programmes is needed, a timely chance to apply, and better monitoring of delivering financial assistance packages to increase potential returnees' confidence.

Recommendation : Improve awareness of and access to voluntary returns programmes

### **Parliamentary, professional and public support for ending the detention of children**



The ending of detention of children has been a popular move. The issue has hardly been out of the headlines for a considerable time now. Medical Justice feels that general public has very little against asylum seeking families. Of the approx 1,000 children detained each year, perhaps that equates to 500 families – relatively few - and we feel that dealing with them in the most humane, low key and pragmatic manner would not create a “pull factor”. Many are already being granted status via the Legacy programme and we recommend the criteria is extended to more families.

Mainstream media coverage has been largely from the newspapers who traditionally covering issues faced by asylum seekers (Guardian, Independent, etc), but there has been coverage in other newspaper as well, for example ; the Daily Mail<sup>51</sup>, the Daily Telegraph<sup>52</sup>, and The Times<sup>53</sup>.

Medical professionals have demanded an end to the detention of children, including 527 doctors who signed a petition, and the Royal College of Paediatrics and Child Health, the Royal College of General Practitioners, the Royal College of Psychiatrists and the Faculty of Public Health.

Prominent church leaders signed a joint letter in the Daily Telegraph calling for the end of detention of children, as did leaders from Jewish organisations in the Guardian.

Prominent cultural figures including Joanna Lumley, Juliet Stevenson, Colin Firth and Lenny Henry signed a joint letter. So too did children’s writers and illustrators, including Michael Morpurgo, Quentin Blake, Carol Ann Duffy and Michael Bond, and novelists including Nick Hornby , Hanif Kureishi, and David Mitchell.

4,925 “ordinary” people signed a petition to end the detention of children.

180 MPs (includes 52 who have since ceased being an MP after the election in May) signed Early Day Motions calling for an end to the detention of children.

Large children’s organisations also call for the immediate end to detention of children and families, including Barnardo's, the British Association of Social Workers, the British Associations for Adoption and Fostering, The Children's Society, NCB and NSPCC.

All the people and organisations mentioned are expecting the immediate end to the detention of children and we are quite sure everyone understood the ending of detention of children to mean that there would be no detention in the future, in any form, and, that families would not be split up. We are sure that all those who called for an end to detention of children are set to continue to be vocal on the issue until children are released from detention and there is a commitment to not arrest any more.

Many will continue to campaign and seek commitments that “alternatives” do not include splitting family members up or any form of detention of any family members.

Recommendation : release detained children and families in detention and commit not arresting any more

If UKBA make improvements on the issues listed above, there may be less families subject to removal. Medical Justice appreciate that some recommendations it makes will cost money. We cannot know how much because UKBA have not made public many of the relevant statistics needed for even vague cost analysis. However, it can be said that some problem areas in the “asylum process” cause further and more expensive problems further down the line, as it were. Taken in the round, it could be that the improvements suggested could be cost neutral, or even represent a saving ; “nothing is as expensive as detention”<sup>54</sup>, as the Minister says.

Alternatives to detention must address why 55% of families are release from detention, otherwise UKBA could be simply swapping one unsuccessful or damaging element for another. Any new alternative should be well resourced, defined, and piloted using the best possible project management, to ensure the best chance of success.

Any half-hearted pilots would be lamentable. Any new policy / practice option takes time to research, to evaluate the impact, consult on, define and document appropriately. The detention of children should be ended meanwhile.

[Responding to actual / possible UKBA future changes;](#)

#### **UKBA potential suggestion: Alternative to detention - Short-term detention**

The Immigration Minister said last month that “in some cases we may still have to have recourse to holding families for a short period before removal-where keeping the family together is seen as being in the best interests of the children”<sup>55</sup>. We do not see any difference between this and today’s scenario whereby detention is supposedly used, according to UKBA’s policy, in “exception circumstances only”, as a last resort and for the shortest time possible. The reality is that children are detained for longer than “a short period before removal”. Detention is any kind of holding of a family against its will and can take place in a variety of settings, including at a detention centre, in police cells, in a short-term holding facility, in a vehicle, etc.

Recommendation : Fulfil the commitment to end detention of children, in any form

#### **UKBA potential suggestion : Removal at less than 72 hours notice**

The UKBA has had a policy that enables it to remove certain categories of vulnerable people, including unaccompanied children and those at risk of suicide attempts, at no or little notice rather than the usual 72+hours notice. UKBA may suggest removal at less than 72 hours notice as a means of avoiding detention. Medical Justice would be opposed to this as it may deny the child or family access to justice / the courts. Medical Justice does not accept that 72 hours notice of removal is adequate in any case. Medical Justice is currently judicially reviewing UKBA’s policy of removal at little or no notice<sup>56</sup> and there is a High Court injunction<sup>57</sup> against UKBA using the policy at least until an order is issued regarding the hearing held last month. Medical Justice strongly feels that

removal of families with little or no notice would not at all be in line with the “a fairer and more humane system” that the Immigration Minister referred to<sup>58</sup>.

Recommendation : do not set removal directions at less than 72 hours notice – set at 3 months in advance

**UKBA potential suggestion : advanced notice removal directions with actual date withheld**

UKBA might possibly suggest they issue removal directions well in advance but do not actually disclose the date they intend to effect removal. Medical Justice feels this could create feelings within a family of terror and that they were being dealt with in an underhand manner by UKBA.

Recommendation : do not withhold actual date – set a specific date 3 months in advance

**UKBA stated possibility : separating different members of a family by detaining one of them**

The Immigration Minister announced ; “That approach could involve separating different members of a family and reuniting them before departure”<sup>59</sup>. Medical Justice would strongly oppose separating family members from one another. Separating children from parents very damaging to the child, siblings and the family as a whole and effects parenting relationships. For some families, including single parent families, it could entail children being in potentially unsuitable or risky fostering arrangements. It has been reported that “The UK is facing a shortfall of over 10,000 foster parents, due in part to a rise in the number of babies and toddlers being taken into care following the Baby P case, a fostering charity has warned”<sup>60</sup> We would predict that many professionals and foster parents would have issues being made to make foster arrangements when a capable parent is available and wants to care for their own child themselves. A child should only be separated from his or her parents if he or she is at risk of significant harm.

Children and their families should never be separated for immigration purposes - Article 8 of the European Convention on Human Rights provides that a child has “*the right to respect for private and family life*”.

Article 9.1 of the UN Convention on the Rights of the Child provides that: “*States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.*”

Gavin Barwell MP stated ; “If we move from detaining children to breaking up families, it could be a case of out of the frying pan, into the fire.”<sup>61</sup>

If UKBA were to separate family members it would be contrary to a Response they gave to the Children’s Commissioner ; “We also consider that maintaining the family unit together, including any children, is preferable to splitting the family.”<sup>62</sup>

Separating children from their families can never been an acceptable alternative to detaining children and certainly not line with the “a fairer and more humane system” that the Immigration Minister referred to<sup>63</sup>.

Recommendation : do not separate family members from one another for immigration purposes

**UKBA potential suggestion : remove different members of a family at different times**

Medical Justice would strongly oppose separating family members from one another and removing them at different times. Separating children from parents very damaging to the child, siblings and the family as a whole and effects parenting relationships.

Medical Justice would see a split family removal for the purposes of enforcing immigration control as cruel and unjustified. Taking the best case scenario that the family does not have a well founded fear of persecution, the possible instability of country they are being removed to, coupled with lack of financial means of most families, plus possible health problems, could all add up the family is never being reunited again. UKBA could find itself responsible for wrecking lives and destroying families.

The Immigration Minister said ; “We want to replace the current system with something that ensures that families with no right to be in this country return in a more dignified manner”<sup>64</sup> Medical Justice feels that there would be nothing remotely dignified in a split family removal.

Recommendation : do not remove different members of a family at different times

**UKBA potential suggestion : voluntary and forced removals involving members of the community**

Medical Justice would be concerned that attempts within communities to persuade a family to return to their country could have the potential to become intimidating and there could be issues of confidentiality regarding their asylum / immigration claim. If funding were passing hands between UKBA and another organization or individual in anyway involved in a voluntary or forced return, there is a potential for corruption in both UK and the country removal is taking place to. Having activities involved in removals taking place in the community, especially if involving more than one person, there may be little scope for monitoring and accountability. Any use of force involved in a forced removal must not be carried out by anyone not licensed to do so. If a member of the community accompanies a family or child on a return, there may be the possibility that they draw unwanted, unhelpful and possibly dangerous attention from that county’s authorities to the returnee. Medical justice would be concerned that involvement in returns programmes by members of the community has the potential to turn into a form of misguided vigilantism.

We would be concerned that vested interests in being funded in anyway to be involved in anyway in a returns programme may encourage, directly or indirectly, some form of interference or influence in the outcome of an asylum claim by community members.

Recommendation : consult widely before considering any returns programme involving the community

**Recommendations : when removals of families do take place**

Below measures must be taken, systematically ;

**Implementation of existing UKBA policy which is routinely flouted ;**

1. Children must be appropriately immunized
2. Children must be offered appropriate anti malarials<sup>65</sup> and bed nets, in the right time frame and given adequate advice about them
3. BHIVA guidelines<sup>66</sup> adhered to
4. Healthcare equivalent to the NHS provided
5. R35 reports for every child
6. Full, reasonable access to independent doctor of the family's choice

**Longer term**

1. Transfer of healthcare to the NHS, as recommended by HMIP in 2006<sup>67</sup>
2. Implement all UKBA policies

Medical Justice does not condone any separation of family members or any form of detention – this submission and any efforts we make to have a dialogue with UKBA and the government should not be interpreted as any sign of approval for any UKBA action.

Appendix 1

**Open letter from Nick Clegg to Gordon Brown : Daily Mail, 15th December 2009**

“Dear Gordon,

I am writing to urge you to stop the scandal of hundreds of very young children, including toddlers, spending this Christmas locked up behind bars in Immigration Centres in Britain.

One of the best ways to judge the moral compass of a nation is how we treat children - all children.

There is now concrete evidence that the very young children who find themselves locked up even though they've done nothing wrong are suffering weight loss, post traumatic stress disorder and long lasting mental distress.

How on earth can your Government justify what is in effect state sponsored cruelty?

Of course we must keep track of adults who are seeking asylum in this country, and deport them where justified.

But this can be done through other means.

It is simply indefensible to do so at the cost of the mental and physical wellbeing of very young children.

I would also ask you to lift the paranoid Government secrecy which surrounds the work of the Immigration Centres.

Your Government has consistently refused to provide total figures of the number of children detained.

This attempt to cover up such a morally reprehensible practice only makes matters worse.

The British people want us to take a world lead in the way we treat toddlers and children, not to inflict systematic cruelty on them behind a veil of Government secrecy.

I look forward to your urgent reply.

Yours

Nick

Appendix 2

**4,925 people signed a petition**

4,925 signed the petition between 30th September 2009 and the date the May 2010 election was called. All No. 10 petitions have been suspended since the election was called.

**527 doctors signed a petition**

General Medical Council number required to be able to sign.

**Royal Colleges – 10th December 2009**

Royal College of Paediatrics and Child Health

Royal College of General Practitioners

Royal College of Psychiatrists

Faculty of Public Health

**Daily Telegraph letter from church leaders – 19th February 2010**

Bishop Doyé Agama, Deputy Moderator, Churches Together in England (CTE)

The Revd Inderjit S Bhogal, OBE, Former President of the Methodist Conference

Steve Clifford, General Director, Evangelical Alliance

Lt. Colonel Marion Drew, Secretary for Communications, The Salvation Army

The Revd Jonathan Edwards, General Secretary of the Baptist Union of Great Britain

The Revd David Gamble, President of the Methodist Conference

The Rt Revd Bill Hewitt, Moderator of the General Assembly of the Church of Scotland

The Rt Revd Patrick Lynch, Migration Policy of the Catholic Bishops' Conference of England & Wales

The Revd Peter Macdonald, Leader, The Iona Community

The Revd John Marsh, Moderator of the General Assembly of the United Reformed Church

The Most Revd Dr Barry Morgan, Archbishop of Wales

The Rt Revd John Packer, Bishop of Ripon and Leeds, Chair of the Urban Bishops Panel, Church of England

Susan Seymour, Clerk, Meeting for Sufferings, The Religious Society of Friends (Quakers)  
Margaret Swinson, Moderator, Churches Together in Britain and Ireland (CTBI)

**Guardian letter from Jewish organisations – 18th February 2010**

Dr Edie Friedman Director, Jewish Council for Racial Equality  
Hannah Weisfeld Chair, Jewish Social Action Forum  
Rabbi Alexandra Wright Senior rabbi, Liberal Jewish synagogue,  
Sarah Kaiser Director, CCJO René Cassin  
Rabbi Jeremy Gordon New London Synagogue  
Rabbi Mark Goldsmith North Western Reform Synagogue

**Guardian letter from prominent cultural figures – 18th February 2010**

Sir Nicholas Hytner Michael Bond OBE  
Colin Firth Benjamin Zephaniah  
Emma Thompson Roger McGough CBE  
Joanna Lumley OBE Matthew Bourne OBE  
Juliet Stevenson CBE Kamila Shamsie  
Miriam Margolyes OBE Michelle Magorian  
Lenny Henry CBE Beverley Naidoo  
Terry Jones Lynne Reid Banks  
Esther Freud Tindy Agaba, MA Law student, former child refugee  
Henry Porter Anthony Browne, Children's Laureate 2009-2011  
Livia Firth Carol Ann Duffy CBE, Poet Laureate  
Natasha Walter Michael Rosen, Children's Laureate 2007-2009  
Emma Freud Dame Jacqueline Wilson, Children's Laureate 2005-2007  
Melly Still Michael Morpurgo OBE, Children's Laureate 2003-2005  
Jamila Gavin Anne Fine OBE, Children's Laureate 2001-2003  
Mariella Frostrup Quentin Blake CBE, Children's Laureate 1999-2001  
Philip Pullman CBE Anna Home OBE  
Sandi Toksvig Vicky Ireland MBE  
Nick Hornby David Wood OBE

**Guardian letter from children's writers and illustrators – 13th December 2009**

Michael Rosen Mary Hoffman Gwen Grant  
Jacqueline Wilson Linda Newbery John Dougherty  
Michael Morpurgo Gillian Cross Julia Green  
Quentin Blake Julia Donaldson Karen King  
Carol Ann Duffy Catherine and Laurence Anholt Katherine Langrish  
Michael Bond Bernard Ashley Leila Rasheed  
Benjamin Zephaniah Tony Bradman Leslie Wilson  
Philip Pullman Catherine Johnson Mary Hooper  
Paul Stewart Celia Rees Ann Harries  
Chris Riddell Ifeoma Onyefulu Ann Turnbull  
Katharine Quarmby Karin Littlewood Rosemary Stones  
Ally Kennen Niki Daly Shereen Pandit  
Jackie Kay Chris Cleave Nicki Cornwell  
David Almond Bali Rai Valerie Bloom  
Jamila Gavin Eleanor Updale Anna Perera  
Lynne Reid Banks Prodeepta Das Maya Naidoo  
Tim Bowler Debjani Chatterjee Graham Gardner  
Meg Rosoff Moira Munro Alan Gibbons  
Francesca Simon Anne Rooney Jan Needle  
Elizabeth Laird Frances Thomas Anthony McGowan  
Louisa Young

**Observer letter from novelists – 28th October 2009**

Kamila Shamsie Patrick McGrath Christina Koning  
Jeanette Winterson Louise Doughty Robyn Scott  
Gillian Slovo Tash Aw Sathnam Sanghera  
Ian Rankin Hisham Matar Marie Phillips  
Nick Hornby Tahmima Anam Leon Arden  
Ali Smith Toby Litt Yasmin Hai  
Hanif Kureishi Nikita Lalwani Richard Hamblyn  
David Mitchell Charles Palliser Julia Williams  
Andrea Levy Pankaj Mishra Helen Smith  
Hari Kunzru Lisa Appignanesi John Hands

Joanne Harris Peter Hobbs Lorna Gibb  
Mohsin Hamid Rachel Holmes Imran Ahmad  
Liz Jensen Alice Albinia Sue Reid  
Nadeem Aslam James Runcie Michael Newton  
Chris Cleave Amanda Craig Lisa Gee  
Esther Freud Aamer Hussein Clare Sambrook

### **Refugee Children's Consortium**

Action for Children Immigration Law Practitioners' Association (ILPA)  
The Asphaleia Project Medical Foundation for the Care of Victims of Torture  
Association of Visitors to Immigration Detainees Medical Justice  
Bail for Immigration Detainees NCB  
Barnardo's NSPCC  
British Association of Social Workers (BASW) RAMFEL  
British Associations for Adoption and Fostering Refugee Council  
Catch 22 Refugee Legal Centre  
Children's Legal Centre The Prince's Trust  
Child Poverty Action Group Scottish Refugee Council  
Children's Rights Alliance for England Save The Children UK  
The Children's Society Student Action for Refugees (STAR)  
DOST Voice  
Family Rights Group Welsh Refugee Council  
Fostering Network  
180 MPs (includes 52 who have since ceased being an MP after the election in May)

### **128 MPs who signed**

#### **Source MP's name Party Source MP's name Party**

EDM139 **Adrian Sanders** Lib Dem Sanctuary P **Ian Murray** Labour  
EDM139 **Alan Beith** Lib Dem Sanctuary P **James Paice** Cons  
EDM139 **Alan Meale** Labour Sanctuary P **James Wharton** Cons  
EDM139 **Alan Reid** Lib Dem EDM139 **Janet Dean** Labour  
EDM139 **Alan Simpson** Labour Sanctuary P **Jeffrey Donaldson** DUP  
Sanctuary P **Alan Whitehead** Labour EDM139 **Jenny Willott** Lib Dem  
EDM139 **Alasdair McDonnell** SDLP EDM139 **Jeremy Browne** Lib Dem  
Sanctuary P **Alex Cunningham** Labour EDM139 **Jeremy Corbyn** Labour  
EDM139 **Alistair Carmichael** Lib Dem Sanctuary P **Jim Fitzpatrick** Labour  
Sanctuary P **Alun Michael** Labour EDM139 **Jo Swinson** Lib Dem  
EDM139 **Andrew Dismore** Labour Sanctuary P **John Denham** Labour  
EDM1224 **Andrew George** Lib Dem EDM139 **John Hemming** Lib Dem  
Sanctuary P **Andrew Griffiths** Cons EDM139 **John Leech** Lib Dem  
EDM139 **Andrew Stunell** Lib Dem EDM139 **John McDonnell** Labour  
EDM1224 **Andy Slaughter** Labour EDM139 **John Pugh** Lib Dem  
EDM139 **Angus MacNeil** SNP EDM139 **John Thurso** Lib Dem  
Sanctuary P **Angus Robertson** SNP Sanctuary P **Jon Cruddas** Labour  
Sanctuary P **Anna Soubry** Cons Sanctuary P **Julian Huppert** Lib Dem  
EDM139 **Ann Cryer** Labour EDM634 **Karen Buck** Labour  
EDM139 **Annette Brooke** Lib Dem EDM139 **Kate Hoey** Labour  
EDM139 **Bob Russell** Lib Dem EDM139 **Katy Clark** Labour  
Sanctuary P **Caroline Lucas** Green EDM634 **Keith Vaz** Labour  
EDM139 **Charles Kennedy** Lib Dem EDM139 **Kelvin Hopkins** Labour  
EDM139 **Chris Huhne** Lib Dem Sanctuary P **Kevin Barron** Labour  
Sanctuary P **Chris Leslie** Labour Sanctuary P **Khalid Mahmood** Labour  
Sanctuary P **Chuka Ummuna** Labour Sanctuary P **Lilian Greenwood** Labour  
EDM139 **Daniel Rogerson** Lib Dem EDM139 **Linda Riordan** Labour  
EDM139 **Danny Alexander** Lib Dem EDM139 **Lorely Burt** Lib Dem  
Sanctuary P **David Amess** Cons EDM139 **Louise Ellman** Labour  
EDM139 **David Crausby** Labour Sanctuary P **Lyn Brown** Labour  
EDM139 **David Howarth** Lib Dem EDM139 **Lynne Featherstone** Lib Dem  
Sanctuary P **David Lammy** Labour EDM139 **Malcolm Bruce** Lib Dem  
EDM139 **Diane Abbott** Labour Sanctuary P **Margaret Hodge** Labour  
EDM139 **Don Foster** Lib Dem EDM139 **Mark Durkan** SDLP  
EDM139 **Edward Davey** Lib Dem EDM139 **Mark Hunter** Lib Dem  
EDM139 **Elfynd Llwyd** Plaid Cymru EDM139 **Mark Lazarowicz** Labour  
EDM139 **Eric Illsley** Labour EDM139 **Mark Williams** Lib Dem  
EDM139 **Fabian Hamilton** Labour EDM139 **Marsha Singh** Labour  
Sanctuary P **Frank Dobson** Labour EDM139 **Martin Caton** Labour  
Sanctuary P **Gary Streeter** Cons EDM139 **Martin Horwood** Lib Dem



EDM139 **Geoffrey Robinson** Labour EDM139 **Menzies Campbell** Lib Dem  
EDM139 **Glenda Jackson** Labour EDM139 **Michael Connarty** Labour  
Sanctuary P **Gordon Brown** Labour Sanctuary P **Michael Meacher** Labour  
Sanctuary P **Graham Stringer** Labour EDM139 **Michael Moore** Lib Dem  
EDM139 **Greg Mulholland** Lib Dem Sanctuary P **Mike Gapes** Labour  
Sanctuary P **Heidi Alexander** Labour EDM139 **Mike Hancock** Lib Dem  
EDM139 **Hugh Bayley** Labour EDM139 **Mike Weir** SNP  
EDM139 **Hywel Williams** Plaid Cymru EDM139 **Mike Wood** Labour  
EDM139 **Nick Harvey** Lib Dem EDM139 **Ronnie Campbell** Labour  
Sanctuary P **Nia Griffith** Labour EDM139 **Sarah Teather** Lib Dem  
EDM139 **Norman Baker** Lib Dem Sanctuary P **Sheila Gilmore** Labour  
EDM139 **Norman Lamb** Lib Dem Sanctuary P **Simon Danczuk** Labour  
Sanctuary P **Owen Smith** Labour EDM139 **Simon Hughes** Lib Dem  
Sanctuary P **Pat Glass** Labour Sanctuary P **Stella Creasy** Labour  
EDM139 **Paul Burstow** Lib Dem EDM139 **Stephen Williams** Lib Dem  
EDM139 **Paul Farrelly** Labour EDM139 **Steve Webb** Lib Dem  
Sanctuary P **Pauline Latham** Cons EDM139 **Stewart Hosie** SNP  
EDM139 **Pete Wishart** SNP Sanctuary P **Tessa Jowell** Labour  
EDM139 **Peter Bottomley** Cons EDM139 **Timothy Farron** Lib Dem  
Sanctuary P **Peter Luff** Cons Sanctuary P **Tom Blenkinsop** Labour  
Sanctuary P **Peter Soulsby** Labour EDM139 **Tom Brake** Lib Dem  
Sanctuary P **Rachel Reeves** Labour Sanctuary P **Vernon Coaker** Labour  
EDM1224 **Roger Godsiff** Labour EDM139 **Vincent Cable** Lib Dem  
EDM139 **Roger Williams** Lib Dem EDM634 **Virendra Sharma** Labour

**52 signed EDM - no longer MPs since May election**

**Source MP's name Party Source MP's name Party**

EDM1224 **Andrew Pelling** Ind. EDM139 **John Austin** Labour  
EDM139 **Andy Reed** Labour EDM139 **John Battle** Labour  
EDM139 **Betty Williams** Labour EDM1224 **John Cummings** Labour  
EDM139 **Bill Etherington** Labour EDM139 **John Mason** SNP  
EDM139 **Brian Jenkins** Labour EDM139 **Julia Goldsworthy** Lib Dem  
EDM139 **Celia Barlow** Labour EDM139 **Julie Morgan** Labour  
EDM139 **Chris McCafferty** Labour EDM139 **Lembit Opik** Lib Dem  
EDM139 **Chris Mullin** Labour EDM139 **Lynne Jones** Labour  
EDM139 **Clare Short** Labour EDM139 **Mark Fisher** Labour  
EDM139 **Colin Breed** Lib Dem EDM139 **Mark Oaten** Lib Dem  
EDM139 **Dai Davies** BGPV EDM139 **Matthew Taylor** Lib Dem  
EDM139 **David Chaytor** Labour EDM1224 **Michael Clapham** Labour  
EDM139 **David Drew** Labour EDM634 **Mohammad Sarwar** Labour  
EDM139 **David S Borrow** Labour EDM139 **Neil Gerrard** Labour  
EDM139 **Desmond Turner** Labour EDM139 **Nick Palmer** Labour  
EDM634 **Doug Naysmith** Labour EDM139 **Paul Holmes** Lib Dem  
EDM139 **Eddie McGrady** SDLP EDM139 **Paul Keetch** Lib Dem  
EDM139 **Evan Harris** Lib Dem EDM139 **Paul Rowen** Lib Dem  
EDM1224 **Gavin Strang** Labour EDM139 **Paul Truswell** Labour  
EDM139 **George Galloway** Respect EDM139 **Phil Willis** Lib Dem  
EDM139 **Gwyn Prosser** Labour EDM139 **R. Younger-Ross** Lib Dem  
EDM139 **Harry Cohen** Labour EDM1224 **Robert Wareing** Labour  
EDM139 **Ian Cawsey** Labour EDM634 **Rudi Vis** Labour  
EDM139 **Ian McCartney** Labour EDM139 **Sandra Gidley** Lib Dem  
EDM139 **Ian Stewart** Labour EDM139 **Susan Kramer** Lib Dem  
EDM 634 **Jim Cousins** Labour EDM139 **Willie Rennie** Lib Dem  
BGPV = Blaenau Gwent People's Voice, Ind. = Independent  
EDM139 - 19/11/09, EDM1224 - 30/03/10, EDM 634 - 07/01/10

1 17th June 2010 parliamentary debate

2 Nick Clegg's letter to Gordon Brown 15/12/09

3 The coalition agreement between the Liberal Democrats and the Conservatives (11th May 2010)

4 Hansard, HC 25 May 2010, Col: 49

5 "Child Abuse & Neglect: the International Journal" - 15 October 2009

6 "Significant harm - the effects of administrative detention on the health of children, young people and their families" – RCPCH,

RCGP, RCPsych and the UK Faculty of Public Health – 10/12/09

7 "Yarl's Wood detention centre – Children's Commissioner issues progress report"- 17 February 2010

8 Daily Telegraph : "Yarl's Wood immigration centre treated children in a shameful way" - 18/06/10.

9 Letter to the Detention User Group from David Wood, UKBA - 10th June 2010

10 See Home Office, 'Control of Immigration: Quarterly Statistical Summary, United Kingdom, April – June 2009'

11 Guardian – “Yarl's Wood detained baby for 100 days, damning report reveals” - 24/03/10

12 Joint Committee on Human Rights, The Treatment of Asylum Seekers: Tenth Report of Session 2006-07, Q528

13 UKBA- Enforcement Instructions and Guidance - Chapter 55

14 Oral Evidence given by Dave Wood, UKBA to the Home Affairs Committee 16/09/09, HC 970-i (Question 25)

15 Bruegel I and Natamba E (2002) Maintaining Contact: What happens after detained asylum seekers get bail? South Bank University.

16 Home Affairs Committee :The Detention of Children in the Immigration System, First Report of Session 2009–10

17 Hansard, HC 17 June 2010 : Column 234WH

18 UK National Audit Office (2005). Returning Failed asylum applicants. The Stationary Office.

19 17th June 2010 parliamentary debate

20 17th June 2010 parliamentary debate

21 “Asylum Matters” – Centre for Social Justice

22 17th June 2010 parliamentary debate

23 <http://www.refugeecouncil.org.uk/policy/position/2010/18jan2010>

24 Daily Telegraph 12 Feb 2010

25 17th June 2010 parliamentary debate

26 Scotsman, 16/12/09.

27 17th June 2010 parliamentary debate

28 BBC news 19/05/10

29 17th June 2010 parliamentary debate

30 Guardian : “Border staff humiliate and trick asylum seekers – whistleblower” – 02/02/10

31 BBC news 22/02/05

32 Home Office Press Releases 19 May 2008

33 Home Office: Asylum Statistics

34 17th June 2010 parliamentary debate

35 “Asylum Matters” – Centre for Social Justice

**36** Lib-Dem manifesto 2010

37 Home Office (2010) Control of Immigration: Quarterly Statistical Summary, United Kingdom, October-December 2009

38 “Asylum Matters” – Centre for Social Justice

39 “Asylum Matters” – Centre for Social Justice

40 Lib-Dem manifesto 2010

41 “Asylum Matters” – Centre for Social Justice

42 Hansard, HC 17 June 2010 : Column 213WH

43 Lib-Dem manifesto 2010

44 JCWI regularisation programme proposal 'Recognising Rights - Recognising Political Realities

**45** Lib-Dem manifesto 2010

46 “Asylum Matters” – Centre for Social Justice

47 “Asylum Matters” – Centre for Social Justice

48 New Statesman – 18/09/08

49 Guardian : “Charities attack 'distressing' asylum scheme” – 18/02/08

50 “Asylum Matters” – Centre for Social Justice

51 Daily Mail – Brown attacked for not scrapping asylum policy that leaves hundreds of children behind bars at Christmas – 14/12/09

52 Daily Telegraph 20th May 2010 – “Yarl's Wood immigration centre is not fit for children and families”

53 The Times October 27th 2009 “No need to defend kids? The hell there isn't”

54 Hansard, HC 17 June 2010 : Column 234WH

55 17th June 2010 parliamentary debate

56 Medical Justice judicial review of UKBA removals at little or no notice

57 Guardian : “Judge orders Home Office to stop deportations without warning” – 25/05/10

58 17th June 2010 parliamentary debate

59 17th June 2010 parliamentary debate

60 Independent “Shortage of foster parents” May 17th 2010

61 17th June 2010 parliamentary debate

62 UKBA 12-August-09 : UKBA POLICY ON DETENTION OF CHILDREN

**64** 17th June 2010 parliamentary debate

65 Feb/07 - IMMIGRATION DIRECTORATES' INSTRUCTIONS - SECTION CONTENTS

66 BHIVA / NAT : "Detention, Removal and People Living with HIV" - June 2009

67 HMIP recommendation 2006



## 45. NATIONAL BOARD OF CATHOLIC WOMEN

Dear Mr David Wood and the UK Border Agency Review Team,

The National Board of Catholic Women, a consultative body to the Catholic Bishops' Conference of England and Wales, has been concerned about the detention of children for immigration purposes and we are glad to take part in the consultation you are conducting as part of your review into ending the detention of children.

There has been mounting evidence from the Children's Commissioner, from doctors and from organisations working with families who have been detained that shows beyond doubt that serious harm is caused to children by the act of detaining them. Physical and emotional damage is suffered as well as psychological damage to children who cannot understand why their parents are rendered powerless to protect them from the experience of forced removal from their home to a place of detention.

Our members believe it is indefensible to lock up children. We would ask you to ensure that children's welfare is at the heart of any new policy you implement. We feel very strongly that children and parents should remain together and family unity be a principle guiding policy. Any procedure you propose should not separate parents from their children.

We urge you to end the detention of children and their families now and immediately release those families currently in immigration detention.

It is also crucial to improve the wider system to provide a fair and humane process for children and their families seeking refuge in the UK, for instance by providing access to good quality legal advice and better support throughout the process.

We need a fairer system that demonstrates our natural instinct to protect and care for all children in our society.

We wish to be informed of the results of this consultation and your review in due course.

Yours sincerely

Jackie McLoughlin MBE  
On behalf of the National Board of Catholic Women

## 46. NORTH GLASGOW FRAMEWORK FOR DIALOGUE GROUP

### North Glasgow Framework for Dialogue Group

A voice for asylum seekers and refugees

30 June 2010

To: David Wood

Strategic director for criminality and detention

UK Border Agency

Dear Mr Wood,

### Review into ending the detention of children for immigration purposes

North Glasgow Framework for Dialogue Group is made up of people seeking asylum and refugees who live in North Glasgow. We meet every 2 weeks to address our common issues of concern, and we are very glad to take the opportunity to respond to your review of child detention.

You highlighted 3 areas on which you sought views:

#### 1) *How UKBA engages with asylum seeking families*

The main concern of our members is how your staff at the reporting centre in Brand Street, Glasgow relate to us. Reporting is very stressful for us – there is always the fear of arrest and detention. We do not sleep the night before and we are afraid and depressed on the day of reporting. UKBA staff do not come across as friendly. Police are more friendly! The staff make comments about us, for example about what we are wearing, and the engagement goes downhill from there.

This is bad enough for adults. We should not have to take our children to the reporting centre. They become stressed because of our fear.

We can get a train pass to travel to the reporting centre in Glasgow, but the station near Petershill Drive, where many people seeking asylum live, is not easily accessible for mothers with young children and prams. It is also unstaffed, so sometimes women especially do not feel safe.

- To improve your engagement, you should give staff more training in customer care matters.
- To review contact arrangements – don't make us take our children to reporting centres
- To review our access to legal representation, the incredibly short time limits on asylum appeals should be changed. Five days is not enough to prepare an appeal, especially if we have to find a new solicitor, or receive new evidence from our home country for example. If someone is detained s/he has only 3 days to make an appeal

#### 2) *Voluntary returns*

If people felt they got justice in the asylum application process, they might feel more positive towards the voluntary return policy. In the New Asylum Model it is our experience that there is a very short time between screening and the substantive interview, leaving us little time to get legal advice. People go into these interviews, not understanding their importance. While we understand the desire for an efficient process, it is too fast for us to do our case justice.

We would ask UKBA to ensure that anyone co-operating with UKBA in the voluntary returns process does not suffer homelessness and is not made destitute during this time. If not supported by UKBA they should be allowed a temporary work permit.

The eligibility criteria for voluntary return should be transparent and clear.

The level of resources publicised around voluntary return are not always available. Another barrier to return is often fear of destitution

Members also feel that there is undue emphasis placed on the country reports, sometimes to the detriment of an individual's case, and that the reports do not contain enough detailed knowledge.

#### 3) *Alternative family returns policy*

Glasgow's family return project certainly gives people time to mentally prepare for being sent home, but this might happen as well if people were left in familiar surroundings and given time to gather evidence for a final review of their case.

If the government is so sure it is safe to return us we would like the government to give us some surety or guarantee of no detention if we are returned. The UK government should not sign its liability away before removing people.

Whatever the alternative, the welfare of children should be paramount. Even young children link detention with jail and crime and this is very troubling for them. We see child detention for immigration purposes as a form of child abuse.

Regards

N. Akhtar  
On behalf of North Glasgow FFD Group

## 47. NORTH WEST REGIONAL STRATEGIC MIGRATION PARTNERSHIP

### Review into ending the detention of children for immigration purposes

Response from: North West Regional Strategic Migration Partnership

Date: 1<sup>st</sup> July 2010

1. **How can UKBA improve their engagement with families in dealing with asylum applications? Do UKBA need to review the contact arrangements with those families and their access to legal representation?**
  - 1.1 Early, consistent casework and legal support should be the focus when improving engagement with families in dealing with asylum applications. Evidence from the Early Legal Advice Pilot in Solihull suggested that refused asylum seekers were more likely to accept voluntary return if they felt they had been provided with adequate legal support during their initial or appeal hearing<sup>133</sup>. Indeed early legal representation should provide greater validity to initial decisions for all concerned.
  - 1.2 Australia's Hotham Mission's Asylum Seeker Project in Melbourne provides consistent casework with, if possible, an ongoing caseworker. This approach was seen to reduce anxiety and allay the fears and mistrust of agencies wishing to return asylum seekers to their country of origin. A review of their work concluded that "the early intervention casework response contributed to the fact that over 85% of all refused asylum seekers voluntarily left the country on a final decision....no asylum seeker absconded."<sup>134</sup>
  - 1.3 In addressing engagement with families, the role of the caseworker needs to be explored. In Sweden, the case worker prepares asylum seekers for a negative decision and possible return through "motivational counselling". The caseworker communicates all possible immigration outcomes, whilst providing support on how to cope with a negative decision and return to their country of origin. This model of end-to-end support has proven to be most successful in terms of voluntary return and a reduction in the number who choose to abscond.<sup>135</sup>
  - 1.4 It is important that families are able to receive information on voluntary return from a source independent of UKBA. Experience shows that UKBA initiatives to encourage return of families have resulted in few if any returns<sup>136</sup>. This could be because families are wary of any information received from such a source. On the other hand, an IOM voluntary return scheme for families (AVR FC) launched just three months ago has already seen applications from 315 individuals within families of whom 27 have already departed with another 32 booked to travel in the coming weeks. This may be due to efforts made by IOM in its communications with diaspora communities and media and other relevant stakeholders to explain the organisation's independence from UKBA.
2. **How can UKBA promote and improve the current voluntary return process to increase the take up from families who have no legal right to remain in the UK? What is UKBA's role here and is there a role for others in engaging with families around this option?**
  - 2.1 The dissemination of information on the programme needs to be consistent and to be shared not just amongst UKBA staff but all stakeholders. It is important that frontline staff both in Local Authorities and the voluntary sector are not only aware of this programme but have confidence and trust in the process, to avoid agencies giving conflicting advice.
  - 2.2 One way of gaining trust and instilling confidence amongst the voluntary sector, in this programme, is by ensuring that it is independently reviewed and evaluated from the beginning of the process right through to resettlement, particularly the outcomes for those concerned after resettlement in their country of origin.
  - 2.3 Providers of accommodation and other services under contract to UKBA should have a contractual obligation to provide access to information on voluntary return. This may be through, for example, dissemination of printed material (Assisted Voluntary Return leaflets, Stories of Return etc), through the facilitation of briefings from IOM staff, and / or through arranging contact with other

<sup>133</sup> Centre for Social Justice (2008) *Asylum Matters*, - Chapter 5, pg. 70

<sup>134</sup> Asylum Seekers Project – Hotham Mission (2003) *Welfare issues and immigration outcomes for asylum seekers Bridging Visa – pg. 5*

<sup>135</sup> Mitchell G (2001) *Asylum Seekers in Sweden: An integrated approach to reception, detention, determination, integration and return*

<sup>136</sup> The UKBA Alternatives to Detention project in Ashford, Kent saw the return of only 1 family during its 9 months; the Families Return Project in Glasgow has yet to see a single return of any family; the Clan Ebor project in Yorkshire and Humberside in 2007 failed to see the return of any of its 60-family caseload

families who have returned home under voluntary return schemes who can provide an independent perspective on the return and reintegration process.

- 2.4 In engaging with families with respect to voluntary return, it is essential that children, not just parents, are adequately briefed about the process. The role of parents and agencies in briefing children needs to be thoroughly examined here, to ensure that they do in fact receive the correct information and that it is in a timely and appropriate manner.
- 3. If a family chooses not to leave the country, with or without support from UKBA, what might an alternative family returns model look like? How should UKBA respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between their section 55 safeguarding duty and the enforcement of immigration rules)?**
- 3.1 The repercussions of non-compliance to voluntary return need to be handled sensitively both for the family involved and the wider community in which they have been residing.
- 3.2 Fear of the consequences of non-compliance may cause a family to abscond either with or without the children. The safety and well-being of children needs to be at the forefront in such considerations, particularly the impact of separation from their parents / family in such a scenario and the potential dangers associated with children who become “missing” from the system.
- 3.3 A particular concern around the potential of split-family removals and detention of one or both parents is the impact on the child’s emotional well-being. Indeed, the fear over split family removals is that the head of household may be deported and the family for one reason or another, potentially because they have absconded, will not follow. This is neither effective nor in the best interests of the child.
- 3.4 The common theme in successful schemes is working alongside families to seek their cooperation. Contact should obviously be initiated at the beginning of the process, but perhaps the frequency of contacts could be increased from the time the family receives its removal orders. Therefore, at the point that a family chooses not to leave the country this relationship has been well established and can be used to seek to address the reasons why this family do not wish to return, thereby reducing the risk of absconding.
- 3.5 Following on from that point, the reasons why a family chooses not to leave the country need to be addressed in this circumstance, rather than using this scenario as a justification for detention. This links into a wider point that is, whatever model is adopted for enforced return for families, the commitment to end child detention must be at the forefront as a moral imperative.

## 48. PRAXIS ORGANISATION, LONDON

### Introduction

Praxis Community Projects is an organisation whose mission is “to be with displaced communities, listening and acting through our common humanity to create and nurture reconciliation, human rights and social justice.”

Since its inception 26 years ago, Praxis has worked with refugees, asylum seekers and other vulnerable migrants. Praxis is providing its clients with intensive casework support and has drawn in a number of complementary services. In recent years, Praxis has become increasingly aware, through its casework, of the effects that the different aspects of the asylum process have on the most vulnerable of our clients. By far the most pernicious of these is detention of asylum seeking children for immigration purposes, and Praxis welcomes the commitment taken by the new government to abolish it. Therefore Praxis and its clients have a stake in the outcome of the review into child detention currently underway, as it may affect a substantial proportion of our clients who may be at various stages of their asylum process.

### The scope of the review

The Review considers, *inter alia*, the current approach to dealing with asylum applications from families, including the contact arrangements with those families and the families' access to legal representation, the current circumstances in which children are detained, models of good practice from other jurisdictions and relevant current research.

The Review is prepared to take account of the existing international, EU and Human rights obligations; the UK Border Agency's statutory duty to make arrangements to take account of the need to safeguard and promote the welfare of children (section 55, BCI ACT); equality obligations; current financial constraints; the requirement for robust statistical data; the need for a risk assessed approach in dealing with individual families; the need for an implementation timetable.

However, a special emphasis is placed on the following questions, as outlined in the letter by David Wood, UKBA Strategic Director for Criminality and Detention:

- *How can we improve our engagement with families in dealing with asylum applications? For example, do we need to review the contact arrangements with those families and their access to legal representation?*
- *How can we promote and improve the current voluntary return process to increase the take up from families who have no legal right to remain in the UK? What do you believe UK Border Agency's role is here and is there a role for others in engaging with families around this option?*
- *If a family chooses not to leave the country, with or without support from the UK Border Agency, what might an alternative family returns model look like? How should the UK Border Agency respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)?*

It appears from the scope of the review as outlined above that the question of alternatives to child detention of children and families is seen by the Government in connection with the removal of asylum seeking families or unaccompanied children. We cannot agree with this assumption, and would like to make two main points regarding the scope of the review.

I. The first of these points is that detention of children is so inherently harmful for their wellbeing and violates their rights in so many and varied ways that the practice should be stopped immediately. This should be done regardless of whether the government succeeds in its goal to increase the uptake of voluntary returns schemes and to meet its removal targets. There is a compelling legal, moral and practical case against the detention, as well as a broad consensus of politicians, professionals in the areas concerning children's well-being, lawyers and the civil society organisations.

The human rights of children are paramount and may not be trumped by policy considerations and the government's duty to safeguard them cannot depend on the immigration status of the children concerned. Refugee and asylum-seeking children must be afforded the same rights and protection as any other child in the UK. The very fact of detention of children for no crime that they have committed is in itself a violation of several human rights of children guaranteed by the Human Rights Act 1998, the European Convention of Human Rights, the UNCRC and other international conventions and treaties of which the UK is a signatory. It is deeply discriminatory in that no other child in the UK would be subjected to the same treatment as refugee and asylum seeking children. In the more extreme of the documented cases, the harm to mental and physical well-being of children was so great that it raises issues of inhuman and degrading treatment under Art. 3 of ECHR.

There is a statutory duty on the UKBA to make arrangements to safeguard and promote the welfare of children as it carries out its functions. The statutory basis for this duty is s.55 Borders, Citizenship and Immigration Act 2009, which came into force on 2 November 2009. This duty is intended to be equal to the duty imposed on all other statutory bodies dealing with children under s.11 Children Act 2004.<sup>137</sup> Numerous papers and reports have comprehensively condemned detention of children as an inherently flawed measure which causes enormous harm to the physical and psychological wellbeing of the children detained.<sup>138</sup>

The case against detention of children and families is compelling, while the benefits and necessity of this measure for the Government's purposes are doubtful: overall, detention is a costly, ineffective and unnecessary measure.

According to the statistics, nearly 1,000 children a year are detained in the UKBA's immigration detention centres. On average, such children spend more than a fortnight-15.58 days-in detention, but detention for up to 61 days is not uncommon. On 30 June 2009 10 of the 35 children in detention at that time had been held for between 29 and 61 days. The cost of keeping a person in detention in 2009 was £130 a day; therefore, keeping a family of four in detention for between four and eight weeks costs more than £20,000.<sup>139</sup>

Under half of the 1,100 or so children detained last year were actually removed, while over 600 were 'released back into the community'.<sup>140</sup> Equally, there is no evidence that families are systematically at risk of absconding if they are not detained. The education and health needs of children, friendship ties and the desire to be granted status in the UK all work against families 'disappearing'. UNHCR has referred to 'the remarkable scarcity of official data, at least in the public realm, relating to the number of non detained asylum seekers, and failed asylum seekers, who abscond'.<sup>141</sup>

II. The second point is that the issues around child detention elucidate the flaws in the current system of processing of asylum claims and removals. It is these root flaws that need to be addressed to provide a real alternative to detention and its most harmful consequences, rather than attempting to cajole families into returning.

The flaws in question include:

- the excessive length of the asylum process;
- lack of quality legal representation and interpreting for the families involved from the very early stages of the process, which leads to delays in determination of asylum claims and affects the quality of decision making;
- poor decision making as a result of which as much as a third of all decisions to refuse asylum is overturned on appeal; if these cases had been given proper consideration from the outset, the trauma of detention and threat of removal would have been possible to avoid;
- the government's alarming readiness to remove to manifestly unsafe countries as Afghanistan,<sup>142</sup> Iraq, Somalia, DCR, often against the advice of UNHCR and other international organisations.

Praxis believes that asylum claims must be processed while the claimant families live in the community. A dedicated case-owner must work with the family and close cooperation must be established with the social services and voluntary sector to ascertain and meet the family members' – especially children's – needs. Successful schemes of non-detention-based processing of asylum claims have been in existence in other countries such as Sweden and Canada.<sup>143</sup> The practice of reporting existing in the UK can be an alternative to detention, however, in the current form, it can be very cumbersome and disruptive for the families involved. Alternative forms of contact, taking account of the needs of asylum-seeking families can and should be developed.

Praxis also believes that there may be cases – as a result of the above mentioned flaws which are by no means the asylum seekers' fault – where it would be unrealistic to expect families with children to return or comply with removals. In these cases, the Home Office should consider granting these families leave to remain, temporary or indefinite depending on the circumstances of the family or the child involved.

One such situation involves families have been in the UK for a substantial period of time, - primarily as a result of the unreasonable length of the asylum procedures in the UK – and consequently, their children are likely to have

<sup>137</sup> See Briefing paper of the Refugee Children's Consortium, A debate on alternatives to child detention Thursday 17 June 2010, Westminster Hall

<sup>138</sup> The Children's Commissioner for England's follow up report to *The Arrest and Detention of Children Subject to Immigration Control* 19 February 2010

<sup>139</sup> Westminster hall debate on alternatives to child detention, 17 June 2010

<sup>140</sup> Data provided at the Westminster Hall debate on 17 June 2010.

<sup>141</sup> Alternatives to immigration detention of families and children, July 2006 [Online]

[http://www.biduk.org/pdf/res\\_reports/alternatives\\_to\\_detention\\_july\\_2006.pdf](http://www.biduk.org/pdf/res_reports/alternatives_to_detention_july_2006.pdf)

<sup>142</sup> Particularly concerning in this respect are the recently publicised plans to deport unaccompanied asylum seeker children to Afghanistan – see e.g.

[http://www.channel4.com/news/articles/politics/domestic\\_politics/uk+to+deport+afghan+minors+in+immigration+shakeup/36740](http://www.channel4.com/news/articles/politics/domestic_politics/uk+to+deport+afghan+minors+in+immigration+shakeup/36740)

<sup>143</sup> Alternatives to immigration detention of families and children, July 2006



integrated into UK society, learned the language and may have little or no meaningful links with their country of origin. Removal would thus have a detrimental effect on their well-being. In a situation like this, challenges against the decision to remove on human rights grounds are likely to succeed.

For many people return is not an option as a result of the situation in their country of origin. The government must comprehensively and honestly assess whether the country of destination is genuinely safe, and where it is not – to refrain from the attempts to persuade or force refused asylum seeking children and families to return. Returning children to the situations of ongoing or recent conflict, as is the case with the planned forced removals of unaccompanied asylum seeking children to Afghanistan, may place the children in a great risk of harm. Having the children's best interest in mind, the government should consider granting temporary stay, with a possibility of a subsequent review.

In conclusion, Praxis would like to join its voice to the remarks made by the Refugee Children's Consortium (RCC), a coalition of thirty immigration and children's organisations, in its briefing for the parliamentary debate on alternatives to the detention of children on 17 June 2010:

- 'Ending the detention of children is not dependent on establishing "alternatives to detention" projects, or new processes for families.
- Discussion on policies and practice on returns are not needed to end the detention of children.
- Discussions that focus on finding solutions to the problems at the end of the process need to consider a family's entire experience of the asylum and immigration processes.'<sup>144</sup>

Vaughan Jones - Chief Executive Officer

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<sup>144</sup> Briefing paper of the Refugee Children's Consortium, A debate on alternatives to child detention  
Thursday 17 June 2010, Westminster Hall  
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## 49. PRISONS AND PROBATION OMBUDSMAN



Mr David Wood  
Strategic Director  
Criminality and Detention Group  
UK Border Agency  
2<sup>nd</sup> Floor - Seacole  
2 Marsham Street  
London SW1P 4DF

11 June 2010

*Dear David*

Thank you for your letter of 10 June inviting the Prisons and Probation Ombudsman's office to participate in the review into ending the detention of children for immigration purposes.

Neither the Complaints nor, I am especially pleased to say, the Fatal Incidents Investigation team have had any involvement with the children detained for immigration purposes and so there is nothing that we can usefully add to the review.

We are of course pleased to learn of the spirit of the review and trust that the outcome is the ending of the detention of children.

Yours sincerely

*Jane*

**Jane Webb**  
Acting Prisons and Probation Ombudsman



M/S C11.jjb

INVESTOR IN PEOPLE

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## 50. REFUGEE CHILDREN'S CONSORTIUM

**Review into ending the detention of children for immigration purposes: Response of the Refugee Children's Consortium June 2010**

**Members of the Refugee Children's Consortium are: Action for Children, The Asphaleia Project, Asylum Aid, AVID (Association of Visitors to Immigration Detainees), Bail for Immigration Detainees, Barnardo's, BASW (British Association of Social Workers), British Association for Adoption and Fostering (BAAF), Catch22, Children's Legal Centre, Child Poverty Action Group, Children's Rights Alliance for England, The Children's Society, DOST, Family Rights Group, The Fostering Network, FSU (Family Service Units), The Immigration Law Practitioners' Association (ILPA), Medical Justice, The Medical Foundation for the Care of Victims of Torture, National Care Advisory Service, NCB, NSPCC, The Prince's Trust, RAMFEL, Refugee Council, Refugee and Migrant Justice, Scottish Refugee Council, Student Action for Refugees (STAR), Voice and Welsh Refugee Council.**

**The British Red Cross, Office of the Children's Commissioner (England), UNICEF UK and UNHCR all have observer status.**

### 1. Introduction

The Refugee Children's Consortium (RCC) is a group of NGOs working collaboratively to ensure that the rights and needs of refugee children are promoted, respected and met in accordance with the relevant domestic, regional and international standards. Our membership includes leading children's and refugee NGOs, bringing together a significant body of expertise in dealing directly with asylum seeking children and safeguarding and promoting children's welfare.

The RCC welcomes the commitment within the coalition agreement to '*end the detention of children for immigration purposes*'<sup>1</sup> and the announcement of a review that will take account of international, EU and human rights obligations. The urgency of this matter was demonstrated by the Prime Minister in his address on the Queen's Speech, in which he stated: '*after the Labour Government failed to act for so many years, we will end the incarceration of children for immigration purposes once and for all*'<sup>2</sup>. Given this commitment:

1. Detention of children must end now, as it is clear that detention harms children; children and their families must be released immediately.
2. Children and their families should never be separated for immigration purposes.
3. Ending the detention of children is not dependent on establishing 'alternative to detention' projects, or new processes for families.
4. Discussion on policies and practice on returns are not needed to end the detention of children.
5. Discussions that focus on finding solutions to the problems at the end of the process need to consider a family's entire experience of the asylum and immigration processes. The provision of good quality legal advice throughout these processes is crucial.

The RCC also welcomes the detention review as an opportunity to adopt a fresh approach to the treatment of children and families within the asylum and immigration process; and to look at how the system can be improved, with real meaning given to the UK Border Agency's obligations in international and domestic law to safeguard and promote the welfare of children. NGOs and civil servants have identified a real need for a change of culture, and for the best interests of children to be a primary consideration at all times, and the UKBA's response to the government's commitment to end the detention of children provides an opportunity to address these needs.

### 2. Context and evidence that immigration detention harms children

Despite a range of international human rights bodies and experts speaking out against the routine use of detention as a form of immigration control, detention continues to be a frequent response to violations of immigration laws and regulations, such as unauthorised entry into a State.<sup>3</sup> Most migration laws do not adopt a children's rights perspective, nor do they have specific provisions for children. This leaves children particularly vulnerable to suffering deprivation of liberty for immigration purposes, and suffering harm.<sup>4</sup> A recent case in the European Court of Human Rights found that, where the conditions of detention and the effect of detention on the physical and mental health of the detainees are sufficiently adverse,<sup>5</sup> this may in itself constitute a breach of the prohibition against torture or cruel, inhuman or degrading treatment or punishment, in violation of international law.<sup>6</sup> The extra vulnerability of children has to be taken into account, but where conditions meet this threshold the detention will become unlawful. Detention causes short-term and long-term damage to children. While it has been acknowledged that conditions in Yarl's Wood have improved<sup>7</sup>, the centre "*remains essentially a prison*"<sup>8</sup> and there is a growing body of evidence, including from the Royal Medical Colleges,<sup>9</sup> that documents the "*profound and negative impact*"<sup>10</sup> of detention on children, including impairment of their physical and mental health.

In February 2009, a family was awarded £150,000 in compensation after the government admitted that the family's detention had been unlawful and had left one of the children suffering from post-traumatic stress disorder.<sup>11</sup> A report produced by a team of paediatricians and a clinical psychologist in late 2009, after they had examined 24 detained children, also found that the British system of immigration detention, although often relatively brief, is nevertheless potentially harmful to the mental and physical well-being of children. An audit of health records at Yarl's Wood found standards to be below those expected of the National Health Service. A decision to detain rarely

appears to be informed by a child's physical and mental health, even in cases where a child has a serious illness such as Sickle Cell Anaemia, or where it is evident that a child's condition has deteriorated in detention. Preventative healthcare arrangements prior to removal, for example immunisations and the provision of malaria prophylaxis, were found "to be so inadequate as to endanger children's health".<sup>12</sup> The 2009 inspection of Tinsley House immigration removal centre at Gatwick airport reiterated previously expressed concerns at the plight of the small number of children and women held in this largely male establishment, and found both that conditions had generally deteriorated and that "the arrangements for children and single women were now wholly unacceptable". Children continued to be detained for more than 72 hours, and there had been little progress in developing appropriate child protection; childcare; or education arrangements.<sup>13</sup>

The RCC is opposed to the detention of children and their families for immigration purposes. Detention under Immigration Act powers is without charge or trial, for an unlimited period and without the automatic supervision of any court. Detention centres cannot afford children the protection and care they need, nor uphold their rights under human rights law and international instruments; including rights to freedom, to a normal social life, and to education. Detention facilities are never an appropriate environment for children and can badly affect their physical and emotional health and wellbeing.<sup>14</sup> Given the commitment to end the detention of children, we expect to see the decommissioning of facilities and resources for the detention of children.

### **3. International and domestic legal framework**

In 2008, the UK Government withdrew its immigration reservation to the UN Convention on the Rights of the Child. However, the removal of the reservation did not result in substantive government action to protect and promote the human rights of children subject to immigration control, which would have included ending the detention of children for immigration purposes. Article 3(1) of this convention requires that the "best interests of the children shall be a primary consideration" in all actions concerning children. However, the UK has been repeatedly criticised for its failure to ensure that the principle of the best interests of the child is integrated into all immigration legislation and policy affecting children<sup>15</sup>. Article 37 prohibits the unlawful or arbitrary detention of children, stating that any detention of a child is only permissible "as a measure of last resort" and must be "for the shortest appropriate period of time". Every child deprived of liberty "shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age". International human rights standards outline that for the administrative detention of a child to be lawful, it must be shown that no less restrictive measure would suffice. In other words, States must use and make available alternative measures both in law and in practice, and give consideration to 'less invasive means of achieving the same ends'.<sup>16</sup> Furthermore, section 55 of the Borders, Citizenship and Immigration Act 2009, which came into force on 2 November 2009, places a statutory duty on the UKBA to make arrangements to safeguard and promote the welfare of children as it carries out its functions. This duty is intended to be equal to the duty imposed on all other statutory bodies dealing with children under section 11 of the Children Act 2004. The duty does not mean that the UKBA cannot carry out its primary functions of immigration control; however it does mean that processes should be carried out in a way that safeguards and promotes the welfare of children. As is recognised by the Government's commitment, it is clear that, given the mental and physical harm suffered by children in detention, the policy of detaining children is not compatible with this duty.

## **4. The UKBA's current approach**

### **4.1 The need for detention to end immediately**

As observed at the beginning of this submission, ending the detention of children is not dependent on establishing "alternatives to detention" projects; new processes for families; or new policies and practice on returns. It is necessary to distinguish between short-term and long-term strategies, and in the short term, the priority should be to end the detention of children and families immediately, without separating families. The development of alternative returns processes is a longer, and more complicated, process, requiring time and investment. It is regrettable that the Minister for Immigration, Damian Green MP, recently stated in debate in Westminster Hall on 'Alternatives to Child Detention' that "before we close Yarl's Wood for the detention of families we need to find effective alternatives"<sup>17</sup>. Given the clear harm that detention causes children, and the commitment of the Government to putting an end to it, the obvious 'alternative to detention' is simply *not to detain*, and we see no reason why the UK Border Agency could not cease detaining children immediately and release all families. It is presumed that the reason for not immediately ending the detention of children is the fear that some families may abscond. However, there is little evidence to substantiate this concern. UNHCR research found in 2006 that the rate at which asylum seekers and irregular migrants abscond, prior to a final rejection of their claim and/or the real prospect of removal from the territory, was low<sup>18</sup>, and David Wood, the UKBA Strategic Director for Criminality and Detention Group and the person leading the current review, stated that absconding is "not our biggest issue" because "it is not terribly easy for family units to abscond"<sup>19</sup>.

### **4.2 Improvements to the asylum process**

Any discussion of alternative family returns models is inextricably linked to improvements in the asylum and immigration system, and a wider programme of reform is necessary to improve the ways in which the immigration and asylum process treats families. In addition, a culture change is desperately needed with the treatment of children and families in the asylum and immigration system directed primarily by the best interests of the child. Key

recommendations from the detention review should be taken forward in the wider asylum review, and specifically the following improvements are crucial:

### **Improvements to case management**

□ Families should be provided with independent support workers at the point at which they claim asylum, or appeal decisions on their immigration cases.

Support workers should offer families information and assistance, and signposting to legal advice, education, medical care and social services. It is imperative that this support be provided in conjunction with access to independent legal advice, in order to ensure that, following refusal of a legal application, parents are informed about the options available to them, including the possibility of making further legal applications and/or returning voluntarily to their country of origin.

### **Access to legal advice**

□ It is vital that the UKBA ensure that those entitled to be granted leave to remain in the UK, whether because they are refugees or for other reasons, are granted such leave. This relies on families having access to good-quality, publicly funded legal representation from an early stage in their asylum claim, and throughout the determination process. There should be sufficient funded time for the full facts in families' cases to be aired before decisions are made, and for a proper exchange of information. Such changes would increase parents' confidence in Home Office decision-making, and enable parents to make decisions based on comprehensive information about their legal situation. The Solihull Early Legal Advice Pilot has demonstrated that early access to high-quality legal advice generates improved decision making and improved perception of the process from all involved, including asylum applicants, and the frontloaded model should be rolled out across the UK20, with specialist teams established to work with families.

There is much evidence that inadequate legal aid provision has had a highly negative impact on immigration advisors and the ability of individuals to gain access to legal advice and representation<sup>21</sup>. This has most recently been underlined by the closure of Refugee and Migrant Justice, one of the largest providers of publicly funded legal advice to asylum seekers and migrants in the UK. A review of the legal aid funding arrangements for family cases is essential to ensure that families can access good quality publicly funded legal advice and representation at every stage of the asylum and immigration process.

### **Decision-making**

□ The Home Office must pay urgent attention to improving the quality of first instance asylum and immigration decisions in family cases. The UKBA should take immediate steps to implement recommendations from UNHCR's Quality Initiative Project on areas of continuing concern in the determination process, including credibility assessment, workloads, and the provision of information to applicants. The research of RCC members shows that poor performance by case owners in these areas adversely affects families' levels of trust in the Home Office, with implications for compliance. Later changes in the decisions of the courts as to the law and country situations must all be addressed, as with the current asylum process, which is not 'fit for purpose', it is not a given that, if someone has been through the appeals process, and had their appeal dismissed, it will necessarily be appropriate or lawful to expect them to return to their home country. Asylum seekers and irregular migrants are more likely to accept and comply with a negative decision if they believe that they have been through a fair asylum or immigration process; and throughout this they have been well informed and supported.

### **Granting temporary leave**

□ A key problem in the current system is the attempted removal of persons who it would be unlawful to remove or who it is not reasonably practicable to remove, and who should not be subjected to attempts at removal<sup>22</sup>. In conjunction with improvements to the efficiency and quality of the asylum and immigration decision-making process, policies for bridging 'the protection gap' should be introduced – including options for granting temporary protection where return is not viable.

## **5. The UKBA's initiatives on implementing alternatives to the detention of children, including the current Glasgow pilot**

As mentioned before, any 'alternatives' should not be established in isolation, and the failure of previous pilots in part stems from the fact that they focussed on returns and removals, rather than on engaging with the asylum and immigration process as a whole, and the welfare of families and children.

In November 2007, the Home Office began a pilot scheme to trial an alternative to detention for families with children, focussing on families who had been refused asylum and were facing the prospect of return. It ran for ten months, and supported accommodation for families was provided at Millbank, a centre managed jointly by the UKBA and the charity Migrant Helpline. Following concerns expressed by members of the RCC, the Children's Society and Bail for Immigration Detainees conducted an evaluation of the pilot and found that the government was less interested in the impact of the pilot on the minors involved than on its cost and with the number of families leaving the UK. There were insufficient efforts to build the trust of those involved and the project was considered a failure.<sup>23</sup> The minister himself lamented that the 'experiment' "*was nothing like long enough, well resourced enough or serious enough to answer the question about whether we can have a proper alternative.*"<sup>24</sup>

The subsequent establishment of a pilot scheme in Glasgow which promised an ‘alternative to detention’ was a welcome development, but in light of the failing of the Millbank pilot in Kent and criticisms levelled against the Glasgow scheme’s “*robustness and experimental design*”, concerns have remained<sup>25</sup>. Families in this pilot are required to move to specific accommodation, and are offered information to help them consider how best to return to their home countries, while being regularly reminded that if they do not co-operate with voluntary return the UKBA will attempt forcibly to remove them from the UK. The RCC does not have further information on this pilot but would suggest that any alternative which involves coercive sanctions at the end of the process, and does not acknowledge a families’ need to access quality legal advice in order to assess their options, is unlikely to succeed. Alternatives can only be meaningful if they engage with the whole asylum process and are not based solely around returns and removals. Ongoing and consistent contact should be maintained with families and sufficient information and good quality-legal advice should be provided throughout.

## **6. Models of good practice from other jurisdictions and relevant current research**

Research into alternative programs in a range of countries has found that:

- asylum seekers and irregular migrants are better able to comply with requirements if they can meet their basic needs while in the community
- asylum seekers and irregular migrants are more likely to accept and comply with a negative decision on their permission to stay if they believe
  - o they have been through a fair asylum or immigration process
  - o they have been informed and supported through the process<sup>26</sup>.

It has also been found that the effectiveness of a particular alternative measure is linked to several common factors, including:

- The provision of legal advice;
- Ensuring that asylum seekers are not only informed of their rights and obligations, but also that they understand them;
- The provision of adequate materials, support and accommodation throughout the asylum procedure; and
- A focus on broader psycho-social well-being, not just the immigration process outcome<sup>27</sup>.

These points correspond with those raised above regarding desperately needed improvements to the asylum and immigration process as a whole. Furthermore, international models clearly demonstrate the need to develop trust and dialogue with migrants, in the context of high-quality decision making and transparent, fair processes. Elements of good practice from models operating in other jurisdictions, such as Sweden, Australia and Belgium, may be appropriate to incorporate into the British system, but only as part of more holistic reform.

### **6.1 Case management**

A common feature of models is the presence of a case manager, separate from the decision maker, who is a constant point of contact to guide the migrant through the immigration or asylum processes. Case management is a strategy for managing asylum seekers and irregular migrants in the community while their migration status is resolved, without resorting to immigration detention. The case manager ensures that the migrant understands these processes, has access to appropriate legal advice and can meet his or her welfare needs. Migrants’ whose immediate needs are met are more able to engage with difficult choices regarding the limited options available to them, and access to information and support on voluntary return is a part of case management.

The case management model “*utilises social work type principles of supporting and empowering individuals and recognising unique needs and circumstances*”<sup>28</sup>. It is essential that trust is built with individuals or families, and that there is a focus on broader wellbeing, not just their immigration outcome. The individual case should be properly examined, with all new information taken into account, and support provided. The system should cover all families with children and unaccompanied minors, and it is vital that NGOs and Government work together on its transparent development and implementation.

Australia has in recent years introduced a case management model similar to that of Sweden. Migrants identified as vulnerable are allocated a case manager, who works with them until their case is finally resolved. The case manager role provides ongoing assessment, support and recommendations to decision makers, but has no decisionmaking role. The role assesses welfare needs and identifies barriers to immigration outcomes. Australia has closed the majority of its mainland detention centres. According to government statistics, 94% of people on community-based case management programs complied with reporting and did not abscond. 99% of families did not abscond. 67% of people not granted a visa to remain voluntarily departed<sup>29</sup>.

### **6.2 Open reception/accommodation centres<sup>30</sup>**

In other jurisdictions, alternative forms of detention have been introduced, ranging from the asylum seeker group homes, where women and children often live freely in the community in group housing<sup>31</sup>, to residential housing, where women and children remain under guard with no freedom of movement. In some cases, the excessive and long-term restrictions on freedom of movement could still amount to deprivation of liberty in law<sup>32</sup>. Concerns have been also been raised regarding the unnecessary and sometimes prolonged use of low-security facilities, including access to health-care and recreation and other support available in the community.

Belgium ended the detention of families with children in October 2009. Instead families are placed in open housing units, designed to accommodate families pending their departure. During their stay they receive 'coaching' from return assistants of the Immigration Office, to prepare them for return. Initial government statistics show that 79% of families remained in contact with the coaches throughout their stay in the housing units<sup>33</sup>. However, the manner in which families are transferred to and placed in the return houses is an area of concern, as families without a residence permit are frequently arrested by the police, and the transfer to the return house can be deeply traumatic, hinder the development of trust between the individual and his or her coach, and impact negatively on the education and wellbeing of the child. While officially children can continue to go to school in their neighbourhood, often the return homes are too far away for this to be possible. In essence, the disruption in the children's lives remains the same as it would have been had they been brought to a closed centre<sup>34</sup>.

## **7. Increasing take-up of voluntary return by families who have no legal right to remain in the UK**

Those who cannot remain in UK should be better supported to return voluntarily, and much can be done to further raise awareness of the Assisted Voluntary Return programmes available. Many families that RCC members have worked with have not been given a meaningful opportunity to return voluntarily to their countries of origin before being detained. The RCC believes though that increased take-up of voluntary return will be contingent on improvements to the asylum and immigration processes, which will in turn foster trust in decision making. Engaging with the family to discuss options for voluntary return can and should take place outside detention.

## **8. Establishing a new family removals model**

Given the comments made by Immigration Minister Damian Green MP in the Westminster Hall debate that the review will look at "*the actual levels and at how to prevent such detention by improving the current voluntary return process*"<sup>35</sup>, it seems there has already been a worrying shift towards focusing on returns rather than on ending the detention of children. The RCC would reiterate that discussion on policies and practice on returns are not needed to end the detention of children. Human rights law does not make returns impossible, but it does require that they be carried out in a manner which respects the dignity, integrity, welfare and safety of the individuals concerned. Before a decision is taken to remove a family from the UK, thorough consideration should be given to the family's length of residence and ties to the UK, as well as the impact removal would have on the welfare of the children in the family. Effective procedures should be introduced to gather information about legal, documentation or health barriers to removal, so that no enforcement action is taken against a family while these barriers exist. The RCC suggests that a preremoval assessment panel, taking into account welfare and safeguarding obligations, should be established to consider whether the removal of a family is appropriate. This should include independent experts from outside the UKBA. For many people return is not an option as a result of the situation in their country of origin. Where there is no prospect of returning a family safely, the Home Office should grant temporary renewable leave to remain. Attempting to force families to return with their children to conflict or post-conflict stations is not only impractical, but also puts children and families at risk of harm. Additionally, some families cannot be returned safely as a consequence of the health or welfare needs of family members. When assessing whether a safe return is possible, the vulnerability of all family members should be taken into account, with particular emphasis given to the needs and interests of children. Families who cannot be returned for welfare reasons should be given indefinite or temporary leave as appropriate. In the Westminster Hall debate on Alternatives to Detention on 17th June 2010, the Minister suggested that "*the UK Border Agency would therefore set removal directions while the family is in the community, giving the family time to submit further representations and to apply for a judicial review if they wish to do so, as well as giving them time to make plans for their return*"<sup>36</sup>. This approach would recognise that asylum seekers and irregular migrants are better able to comply with requirements if they can meet their basic needs while in the community, and would be a step towards ensuring that a family facing removal is able to access to legal representation and, where appropriate, the court. The RCC notes with concern that in the same debate the Minister indicated that consideration is also being given to options such as the separation of families and detention of families "*for a short period*".<sup>37</sup> The UKBA has always said that the current system allows for detention only for the shortest possible time<sup>38</sup>, and this is outlined in the current policy on detention, which states that "*detention must be used sparingly, and for the shortest possible period necessary*".<sup>39</sup> In essence, this suggestion represents nothing different to UKBA's current position, and clearly is incompatible with the absolute commitment given in the coalition agreement. Damian Green also mentioned the possibility of an approach to returns involving "*separating different members of a family and reuniting them before departure*", although he recognised that that approach would be "*hugely contentious*". It would also be incompatible with the UK's obligations under international law. While there is a dearth of policy or legislative guidance on children being separated from their parents as a result of their parents being placed in immigration detention, there is a clear requirement under the UN Convention on the Rights of the Child to take account of the welfare of children at all times<sup>40</sup>. Indeed, the Minister himself rightly drew attention to the best interests of the child being "*the paramount concern*"<sup>41</sup> in this regard. Article 9(1) of the same convention requires that "*a child shall not be separated from his or her parents against their will, except where competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child*". It is difficult to conceive of circumstances in which separation from family for the purposes of immigration control alone could be in the best interests of a child.



Article 8 of the European Convention on Human Rights provides that a child has “*the right to respect for private and family life*”. Cases before the European Court of Human Rights highlight that children should only be separated from parents in the most extreme cases where no alternatives can be found, stressing that “*it is an interference of a very serious order to split up a family*”<sup>42</sup> and the best interests of the child are of paramount importance<sup>43</sup>. A child should only be separated from his or her parents if he or she is at risk of significant harm. The RCC believes that children and their families should never be separated for immigration purposes alone. The Government should make clear its commitments to these international human rights obligations, and consequently not to separate children from their families.

## 9. Current financial constraints

RCC’s primary concerns are with the safety and welfare of children in immigration processes, with the legality and fairness of such processes and with the availability of appropriately competent and expert legal advice and representation throughout such processes. It is also unrealistic to expect a ‘quick fix’ to improving the immigration and asylum system – effective models will require time and investment. However, given the current financial constraints faced by all Government departments, it is worth noting that the detention of families is significantly more costly for the taxpayer than continuing to house families in the community prior to removal – it costs £130 a day to keep a person in detention; in the most extreme situations, detaining a family of four for between 4 and 8 weeks costs over £20,000<sup>44</sup>.

The Australian use of case management has reportedly generated substantial savings for government, even leaving aside the costs of enforced removals.

Detention costs on average AUS\$45,000 per year (£26,000), while the cost of welfare, legal and voluntary return services under the Community Care Pilot for the most vulnerable individuals was less than AUS\$15000 per year (£8,800), i.e. less than a third of the cost of detention<sup>45</sup>. Voluntary returns cost a small fraction of enforced returns and detention, and efficient transparent decision-making can lead to earlier take-up of voluntary return.

It is clear that an immediate end to detention will save money - keeping families in detention for weeks or months before eventually releasing them not only causes untold damage to the children affected, it is a hugely inefficient use of resources.

## 10. Conclusion

There is more than sufficient evidence outlining that detaining children is harmful, unnecessary and expensive, as well as contrary the government’s commitment in international human rights law, and in domestic law, to safeguard children. It is the responsibility of the Government to design and implement a national system that protects and upholds the rights of children and meets their protection needs. The

RCC has welcomed the review into the detention of children for immigration purposes and hopes that after the review has reported to the minister, there will be an opportunity for the RCC to discuss its views on the review process. Also, while certain actions can be taken forward immediately, the RCC would like to take part in a longer-term dialogue with government to discuss how further changes to the system, which will safeguard and protect the welfare of child, could be established.

In the interim, the RCC’s recommendations are as follows:

- 1) Detention of children must end now, as it is clear that detention harms children; children and their families must be released immediately.
- 2) The provision of good quality legal advice throughout the asylum and immigration processes is crucial and the inadequate provision of legal aid in this area must be addressed with the Ministry of Justice.
- 3) The UKBA should work with UNHCR to improve decision-making on family cases.
- 4) The Solihull pilot should be rolled out, and should include the development of specialist family teams.
- 5) A pre-removal assessment process, taking into account welfare and safeguarding obligations, should be established to consider whether the removal of a family is appropriate. This must include independent experts from outside UKBA and the assessment should include medical issues
- 6) Higher numbers of grants of discretionary or temporary leave should be made to families where return is not viable.
- 7) Removal directions should be set while the family is in the community, with sufficient time allowed for further legal action to be taken if appropriate and for the family to make plans for their return.

1 HM Government (2010) *The Coalition: our programme for government*, p. 21; and in the text of the Queen’s Speech, 25 May 2010

2 *Hansard*, HC 25 May 2010, Col: 49, at

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100525/debtext/100525-0004.htm>

3 Amnesty International, *Irregular Migrant and Asylum Seekers – Alternatives to Immigration Detention*, April 2009, at <http://www.amnesty.org/en/library/info/POL33/001/2009/en>

4 United Nations, Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants, Eleventh Session, 14 May 2009, A/HRC/11/7, para 42

5. *Muskhadzhiyeva and others v. Belgium* (application no. 41442/07) European Court of Human Rights.

6 *Bensaid v UK* [2001] 33 EHRR 10.

7 11 MILLION The Children’s Commissioner for England’s follow up report to ‘*The Arrest and Detention of Children Subject to Immigration Control*’, 19 February 2010.

8 House of Commons, Home Affairs Committee, *The Detention of Children in the Immigration System, First Report of Session 2009 – 2010*, 29 November 2009, para. 11.

9 A briefing from the Royal College of General Practitioners, Royal College of Paediatrics and Child Health, Royal College of Psychiatrists and the UK Faculty of Public Health described the significant harm to the physical and mental health of children and argued that such detention is unacceptable and should cease without delay. Available at <http://www.rcpch.ac.uk/Media/News>

10 11 MILLION The Children's Commissioner for England's follow up report to *The Arrest and Detention of Children Subject to Immigration Control* 19 February 2010.

11 R. Verkaik, 'Asylum detainees win record payout', *The Independent*, 13 February 2009, at <http://www.independent.co.uk/news/uk/home-news/asylum-detainees-win-record-payout-1608207.html>.

12 11 Million, *The Arrest and Detention of Children Subject to Immigration Control: A report following the Children's Commissioner for England's visit to Yarl's Wood Immigration Removal Centre*.

13 Report on an unannounced short follow up inspection of Tinsley House Immigration Removal Centre 13–15 July 2009 by HM Chief Inspector of Prisons, October 2009, at [http://www.justice.gov.uk/inspectors/hmi-prisons/docs/Tinsley\\_House\\_2009\\_rps.pdf](http://www.justice.gov.uk/inspectors/hmi-prisons/docs/Tinsley_House_2009_rps.pdf)

14 See for example, Save the Children UK (2005) *No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards*.

15 UN Committee on the Rights of the Child (2008), *Concluding observations: United Kingdom of Great Britain and Northern Ireland*, para 71 (a)(c)(e)

16 Human Rights Committee, *C v. Australia*, Case No. 900/1999, 13 November 2002, CCPR/C/76/D/900/1999, paragraph 8.2. (The case considered the necessity and proportionality of using detention against an asylum-seeker.). *Ali Aqsar Bakhtiyari and Roqaiha Bakhtiyari v. Australia*, CCPR/C/79/D/1069/2002, UN Human Rights Committee (HRC), 6 November 2003, paragraph 9.3. The case concerned a complaint of arbitrary detention made by an Afghan asylum-seeker and her young children, where a mother and her two children were detained over two years and ten months on the basis of their unlawful presence in Australia. The Committee concluded that since less intrusive measures were not considered, the detention of the complainant and her children without appropriate justification was found to be arbitrary and contrary to Article 9(1) of the ICCPR. See also *Omar Sharif Baban v. Australia*, CCPR/C/78/D/1014/2001, UN Human Rights Committee (HRC), 18 September 2003, paragraph 7.2; Human Rights Committee, *C v. Australia*, Case No. 900/1999, 13 November 2002, CCPR/C/76/D/900/1999, paragraph 8.

17 Damian Green MP, Immigration Minister, Westminster Hall debate: Alternatives to child detention, 17 June 2010, *Hansard* column 212 WH

18 UN High Commissioner for Refugees, *Alternatives to Detention of Asylum Seekers and Refugees*, April 2006, POLAS/2006/03, available at: <http://www.unhcr.org/refworld/docid/4472e8b84.html>

19 Oral Evidence given by Dave Wood, Strategic Director, Criminality and Detention, UKBA to the Home Affairs Committee, *The Detention of Children in the Immigration Service*, on 16 September 2009, HC 970-i (Question 25)

20 Aspen, J. 2008 'Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission' London: HM Stationary Office

21 See, for example, ICAR and RMJ, *Justice at Risk: quality and value for money in asylum legal aid*, 2010, at <http://refugee-migrant-justice.org.uk/downloads/Justice%20at%20Risk.pdf>

22 Some of cases have come before the courts. Among the more recent and egregious examples to have done so are *N v Secretary of State for the Home Department* [2009] EWHC 873 (Admin) and *Muuse v Secretary of State for the Home Department* [2010] EWCA Civ 453. In the former case a gay asylum-seeker was removed to Uganda without forewarning and without his legal representatives knowledge. Subsequent to the ruling that the Home Office had acted unlawfully, he was returned to the UK on the order of the High Court. He was then found to be a refugee by the Asylum and Immigration Tribunal. In the latter case, a Dutch national of Somali origin was unlawfully detained for more than four months by reason of the UK Border Agency's determination to deport to Somalia a man who insisted he was a Dutch national and whose Dutch driving licence, identity document and passport were each available to the UK Border Agency.

23 See *An evaluative report on the Millbank Alternative to Detention Pilot*, The Children's Society and Bail for Immigration Detainees, May 2009, at <http://www.biduk.org/library/A2D%20Report.pdf>

24 *Hansard*, HC Borders Citizenship and Immigration Bill, Second Reading 2 Jun 2009 : Column 217

25 See House of Commons, Home Affairs Committee, *The Detention of Children in the Immigration System, First Report of Session 2009 – 2010*, 29 November 2009, para. 8

26 Please see the extensive research on alternatives to detention on the International Detention Coalition website at [www.idcoalition.org](http://www.idcoalition.org)

27 International Detention Coalition, *Case management as an alternative to immigration detention – The Australian Experience*, June 2009

28 International Detention Coalition, *Case management as an alternative to immigration detention – The Australian Experience*, June 2009

29 "Detention reform and alternatives in Australia", International Detention Coalition, June 2009

30 Open centres, semi-open centres, directed residence, and restrictions to a specified district are already used by many States, particularly in Europe, for asylum-seekers during the processing of their claim. The nature of the centres and the restrictions placed on freedom of movement vary greatly. In some countries, movement is restricted in practice as asylum-seekers have to report to or stay in their accommodation centres at certain times. In other countries asylum-seekers are not allowed to choose their place of residence, but may do so under certain conditions or at a certain stage of the asylum procedure. In some countries, asylum-seekers are free to leave their place of residence without any authorisation or by submitting a formal request which is routinely accepted. Others have a more stringent system of limited days of absence, reporting obligations or virtually no possibility of leaving apart from in exceptional circumstances. European Commission, Report from the Commission to the Council and to the European Parliament on the application of Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum-seekers, COM/2007/0745, Brussels, 26 November 2007, Section 3.4.1. 'Free movement and residence', available at: <http://eurlex>.

31 For example, in Sweden

32 See, for example, *Amuur v France*, 19776.92 [1996] ECHR 25 (25 June 1996); *Guzzardi v Italy* (1980) 3 EHRR 333 [92]

33 An Alternative to Detention of Families with Children”, Flemish Refugee Council, December 2009

34 Vluchtelingenwerk, JRS and CIRE, *Briefing to the European Committee for the Prevention of Torture: Alternatives to immigration detention of families with minor children in Belgium 2005 - 2008*

35 *Hansard* HC 17 June 2010 : Column 212WH

36 *Hansard*, HC 17 June 2010 : Column 213WH

37 *Hansard*, HC 17 June 2010 : Columns 213-214WH

38 For example, in his evidence to the Home Affairs Committee, David Wood stated “...when we detain the children it is going to be for a short period or time...”. However, Mr Keith Vaz, the former and newly elected Chairman of the Home Affairs Select Committee citing his Committee’s report on child immigration detention, told the House,

“On average, such children spend more than a fortnight-15.58 days-in detention, but detention for up to 61 days is not uncommon. On 30 June 2009-the last date for which the Home Affairs Committee had information on children in detention-10 of the 35 children in detention at that time had been held for between 29 and 61 days” *Hansard* 17 June 2010 Col 214 WH.

39 UK Border Agency enforcement instructions and guidance, chapter 55, section 55.1.3

40 Article 9.1 of the UN Convention on the Rights of the Child also provides that: “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”

41 *Hansard*, HC 17 June 2010 : Column 231WH

42 *Olsson v Sweden (No. 1)* (1989) 11 EHRR 259

43 *TP and KM v UK* (2002) 34 EHRR 2 – in this case, the Court gave weight to the opinions of professionals and the family doctors, who opposed the child’s removal from their parents.

44 House of Commons, Home Affairs Committee, ‘*The Detention of Children in the Immigration System, First Report of Session 2009 – 2010*,’ 29 November 2009

45 International Detention Coalition, *Case management as an alternative to immigration detention – The Australian Experience*, June 2009

## 51. THE REFUGEE COUNCIL

Response to the UKBA Review into ending the detention of children for immigration purposes

1 July 2010

### Background

On 12<sup>th</sup> May 2010, the Coalition Government announced its intention to bring to an end the practice of detaining children for immigration purposes.<sup>145</sup> On 10<sup>th</sup> June 2010 a short Consultation exercise was announced to identify how this might be achieved whilst maintaining UKBA's priority of effective immigration control. The Terms of Reference are available on the UKBA website.<sup>146</sup>

### About the Refugee Council

The Refugee Council is a human rights charity, independent of government, which works to ensure that refugees are given the protection they need, that they are treated with respect and understanding, and that they have the same rights, opportunities and responsibilities as other members of our society.

We achieve this mission by:

- supporting refugees and working with them as they build a new life
- speaking up for refugees and ensuring that refugees themselves have a strong voice in all areas of UK life
- building links with people from across our society to increase mutual understanding of refugees
- making the case for a fair and just asylum system
- taking a leading role in helping to build up a vibrant, sustainable and successful refugee sector in the UK and internationally.

### Summary

The Refugee Council welcomes the announcement to end the detention of children for immigration purposes. Detention is demonstrably harming children and therefore we believe that this commitment must be implemented immediately, and must not be conditional on establishing alternative approaches to the asylum and immigration process, returns or removals.

We believe that there is a wider programme of reform necessary to improve the ways in which the immigration and asylum systems treat families, though such reforms will take time and should not be allowed to delay ending detention of families. We are keen to participate in this programme of wider reform, and believe that the upcoming asylum review will provide a good opportunity for addressing some of these issues in a holistic way.

Our submission to this review is focused on the key aspects of the terms of reference and the questions to stakeholders posed in David Woods' letter of 10 June 2010. Our mandate is to work with people who have made an asylum claim, and we do not have expertise in relation to families liable to enforcement action who have not made a claim for asylum. However, we urge the UKBA to ensure that appropriate alternative approaches are developed which reflect the circumstances of all those families subject to immigration control, whether or not they have made an asylum claim.

As a supporter of the Outcry campaign led by the Children's Society and Bail for Immigration Detainees, we have had sight of the campaign submission to this review and endorse it. We have not repeated here the detailed evidence set out in that response of harm caused by current practice or evidence on alternative approaches, including practice from other jurisdictions. We urge UKBA to carefully consider the evidence from Outcry in relation to this review. We are also an active member of the Refugee Children's Consortium and have contributed to the RCC submission to this review.

We have actively participated in the working group co-chaired by UKBA and the Diana Princess of Wales Memorial Fund where we have fed in more detailed comments based on our operational experience of working with asylum seekers at all stages of the process. We are an active member of the Refugee Children's Consortium and support the broad principles on this issue defined by the RCC.<sup>147</sup> We would be pleased to contribute further to developing thinking on these issues, particularly in the context of the upcoming review of asylum.

<sup>145</sup> See "The Coalition: our programme for government" May 2010 <http://programmeforgovernment.hmg.gov.uk/immigration/>

<sup>146</sup> See <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/26-end-child-detention/>

<sup>147</sup> 1. Detention of children must end now, as it is clear that detention harms children; children and their families must be released immediately. 2. Children and their families should never be separated for immigration purposes. 3. Ending the detention of children is not dependent on establishing 'alternative to detention' projects, or new processes for families. 4. Discussion on policies and practice on returns are not needed to end the detention of children. 5. Discussions that focus on finding solutions to the problems at the end of the process need to consider a family's entire experience of the asylum and immigration processes. The provision of good quality legal advice throughout these processes is crucial.

### **Separated children in the asylum process**

The Refugee Council is extremely concerned about the treatment of young people whose age is disputed by the UKBA, and are detained as adults as a result. Our own casework with such young people demonstrates that children are being wrongly detained. The current review is focused on families with children, but we also recommend that UKBA review policies and practices related to young people whose age is disputed as a matter of urgency.

### **A new approach to families in the asylum system**

We have repeatedly made the case to the UK Border Agency and to Home Office ministers that there is scope to reform the asylum process and to improve voluntary return opportunities, so as to ensure those with protection needs are given status, those for whom return is not viable or safe are given temporary protection, and those who cannot remain are better supported to return voluntarily.

We recognise that UKBA will wish to maintain an option for removing families who do not have protection needs or other grounds to remain in the UK, and do not take up voluntary return. Where enforcement action is taken, appropriate independent safeguards must be introduced.

Any alternative approaches to families and children in the asylum and immigration system, must be appropriate and proportionate, and in line with domestic and international legal standards (in particular the UN Convention on the Rights of the Child and Section 55 of the Borders, Citizenship and Immigration Act). This requires the best interests of the child to be a primary consideration. Alternative approaches must therefore ensure that families are kept together and that they are able to access independent advice and representation throughout the process.

### **Appropriate approaches for different circumstances**

In order to develop humane and fair approaches to resolving families' status in the UK, it is essential to break down the situation of families of interest to UKBA – indeed the success of the alternative approaches to detention is dependent on those who cannot or should not be removed being correctly identified and filtered out.

This requires an approach by UKBA which accepts that there are a range of circumstances and experiences that make up the current picture of families whom UKBA expect to return, and therefore may be liable to enforcement action against them. A single approach to resolving often complex situations will not be effective.

### **Submission to review questions:**

- 1. the UK Border Agency's current approach to dealing with asylum applications from families, including the contact arrangements with those families and the families' access to legal representation; *How can we improve our engagement with families in dealing with asylum applications? For example, do we need to review the contact arrangements with those families and their access to legal representation?*

Our experience of working with families who seek asylum is that the process is fragmented, complex and too often fails to deliver protection to those who need it. Families struggle to access information about their case, adequate and timely access to quality legal representation. Many are affected by destitution at various stages of the process, and many are not able to access asylum support due to UKBA maladministration and delays in the system. They are subject to repeated moves of accommodation and as a result often struggle to access appropriate education and health care for their children.

Families without protection needs are not supported systematically to explore their options once their case has been refused, and many remain in limbo, or are inappropriately targeted for enforcement action where there are clear barriers to their return (for example, they do not have travel documents or there are health issues that would prevent return).

An alternative approach must entail working with people early in the process to build trust and deliver a sustainable outcome – protection or return. This requires a coherent system of early legal advice, close case contact and timely and independent advice on all options, including voluntary return.

The following reforms would benefit all families in the asylum process and reduce overall cost and inefficiencies:

- Prompt, early access to quality legal advice and representation, achieved by the early access to legal advice pilot being rolled out across the country

- Reform of legal aid, in tandem with improvements to the asylum process, so that families can access legal representation and the courts throughout the process
- Access to independent voluntary sector support at key points in the asylum and immigration process, reducing the overall time and money spent on resolving cases (building on the model of the Voluntary Sector Key Worker pilot being developed by Refugee Council and Refugee Action and is now being delivered in Liverpool by Refugee Action)
- Policies to bridge ‘the protection gap’, where a family is not granted status but cannot return, including reviewing options for granting temporary protection where return is not viable
- Improvement of contact management procedures, that are proportionate and reasonable, and support families to maintain contact with their legal representative, voluntary and community support, and the UKBA – in particular families if required to report should be given travel expenses, and should be given the option of telephone reporting where possible<sup>148</sup>
- Contact management should be arranged on a case-by-case basis, and following a realistic assessment of the likelihood of absconding, and the stage of the process the family are at
- Childcare at asylum interviews for all families so that full accounts can be given of the parents’ experiences, and a proper decision made on the basis of disclosure of experiences<sup>149</sup>

➤ 6. how the current voluntary return process may be improved to increase the take-up from families who have no legal right to remain in the UK; *How can we promote and improve the current voluntary return process to increase the take up from families who have no legal right to remain in the UK? What do you believe UK Border Agency’s role is here and is there a role for others in engaging with families around this option?*

Information about voluntary return should be provided to families at appropriate stages of the asylum process, in the context of information about all their options. There needs to be enough time and case-specific information for an informed consideration of return to take place. This means access to independent advice and information must be facilitated.

The experience of our One Stop Service advisers is that families at the end of the process are often preoccupied with day to day survival in the UK, which prevents them from engaging with longer-term decisions about their future. Those families who are on Section 4 support are given no cash at all, limiting their ability to access and communicate with legal representatives, travel to reporting centres or be in touch with family and communities in their country of origin.

We believe that an end-to-end support system, whereby cash support is available to those in the asylum process, would help families to engage with all decisions about their lives.

To help inform the improvement of the voluntary return package for families, UKBA should commission an independent review of the views and perceptions of families who have been refused asylum to identify obstacles to voluntary return, and review the data from IOM and the UKBA on the number of families returning and *more importantly* explore the decision-making of those who have been refused but do not opt for voluntary return.

UKBA should introduce a more rigorous process for ensuring that all families are supported to explore voluntary return properly **before** enforcement action is taken. This includes having an opportunity to seek advice, information about current conditions in country of origin and independent legal advice and to get their affairs in order.

➤ 7. how a new family removals model can be established which protects the welfare of children and ensures the return of those who have no right to be in the UK, outlining the key process changes, rule or legislative changes that would be required to implement the new model. If a family chooses not to leave the country, with or without support from the UK Border Agency, what might an alternative family returns model look like? How should the UK Border Agency respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)?

<sup>148</sup> Current reporting practice can be difficult for families to comply with – for example they are not given travel expenses if the location is less than three miles radius (as the crow flies). Options for improving reporting mechanisms for families could be explored (for example, providing travel expenses).

<sup>149</sup> Childcare at asylum interviews is provided only in certain regions, and there is no central national requirement for childcare to be provided. This has a negative impact on parents’ ability or willingness to disclose fully traumatic experiences in their home country, as they may have to do so in the presence of their children.

We note that the Minister has set out in parliament some options about alternative approaches. Our comments on those approaches are below.

### **Notice periods for removal**

The Minister referred to the option that:

*“The UK Border Agency would therefore set removal directions while the family is in the community, giving the family time to submit further representations and to apply for a judicial review if they wish to do so, as well as giving them time to make plans for their return.” (Hansard, HC 17 June 2010: Column 213WH)*

This approach would be useful and may be more effective than current approaches, provided that adequate time allowed. We support the recommendation of Outcry that a period of three months would be appropriate, given the challenges facing families in accessing legal representation at short notice and the timetable of the courts.

Before a decision is taken to remove a family from the UK, thorough consideration should be given to the family's length of residence and ties to the UK, as well as the impact removal would have on the welfare of the children in the family. Effective procedures should be introduced to gather information about legal, documentation or health barriers to removal, so that no enforcement action is taken against a family while these barriers exist. We would recommend to UKBA that serious consideration be given to the RCC suggestion that a pre-removal assessment panel, taking into account welfare and safeguarding obligations, should be established to consider whether the removal of a family is appropriate. This should include independent experts from outside the UKBA.

### **Electronic monitoring**

Electronic monitoring has been in place for some time (since it was introduced in the 2004 Asylum and Immigration Act) but there is little publicly available evidence of the scale of its use or absconding rates. If the UKBA decide to extend the use of electronic monitoring, this must be subject to appropriate independent scrutiny and safeguards where an absconding risk is demonstrated to exist.

### **Short periods of detention**

We note that the Minister indicated that consideration is also being given to options such as the separation of families and detention of families *“for a short period”*.<sup>150</sup> We would be opposed to the use of detention for any period. If the decision is made to use detention for children in families, it would be essential to implement basic safeguards, in particular that the decision to detain must be taken by an independent body, and must be regularly independently and automatically reviewed.

### **Separation of families**

Baroness Neville-Jones, Home Office Minister of State has stated:

*“We certainly aim not to separate families from children or children from families.” (Hansard, HL 2 June 2010 : Column 252)*

We note that current UKBA practice already entails separating families by detaining the head of the household, and in some cases seeking to remove part of the family. We are opposed to the splitting of families for the purposes of immigration control and cannot see that it can be in the best interests of a child to do this. This review should take account of current UKBA practice and policy on splitting families and ensure that independent reviews of these decisions are taken (at present there is a requirement for Ministerial authorisation but we do not believe this to be adequate or transparent).

**Contact:** Sarah Cutler, Head of Policy and Public Affairs

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<sup>150</sup> Hansard, HC 17 June 2010 : Columns 213-214WH



## 52. THE RELIGIOUS SOCIETY OF FRIENDS (QUAKERS)

### Review into ending the detention of children for immigration purposes

1 .We welcome the Government's commitment to ending the detention of children for immigration purposes and this opportunity of making a submission to the UK Border Agency's review. We hope that this may be a first step to reducing the reliance on immigration detention for adults.

2. We welcome also the recognition that this review will take place within a framework of international EU and human rights obligations and the duty of the UK Borders Agency to safeguard and promote the welfare of children in carrying out its functions under section 55 Borders Citizenship and Immigration Act 2009.

3. Improving the quality of initial decision-making would be the single most effective contribution towards reducing the pressure on the UKBA to detain children. The statutory duty to promote the welfare of children requires that children should not be separated from their parents except where there are significant child protection concerns brought a competent court. Where there are ambiguities in age assessment a precautionary principle should be applied.

4. We welcome the Solihull Pilot Scheme as a way of ensuring that asylum seekers have access to high quality and early legal advice and hope that an enhanced scheme combining this with high quality 'contact management' can become a benchmark for good practice. Only a system where asylum seekers are listened to with a receptive mind and have access to independent legal advice and representation will command the faith of those affected. Appropriate advice and consultation will maximise the chances of voluntary return in those circumstances where asylum seekers do not meet the rigorous requirements of the Refugee Convention and complementary protection.

5. Families with children are among the groups least likely to abscond. Where it is considered that there is a serious likelihood of absconding, Bail provides the most appropriate and least restrictive alternative to detention. In these circumstances we suggest that a model that includes dedicated case workers and welfare officers is most likely to guarantee the well being of children who are always vulnerable and sometimes destitute. We hope that the UKBA will consider the lessons of the Toronto Bail programme. We understand that in the period 2002 to 2003 the project had a record of over 90% compliance with Bail conditions. In those rare cases where there is a particular risk of absconding at the end of process we would urge the provision of high quality hostel like accommodation. We understand that in the case of Mathew House ([www.matthewhouse.ca](http://www.matthewhouse.ca)) in Canada 99% of asylum seekers have complied with conditions.

6. In those circumstances where families including young children need to be returned at the end of process we would urge the continued monitoring of those affected to ensure the education and well being of vulnerable children. We note the decision of Mr Justice Collins in the cases of *A v SSHD* (CO/1995/2009) and *T v SSHD* (CO/1858/2010), a case of unaccompanied minors, in February of this year, where the removal of children without notice and without enquiring into reception conditions was held to be unlawful. In end of process cases, we recognise the value of advice, support and practical assistance in maximising the rate of voluntary returns. In the Canadian Failed Refugee Project run by the Greater Toronto Enforcement Agency over 60% of the project's clients returned to their country of origin after a 30 day period and over 80% after a further visit. We recognise the value of appropriate support both for re-housing and access to schools on return to their country of origin. Even in manifestly unfounded cases the Government of the UK has a duty of care towards those children affected. Where there is a reasonable prospect of returning families voluntarily we would suggest that time-limited temporary leave to remain may be an option.

7. We do not consider that electronic tagging is an appropriate alternative to detention. In coming to this conclusion we are aware both of the damaging psychological effects that can be caused by tags among children and the moral hazard of introducing a new alternative to detention. We would suggest that where there is a particularly high risk of absconding of the families concerned that more onerous reporting conditions are a preferable alternative.

**Michael Bartlet, Parliamentary Liaison Secretary, Religious Society of Friends (Quakers) in Britain.**

## 53. ROYAL COLLEGE OF PAEDIATRICS AND CHILD HEALTH, ROYAL COLLEGE OF GENERAL PRACTITIONERS, ROYAL COLLEGE OF PSYCHIATRISTS, FACULTY OF PUBLIC HEALTH (JOINT RESPONSE)

### **Response from the Royal College of Paediatrics and Child Health, Royal College of General Practitioners, Royal College of Psychiatrists and the Faculty of Public Health to the UKBA review into ending the detention of children for immigration purposes**

Following the December 2009 launch of our intercollegiate report *Significant Harm: The effects of administrative detention on the health of children, young people and their families* 1 we have maintained a keen interest in this issue. We welcome both the unambiguous commitment made in the Coalition *Programme for Government* to 'end the detention of children for immigration purposes'<sup>2</sup> and the UKBA's ongoing review of alternative measures.

Our previous research into the topic of immigration detention led us to examine various alternative models and we would like to direct you to these to inform the review. As clinicians and/or public health specialists we are uniquely placed to comment on the health implications of potential alternative models and also on how to effectively provide for the health needs of this particular group throughout the asylum process.

It is important to clarify at this point that we acknowledge that the UKBA has a duty to enforce immigration rules and that in our response we wish to offer specific advice on the health implications of the processes involved. Our response has been structured to reflect the areas identified in your initial consultation letter. We would be happy to consider other facets of this topic as you require.

*1) How can we improve our engagement with families in dealing with asylum applications? For example, do we need to review the contact arrangements with those families and their access to legal representation?*

A high level of engagement with families – at all stages of the asylum process – is essential. The United Nations High Commissioner for Refugees (UNHCR) has conducted extensive research into alternative models to detaining asylum seekers. Their report identifies four common factors which increase the effectiveness of the asylum process: the provision of legal advice, making efforts to ensure that the rights and obligations of asylum seekers are understood, the provision of sufficient housing and welfare support and screening for community ties or volunteer groups who can act as sponsors or guarantors.<sup>3</sup>

The Swedish asylum model is a good example of such engagement. Families are assigned caseworkers and meet together on a monthly basis. The caseworkers facilitate access to medical care and other services, and provide motivational counselling designed to prepare the asylum seeker for a range of outcomes.<sup>4</sup> The counselling can involve legal representatives or other relevant parties.<sup>5</sup>

Access to competent legal representation has been found to improve compliance with the asylum process.<sup>6</sup> A UK based pilot suggested that early access to legal advice reduced the incidence of appeals following the rejection of an asylum claim by 50% (with a commensurate net financial saving); it was felt that failed asylum seekers would be more likely to voluntarily return home having had a 'fair hearing'.<sup>7</sup>

It is essential that engagement with asylum seeking families includes consideration of their physical and mental health needs. Refugees are significantly more likely as a population group to have pre-existing mental health problems. <sup>8</sup> <sup>9</sup> Availability of initial assessment plus ongoing access and engagement with local GP services must therefore be a core component of the asylum process.

*2) How can we promote and improve the current voluntary return process to increase the take-up from families who have no legal right to remain in the UK? What do you believe UK Border Agency's role is here and is there a role for others in engaging with families around this option?*

Voluntary return following the rejection of an asylum claim is clearly a better outcome for all parties than enforced return. The cost of an enforced removal has been calculated as being ten times more expensive than a voluntary return; it is noteworthy that only one in five failed asylum seekers leaves the UK voluntarily but that four in five leave Sweden voluntarily.<sup>10</sup>

The Canadian Failed Refugee Project provides counselling to asylum seekers who have had their applications rejected. Practical assistance and advice are also offered. An audit of the project's efficiency found that 60% of its clients left voluntarily within a 30-day period of their counselling appointment, and 20% left voluntarily after a follow-up visit.<sup>11</sup>

The Hotham Mission Asylum Seeker Project (based in Australia) is an excellent example of how third party organisations can play a significant role in improving the rate of voluntary returns. Workers at the Mission advocate for refugees on a de facto caseworker basis with the immigration authorities and facilitate access to services.<sup>12</sup>

The Mission reports that early intervention and consistency in their caseworking approach (alongside a respectful approach) are key drivers for their considerable success. 85% of the refused asylum seekers engaged with by the Mission between 2001-2003 returned voluntarily to their country of origin and none absconded following the decision to refuse.<sup>13</sup>

As mentioned above, Sweden operates a caseworker system which incorporates a motivational counselling element. In the run up to the outcome of an asylum decision the caseworker will pre-empt a negative outcome and explore the implications of this with the asylum seeker. Three options are presented – voluntary repatriation (with support to effect this), escort by caseworker or being handed over to the police. The majority (82% in 2008) opt to return voluntarily. Underpinning the casework is a flexible, compassionate and empowering approach to the whole process.<sup>14 15</sup>

There are international comparisons of approaches which have not increased the uptake of voluntary repatriation and have in fact proved to be detrimental to the overall objective of removal. The Netherlands withdraws material assistance from failed asylum seekers almost immediately following the refusal decision. This has been linked not with a higher rate of removals but instead with people 'going underground'.<sup>16</sup> Closer to home, the UK's similar 'destitution' policy has been criticised for not significantly increasing the rate of voluntary repatriation and also for making enforced removals harder to effect when necessary.<sup>17</sup>

*3) If a family chooses not to leave the country, with or without support from the UK Border Agency, what might an alternative family returns model look like? How should the UK Border Agency respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)?*

The recent Home Affairs Committee Report *The Detention of Children in the Immigration System* accepted that there is no evidence of families systematically absconding following the refusal of an application for asylum.<sup>18</sup> It is questionable on this basis whether the restrictive measures which have been suggested as alternatives to detention for individual asylum seekers (for example bail, electronic tagging, voice-reporting technology or residence requirements)<sup>19</sup> are necessary. Certainly it can be reasonably argued that the existence of alternatives to detention does not necessarily confer their arbitrary application.<sup>20</sup>

We are extremely concerned that the UKBA is prepared to give any consideration whatever to separating families by placing parents in detention and children in the care of Social Services. Our clinical opinion is that separation would be detrimental to the mental health of the children involved. We would like to remind UKBA of their statement that 'we...consider that maintaining the family unit together, including any children, is preferable to splitting the family.'<sup>21</sup> To renege on this commitment now would imply that it was originally disingenuous; we hope that this was not the case.

The detailed practicalities of an alternative family return model lie beyond our clinical and research experience. However, we believe that there is much that the UKBA can learn from the testimony of children and families in the 11 Million Report *The Arrest and Detention of Children subject to Immigration Control* which identified many elements of the arrest process which were unnecessarily distressing.<sup>22</sup> A compassionate and humane approach from the UKBA in what we acknowledge will be difficult situations is essential. The use of restraint must be a last resort.

We strongly recommend that a thorough health assessment is offered to families immediately prior to removal in voluntary or enforced circumstances. This should be provided by competent healthcare professionals and be consistent with NHS standards. Key components would include *inter alia* an assessment of fitness to travel, provision of appropriate immunisations, anti-malarial chemoprophylaxis and nets and an updated medical record detailing any treatment in the UK which can be passed on to foreign health services.

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## 54. ST DAVID'S CHURCH, PONTYPRIDD

To whom it may concern:

I write in response to the invitation to submit views on the UK Border Agency *Review into Ending the Detention of Children for Immigration Purposes*.

St David's Church in Pontypridd, Rhondda-Cynon-Taff, South Wales has for some time, been involved in supporting asylum seekers in the area. We have expressed concern over the detention of all asylum seekers, whether or not they are children and recently met with our local MP, Owen Smith, to raise these issues with him. We are particularly concerned over the negative effect of detention on families and children. Members of the church have also visited detention centres and were disturbed at the conditions that exist there. Consequently, we would also welcome an investigation into the possibility of exploring alternative solutions to the current system of detention centres, particularly for families.

We hope that you will consider these views as you undertake the review.

Yours faithfully,

Catherine Naamani (on behalf of St David's Uniting Church)

## 55. THE SALVATION ARMY

David Wood  
Strategic Director  
Criminality and Detention Group  
UK Border Agency  
1st Floor  
Seacole  
2 Marsham Street  
London SW1P 4DF

30 June 2010

Dear Sir

### **Review into ending the detention of children for immigration purposes**

Thank you for the opportunity to respond to the above consultation and to attend the 30 June event with the Minister for Immigration at Marsham Street.

This response has been prepared on behalf of The Salvation Army in the UK with the Republic of Ireland, and is suitable for publication as required.

This letter has been divided into a number of sections, as follows:

- Introduction to The Salvation Army
- Response to seven specific considerations (as referenced in UKBA Consultation Terms of Reference) and 30 June event priorities
- The Salvation Army's potential contribution
- Conclusion

### **Introduction to The Salvation Army**

The Salvation Army is one of the largest, most diverse providers of social services in the UK after the Government. Founded in East London in 1865, we are now working in 121 countries worldwide.

As a church and registered charity, we demonstrate our Christian principles through social welfare provision. Worldwide there are over 1.6 million members, with programmes including homeless centres, drug rehabilitation centres, schools, hospitals and medical centres, as well as nearly 16,000 church and community centres. The work of The Salvation Army is funded through donations from its members, the general public and, where appropriate, local authority and government grants.

The Salvation Army is a member of the Citizens for Sanctuary campaign (run by Citizens UK), and we are a signatory of the Sanctuary Pledge.

As such, we welcome the coalition government's commitment to end the detention of children for immigration purposes.

Our comments on the areas this Review will consider (as set out in the Terms of Reference) and key areas for discussion with the Minister for Immigration are set out below.

#### **1. The UK Border Agency's current approach to dealing with asylum applications from families, including the contact arrangements with those families and the families' access to legal representation (ToR)**

##### ***How can we improve engagement with families in dealing with asylum applications? For example, do we need to review the contact arrangements with those families and their access to legal representation? (Letter)***

The Salvation Army's primary concern for this client group is the welfare of children progressing through the asylum process. In summary, we draw your attention to the following recommendations drawn from specialist children's NGOs:

- Refugee and asylum-seeking children are children first and foremost. The asylum process must not compromise or militate against their proper care, protection and development.<sup>151</sup>
- The provisions of the United Nations Convention on the Rights of the Child include rights to family unity, and the limitation of detention to a measure of last resort.<sup>152</sup>
- The conditions in immigration screening centres should be child-friendly, children should be made aware of their rights and encouraged to understand the system they are progressing through, there should be child-oriented literature, separated children should have ready access to quality legal advice.<sup>153</sup>
- All separated children should be allocated an independent guardian<sup>154</sup>
- In all age-disputed cases, the benefit of doubt should be given to the child<sup>155</sup>
- There should be a national safeguarding strategy for separated children with clear guidance for Children's Trusts<sup>156</sup>
- Multi-agency teams with child protection staff should be placed at all ports of entry in order to identify concerns about trafficking
- All children should have access to fully funded legal advice based upon individual need rather than quota<sup>157</sup>
- In clearing the asylum backlog, the Government should take into account the needs of children who have spent several years living in the UK, or who have been born here.<sup>158</sup>
- To allow asylum seekers to apply for permission to work if they have waited more than six months for their application to be finally determined and where the delay in reaching a decision cannot be attributed to the applicant.<sup>159</sup>
- To give all asylum seekers entitlement to the same benefits as other claimants in the UK, or to levels of support equivalent to this, including all allowances for children.<sup>160</sup>
- To repeal section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004.<sup>161</sup>
- To end the practice of providing some asylum-seeking families with vouchers instead of cash benefits.<sup>162</sup>

We also have the following concerns:

- The dwindling number of legal aid providers and the knock on effect for children & families putting in representations to UKBA.
- The length of time it takes to process applications (including those outside the asylum system, such as those pursuant to Article 8 Human Rights Act (HRA)).
- The need to consider the needs of children and families who are subject to immigration control but are outside the asylum system.
- The impact of termination of the Case Resolution Directorate upon outstanding family cases.

## 2. The current circumstances in which children are detained. (ToR)

Starting from the premise that children must not be taken into care, we agree wholeheartedly with the Barnardo's recommendations:

- To allow asylum-seeking families with children a right to express reasonable preference about the regional location of their accommodation before dispersal and for this preference to be taken into account.<sup>163</sup>
- Not to house asylum-seeking families with children in areas where there is a history of harassment or reason to believe their presence will aggravate community tensions.<sup>164</sup>
- To house asylum-seeking families with children only in conditions which would be acceptable for UK families living in temporary accommodation.<sup>165</sup>
- To ensure that asylum-seeking families with children are allocated to accommodation which they can occupy for the duration of their asylum applications.<sup>166</sup>

<sup>151</sup> NSPCC Policy Summary – Children who are asylum seekers or refugees p.1

<sup>152</sup> NSPCC *ibid*

<sup>153</sup> NSPCC *op. cit.*, p.2

<sup>154</sup> NSPCC *op. cit.* p.3

<sup>155</sup> NSPCC *op. cit.*, p.5

<sup>156</sup> NSPCC *op. cit.* p.7

<sup>157</sup> NSPCC *op. cit.* p.9

<sup>158</sup> Barnardo's, *Like Any Other Child?*, p.17

<sup>159</sup> Barnardo's, *op. cit.*, p.18

<sup>160</sup> Barnardo's, *op. cit.*, p.20

<sup>161</sup> Barnardo's *ibid.*

<sup>162</sup> Barnardo's *ibid.*

<sup>163</sup> Barnardo's, *op. cit.*, p.21

<sup>164</sup> Barnardo's, *op. cit.*, p.23

<sup>165</sup> Barnardo's, *ibid.*

<sup>166</sup> Barnardo's, *op. cit.*, p.24



- If asylum-seeking families with children have to be moved during their asylum applications, or have to move areas after being given leave to remain, they should not be required to move distances which entail children changing schools.<sup>167</sup>
- To give asylum-seeking families with children who are granted leave to remain in the UK assistance to obtain decent, secure and affordable tenancies.<sup>168</sup>
- To allow asylum-seeking families with children who are granted leave to remain in the UK to stay in their temporary asylum accommodation until they obtain secure accommodation.<sup>169</sup>

Along with the NSPCC, we recommend that there should be guidance and minimum standards set down to ensure that all separated children have their support needs met and accommodated in safety.<sup>170</sup>

### 3. All relevant baseline data and statistics. (ToR)

We are concerned at the persistent lack of baseline data and statistics regarding illegal immigrants. More information is provided in Section 7 below.

### 4. The UK Border Agency's initiatives on implementing alternatives to the detention of children, including the current Glasgow pilot. (ToR)

Reading the House of Commons Library report on "Alternatives to Child Immigration Detention"<sup>171</sup>, we note that Millbank, the 12-month 'alternative to detention' pilot was launched in Kent in November 2008. The pilot's stated objective was to encourage refused asylum seeker families who had exhausted their appeals rights to make an assisted voluntary return (AVR) to their country of origin. Families were accommodated in a large catered residential facility and given information about options for voluntary return.

The report confirms that UKBA published a review of the pilot in May 2009. ***It was not judged to be a success.*** Although over 500 cases were referred to the pilot, 68% were subsequently found to be unsuitable, and only one family made a voluntary return.

In June 2009 a new 3 year pilot project was launched in Glasgow. The UKBA said that the project built on the lessons learnt from the Millbank pilot. During a Westminster Hall debate on alternatives to child detention on 17 June 2010, the Immigration Minister confirmed that 32 families have been referred to the Glasgow pilot so far. 11 of them have been accommodated. There have been three enforced removals but no voluntary returns by pilot families.

However, the Minister suggested that the pilot was having an impact in terms of increasing uptake of assisted voluntary returns by asylum seeker families in the Glasgow area in general.

***In our opinion, at this stage, the progress made in Glasgow appears to be most promising.***

### 5. Models of good practice from other jurisdictions and relevant current research. (ToR)

For convenience, the key findings presented in the House of Commons Library report are reproduced below.<sup>172</sup>

Based on examples from Sweden, Australia and Belgium, the International Detention Coalition identified several features of a "successful case management approach":<sup>173</sup>

"From the experiences of NGOs with high compliance rates and improved welfare outcomes, the principles of building trust, maintaining dignity, information provision and community connection, have been key components. This approach differs considerably from models developed that in practice have focused primarily on return outcomes, rather than a holistic approach, exploring all possible immigration outcomes and developing a level of trust between client and case manager."

A number of international comparisons are also referenced.<sup>174</sup>

<sup>167</sup> Barnardo's, *ibid.*

<sup>168</sup> Barnardo's, *ibid.*

<sup>169</sup> Barnardo's, *ibid.*

<sup>170</sup> NSPCC *op. cit.* p.8

<sup>171</sup> House of Commons Library, *Alternatives to Child Immigration Detention*, 18 June 2010

<sup>172</sup> House of Commons Library, *op. cit.*, p.12

<sup>173</sup> House of Commons Library, *ibid.*

<sup>174</sup> House of Commons Library, *op. cit.*, pp.12-13

**6. How the current voluntary return process may be improved to increase the take-up from families who have no legal right to remain in the UK. (ToR)**

***How can we promote and improve the current voluntary return process to increase the take up from families who have no legal right to remain in the UK? What do you believe UK Border Agency's role is here and is there a role for others in engaging with families around this option? (Letter)***

Recognising the need for balance between care / protection and upholding the law re right to remain, The Salvation Army suggests that the primary issue is one of clear, unambiguous and continuous communication. This may best be facilitated by giving the responsibility for processing the cases of asylum-seeking families with children to specialised case owners; these case owners should receive training to enable them to address the needs of children throughout the asylum process.<sup>175</sup>

Separated children should only be returned on a voluntary basis, following a risk assessment of their circumstances. If young people are voluntarily returned after the age of 18 to their country of origin this should be part of a managed return programme. There must be an obligation to help them to prepare for independent living in the society and culture to which they are returning, with recognition that they are vulnerable and must be appropriately consulted on how best to ensure that they are effectively reintegrated.<sup>176</sup>

We also have the following recommendations:

- Make decision-making quicker such that families don't get too attached to their communities and find it difficult to move away.
- Continue with programmes such as the Assisted Voluntary Returns for Children and Families (AVRFC) programme run by the International Organisation for Migration (IOM) - this has proven very successful as an incentive-driven model.
- Remove the five year restriction on return for those going through IOM (we understand that this is a significant disincentive for families to return).

**7. How a new family removals model can be established which protects the welfare of children and ensures the return of those who have no right to be in the UK, outlining the key process changes, rule or legislative changes that would be required to implement the new model. (ToR)**

***If a family chooses not to leave the country, with or without support from UK Border Agency, what might an alternative family returns model look like? How should the UK Border Agency respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)? (Letter)***

Speaking in 2008, Phil Woolas MP, then Immigration Minister, said "No government has been able to produce an accurate figure of the number of people who are in the country illegally and that includes failed asylum seekers. By its very nature it is impossible to quantify and that remains the case."

In 2009, the London School of Economics estimated there were 500,000 refused asylum seekers in the UK. In 2007, Refugee Action suggested there were 200,000 and the National Audit Office estimated between 155,000 and 283,500.

We agree with the British Red Cross that this would suggest the current policy is not meeting the incumbent government's stated objectives, as well as creating a humanitarian crisis.<sup>177</sup>

In keeping with Save the Children, our recommendation is that Information about the opportunities for returning voluntarily to the country of origin needs to be made more widely available. Return under these circumstances must be truly voluntary in order for it to be effective and durable.<sup>178</sup>

### **The Salvation Army's Contribution**

Whilst recognising the role of specialist children's charities such as NSPCC and Barnardo's, there is a role for wider civil society in meeting the needs of asylum seekers (both in the UK and their country of origin).

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<sup>175</sup> Barnardo's, Like Any Other Child?, p.16

<sup>176</sup> NSPCC op. cit., p.4

<sup>177</sup> British Red Cross, Not Gone, but Forgotten, June 2010

<sup>178</sup> Save the Children, No Place for a Child, p.10

The Salvation Army is keen to participate e.g. by responding to UKBA's anticipated requirements for accommodation based services. The Salvation Army is well placed to provide the holistic support required in appropriate, safe, accommodation.

We are already in conversation with Migrant Helpline and the IOM, and look forward to discuss future accommodation requirements in more detail with the UKBA at a convenient time.

## **Conclusion**

The Salvation Army fully recognises the complexity and effort involved in ensuring that children are no longer retained for immigration purposes. We join NGOs in supporting the Government's decision, making significant and far-reaching recommendations as to how this policy may be implemented. We seek to ensure that a humanitarian crisis is avoided whilst both UK law (enforcement) and the rights of children (safeguarding) are upheld.

Please do not hesitate to contact me should you have any comments or queries upon this consultation response, or if The Salvation Army can contribute to the ongoing dialogue.

Yours faithfully

Tim Stone  
Public Affairs Officer  
The Salvation Army

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- Save the Children, *No Place for a Child*, February 2005
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- UKBA - *Letter for Corporate Partners Event on 30 June 2010*
- UKBA – *Processing an Asylum Application from a Child*

## 56. SCOTTISH CATHOLIC JUSTICE AND PEACE COMMISSION

### Review into ending the Detention of Children for Immigration Purposes

The following **Response** is from the National Commission for Justice and Peace of the Catholic Church in Scotland.

The National Commission for Justice and Peace is the body which advises the Scottish Bishops' Conference of the Catholic Church in matters relating to social justice, international peace and human rights, and promotes action in these areas.

We are aware that, with the end of detention in Dungavel, there is no Scottish locus for the issue. Nevertheless, having questioned the wisdom of detaining children of asylum families within the UK for many years, it would be wrong to think that it is no longer our problem, simply because it is no longer on our patch of the UK.

For a number of years, the Commission has seen asylum as an issue of key significance in our society. In particular, the Commission and the Bishops' Conference have expressed opposition to the practice of detaining the children of asylum seekers as contrary to our legal obligations under international agreements on basic human rights. This opposition is based on the social teaching of the Catholic Church which has as a basic imperative the dignity and integrity of the family as a place for children to grow and to become confident in the wider society. This is rooted, not only in the injunctions to compassion for the oppressed and homeless, but also the reminder, 'You shall not wrong or oppress a resident alien, for you yourselves were aliens in the land of Egypt' (Ex 22:21).

While the terms of reference concern children, it is impossible to consider children in isolation from their parents; unless it is that the children cannot be held responsible for the motives that led their parents to seek asylum.

While one cannot absolutely separate asylum seekers who have undergone a process of migration, we are concerned at the continuing failure to clearly differentiate in the public mind asylum seekers from other immigrants. This gap in public awareness is regularly and deliberately played on by media and other commentators.

We are concerned at the continuing lack of attempts to portray asylum in a positive light. It is an honourable and a praiseworthy tradition in the UK, but too often now asylum is seen as little more than a version of illegal immigration. There is an open ended process of association that too often goes unchallenged as well, which suggests linkages between immigration and criminality and extremism. While there are those who do exploit the asylum system, all the more reason not to make them its central concern.

In fact there are, among the main countries of origin of asylum seekers, countries where there has been social disruption as a result of recent or continuing military action by the UK, its allies and other forces. Until there is a greater effort made to seek diplomatic rather than military solutions, the problems of asylum are likely to persist if not increase.

Similarly, the suggestion that people seek asylum in the UK because of perceived better standards for themselves and their children needs to be challenged. A very useful resource here is the report from January of this year, **Chance or choice? Understanding why asylum seekers come to the UK**, presenting the findings of research commissioned by the Refugee Council, which was undertaken by Professor Heaven Crawley, Director of the Centre for Migration Policy Research at the University of Swansea  
<http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/rcchance.pdf>

The opposition of the Scottish Catholic Bishops to the detention of children has been based on the rights enshrined in Article 37(b) of the UN Convention on the Rights of the Child, requiring '*that detention is used only as a measure of last resort and for the shortest appropriate period of time.*' The onus, therefore, should not be on critics to provide reasons for compliance with an international responsibility, but rather on government to justify its non compliance.

We welcome the current government's statement of intent to move towards stopping detaining children. We are encouraged by commitments to aim for speedier processing and resolution of claims for asylum. We hope, however, that this does not lead to cutting corners. Recently announced plans for a 'reintegration centre' in Afghanistan to accept young unaccompanied minors after deportation do not inspire confidence. Suggestions that the UK is seeking to obtain a European consensus for deportation of unaccompanied minors to reintegration centres in countries of origin is a further source of concern. It raises suspicions that the aim is quite simply to move the problem out of the UK.

The main reason for detention –the risk of flight or absconding – always seemed to be less likely for a family and children than for an individual and lacked any significant evidence. The key facts the 2009 Home Affairs Committee Report were able to extract show that

- Nearly 1,000 children a year are detained in UKBA immigration detention centres.
- On average, children spend over a fortnight in detention (15.58 days). Detention for up to 61 days is not uncommon. On 30 June 2009, 10 of the 35 children in detention had been held for between 29 days and 61 days.
- It costs £130 a day to keep a person in detention; in the most extreme situations, detaining a family of four for between 4 and 8 weeks costs over £20,000.
- Over 90% of judicial reviews do not even get leave for hearing.

We would agree with the majority of the recommendations in this 2009 Home Affairs Committee Report **The Detention of Children in the Immigration System**, within the framework of the seminal report **Every Child Matters**. We would also draw attention to the more detailed recommendations in the 2008 report of the Children's Commissioner for England, Sir Al Aynsley-Green, **The Arrest and Detention of Children subject to Immigration Control**.

Finally, we would like to ensure that the UK Borders Agency's procedures for removal and deportation are kept under close scrutiny. The mentality of 'dawn raids' and unnotified removal and transfer serves no useful purpose. It can hardly help children who may already have undergone terrifying experiences to find similar intimidatory tactics as a prelude to their expulsion. It raises concerns about the needless use of force at any stage of the removal procedure, presumably based on a failure to conduct a proper risk assessment. It certainly sits ill with the expressed intentions in the Minister's announcement of the review on 17 June 2010; and his answers to the concerns raised in the ensuing dialogue with the Rt Hon Keith Vaz (**Hansard**, Col 211 WH - 217 WH) (<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100617/halltext/100617h0001.htm>)

Our concern, and the basis for this submission, is the well being of children, who through no fault of their own, find themselves uprooted from home and at the mercy of bureaucracy. They are entitled to the protection of law which has often been absent in their country of origin. Some indeed may have been born in this country and never have known anything else. They are entitled to some kind of security, both within the family and within the social context in which they live. This may best be achieved if they and their families can be made to feel they are something other than an unwanted burden, swamping the country and taking up resources that would be better used on existing citizens.

There is plentiful evidence that children of asylum seekers show high levels of achievement and sociability in school, as shown by the frequent campaigns against detention and removal by their peers. They are often living examples of reintegration after horrendous experiences and, as such, role models and examples of the good citizenship which is an integral part of the curriculum.

Governments cannot legislate hospitality or compassion. However, as the American vice President Hubert Humphrey said: *'The moral test of government is how it treats those who are in the dawn of life, the children; those who are in the twilight of life, the aged; and those in the shadows of life, the sick, the needy and the handicapped.'* This country has long benefited from the entrepreneurial flair of those who have sought and found a new home here. Who knows what futures we may be turning away, or indeed what future bitterness we may be sowing by rejecting those with a claim on our hospitality?

Ellen Charlton  
Chair  
Scottish Catholic Justice and Peace Commission

## 57. THE SCOTTISH GOVERNMENT

Thank you for the opportunity to comment. My colleague, Val Cox, attended the Scottish event on 14 June and I have nothing to add to the points made at those meetings.

Liz Hunter

## 58. SCOTTISH REFUGEE POLICY FORUM

### Response to the detention of children for Immigration Purposes June 2010

#### 1. Who are we

This response has been produced by the Scottish Refugee Policy Forum which is an independent federation of Scottish Refugee led community groups which unites Refugee Community Organisations in Scotland who are organized by asylum seekers and refugees, for asylum seekers and refugees.

Over 30 refugee community organizations are working closely together to represent the views of asylum seekers and refugees to the government and the big service agencies which affect our lives. We meet regularly with UKBA to try to influence the policies and practices which affect us and lobby those responsible for the conditions we live under. This response is part of this ongoing work to improve conditions for our members and allow us to make a full contribution to Scottish Society and to the UK as a whole.

What follows is our submission to the review of child detention being carried out by the Home Office. Its contents can be summarised as follows.

- It is positive that ending child detention has now been seen as the right thing to do.
- It cannot be seen in isolation from a system which fails to deliver justice to many and often detains and deports the wrong people at the wrong time.
- It is based on a fear that people will hide from the system for which no real evidence has been presented in relation to families with children. This evidence must be produced by UKBA.
- It should not be replaced with an increase in reporting in its current form which our members feel is also highly stressful, stigmatising, distressing and disruptive for children.
- The impact of detention on children is very serious in terms of their health and wellbeing and may be in breach of their human rights.
- The proposed alternatives which have been the subject of experimentation in Solihull, London and Glasgow are valuable but must be seen in terms of improving the system as a whole and should be discussed with Refugee representatives as part of their evaluation.
- There is currently little confidence in the system of voluntary return. If its use is to increase then it must contain safeguards for people who may feel return is possible but that there are still serious risks.

We have provided more detail on these points below.

#### 2. An end to child detention

We were very pleased when on 12 May 2010, the Government published its initial coalition agreement. Containing the commitment:

*“We will end the detention of children for immigration purposes.”*

We were reassured when this was confirmed this in their full agreement eight days later and on the 25<sup>th</sup> of May 2010, when the Prime Minister categorically stated that:

*“...after the Labour Government failed to act for so many years, we will end the incarceration of children for immigration purposes once and for all.” (Hansard, HC 25 May 2010)*

The SRPF welcomes this decision to end the inhumane imprisonment for children who have committed no crime and who are inevitably damaged by the experience of detention. Although there has been only limited detention of children in Scotland for some time now we recognise that in reality, this often led to children who were detained quickly being moved to English detention centres.

This can result in these families being isolated from the communities, friends and often the legal assistance they may have been able to use if still in Scotland. Although we welcome the political support on this issue from the Scottish Government and are certainly not seeking a longer term detention in Scotland, we have always taken the view that there must be an end to the barbaric practice across the UK as a whole. We welcome the courageous position of the new government in bringing this about when it could have chosen to play to the prejudices in the popular press and in some sections of society.

Although we welcome the decision we urge that it should be implemented immediately. Given the nature of the government statement we can see no useful reason to continue detaining children in the UK in the meantime and we welcome the fact that none have been detained in Scotland. One more damaged child as a result of detention is one too many and we urge you to bring an end to this now – even if this is temporarily until the conclusion of your review. We should make it clear at this point that our own broader policy position is clear in that we also oppose the detention of adult asylum seekers but we recognise that this issue is not within the remit of this current review although we would welcome a chance to debate it in future.

We have looked carefully at the consultation questions which you have issued and have used these to inform our comments

### **3. Consultation question - How can we improve our engagement with families in dealing with asylum applications? For example, do we need to review the contact arrangements with those families and their access to legal representation?**

We have argued for some time that it is impossible to view the issues of detention in isolation from the way in which claimants feel about their access to justice in the asylum system as a whole. We understand that the home office view is that detention is a last resort and only used when people who have “no right” to be here will not leave. In our view this is only a credible position if asylum seekers and other sections of civil society are themselves confident in the asylum decision making process. We believe that this is not the case In June 2006 in our Response to the Home Office review on family removals we stated that;

*“ We do not accept the current asylum system delivers access to justice to all of the families who are seeking sanctuary in Britain. The government has conceded that the initial decision process is one of a number of difficult areas which need to be addressed in the asylum system.”*  
SRPF family removals consultation 2006

Later that year we gave both written and oral evidence to the UK parliament Joint Committee on Human Rights our written evidence stated that;

*“ We also believe that it is important to state that the human rights of asylum seekers are being generally affected by a system which has many aspects which when added together can be very traumatic for us as individuals and especially for our children. From the beginning of the process when we are not being helped to prepare our cases in the way we should be. The pressures of poverty, the length of time we have to wait, the constant pressures of the reporting process and the forced removals of those of us who are refused by an inadequate system and yet know that we cannot go back without facing further persecution....the system itself is full of errors including lost documents regarding our claims and financial support stopped in error. We believe that for many people in the process all of these factors taken together undermine the rights of people who are after all simply exercising their right to claim asylum. ”*

Given our existing view of this crucial context we endorse the view of the UK parliament Home Affairs Select Committee in its report in 2010 when it concludes that;

*“we also acknowledge that, as of October 2008, 23% of initial decisions were overturned on appeal in asylum cases. While the legal system as a whole should be streamlined, the legal processes must also become fairer, quicker and more transparent to reduce the need to detain small children and possibly reduce the demand for multiple appeals in the first place.”*  
Home Affairs Select Committee Report 2010

Although we think that the new Asylum Model has brought some benefits for asylum seekers in terms of faster decisions, consistency of caseworkers making the decisions and an increase in the proportions of cases which are successful - we also endorse the concerns of those better qualified than us criticise the system including the Immigration law Practitioners Association, Scottish Refugee Council and others about the problems in the decisions making process which remain. These include; the very fast pace of the process for some people who may not have been able to secure good legal support and may not fully understand the process itself. There are still too many cases which go to appeal and are subsequently granted and this suggests to us, and to others, that the system still tends to disbelieve many people who have a justified case in the first place.

Our members understand that it is important to UKBA to keep in touch with claimants and that this may become even more important if detention is used less often. But they feel very strongly that the use of regular reporting is also a very stressful experience for asylum seekers and in particular for women and children. In order to report we are required to walk long distances often through areas where we have good reason not to feel safe as there is significant racism directed towards us on the streets. This is caused by the low incomes we are living on if we receive section 95 support.



The situation is even worse for those of us living on section four support where we are unable to use public transport. This is an important issue especially if ending child detention was to result in increased reporting. We cannot buy food that meets the cultural and religious needs of many of us and are also unable to have access to communication and clothing on this kind of support. Although section four support is not supposed to affect families with children we know that there are approximately 119 families in Scotland who are living in this situation.

Most families know someone who has been detained at the reporting centre and find visiting it very upsetting for this reason. This is particularly bad for our children and leads to them losing sleep, having their education disrupted and stigmatising them in the eyes of other children.

Some years ago there was a pilot project in Scotland to introduce telephone reporting and we were informed by UKBAs Regional director that he wanted to increase the use of this system to avoid families having to report. We would like to suggest that this could be a way of avoiding children having to report regularly and also allow UKBA to keep in touch with families as they stated they must do. We raise the issues of reporting because we do not see an increase in reporting as an automatic method of dealing with an end to the detention of children and feel that the whole approach to this should be reviewed in line with our comments above.

Why do we need detention of children? - We do not accept that there is a good reason to this. UKBA claim that if they did not detain children their families would abscond and live illegally outside the system. We have asked twice for the numbers of families who have done this in Scotland including under the Freedom of Information Act and twice UKBA have refused to give us the information. We are left wondering what the Home Office have to hide in these figures. Do they prove the need for detention or not? We are aware the home office minister Damien Green is also concerned about this and that this seems clear in his recent statement in the house of commons;

*“Detention under the system that we are getting rid of was not necessarily effective. Of the 1,068 children who departed from detention in 2008-09, only 539 were removed and 629 were released back” (Hansard, HC 17 June 2010 : Column 231WH)*

It is wrong that up to 60% of these children need not have been detained and that the distress and long term damage they may have been subject to is totally unjustified. The minister has also stated that UKBA must be honest about the figures and we agree with this. We also think the related costs of keeping people in detention who could be easily accommodated in communities must also be made public as part of the discussion about the future of detention.

The Royal College of Paediatricians the Scottish Children’s Commissioner, The Independent Asylum Commission and many others agree that the detention of children is very damaging to their interests and is therefore wrong. The Joint Committee on Human Rights and Home Affairs select committee seem to accept that it is undesirable and now the UK government has decided that it must stop. We have of course known this for many years. It is our children who have suffered in this system with the affects of trauma, sleeplessness, bedwetting and depression caused by detention or the threat of detention. This damage can last a long time and its full impact may be with us for many years. Please stop detaining our children and do it now for the sake of decency and humanity.

#### **4. Consultation question - How can we promote and improve the current voluntary return process to increase the take up from families who have no legal right to remain in the UK? What do you believe UK Border Agency’s role is here and is there a role for others in engaging with families around this option?**

Since our own policy review conference in 2006 we have taken the view that voluntary return should only be considered as an option if it is genuinely “voluntary” and if it is accompanied by the following safeguards

- Those subject to return are fully consulted about all risks associated with the process and an independent risk assessment is conducted whether they are being removed voluntarily or otherwise.
- That where practical links are made between those returning and development organizations who can support them when they go home
- Links are made with Human Rights organizations who can monitor their wellbeing and possibly enhance their protection
- An escape route is explored perhaps building on links with UK embassies or with the UN

We think that it is misleading to talk of a “Voluntary” programme of return. In our view the system has little credibility as a voluntary system. It is often put to us as the only way to avoid detention, handcuffing and manhandling and increasingly it is put to us as the only way to avoid destitution and homelessness. This is why we have outlined an approach to this issue within the broader context of a fair and more effective system in our earlier comments.

RCOs and organisations like ours can perhaps help the government explore a system which is more sustainable and could perhaps deliver safer solutions in the long term – but only if people have had justice in the first place.

Presently the Refugee Policy Forum has major concerns about whether the current system does this as recent high profile examples from Iraq illustrate. The system fails because people who feel that they have a genuine case are refused. Many of them go on to win appeals and this is evidence that the system is flawed. It is unlikely that people who feel that they have justified fear of persecution will ever be able to go home “voluntarily” under the system as it stands and unless improvements like those identified above are introduced.

**5. Consultation question - If a family chooses not to leave the country, with or without support from UKBA, what might an alternative family returns model look like? How should UKBA respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)?**

We think it is inaccurate to think in terms of families failing to comply with removal. As we have said there are many people who are terrified of removal for very good reasons associated with their own and their families safety.

As stated previously our view is that the current system is seriously flawed and as such will fail people who will not go home to further persecution without trying all alternatives. It is useful to ask yourself what you would do yourself in such circumstances. If you are in fear of persecution or believe that you are likely to be so then only a system which has the following features will change your mind.

- Takes an impartial independent view of your asylum cases and makes sure that nothing has been missed and that no new circumstances are relevant.
- Looks at other human rights law to see if your case could be affected by this and which may allow you to stay.
- Works with families, NGOs and lawyers to investigate thoroughly that routes home are really safe and that life is really sustainable for people
- If you do agree to go home “voluntarily” rather than in handcuffs that the system of returns has safeguards which will reassure you that you can reactivate your claim safely if you need to.
- These must include good monitoring and communication arrangements with families and the right to seek sanctuary in appropriate embassies or with UNHCR. If this is not possible then returns should not proceed.

Would you return voluntarily if the above safeguards were not in place? Would you lead your children home if they were not? These are the real questions which policy makers need to ask themselves if they are to design a new system which people felt safe in and could use.

We also agree that any alternative system should take into account Refugee Children’s Consortium’s agreed principles:

- Detention of children must end now, as it is clear that detention harms children; children and their families must be released immediately.
- Children and their families should never be separated for immigration purposes.
- Ending the detention of children is not dependent on establishing “alternatives to detention” projects, or new processes for families.
- Discussion on policies and practice on returns are not needed to end the detention of children.
- Discussions that focus on finding solutions to the problems at the end of the process need to consider a family’s entire experience of the asylum and immigration processes. The provision of good quality legal advice throughout these processes is crucial

## **6. Conclusion**

It is no longer necessary for us to persuade people, that detaining children is wrong since the government have already stated this clearly and said that it will happen. We believe that the majority of those claiming asylum have a well founded fear of persecution and that many are failed by the system as it stands. We therefore oppose the use of detention in general and look forward to further discussion on this subject. In the meantime we are pleased to have been able to make our considered views known to the government on this occasion. We work hard at trying to represent the views of asylum seekers and refugees in Scotland and take the responsibility seriously. We are hopeful that this dialogue can continue and look forward to hearing the outcome of the review.

**Ahmed Ali Shee**  
**Secretary**  
**Scottish Refugee Policy Forum**  
**June 2010**

## 59. SCOTTISH REFUGEE COUNCIL

### UK Border Agency Review into Ending the Detention of Children for Immigration Purposes Response submitted by Scottish Refugee Council July 2010

#### **About the consultation**

The review's aim is to consider how the detention of children for immigration purposes will be ended. It will make recommendations based on its findings.

#### **About Scottish Refugee Council**

Scottish Refugee Council is an independent charity dedicated to providing advice, information and assistance to asylum seekers and refugees in Scotland and to campaign on their behalf.

#### **Introduction**

Having long called for the end of child detention for immigration purposes, Scottish Refugee Council welcomes the UK Government's commitment to ending this inhumane practice. With regard to the review's terms of reference, we wholeheartedly endorse the principles set out by the Refugee Children's Consortium:

1. Detention of children must end now children and their families must be released immediately, as it is clear that detention harms children;
2. Children and their families should never be separated for immigration purposes;
3. Ending the detention of children is not dependent on establishing "alternatives to detention" projects, or new processes for families;
4. Discussion on policies and practice on returns are not required to end child detention; and
5. The provision of good quality legal advice is crucial during the whole asylum and immigration process.

Scottish Refugee Council is a member of both the Refugee Children's Consortium and also Immigration Legal Practitioners' Association and supports their respective submissions in response to the consultation. This submission seeks to provide a specific Scottish perspective to the review.

Our responses address each of the key components set out in the terms of reference and begins with describing the legislative architecture in Scotland. The submission goes on to look at the detention of families in Scotland and comment on the various relevant projects that the Agency, the Scottish Government and others have piloted or developed in Scotland. The submission concludes with a summary of the key points we wish the review panel to consider.

### **1. The Scottish Context**

#### **1.1 Legal framework and Scottish child protection systems relevant to detention**

There has been tension between child-related Scots law and reserved immigration powers exercised by Westminster<sup>179</sup>. As a result the Calman Commission Report<sup>180</sup> recommended that:

*In dealing with the children of asylum seekers, the relevant UK authorities must recognise the statutory responsibilities of Scottish authorities for the well-being of children in Scotland.*

This recommendation was consequently accepted by the UK Government in their response to the report.<sup>181</sup>

Scotland has devolved powers that are relevant to the incarceration of children for immigration purposes and has unique legal frameworks, structures, policies and procedures in relation to the welfare of children.

The current pivotal piece of legislation protecting all children in Scotland, including both asylum-seeking children in families and separated children, is the Children (Scotland) Act 1995<sup>182</sup> in which references are made to the Children's Hearing System, Reporters and Children's Panel. The Children's Hearing system is entirely unique to Scotland emanating from the Kilbrandon Report findings<sup>183</sup> where the welfare of the child

<sup>179</sup> See for example Scottish Refugee Council's response to the Commission on Scottish Devolution (Calman Commission) [http://www.scottishrefugeecouncil.org.uk/pub/Scot\\_Devolution](http://www.scottishrefugeecouncil.org.uk/pub/Scot_Devolution)

<sup>180</sup> <http://www.commissiononscottishdevolution.org.uk/uploads/2009-06-12-csd-final-report-2009fbookmarked.pdf>

<sup>181</sup> "The Government fully recognises the responsibilities of the authorities in Scotland for the well-being of children in Scotland and we are sensitive to this role when carrying out UK Border Agency functions in Scotland."

<http://www.scotlandoffice.gov.uk/scotlandoffice/files/Scotland's%20Future%20in%20the%20United%20Kingdom.pdf>

<sup>182</sup> ([http://www.opsi.gov.uk/acts/acts1995/ukpga\\_19950036\\_en\\_1](http://www.opsi.gov.uk/acts/acts1995/ukpga_19950036_en_1))

<sup>183</sup> <http://www.childrens-hearings.co.uk/pdf/krcy.pdf> The Kilbrandon Report was, and still remains, one of the most influential policy statements on how a society should deal with cc children in trouble". Though it is now over thirty years since it was first published, current debate about child care practices and polices in Scotland with a new Children (Scotland) Bill imminent, still resonates with principles and philosophies derived from the Kilbrandon Report itself. What is also remarkable is that the

is considered paramount. The Children's Panel is an independent specialist tribunal with independent Reporters and a panel of lay people. Independent safe guardians can also be consulted on the best interests of the child and their reports utilised for this purpose.

The Scottish Government's focus on multi-agency working and holistic practice is enshrined within 'Getting it Right for Every Child' (GIRFEC)<sup>184</sup>. This outlines that the child should remain at the centre of all decisions, systems and practice. In line with this, Independent Advocacy has become a central feature of this work. Recently, Scottish Refugee Council in partnership with Aberlour Childcare Trust, launched a pilot Guardianship Project which aims to provide independent advocacy to newly arrived separated children, many of whom are age disputed and therefore more vulnerable to detention. UKBA are participating on the project's Advisory Group.

In addition to child welfare, justice, policing, the provision of legal aid, health and education are all competences which are devolved to the Scottish Parliament and are all areas which interact with asylum-seeking families who are subject to removal.

We ask that any proposals developed by the review are compatible with these devolved competences and before any attempt to implement new policies and procedures discussions are held with the relevant institutions in Scotland. In addition, we welcome the fact that the review is considering the role of legal representation, but we would also ask the review to consider the importance of independent advocacy.

## 1.2 **The UNCRC in a Scottish context**

Refugee children must be treated first and foremost as children. Scottish Refugee Council recognises and welcomes the steps that the Scottish Government and previous Scottish Executive have taken to ensure this. We are pleased that Scottish administrations have endeavoured to utilise their devolved powers to support the principles of the United Nations Convention on the Rights of the Child (UNCRC) to refugee children:

*Asylum seekers must be treated fairly and humanely, particularly when children are involved... The welfare and rights of all children in Scotland are paramount and must be treated as such. This is reflected in Scots law<sup>185</sup>; and*

*[The Scottish Parliament] affirms its support for the principles of the UN Convention on the Rights of the Child (UNCRC) which states that governments should protect children from all forms of physical or mental violence; recognizes that, while the Scottish Executive has no direct responsibility for the operation of the immigration and asylum system, it is responsible for the welfare of children, for schools, and for working with the UK Government to report on compliance with the UNCRC<sup>186</sup>;*

The Scottish Government has taken several key steps "... to reflect the aims of the Convention in its policies and legislation wherever possible..."<sup>187</sup> and has considered how the UNCRC might be incorporated into Scottish law and policy. In 'Do the Right Thing'<sup>188</sup>, a response to the UN Committee's recommendations, the Scottish Government has formulated an Action Plan and commits itself to:

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institutional framework for supporting children and families established on the basis of the key recommendations of the report has been largely unchanged since it was introduced in 1971.

<sup>184</sup> <http://www.scotland.gov.uk/Topics/People/Young-People/childrenservices/girfec/programme-overview>

<sup>185</sup> Scottish Government Cabinet Memo on Asylum, 3 August 2007: "Cabinet recently discussed the issue of asylum. The government identified the following issues for discussion with Westminster: Asylum seekers must be treated fairly and humanely, particularly when children are involved; the welfare and rights of all children in Scotland are paramount and must be treated as such. This is reflected in Scots law; the Scottish government is fundamentally opposed to dawn raids - to any kind of forcible removal of children - and to the detention of children at Dungavel; we will be pursuing these issues as a matter of urgency with Home Office Ministers; these methods are not used in many other countries - we want a commitment from them to actively explore and implement alternative options to enforcement activity and detention. In the interim, we want a clear commitment that the Home Office will take all reasonable steps to promote voluntary methods of return and to encourage all families to consider them. We expect that all other options will have been explored before any removals take place; we will also hold the Home Office to account for full implementation of all the measures in the March 2006 Agreement made with the previous administration; we expect the forthcoming "legacy review" to recognise that many families have been here a long time and are well integrated. Certainly, we would expect all families who arrived here prior to the March 2006, other than those involved in criminal or fraudulent activity, to be granted leave to remain; the Scottish government will explore the interaction between Scottish legislation that protects and supports children and UK immigration legislation. We will take all steps to protect and promote the best interests of all children in Scotland; and our discussions with the Home Office will also focus on reinstating the right to work for asylum seekers. It does not make sense that the ability to work is denied when many have skills and experience which are in short supply in Scotland. <http://www.scotland.gov.uk/News/News-Extras/asylum-issues>

<sup>186</sup> Scottish Executive amendment to Parliamentary debate on asylum-seeking children 22 September 2005

<sup>187</sup> <http://www.scotland.gov.uk/Topics/People/Young-People/Childrens-Rights#a1>

<sup>188</sup> <http://www.scotland.gov.uk/Publications/2009/08/27133115/0>

*“Caring for all vulnerable children living in Scotland, regardless of their country of birth or the circumstances of their arrival, is fundamental to the creation of a strong, fair and inclusive national identity and improving of the life chances for children, young people and families at risk.”* and furthermore reports:

*“that there was strong opposition to the detention of children at Dungavel and approval for our [The Scottish Government’s] moves to provide an alternative to detention.”<sup>189</sup>*

Any new policies and procedures involving children must be fully consistent with the principles and articles of the UN Convention on the Rights of the Child.

### **1.3 Detention in Scotland and the ramifications of ending detention in Dungavel**

It was in Dungavel, the only Scottish Immigration Removal Centre, that the Ay family- comprising mother and four children all under 15 - were detained from 2003-4. Their incarceration strengthened the Scottish based campaign to end what the former Scottish Commissioner for Children and Young People, Kathleen Marshall, described as the *“morally distressing”* practice of detaining children solely for immigration purposes. The case was in part responsible for large scale campaigning by civil society throughout 2004/5.

The campaign widely raised awareness of detention and removal issues and called for a complete end to early morning removals – “dawn raids” – and the detention of children across the UK.

In 2004 the former Immigration Minister Des Browne, announced that the detention of families in Dungavel would be limited to 72 hours. This was initially welcomed but concerns quickly grew that it simply meant that families were detained twice, in two different detention regimes and having a long distressing journey in between. Families struggled to organise belongings and consult legal representatives in just 72 hours, and suddenly found themselves in vans being taken to another Removal Centre.

Scottish Refugee Council alongside many others has always called for the end of detention across the UK and not just in Scotland as men, women and very young children in particular, would be sent on long, arduous, frightening journeys to England. We were appalled when exactly this scenario took place following the subsequent announcement that Dungavel Immigration Removal Centre would no longer accommodate children overnight when a woman and very young child were transported directly to Yarl’s Wood. There are very obvious child welfare concerns when children are taken on often uncomfortably long journeys<sup>190</sup> only to find themselves immediately in a bewildering detention regime when the journey finally ends. The family is divorced from their legal representatives, support and social networks. This is therefore of enormous concern. The journey itself has long lasting impacts, as seen in the following case study:

A single mum and her 8-month old daughter were referred to the Medical Foundation for the Care of Victims of Torture by a health visitor in 2008. Following an assessment, the family have attended regular therapeutic sessions. Mum and daughter have been detained on several occasions. The last time, in 2008, they were detained for 13 days: 2 days in Dungavel and 9 days in Yarl’s Wood. Her daughter was not even two years old.

Following the detention, the child could not bear the door to the therapy room being closed. She would start to cry and attempt to open the door. If she wasn’t able to open it, she would scream and have trouble breathing. Mum also reported that her daughter had difficulties falling and staying asleep and would often wake up screaming. She was no longer able to sleep in her own bed and insisted on sleeping with mum. It is believed that being unable to tolerate closed doors stems from being restricted within the confines of the transport between Dungavel and Yarl’s Wood. During the journey, her daughter wanted the guards to open the door to the cage and became inconsolable when they didn’t do so.

Once in England families have to source, consult and create a new relationship with a new legal representative, entering a completely different jurisdiction. In addition, they must apply for public funding for their case, if this is possible, under a very different method.

Whilst the review takes place and alternative, more dignified and humane mechanisms are found to deal with families at the end of the asylum process, we call on the UK Government to immediately halt the detention of children and families.

### **1.4 Scottish-based initiatives**

<sup>189</sup> <http://www.scotland.gov.uk/Publications/2009/08/27111754/21>

<sup>190</sup> Detainees under Escort at Dungavel House IRC, report on an announced escort inspection, 4-8 December 2006, HM Chief Inspector of Prisons: [http://inspectorsates.homeoffice.gov.uk/hmiprison/inspect\\_reports/escortinspections/Dungavel\\_escort\\_report1.pdf?view=Binary](http://inspectorsates.homeoffice.gov.uk/hmiprison/inspect_reports/escortinspections/Dungavel_escort_report1.pdf?view=Binary)

There have been several projects in Scotland which have sought to ensure the welfare of children in the removal and detention processes, namely the Lead Professional Pilot, Clan Alba and the Glasgow Family Returns project.

In autumn 2005, vast public, media and political concern in Scotland surrounded the processes used by the Home Office to forcibly remove failed asylum seekers – in particular the treatment of families with children. The family removal process, particularly the practice of early morning removals, (“dawn raids”) were alarming and deemed by many as inhumane and brutal. Many communities expressed concerns about children and families being uprooted from a society they had lived in for many years and integrated into while waiting for their claims to be resolved.

This led the then Scottish Executive to enter into discussions with the Home Office which subsequently led to the development of a package of measures, announced in March 2006.

#### *Lead Professional Pilot Project*

One aspect of this was a National Review of Family Removal Processes. Our response to this review is available on our website.<sup>191</sup> Another element was the Lead Professional Pilot Project<sup>192</sup> which was established in Glasgow. This involved Glasgow City Council social work staff meeting families who were subject to imminent removal. Over several meetings they undertook comprehensive assessments to ensure UKBA was aware of all of the family circumstances, particularly with regard to children’s health and well-being. The specific aims of the project were to:

- *Ensure that the Home Office had relevant information about the health, welfare and education of asylum seekers to inform its decisions about family removals in cases covered by the legacy review, including matters concerned with their timing and handling ; and*
- *Demonstrate that the needs and rights of children and families inform decisions about planned removals.*

There is to our knowledge no publically available evaluation<sup>193</sup> however; we would urge the review panel to gather any learning derived from the project particularly in relation to the different experiences of family members facing removal, and the impact on local UKBA processes.

#### *Clan Alba*

The aim of the UKBA-led ‘Clan Alba’ project was to look at how families whose cases were being decided in the legacy review should be informed about the decision. Preparations for how this would be done involved a number of Scottish stakeholders. Key elements of the project were to engage stakeholders in the process and to ensure the welfare of children throughout. However, the speed with which family legacy cases in Scotland were dealt with resulted in the short life span of the project

#### *Glasgow Family Removals Pilot Project*

The Glasgow Family Removals Pilot Project, established in 2009 has attracted a great deal of interest; initial findings are yet to be disseminated (see further comments in 2.4).

The pilots have achieved some success in that they have enhanced engagement with stakeholders in UKBA processes and have had a laudable focus on the welfare of children facing removal. We urge UKBA to consider these experiences in its review in relation to the better treatment of children, focussing on their best interests and needs.

However, these projects have all been fundamentally flawed in that they have not properly ensured the role of quality legal representation and only concentrated on the end of the process.

We call for a comprehensive review of the entire asylum system. Emphasis should be placed on the early stages of an asylum case rather than continued focus on returns and removal. UKBA should continue to work in partnership with UNCHR on the quality of case owners’ decisions and implement fully all recommendations of previous Quality Initiative reports. The decision making process should draw from the Solihull Pilot Project with respect to early legal advice and case conference style casework management.

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<sup>191</sup> [http://www.scottishrefugeecouncil.org.uk/pub/Family\\_Removal](http://www.scottishrefugeecouncil.org.uk/pub/Family_Removal)

<sup>192</sup> [www.glasgow.gov.uk/.../channel\\_home\\_a.aspx?...Support%2FAsylumSeekers%2FLeadProfessionalTeam%2F](http://www.glasgow.gov.uk/.../channel_home_a.aspx?...Support%2FAsylumSeekers%2FLeadProfessionalTeam%2F)

<sup>193</sup> We understand the social work staff who were attached to the project moved to the Family Returns Pilot when it started.



## **2. Responses to the various components of the review**

### **2.1 UKBA's current approach to dealing with asylum applications from families, including the contact arrangements with those families and their access to legal representation**

Newly arrived asylum-seeking families and those deemed especially vulnerable who arrive in Scotland<sup>194</sup> may have their cases screened and processed in Scotland. Single people, who are not deemed vulnerable, are expected to undertake a long journey in order to claim asylum at the Asylum Screening Unit in Croydon. This proves particularly difficult for age disputed young people and family members that have been separated in transit.

It is clear that the New Asylum Model has created a swifter process. Scottish Refugee Council recognised the advantages to the envisaged consistent end-to-end contact management approach and regional decision making however, would agree with the findings of many reports, (see National Coalition paper 2005, Home Office Affairs Select Committee 2008, UNCHR report on quality in decision making 2008<sup>195</sup>) that there continues to be little confidence in the current asylum decision making process and over emphasis on targets and the end of the process - return and removal. Apart from the above cited reports, the indisputable fact that over 50% of families with children who are detained are consequently released back into the community, and the well publicised cases where compensation has been paid to detained asylum applicants sends a clear signal to asylum seeking families and professionals working within the asylum field that the current asylum system is a very flawed process.

We ask that the review panel fully considers the findings of the Solihull Pilot Project.<sup>196</sup> Though not in any way an alternative to detention project, the pilot has key facets which would be vital in the development of any new model to deal with families. In the project legal practitioners had early intervention with asylum applicants and there was evidentially more consistent practice and front-loading of the asylum case which benefitted both UKBA, the legal practitioners and ultimately the applicants who felt they had more opportunity to relay their story, understand the process and had a fairer hearing with more input from decision makers. In many cases case-conference style interventions were made which meant there was open dialogue and negotiation, for example discussion on evidence gathering and submission; less of an adversarial situation which may be intimidating for clients and less misinformation. Close working between all parties produced more effective case management and the applicant's level of understanding and indeed cooperation could be more closely monitored by all interested parties.

Through the higher degree of intervention at the beginning of the process applicants gain more understanding of the system, are more likely to have understood the decision making process and may be more likely to accept refusal and the resultant removal process. Of key importance is the fact that applicants feel that the system is fair, just, and transparent and that they have been heard. We call for the pilot to be rolled out further across the UK and into Scotland where many of the partnership working practices have already been successful tested in the previously mentioned pilots.

Through our direct advice work Scottish Refugee Council is concerned that specialist legal representation available to families in Scotland can be variable in terms of both quality and quantity. In particular, there is relatively few occasions where people claiming asylum receive any substantive legal representation prior to their substantive interview. Moreover, we can unfortunately cite a number of cases where poor legal practice has jeopardised the family's asylum claim and has left them vulnerable to detention.

There is no specific accreditation system for legal advisors wishing to work in the asylum and immigration field in Scotland. Any solicitor practicing in Scotland may undertake asylum and immigration related work and may not be as cognisant of the practice procedures and protocols e.g. voluntary return procedures.

In Scotland the availability and quality of specialist legal representation afforded to asylum seekers (single, family and separated child applicants) is currently under scrutiny and there are two ongoing research projects. The Scottish Legal Aid Board (SLAB), with the support of Scottish Refugee Council, is currently conducting research into the initial access to justice that asylum seekers currently have, with a specific focus on the timing of legal representatives' interventions and the impact that the speed of the process has on access to justice.

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<sup>194</sup> In-country applicants

<sup>195</sup> International Detention Coalition, 'Case Management as an alternative to immigration detention', <http://idcoalition.org/wp-content/uploads/2009/06/casemanagementinaustralia.pdf> and [www.unhcr.org/what.../quality-initiative-and-integration.html](http://www.unhcr.org/what.../quality-initiative-and-integration.html) and HC 970-i (QU 25) 16 September 2009

<sup>196</sup> <http://www.parliament.uk/deposits/depositedpapers/2009/DEP2009-1107.pdf>



Scottish Refugee Council is conducting research into the availability and perceptions of quality of legal representation available to separated children arriving in Scotland. This was commissioned following concerns raised by young asylum-seeking people with regards to their lack of knowledge about the asylum process and previous proposals to disperse unaccompanied asylum-seeking children to different local authorities around the UK, including Glasgow. Whilst the report is not complete, an initial finding that quickly emerged in consultation with a large cross section of young people was that they felt that the asylum system had simply 'happened' to them. Many stated that they wished to have an 'asylum teacher' to explain to them what exactly was happening to them. Responses included the insightful remarks such as "I didn't understand my papers"; "No one explained that I could be returned"; "I didn't know what was happening, who was telling the truth"; "We just need to be believed"; "I had little to do with my asylum claim"; "My lawyers wrote everything... I said very little"; "I think I have a visa"; "I have *indefinite* leave to remain until I am 17 and a half". Furthermore, they had not felt that they had a fair hearing and knew very little about the possibility of being returned or options available to them, for example, the Voluntary Assisted Returns and Removals Programme (VARRP) if facing return.

Scottish Refugee Council is hopeful that the development and launch of its guardianship pilot project will resolve some of these issues for young people. We believe that independent advocacy and support is also an essential requirement to ensure that single adults and families are also supported and informed throughout the asylum process.

When the results of the two studies are complete, we ask that the UK Government work closely with the Scottish Government, the Scottish Legal Aid Board and other stakeholders to ensure that that people claiming asylum in Scotland can have early access to legal representation.

#### *Age disputed children*

Though the review focuses on families, we wish to take this opportunity to expose the particular difficulties young age disputed applicants face in Scotland and how they are often left especially vulnerable and ultimately more exposed to detention. Through there being no ASU in Scotland, young people who have been age disputed by UKBA or by social work, are reliant on charitable sources for overnight travel to Croydon in order to lodge their asylum claim. Their details are not officially recorded, and their journey is not monitored, leaving these vulnerable young people open to possible exploitation. This can result in young people going 'missing'. Should they fail to claim asylum within what is considered by UKBA to be a 'reasonable time'; this can subsequently impact on their claim. In Scotland, a thorough and urgent review is required of age assessment practice as there is an evident lack of expertise in this area. Furthermore, no 'Scottish-specific' training, guidance nor relevant case law is available from which to draw upon.

## **2.2 Current circumstances in which children are detained**

Children may be detained with their families or because they are believed to be over eighteen. Two particularly high profile Scottish cases have exposed many of the flaws in the current system. One case involved a mother and her ten-year old daughter, who endured two periods of detention only to be released after a costly, stressful high court case. Due to their removal to English detention centres High Court cases were lodged initially in the Court of Session and subsequently in the Supreme Court. This resulted in considerable cost (for detention and processing of the family's case in court) to Scottish and English taxpayers.<sup>197</sup>

## **2.3 Numbers of children detained in Scotland and problems with statistical data**

Between October 2008 and September 2009, 103 children were detained at Dungavel in Scotland.<sup>198</sup> Though improved recently in their layout and dissemination, the fact that the UKBA statistics have previously not been disaggregated has led to inconsistency and confusion. The policy of families remaining in Dungavel for just 72 hours appeared to cause some variation in detention statistics, as when detained for a second time or moved to England, this was reflected in statistics as just one continuous period of detention. The previous Inspector of Prisons, Dame Anne Owers, alluded to this when visiting Yarl's Wood in 2008. She concluded:

*"Data collected on the total number of days children had been in detention did not include cumulative detention .... The monthly data recorded the average number of days [between 12 and 27] children were held [at Yarl's Wood- where several previously Scottish cases were held]"*

The Scottish Government has collated statistics related to children in detention and Scottish Local Authorities, responsible for protecting families in detention in Scotland, have not consistently recorded the numbers of families, children and age disputed young people passing through Dungavel. When

<sup>197</sup> Asylum detainees win record pay out. The Independent 13.2.09, [www.independent.co.uk/news/uk/home-news/asylum-detainees-win-record-payout-1608207.html](http://www.independent.co.uk/news/uk/home-news/asylum-detainees-win-record-payout-1608207.html)

<sup>198</sup> UKBA Quarterly Statistics Q3 2009 Detention Users Group

questioned on the numbers of detained children, the Scottish Government defer to centralised statistics collated in England which, due to the above reasons, may be heavily distorted. On 27 May 2010 Johann Lamont MSP asked the Scottish Government if it had sought information on how many children of asylum seekers had been detained in Dungavel IRC in each month of 2009 and received the reply that:

*“The [UK Border Agency](#) does not provide statistical information on a month by month basis. However, it has published quarterly reports for 2009 which are available on the UKBA website.... The reports detail the numbers of people who entered detention for immigration purposes – these include a breakdown by age and place of detention. However, they do not specify if the children were those of asylum seeking families..... These figures are not subject to detailed checks. Some detainees may be recorded more than once, for example, the person has been detained on more than one separate occasion in the time period shown, such as a person who has left detention, but has subsequently been re-detained”<sup>199</sup>.*

Whilst collation of specific data related to children in detention should not now be needed, as children should no longer be detained, we call for greater consistency and transparency in the collation and dissemination of statistical information, particularly in age disputed cases. This would reflect the true situation and emerging trends in the various devolved regions in order that practice and policy may be improved to provide further safeguarding of families and for cost effectiveness.

#### **2.4 The UK Border Agency’s initiatives on implementing alternatives to the detention of children, including the current Glasgow pilot**

##### *The Family Returns Pilot Project*

Scottish Refugee Council welcomed the inception of the Alternatives to Detention Pilot Project known also as the Family Returns Project, and participates in the project’s steering group. We are aware that concerns have been raised with regard to its experiential nature and lack of robustness<sup>200</sup> and despite our ongoing concerns that is flawed by focussing solely on the end of the process, believe it is a unique opportunity to gain first-hand and considerable insight and learning into the complex experiences, perceptions of return and treatment of families facing removal - particularly from a child’s perspective. It is vital to consider these aspects to support development of future policy.

Unfortunately the commencement of the evaluation of the project was delayed. There is little publically available data on the project and the project remains in its infancy. There is however some elements we are able to comment on, having sat on the steering group of the project:

##### *Evaluation*

There are two evaluations taking place: an overall evaluation of the project and a separate piece of work being undertaken specifically with children in the project. This will hopefully lead to a much greater understanding of the needs of families at the end of the asylum and removal process through the eyes of parents and children. Equally as important, it will give greater insight into where the initial stages of the process are lacking and flawed. The pilot again focuses solely on the last stages of the asylum process - the end process - and it has already emerged on an anecdotal basis that families do not believe they can, or will be, removed because of a number of issues. These include failings in the initial stages of process, lack of consistent legal representation, lack of consistent information and also late introduction of organisations such as IOM. These findings are echoed in the findings of the Kent-based Millbank Project, carried out by Bail Immigration for Detainees and the Children’s Society. This highlights failures on several levels: a key recurrent theme being the lack of relationship between case owners and families and a subsequent lack of trust families had in the asylum process.<sup>201</sup>

##### *Accommodation*

In the project, families are moved from their initial dispersal accommodation – often the family homes which they have stayed in for a number of years - to the pilot project accommodation. The reasons given initially were that the families were given a clear indication that they were in a new, final stage of the process of moving on and away.

Scottish Refugee Council had objected to this practice from the outset, believing that moving the family simply added unnecessary stress and strain on the family. The focus for the family shifting to what to take to the new accommodation, adapting to new accommodation and community and the actual move rather

<sup>199</sup> <http://www.theyworkforyou.com/spwrans/?id=2010-05-27.S3W-33598.h&s=numbers+of+children+in+dungavel#gS3W-33598.r0>

<sup>200</sup> House of Commons Home Affairs Select Committee Detention of children in the Immigration System Session 2009/23010, 29 November 2009 Para 8

<sup>201</sup> Report on the Millbank Alternative to Detention Pilot at <http://www.biduk.org/library/A2D%20Report.pdf>

than concentrating on what was being said to them about entering the removal stage and process, gaining legal advice and mentally preparing for returning to their country of origin.

#### *Interagency working*

The interagency and partnership approach within the pilot is seen by Scottish Refugee Council to be beneficial. Qualified children and family specialist social workers work with families alongside UKBA and IOM. This is advantageous in terms of child protection, communication, learning and most importantly holistic working around the family and children. However, the lack of consistent legal support or any form of legal support being attached to the project is very concerning. Whilst it is preferable for people to be able to choose their legal representatives, legal representatives have been seen not to engage with the project and have, in anecdotal evidence, advised applicants not to enter the project. One solution might be that legal representatives need, in some way, to be attached to any project or model to ensure consistent access to high quality legal advice.

### **2.5 Models of good practice from other jurisdictions and relevant and current research**

In addition to previous comments, Scottish Refugee Council is aware of Swedish and Australian models and whilst not knowledgeable on the intricacies or evaluation of these systems notes that the International coalition paper submitted in 2005:

*“The Swedish case management role introduced in both community and detention contexts were premised on a rights and welfare-based framework. The caseworker is responsible for informing detainees of their legal rights and ensuring these rights are upheld, including access to legal counsel and the right to seek asylum.”*<sup>202</sup>

### **2.6 How the current voluntary return process may be improved to increase the take up from families who have no legal right to remain in the UK**

Scottish Refugee Council would not be in a position to comment on the viability practice or procedure in terms of improving the take up from families on voluntary return. However in respect to any voluntary return process or model would call for:

- A thorough review of the entire asylum process;
- Front loading of the asylum process including: Early and greater access to high quality, specialist and accredited legal representation which is supported by publically-funded legal aid. The recent closure of Refugee Migrant Justice has brought to the fore many of the issues relating to the funding of highly complex asylum; an assessment of vulnerability by UKBA at the beginning of the asylum claim and independent advocacy throughout the asylum process for particularly vulnerable individuals and families;<sup>203</sup>
- Ensuring applicants involvement and monitoring their understanding of processes;
- Dual planning from first arrival; early introduction to IOM; and honesty and transparency in the asylum system; and
- A shift in focus on assessing applicants’ protection needs rather than on return and removal.

### **2.7 How a new family removals model can be established which protects the welfare of children and ensures the return of those who have no right to be in the UK, outlining the key process changes rule or legislative changes that would be required to implement the new model**

Scottish Refugee Council would wish to see the Section 55 duty UKBA placed itself under from November 2009<sup>204</sup> to be fully reviewed and understood internally. There appears to be misunderstanding and mistrust of the duty amongst UKBA staff. In tandem with this UKBA should consider the UNCRC at all times and superimpose the UNCRC into relevant facets of the immigration rules, procedures, policy and practices.

Scottish Refugee Council is not in a position to suggest a family removals model but would suggest that learning and key insights may be gained from the Solihull Pilot , Swedish and Australian system where applicants are reported to perceive that their legal rights are upheld , they have ready access to justice and that the potential for removal is introduced and discussed from outset, Crucially applicants must believe

<sup>202</sup> International Detention Coalition, ‘Case Management as an alternative to immigration detention’, <http://idcoalition.org/wp-content/uploads/2009/06/casemanagementinaustralia.pdf> and [www.unhcr.org/what.../quality-initiative-and-integration.html](http://www.unhcr.org/what.../quality-initiative-and-integration.html) and HC 970-i (QU 25) 16 September 2009

<sup>203</sup> See Justice at risk , <http://refugee-migrant-justice.org.uk/downloads/Justice%20at%20Risk.pdf>

<sup>204</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/bci-act1/change-for-children.pdf?view=Binary>

that removal is safe and thoroughly planned, that it is dignified and humane and that in family cases the child's needs remain pivotal to all decisions in all cases and are a primary concern in all UKBA decisions as laid out in the Every Child Matters, Change for Children November 2009 guidance.<sup>205</sup>

For further information, contact:

**Clare Tudor**  
**Children's Policy Officer**  
**Scottish Refugee Council**

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<sup>205</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/bci-act1/change-for-children.pdf?view=Binary>

## 60. SOCIAL DEMOCRATIC AND LABOUR PARTY (SDLP), BELFAST

### **SDLP Response to the UK Border Agency Review into ending the detention of children for immigration purposes July 2010**

The SDLP was founded on the principles of promoting equality, social justice and reconciliation, and to protecting human rights.

The SDLP has always been opposed to the detention of children. We believe the government must fulfil its obligations under the UN Convention on the Rights of the Child which committed to introducing a duty on the UK Border Agency equivalent to section 11 of the Children Act 2004 which requires it to safeguard and promote the welfare of children.

Our key concerns in relation to the detention of children are:

- The impact upon a child's physical and mental health

Detention can have a hugely detrimental impact on the physical and mental health of a child. Being removed from their community or family circle, often with little explanation as to why they are being locked up, is understandably traumatic. This trauma is often compounded by inadequate access to health care while in detention.

- Detention decisions are not automatically subject to judicial oversight

Currently the government is not required to get the permission of a judge to sanction its decision to detain a family unless the family themselves apply for bail. This leaves the onus on the family themselves to know what bail is, how to apply and what evidence they would need. This is a lot to ask of anyone undergoing such a traumatic experience.

- Detention is not always used as a last resort measure

In 2008 the UN Committee on the Rights of the Child concluded that the UK government should "Intensify its efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time, in compliance with article 37 (b) of the Convention"<sup>206</sup> Current failure to ensure that detention is only used as a last resort measure places more children under unnecessary hardship and provides little assurance as to the government's commitment to their welfare.

- There is a lack of meaningful safeguards in place to protect children in detention and the detention of children is not properly monitored

The January 2009 "UK Border Agency Code of Practice for keeping children safe from Harm" does not acknowledge the harmful impact of detention on children and does not require that families are released when a health or social care professional documents concerns about a child's wellbeing.

The government currently fail to keep adequate information as to the numbers of children it detains. The absence of such statistics makes holding the government to account on this practice all the more difficult.

- A cessation of the detention of children must not mean that families are pushed through the immigration system without due process

The SDLP would welcome an end to the detention of children however this should not mean any undue acceleration to deportation. It is essential that individuals or families are provided adequate time to allow for fairness in the immigration process.

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<sup>206</sup> Committee on the Rights of the Child; forty-ninth session; consideration of reports submitted by states parties under article 44 of the convention; concluding observations: United Kingdom of Great Britain and Northern Ireland, page 17 [crc/c/gbr/co/4  
http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf)



## 61. SOUTHAMPTON & WINCHESTER DETAINEE VISITORS GROUP

### **Southampton and Winchester Visitors Group**

*Working with refugees and asylum seekers*

**Registered charity:** 1103093

**Patrons:** Miriam Margolyes, John Pilkington, Rt Revd Michael Scott-Joynt

**Web:** [www.swvg-refugees.org.uk](http://www.swvg-refugees.org.uk)

Dear Mr Wood,

As a charity we have been supporting those seeking sanctuary in the Southampton area for the last ten years. Last year we raised nearly £90 000, of which 86% went directly to the assistance of 81 asylum seekers, either as rent, emergency payments or legal assistance. We have 43 trained visitors who meet weekly on a one-to-one basis with an individual asylum seeker. As a result we believe we have acquired considerable understanding of both the needs of asylum seekers and of what is likely to be successful in persuading them to accept voluntary return, should they fail to gain leave to remain.

We welcome the new coalition government's commitment to end child immigration detention, as we do a major review of the asylum system, provided it is in line with the principles laid down by Damian Green in his recent speech in London to supporters of Citizens for Sanctuary.

Mr Green accepted that "there are people who apply for asylum in this country who are genuine refugees and deserve our help." He emphasised the need "to ensure that decisions are right first time". He wants a system which is not only fast and efficient but also "humane". He thinks it important "that the general question of immigration should be treated separately as far as possible from the question of asylum. They are separate political issues and need to be treated as such." Finally he wants to challenge the views of unpleasant extremist politicians" and represent those of the mass of the British people who "are perfectly sensible and humane on this subject"

We ask only that these principles are upheld in your review and we will judge its outcome in so far as it is in conformity with them. However, several recent developments cause us some concern that they may, to a disturbing extent, be ignored. The forcible return to Afghanistan of child asylum seekers; the renewal of attempts to remove asylum seekers to war zones in Iraq and Somalia; and the emphases both in your own letter and in the terms of review suggest that this review may focus primarily on swift removal rather than, as it purports, on a humane review of the system in the wake of ending child detention. Withdrawing the option of detention should not lead to ill-considered attempts at fast-track removal.

We are particularly concerned with an apparent conflict between the minister's recognition of the importance of getting decisions right the first time with the decision to proceed with the liquidation of the charity Refugee and Migrant Justice - even though it is clear from Kenneth Clarke's comments in parliament that both the Legal Services Commission and officials at the Ministry of Justice have misunderstood the nature of the problem. Our anxiety is increased by your mention of the possibility that families' access to legal representation be reviewed, by your statement that there may need to be legislative changes, and by your emphasis on the fact that any changes will need to be made in the light of financial constraints.

These issues are central to increasing voluntary removal. The evidence is clear from a whole range of pilot projects, some successful and others unsuccessful, that encouragement of voluntary return can only be successful in a context of trust by, and support for, failed asylum seekers. This is the lesson of The Failed Refugee Project started in Toronto in January 2000; the Hotham Mission Asylum Seeker Project in Melbourne 2001-3; the experience of Sweden; the UK's Clannebor project in Leeds between June and December 2007; and the Kent project. Given what has happened to Refugee and Migrant Justice, it is ironic that the findings of the UKBA's Solihull Early Legal Advice Pilot was that excellent early legal advice increased levels of voluntary return. Absence of trust, largely due to the fact that decisions are not right first time (as is clear by the number overturned on appeal) was a major reason why European comparisons in 2005 showed us bottom of the league for voluntary returns.

Turning specifically to the issue of what should replace child detention, we assume that separation from parents is not being considered. To take children into care while their parents are detained would be to substitute one form of state child abuse with another; it would be contrary to article 8 of the European convention on human rights and would make social workers complicit in damaging rather than protecting the welfare of children. As you will know, the removal in 2008 by government of its reservation to article 22 of the UN convention on the rights of the child gave asylum-seeking children the same rights as British children. In 2009 section 55 of the Borders, Citizenship and Immigration Acts introduced a duty on the UK Border Agency to "safeguard and promote the welfare of

children". Research for at least the last fifty years has demonstrated beyond all doubt the vital necessity of children's links with their parents, especially their mothers. This link becomes even more vital when the family is in such a vulnerable and insecure position as that of asylum seekers. Therefore, it is not just about not detaining a child – it is also about respecting all other human rights such as the right to family life, safety, security and health.

There is ample evidence to show that families with children are very unlikely to abscond while living in their own communities, as has already been admitted by the UK Border Agency. Apart from anything else, their children are in, and have friends at, the local school. A system of regular reporting could be an effective and cheap option at a time of financial stringency. Other options could include a close link with a social worker or with a member of an approved NGO. The Glasgow scheme appears promising and it is difficult to see why ministers in the last government were concerned that a larger scheme of its type could see many asylum seekers abscond.

It is precisely because governments in the past have not involved and not gained the trust of all stakeholders in this policy area that the present crisis has occurred. Without this trust, attempts to increase voluntary return will continue to fail, while attempts at fast-track removal will be evaded and opposed on the grounds of inhumanity and injustice. The crisis will not be resolved and the new government will find itself faced with the same problems as the last. The fact that last week a Red Cross report estimated that there are as many as 20 000 destitute failed asylum seekers in the country, together with an even greater number reliant on long-term government support, makes it abundantly clear that any hard-headed approach, with any chance of substantial success, will put humanity, support and trust at its centre.

This is our view based on extensive involvement with asylum seekers. We fully agree with the report produced by Ian Duncan Smith's Centre for Social Justice that excellent, available legal advice, trustworthiness of the workers they have contact with, and support, not destitution are the conditions most likely to achieve the voluntary returns the government is seeking. What is encouraging is that, judged by his remarks in the London speech, the new minister may share this view.

Yours sincerely,

Anne Leeming (Chair)



## 62. SOUTH EAST STRATEGIC MIGRATION PARTNERSHIP

### Review into Ending the Detention of Children for Immigration Purposes

#### Submission from the South East Strategic Partnership for Migration

#### 1. Background

- 1.1 The South East Strategic Partnership for Migration (SESPM) welcomes this opportunity to feed into the national review into ending the detention of children for immigration purposes.
- 1.2 The South East has the experience of hosting the 'Alternative to Detention' pilot (known as 'Millbank') in Kent from November 2007 to September 2009 being operational from January 2008 when the first referrals arrived.
- 1.3 Despite the short operational time a number of key learning points have been identified are incorporated within section 2 of this submission.
- 1.4 A review into Millbank was commissioned by UKBA and a report produced by 'Tribal Group'. A joint evaluation report by The Children's Society, Diana Princess of Wales Memorial Fund and Bail for Immigration Detainees has also been produced.
- 1.5 It is recommended that these reports are also considered within the review as well as the learning from the Family Returns Project in Glasgow.
- 1.6 A separate paper from the Kent Wide Strategic Network for Migration, led by Kent County Council is being submitted which addresses the 'specific areas', set out in the letter from David Wood on 10<sup>th</sup> June 2010, in detail. SESPM was consulted on this submission fully supports it.
- 1.7 Following consultation this submission reflects the views of with key local authorities across the South East and is set out in section 2 below.

#### 2. Key Issues for Consideration within the Review

- 2.1 Clarity of purpose - although the aims of ending child detention and increasing voluntary returns are of course strongly linked, the review needs to draw distinctions between these two actions. This is especially true when considering dedicated projects involving relocation such as Millbank & the Family returns Project.
- 2.2 Safeguarding principles are paramount – throughout the process of return, voluntary or enforced, safeguarding principles should be considered paramount in planning any removal.
- 2.3 Preparing children – it is welcomed that the review is researching other European models in ensuring children are prepared for return. The current practice of early morning arrests presents schools with a safeguarding issue, as the whereabouts of children is not known. Similarly schools deal with the distress and trauma of such enforcement action i.e. the obvious effect on the child being removed but also on friends/staff that have not had the opportunity to say goodbye. It is recommended therefore that expert education input is sought to consider ways of mitigating the distress of enforcement action.
- 2.4 Models - the existing examples include accommodation based models where families are physically relocated at the end of the process and a more community based model such as the Liverpool pilot. Although this response does not advocate for one model in favour of the other it does however support the principle that less disruption to children is preferable during what is already a traumatic time. As in 2.2 it is recommended that full consideration is given to promoting maintaining the welfare of children throughout this process.
- 2.5 End-to-end approach - consideration is given to an approach which works closely with families throughout their asylum claim, building on the structure of asylum support through all stages of the process and mirroring the NAM Case Owner model. Early access to accredited legal representation and ongoing

independent support from start to finish enables a more integrated approach. This helps to address issues of denial around the legitimacy of the negative decision and enables access to realistic accurate advice. Information from voluntary return specialists should feed into this review and consideration of aligning this work with that of the national Voluntary Return Steering Group should be given.

- 2.6 The range of migrants - although detention of families is often linked with Appeal Rights Exhausted asylum seekers it is not limited to this category of migrant e.g. visa over stayers may also be affected. So whilst an integrated casework approach model fits relatively well within the structure of asylum support consideration needs to be given to how this could work across the range of migrants
- 2.7 Accommodation based projects - where accommodation based projects such as Millbank are considered a number of key learning points should be taken into account:
  - As in 2.2 consideration should be given to involving local safeguarding boards in any further dedicated projects.
  - Principles of the end-to-end process (2.3 and 2.4) need to be included
  - Robust referral processes need to be in place in order that the selection of families meets agreed criteria. For example families who cannot forcibly be removed should not be referred to a 'voluntary return' project as a mechanism to avoid detention.
  - Legacy cases need to be carefully considered before inclusion in such projects.
  - Any 'conflicts' between enforcement targets and the project operations/objectives are identified, communicated fully understood across the agencies resolutions put in place.
  - Close working with statutory services such as health and education help promote clearer understanding across the agencies support an integrated approach e.g. enabling schools to incorporate closure rather than deal with the trauma of the fall out when children are abruptly removed (see also 2.3)
  - Any model should be adequately tested with regular review points independently evaluated.

### **3. Summary**

- 3.1 As stated SESPM welcomes this review and has set out above broad key issues to inform and shape the outcome based on the regions experience and desire to see the ending of detention of children for immigration purposes.
- 3.2 This response aims to constructively support improving engagement with families throughout the process, supporting voluntary returns and influencing how a returns model could be developed.

Roy Millard  
Partnership Manager

### **63. SOUTH LIVERPOOL VINEYARD CHURCH**

Dear Review Team,

Having seen the effects of detention on children first hand and visited asylum seekers in detention, it is clear to me that detention centres are no place for children. I support the government in ending child detention and think this should happen now as it is totally unacceptable.

Any future policy should put the welfare of children at the centre, living in extended periods of extreme uncertainty is damaging for children and a system that is fairer and much better organised should be put in place to reduce this.

Kind regards  
Sarah Brown

South Liverpool Vineyard Church

### **64. SOUTH YORKSHIRE MIGRATION & ASYLUM ACTION GROUP**

Dear Sir/Madam

I have read the UKBA consultation document regarding the detention of children for immigration purposes.

I am pleased to hear that you are looking for alternatives to this practice (described in a review last year as making "children sick with fear").

I think that Liberal Democrat MP for Cambridge, Dr Julian Huppert summed up the view of our organisation on this matter when - in a parliamentary debate - he said "The main alternative that I can think of to detaining 1,000 children a year is not to detain them."

Yours faithfully  
Stuart Crosthwaite  
Secretary, South Yorkshire Migration and Asylum Action Group (SYMAAG)

## 65. STRATEGIC MIGRATION PARTNERSHIP, EAST OF ENGLAND

### East of England Strategic Migration Partnership's response to the UK Border Agency consultation 'Review into ending the detention of children for immigration purposes' June 2010

#### Contact details:

Malgorzata Strona  
Senior Policy Officer  
Strategic Migration Partnership  
East of England Local Government Association

#### Background:

The East of England Local Government Association's Strategic Migration Partnership is one of twelve UK partnerships funded by the UK Border Agency. The Partnership was established in March 2000 - originally to co-ordinate activities regarding the dispersal, accommodation and support of asylum seekers across the region. Since April 2007, our role has been expanded to incorporate the wider migration agenda and we work closely with the East of England Development Agency (EEDA) to support and develop regional migrant worker networks, support agencies and projects, as well as continue our work with asylum seekers and refugees. The Strategic Migration Partnership is a tiered regional network which encompasses grass roots organisations and a regional network of multi-agency forums and specialist and task groups which feed into the Migrant Worker Steering Group and the Asylum and Refugee Reference Group, each with a mechanism to feed into the national bodies.

#### General Points:

The existing research<sup>1</sup>, both in the UK and within the wider European context, indicates that detention has an adverse effect on children's welfare and is an extremely traumatic experience, especially in cases when detention extends beyond the shortest appropriate period of time and when children are not aware of the reasons for detention.

In trying to find effective alternatives to detention, it is important to take into consideration both lessons learned and positive outcomes of pilot projects run to date (e.g. Family Return Project in Scotland or the Millbank project in Kent).

Soft outcomes should be considered as well, including closer cooperation between agencies and reducing children's distress by making them aware of their families' position and prospects.

Alternative solutions developed by other countries could also be considered for possible adaptation in the British context.

It is vital to find solutions which would prevent children from being separated from their families for immigration purposes, as this would both have an adverse effect on the families involved and increase costs for local authorities having to provide support for vulnerable children.

#### Responses to consultation questions:

*Q1. How can we improve our engagement with families in dealing with asylum applications? For example, do we need to review the contact arrangements with those families and their access to legal representation?*

The engagement with families should start at the beginning of the asylum process and be based on a multi-agency approach, with accommodation providers and/or voluntary sector organisations providing advice, and with prompt and unobstructed access to good quality legal advice, interpreters and other relevant services and information.

The families need to be well informed at the beginning of their asylum application process of the possible outcomes of their application (and options available to them in case of a negative decision, including assisted voluntary return). The transparency and swiftness in determining an asylum claim will increase understanding of and trust in the process and encourage compliance with removal orders.

Closer cooperation with the voluntary sector and local authorities will help applicants understand the options available to them at each stage of the process.

*Q2. How can we promote and improve the current voluntary return process to increase the take up from families who have no legal right to remain in the UK? What do you believe UK Border Agency's role is here and is there a role for others in engaging with families around this option?*

If families are communicated with regularly from the very beginning and presented the options available to them at each stage of the process, a more joined up approach may assist the family in reviewing their options in light of not being able to stay in the UK. Closer working between agencies may lead to an increase in voluntary return, depending on the quality of the work undertaken to prepare the family for return and re-integration.

The Family Return Project currently run in Scotland may be an option to build on, provided assistance is available from the start of the asylum process with each family being assigned a support worker to guide it through the process.

Prompt and fair consideration of applications and families' awareness of the choices available to them at the end of the process (voluntary return vs. removal) is likely to facilitate the uptake of voluntary returns.

Furthermore, closer cooperation with the International Organisation for Migration on improving early information on and access to Assisted Voluntary Return for Families and Children programme may result in increased uptake of this option.

*Q3. If a family chooses not to leave the country, with or without support from the UK Border Agency, what might an alternative family returns model look like? How should the UK Border Agency respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)?*

At the point of an application for asylum becoming all appeal rights exhausted, simply withdrawing support in the hope that the family will leave the UK has been ineffective. Where asylum support is not available at the end of the asylum process, the family is more likely to end up being supported by local authorities under social services legislation. The UKBA needs to actively assist failed asylum seeking families with no protection needs to leave the UK, not simply leaving them without support.

Support for families who are deemed to have no legal right to remain in the UK should be continued until their departure to prevent destitution. Receiving support during that period will help families plan and prepare for return and for re-integration in their country of origin. With their basic needs satisfied, families can make informed and realistic life choices at the end of the asylum process. A resolution-based focus needs to be maintained; otherwise families, left in limbo for long periods of time, will become increasingly unwilling to return and the rate of voluntary return will remain low.

Support up until removal from the UK should be provided, as removing it does not encourage families to leave the country; on the contrary, they often tend to 'disappear underground' or approach local authorities or voluntary organisations whose funding is limited. Moreover, the removal of support may compromise the UK Border Agency's duty to safeguard and promote the welfare of children.

Finding an alternative model is not easy, but it should be based on managing people's expectations and keeping them informed, while ensuring that the whole process is quick and fair. Under such circumstances refused asylum seeking families are more likely to understand that their case has been given a fair hearing and their chance of a successful appeal is limited. Consequently, they may be more willing to take up voluntary return.

#### *Relevant evidence or research on alternatives to detention in other jurisdictions*

The UNHCR report 'Alternatives to Detention of Asylum Seekers and Refugees'<sup>2</sup> mentions the following alternatives to detention functioning in various countries:

- a) release with an obligation to register one's place of residence with the relevant authorities and to notify them or to obtain their permission prior to changing that address;
- b) release upon surrender of one's passport and/or other documents;
- c) registration, with or without identity cards (sometimes electronic) or other documents;
- d) release with the provision of a designated case worker, legal referral and an intensive support framework (possibly combined with some of the following, more enforcement oriented measures);
- e) supervised release of separated children to local social services;
- f) supervised release to (i) an individual, (ii) family member/s, or (iii) nongovernmental, religious or community organisations, with varying degrees of supervision agreed under contract with the authorities;
- g) release on bail or bond, or after payment of a surety (often an element in release under (f));
- h) measures having the effect of restricting an asylum-seeker's freedom of movement (that is, *de facto*, restrictions) – for example, by the logistics of receiving basic needs assistance or by the terms of a work permit;
- i) reporting requirements of varying frequencies, in person and/or by telephone or in writing, to (i) the police, (ii) immigration authorities, or (iii) a contracted agency (often an element combined with (f));
- j) designated residence in (i) state-sponsored accommodation, (ii) contracted private accommodation, or (iii) open or semi-open centres or refugee camps;
- k) designated residence to an administrative district or municipality (often in conjunction with (i) and (j)), or exclusion from specified locations;
- l) electronic monitoring involving 'tagging' and home curfew or satellite tracking.

The response to the consultation from the British Red Cross provides further information on effective alternative solutions in Sweden, USA and Australia.

<sup>1</sup> House of Commons, Home Affairs Committee, 'The Detention of Children in the Immigration System, First Report of Session 2009-2010', [The Detention of Children in the Immigration System](#);

Royal College of General Practitioners, Royal College of Paediatrics and Child Health, Royal College of Psychiatrists and the UK Faculty of Public Health, 'Significant Harm - the effects of immigration detention on the health of children and families in the UK', December 2009, [http://www.rcpch.ac.uk/doc.aspx?id\\_Resource=5829](http://www.rcpch.ac.uk/doc.aspx?id_Resource=5829);

11 MILLION, The Children's Commissioner for England's follow up report to 'The Arrest and Detention of Children Subject to Immigration Control', February 2010,  
The Children's Commissioner for England's follow up report to: The arrest and detention of children subject to immigration control;  
Civil Society, 'Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union', DEVAS REPORT.  
2 O. Field with assistance of A. Edwards, Study on Alternatives to Detention of Asylum Seekers and Refugees, UNHCR, Legal and Protection Policy Series, UNHCR, Legal and Protection Policy Research Series, POLAS/2006/03, Geneva, 2006.

## **66. SUFFOLK COUNTY COUNCIL FORUM FOR REFUGEES**

Hi,

I am a member of the Suffolk County Council Forum for Refugees, asylum seekers and migrants. Though I don't have specialist knowledge of the issues that are being reviewed, I do have concerns about how the rights of unaccompanied asylum seeking children are being disregarded by the practice of detention which the UKBA operates.

I have set up a 5aside team in a local church league in Ipswich with refugee children from Afghanistan. They also come along to English speaking classes that a local United Reformed Church holds every week. They boys are amazing - still smiling after surviving some horrendous experiences.

The recent report on the activities of the UK Border Agency by Refugee & Migrant Justice provides many recommendations which I believe should be implemented in full.

[http://refugee-migrant-justice.org.uk/?page\\_id=10](http://refugee-migrant-justice.org.uk/?page_id=10)

Clearly children's rights are being abused and the Section 55 duty of care is not being adhered to. The new government needs to ensure such children are not discriminated against through the demeaning process of entry interviews conducted by the UKBA, often without an adult present. These interviews should stop and proper written guidelines for the UKBA should be introduced regarding how information is gathered from immigrant children. Our country should be a bastion for human rights - especially regarding children.

Please take these views into consideration. Thank you,

Ben Wale

## 67. UNHCR

### UNHCR Comments on the UK Border Agency Review into ending the Detention of Children for Immigration Purposes

#### 1. Introduction

The United Nations High Commissioner for Refugees (UNHCR) welcomes the UK Government's commitment to end the detention of children for immigration purposes and hopes that the comments below will support the UK Border Agency's review process.

#### 2. General Observations

UNHCR's submission relates only to the treatment of children assessed as part of a family asylum application, and not to unaccompanied or 'age disputed' asylum seeking children.

UNHCR understands that the review will cover the following issues:

1. The UK Border Agency's current approach to dealing with asylum applications from families, including contact arrangements with those families and families' access to legal representation;
2. The current circumstances in which children are detained;
3. All relevant baseline data and statistics;
4. The UK Border Agency's initiatives on implementing alternatives to the detention of children, including the current Glasgow pilot;
5. Models of good practice from other jurisdictions and other relevant current research;
6. How the current voluntary return process may be improved to increase the take-up from families who have no legal right to remain in the UK; and
7. How a family removals model can be established which protects the welfare of children and ensure the return of those who have no right to be in the UK, outlining the key process changes, rules or legislative changes that would be required to implement the new model.

UNHCR's submission focuses on points 1 and 5 above and covers the following issues:

- the international and regional legal regime;
- effective procedures for identifying and reviewing the best interests of the child;
- early access to legal advice and information about the asylum process;
- good quality and child friendly asylum procedures; and
- UNHCR forthcoming research on alternatives to detention (updating the findings of the 2006 UNHCR study on Alternatives to Detention of Refugees and Asylum Seekers ('UNHCR Study')<sup>1</sup>).

#### 3. International, EU and Human Rights Obligations regarding detention of children

UNHCR views the detention of minors as a special cause for concern.<sup>2</sup> International human rights law contains specific protection for children, taking account of their vulnerability. The United Nations Convention on the Rights of the Child requires that in any judicial and administrative decisions taken by the State, the best interests of the child must be the primary consideration.<sup>3</sup> This means that the question must be asked whether limiting the right(s) in question is in the child's best interests. Children should not to be separated from their parents against their will<sup>4</sup> and should only be deprived of their liberty as a method of last resort and for the shortest period of time possible.<sup>5</sup> Children should not be detained in prison like conditions and strong efforts must be made to seek alternatives to detention and release detained children and their families to suitable alternative accommodation as soon as possible.<sup>6</sup>

The European Court of Human Rights has recently found that the conditions and effect of detention on the physical and mental health of a mother and her four children detained in a transit centre in Belgium constituted a breach of the prohibition against torture or cruel, inhuman or degrading treatment or punishment (Article 3 ECHR). In so far as the four children were kept in a closed centre designed for adults and ill-suited to their extreme vulnerability, even though they were accompanied by their mother, the Court found that there had been a violation of the right to liberty and security (Article 5 § 1 ECHR) in respect of the children.<sup>7</sup>

Following his visit to the UK, the Council of Europe Commissioner for Human Rights expressed concerns that insufficient attention has been paid to the examination of alternative forms of supervision. Furthermore, the Commissioner found that there appeared to have been very little study of the likelihood of families with children to abscond that would support resorting to increasing detention.<sup>8</sup> The Commissioner subsequently stated;

*"No migrant child should ever be subject to detention...having a dependent child must be ground for an adult not to be detained except in accordance with the lawful order of a criminal court."*<sup>9</sup>

This concern was echoed by the UN Special Rapporteur following his visit to the UK who urged the government to exclude migrant children from detention, and to guarantee that immigration and asylum laws include regulations to address children's rights and needs in such circumstances.<sup>10</sup>



#### **4. UK Border Agency's current approach to dealing with asylum applications from families**

##### **4.1 Ensuring primary consideration of the 'best interests' of children**

Difficult questions arise where a decision is taken to detain children with their families. However, in all cases involving children, their best interests will remain of paramount importance, as indicated above.

UNHCR is of the view that the concept of best interests – as required by Article 3 of the Convention of the Rights of the Child – is encapsulated in section 55 of the Borders, Citizenship and Immigration Act 2009 which places a duty on the Government to 'safeguard and promote the welfare of children'. This includes all children with whom UKBA comes into contact, whether unaccompanied, separated or with their families.<sup>11</sup> UNHCR considers that existing guidance to UK Border Agency staff does not sufficiently guide staff towards proper best interest assessment. UNHCR suggests, inter alia, putting in place specific mechanisms to ensure that UK Border Agency staff dealing with children – whether they are unaccompanied, separated or with their families – adequately implement best interests in any administrative decision which affects a child. This should include minute considerations of a child's best interests on the child's file. As such, UNHCR suggests that this requirement could usefully form part of UKBA standard operating procedures (paragraphs 28-29).<sup>12</sup>

##### **4.2 Early legal advice and provision of information**

The 2006 UNHCR's Study on Alternatives to Detention of Asylum Seekers and Refugees<sup>13</sup> found that certain factors increase the cooperation of asylum seekers and reduce the likelihood that they abscond. The provision of competent legal advice and concerned case management, for example – which serve as non-intrusive forms of monitoring and which ensure that asylum seekers fully comprehend the consequences of non-compliance – were found to raise rates of appearance and compliance.

UNHCR has consistently advocated for the "front loading" of asylum decision making and the provision of early legal advice. It is vital that any decision making process allows for all relevant and obtainable evidence to be brought to light as early as possible for consideration before an initial decision is made. Better preparation for interviews and more flexibility to allow for the gathering of evidence are also key to improving the quality of decision making.

UNHCR participated in the evaluation of decision-making under the Early Legal Advice pilot in Solihull in 2008 and 2009. UNHCR found that the increased availability of evidence at first instance and the greater interaction between decision makers and legal representatives was a welcome result of the pilot. A further benefit noted by UNHCR includes clear improvements to the working relationship between Case Owners and Legal Representatives. The interactive features of the Solihull pilot could usefully be explored as a means of enhancing confidence in the system.

UNHCR's 2006 Study also found that ensuring that asylum seekers are not only informed of their rights and obligations but also that they understand them, including all conditions of their release and the consequences of failing to appear for a hearing was another factor which influenced the effectiveness of an alternative measure as far as preventing absconding and/or improving compliance with asylum procedures.<sup>14</sup> UNHCR has highlighted the importance of asylum applicants' access to information about their rights and obligations at the outset of the process in its Quality Initiative Reports as outlined in more detail here-below. UNHCR supports the idea of providing information to asylum seekers throughout the asylum process as a means of contributing to an earlier engagement on the idea of return to their country of origin should their claim be refused.

##### **4.3 Quality of first instance decision making**

UNHCR has been working with the UK Border Agency since the creation of the Quality Initiative Project in 2004. UNHCR has delivered six Quality Initiative Reports to the Minister for Immigration since 2004 and has highlighted a number of concerns with regard to the quality of first instance decision making.

UNHCR believes that high quality first instance decision making is important for a number of reasons. As highlighted in UNHCR's study of March 2010 entitled "Improving Asylum Procedures, Comparative Analysis and Recommendations for Law and Practice"<sup>15</sup>, good quality asylum decisions in the first instance lend greater credibility to the fairness and efficiency of the asylum system overall, including the appeal system. Well-reasoned decisions help applicants take informed decisions about whether to exercise a right of appeal or not. Well-reasoned decisions also contribute to the transparency of decision making. Finally, well-reasoned decisions are ones which are also clear to the individual concerned, thus enhancing their confidence in the asylum system.

#### **5. Models from other jurisdictions and relevant current research**

UNHCR's Guidelines on Detention enumerates a number of alternatives to detention.

These alternatives were elaborated on in the UNHCR Study of 2006 which looked at alternative practices in 34 countries and covered, inter alia, the following range of alternatives:

- release with obligation to register one's place of residence with the relevant authorities and to notify them or to obtain their permission prior to changing that address;
- release upon surrender of one's passport and/or other documents;
- registration, with or without identity cards (sometimes electronic) or other documents;

- release with the provision of a designated case worker, legal referral and an intensive support framework (possibly combined with some of the following, more enforcement oriented measures);
- supervised release to (i) an individual, (ii) family member/s, or (iii) nongovernmental, religious or community organisations, with varying degrees of supervision agreed under contract with the authorities;
- reporting requirements of varying frequencies, in person and/or by telephone or in writing, to (i) the police, (ii) immigration authorities, or (iii) a contracted agency (often an element combined with (f));
- designated residence in (i) State-sponsored accommodation, (ii) contracted private accommodation, or (iii) open or semi-open centres or refugee camps; and
- designated residence to an administrative district or municipality (often in conjunction with (i) and (j)), or exclusion from specified locations.

Since the study was published in 2006, a number of interesting alternatives have been developed such as the use of open housing units with coaches for families with children in Belgium for example<sup>16</sup>.

As an update of the UNHCR Study is currently underway, and further information on different alternatives to detention as well as an analysis of their effectiveness should soon be available, UNHCR stands ready to provide the UK Border Agency with any specific information about models in any particular country that may be required.

UNHCR London

5 July 2010

- 1 Alternatives to Detention of Asylum Seekers and Refugees (UNHCR, Legal and Protection Policy Research Series, POLAS/2006/03, Geneva, 2006), available at: <http://www.unhcr.org/refworld/docid/4472e8b84.html>
- 2 *UNHCR Revised Guidelines on Applicable Criteria and Standards relating to Detention of Asylum Seekers (1999)*
- 3 Article 3, *United Nations Convention on the Rights of the Child*, (1989), and *ExCom Conclusion No. 47 (XXXVIII)*
- 4 Article 9, *United Nations Convention on the Rights of the Child*, (1989)
- 5 Article 37, *United Nations Convention on the Rights of the Child*, (1989)
- 6 *Refugee Children: Guidelines on Protection and Care*, Chapter 7 (IV), UNHCR Geneva 1994
- 7 *Muskhadzhiyeva and others v. Belgium* (application no. 41442/07), European Court of Human Rights.
- 8 *Report by Commissioner for Human Rights on his Visit to the United Kingdom*, Council of Europe, Comm DH(2005)6.
- 9 *Criminalisation of Migration in Europe: Human Rights Implications*, Council of Europe Commissioner for Human Rights (2009)
- 10 *Report of the Special Rapporteur on the human rights of migrants, UK*, UN Human Rights Council (2010)
- 11 UN High Commissioner for Refugees, *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2008, available at: <http://www.unhcr.org/refworld/docid/48480c342.html> [accessed 29 June 2010]. UNHCR has previously commented on draft statutory guidance for section 55 of the BCI 2009 and welcomes references to sections of the UNHCR Guidelines on Determining the Best Interests of the Child (UNHCR BID Guidelines).
- 12 *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2008, p. 14 – 15, p. 17 – 18, p. 34
- 13 *Supra* note 1.
- 14 *Supra* note 1, paragraph 155.
- 15 Available at <http://www.unhcr.org/refworld/docid/4bab55752.html>
- 16 The first return houses were opened in 2008 intended to house asylum-seeking families with children who were detained pending removal. In 2009, the Belgian Aliens Office also began using return houses as an alternative for families with children seeking asylum at the border, and for Dublin transfer cases who would normally await the outcome of their case in a closed transit centre at Brussels international airport.

## 68. UNITED REFORMED CHURCH, THAMES NORTH SYNOD

### Review into ending the detention of children for immigration purposes

1. The Thames North Synod of the United Reformed Church and the Immigration Co-ordinator of the United Reformed Church are pleased to have this opportunity to respond to this review concerning the welfare of asylum seeking children in detention.
2. The Synod and national Church recognise the principle of border control and acknowledge that the issues of desperate people who have exhausted all legal avenues pose a real challenge to the Government. However we believe that the detention of children for immigration purposes is an inhumane and disproportionate response to the problem.
3. The Synod and national Church refer the Government to professional reports, which must include those by the Children's Commissioner for England, the Royal College of General Practitioners, the Royal College of Paediatrics and Child Health, the Royal College of Psychiatrists, and the UK Faculty of Public Health. These respected bodies have demonstrated the harm done to detained asylum seeking children. They have concluded, without exception, that children experience long-term mental and physical damage under these circumstances.
4. This overwhelming evidence is sufficient to persuade us that the detention of children should end immediately. Whilst the review is examining alternatives to detention, we would oppose any action whereby children and families continued to be detained whilst alternatives were researched and piloted. The detention of children must end without delay.
5. As you are aware the UK Border Agency has a statutory duty to care for children of asylum-seeking families, under section 55 of the Borders, Citizenship and Immigration Act 2009. They should only ever be detained in '*extreme circumstances*'. There may be rare circumstances where it is believed that there are no alternatives to detention, such as in the final few hours before removal. The practice of detaining children for several weeks at a time before releasing them does not in our considered opinion arise from '*extreme circumstances*' nor is it in the best interest of the child.
6. We believe that the practice of ending the detention of children should not be achieved at the cost of detaining the parents and taking the children into care, or splitting families in other ways. We are opposed to any decision or action which would allow this move to become policy. The UK is a signatory to the 1989 UN Convention on the Rights of the Child. Article 9 of the Convention requires that children are not separated from their parents unless doing so "*is necessary for the best interests of the child*". We do not believe that separating a child from his or her family could be necessary for in the child's best interests. We believe very strongly that if the decision of this review is for the detention of children to be replaced by the separation of families for immigration purposes it will be a resounding failure.
7. We wish to emphasise, along with other charitable organisations, such as *Citizens for Sanctuary*, the widely accepted fact that families with children do not typically abscond. The Home Affairs Select Committee report *The Detention of Children in the Immigration System First Report of Session 2009–10* stated that, while the risk of absconding is generally viewed as the rationale behind detention, "there is no evidence that families with children systematically disappear".
8. We are aware that many families appear to be detained during legal appeals. Whilst the processes may be in need of greater speed, it is also apparent that availability of legal advice and representation must be properly resourced. New funding systems which means that organisations such as Refugee and Migrant Justice may be forced to close are to be deplored. In addition the quality of initial decision-making must be improved - it is estimated that as many as a quarter of initial decisions are over-turned on appeal.<sup>207</sup>
9. The detention of children for immigration purposes must no longer be a hidden administrative tool of convenience. We believe it to be an unacceptable curtailment of the rights of innocent children under article 37 of the UN Convention on the Rights of the child. For the sake of children who are innocent of any crime, the country can afford to take the risk of more humane strategies for managing families seeking sanctuary.
10. The Synod and national Church have great hope that this review will allow positive changes to be enacted with an immediacy which will benefit children, families and the raise respect for the UK

<sup>207</sup> "Borders, Citizenship and Immigration Bill", Fifth Report of Session 2008–09, HC 425, Oral Evidence, Q2.

## 69. WALES STRATEGIC MIGRATION PARTNERSHIP

### Ending the detention of children: developing an alternative approach to family returns

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June 2010

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**Please note that the views expressed in this paper are the views of the author and do not necessarily represent the views of organisations who are members of the family returns group.**

#### 1. Briefing paper aims

The Conservative-Liberal Democrat Government Coalition Agreement of 10<sup>th</sup> May 2010 included a commitment to “end the detention of children for immigration purposes”. On 25<sup>th</sup> May it was announced that a review of existing practice in the UK and elsewhere would be undertaken in order to identify how this commitment would be achieved. The terms of reference for the review were published on the UK Border Agency (UKBA) website on 11<sup>th</sup> June<sup>208</sup> and debated in the House of Commons on 17<sup>th</sup> June. This paper on alternatives to detention has been produced to inform the review process. It draws upon an existing body of research in the UK and internationally to develop an alternative approach to family returns which does not rely upon detention to secure the forced removal of families but rather increases the willingness and ability of those whose claims have been unsuccessful to return to their countries of origin. This approach takes into account the rights and needs of children and their parents, whilst recognising that those who are not entitled to remain in the UK will be required to leave the country at the end of the asylum process. The paper focuses on alternatives to detention for children in asylum seeking families for whom there may be particular barriers to return.

Before considering the most appropriate strategy for ending the detention of children, it is important to acknowledge the wider context within which the detention of families occurs. The welfare of children in the asylum and immigration system is a complex and difficult area of public policy which requires a wide range of organisations to work constructively together to develop fair and humane solutions for the long term. The review rightly recognises that the development of alternative models for the return of families will be a complex and challenging process, requiring significant time and investment. There is no ‘quick fix’. This is because the decision to detain families in order to affect their return reflects, at least in part, a range of other issues associated with the asylum system. Most notable among these are the quality and culture of decision making and the extent to which asylum applicants consider that their claims for protection have been fairly and properly considered. Alternatives to detention are meaningful only if they exist within a broader system of decision-making that ensures ongoing and consistent contact is maintained, and where asylum seekers have information about their rights and are aware of their obligations.

#### 2. The reasons why children are detained

The UK’s policy of detaining families with children in order to affect their removal from is an area of long-standing concern for many organisations that take an interest in asylum issues as well as those working specifically on behalf of children. Evidence about the impact of detention on the health and well-being of children provides the context within which the search for alternatives has been framed. The impact of detention on children’s health and well-being has been particularly well documented over recent years, with medical studies in the UK and elsewhere

<sup>208</sup> Available at [www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/26-end-child-detention/terms-of-reference.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/26-end-child-detention/terms-of-reference.pdf?view=Binary)

finding that detention is associated with post-traumatic stress disorder, major depression, suicidal ideation, self-harm, and developmental delay in children (Mares and Jureidini 2004; Steel *et al* 2004; Lorek *et al* 2009).

Although the negative impacts of detention are, to some extent at least, acknowledged by UKBA, the detention of families has been justified on the basis that this is a measure of last resort which is used for the shortest possible length of time. Three main explanations have been provided as to why it is necessary to detain children: that some families will abscond if they are not detained and it will therefore be impossible to affect removal; that families are only detained to affect their imminent removal from the UK; and that most families who are at the end of the process are not prepared to leave the UK voluntarily (Crawley and Lester 2005). Whilst the reasons for detention are not the focus of this paper, an understanding of the evidence in relation to these justifications for the detention of children is necessary to understand, and make sense of, the discussion of alternatives that follows.

First, while the risk of absconding is generally viewed as the rationale behind detention, there is no evidence that families with children systematically disappear. It is widely recognised, including by the Centre for Social Justice (2008), that the vast majority of asylum seekers currently detained do not pose a threat to security and studies suggest there is little risk of them absconding. Indeed there is evidence to suggest that children with families are among those who are least likely to disappear because they are frequently embedded into health and educational services (Field and Edwards 2006).

Secondly, there is evidence of a gap between policy and practice in relation to the detention of children. Although families should only be detained when their removal is imminent, in reality a decision to detain is often made when there are significant barriers to removal including outstanding legal issues, health problems, or a lack of travel documents. Recent (as yet unpublished) research by Bail for Immigration Detainees (BID)<sup>209</sup> has found that there are often outstanding legal issues for families in detention or where travel documents for return could not be obtained. On average, families in their study could not be removed as a result of outstanding legal applications for 50% of the time they spent in detention and had no removal directions in place for 64% of this time. A third of families were detained for more than a month while they had no removal directions in place. In total 78 families were detained for periods when they could not be removed, at an estimated cost to the taxpayer of £637,560. Nearly two thirds (61%) of families were eventually released, their detention having served no purpose.

Thirdly, the fact that relatively few families take up the option of returning voluntarily to their countries of origin is interpreted as signaling a resistance on the part of families to leaving the UK. This, in turn, triggers a decision to forcibly remove the family, most commonly following a period of detention. In reality it appears that many asylum seekers, including families with children, have very limited information about the immigration or asylum process, and in some cases are unclear about their legal rights and options. In this context, families may not be confident the application for asylum has been properly considered nor will they be in a position to fully consider their options in relation to return. Recent research by BID for example has found that information about voluntary return schemes is provided on an *ad hoc* basis. Perhaps more importantly asylum seekers may not understand the significance of the information that they are being given at different points in the asylum process or the relevance to their own situation as this is not explained to them.

These factors are reflected in broader concerns articulated by a wide range of organisations in relation to asylum system in general and the approach to returns in particular. The Centre for Social Justice (2008) argues that over the last ten years the asylum system has suffered from a catastrophic breakdown of trust from all sides in the aftermath of a sharp rise and then fall in the numbers of people applying for asylum in the UK. The Government has legislated aggressively over this period in order to reduce the numbers entering the UK to claim asylum. This has made it increasingly difficult for asylum seekers to make an application as well as have their case properly heard. Many asylum seekers have lost trust in the system's ability to deliver a fair hearing, mainly because of inadequate legal support, a lack of accurate translation and poor quality decision-making. This evidence suggests that until families have confidence in the Home Office's process for determining asylum claims, it is unlikely that large numbers will respect the final decision on removal and return to their countries of origin.

This is reflected in the current, very low, rates of return. As is noted by the Centre for Social Justice (2008), the proportion of all 'return migrants' (including refused asylum seekers) who return voluntarily from the UK is very small (6%) compared to other European countries. Both the Centre for Social Justice (2008) and Independent Asylum Commission (2008) suggest that this is symptomatic of a lack of meaningful engagement by the Home Office throughout the process and a failure to actively address the fears that many asylum seekers have about returning home. The current approach is one of confrontation which forces the two parties further apart and decreases the likelihood of any agreement or consensus on how to resolve issues. This creates a 'limbo' situation where thousands of asylum seekers remain in the UK for what can often be several years. The policy of making refused asylum seekers destitute through the removal of support is cited by the Centre for Social Justice (2008) as illustrative of this flawed approach.

### 3. Alternatives to detention

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<sup>209</sup> BID undertook detailed research into the cases of 82 families with 143 children who were detained during 2009

This section outlines the principal alternatives to detention and sets out the benefits and disadvantages of each alternative based on the available evidence from the UK and other countries. In each case the proposed alternative is considered in relation to its potential contribution to the Coalition Government's stated objective of replacing the current system with something that ensures that families with no right to remain in the UK are able to return in a more dignified manner.

There are a number of strategies for facilitating the return of families without resorting to detention. These alternatives are reasonably well-rehearsed. A comparative study commissioned by UNHCR (Field and Edwards 2006) recognises as best practice legislation which establishes a sliding scale of measures from least to most restrictive, allowing for an analysis of proportionality and necessity for every measure. Describing the system in several Nordic States, Switzerland, New Zealand and Lithuania, the study concludes that where detention is one extreme end of a range of measures with unconditional release at another, states are more likely to ensure in practice the application of alternatives. In 2006, a coalition of NGOs published a lengthy report on alternatives to detention (Chmelikova (ed). 2006). The Jesuit Refugee Service subsequently published a paper on alternatives to detention which examines the legal basis for administrative detention in the EU, the legal basis for alternatives to detention and the different forms of alternatives that are used throughout Europe and in non-European countries (Jesuit Refugee Service 2008). Most recently the International Detention Coalition (IDC) published a paper on Australia's experiences with alternatives to detention, in particular, the 'case work and contact management' model which is discussed subsequently (IDC 2009).

### **3.1 Electronic monitoring**

Electronic monitoring covers a range of different forms of surveillance, which vary in intensity and the degree to which they limit an individual's freedom of movement, liberty or privacy. For example, Global Positioning System (GPS) 'electronic tracking' allows continuous tracking of an individual. 'Electronic tagging' works only within a certain range, and requires the individual to wear a bracelet which emits a signal to a receiver at a fixed point, usually the individual's home address. The individual could be required to be at home at a particular time or times of the week. 'Voice verification' or 'voice tracking' enables reporting and uses biometric voice recognition technology over a telephone, from a fixed landline and from a fixed address, at a notified time.

The use of electronic monitoring in its various forms to maintain better contact with those subject to immigration control has been the subject of debate in the UK for a number of years. Increased monitoring of asylum seekers was announced in a White Paper in 2002 and the introduction of Asylum Registration Cards, in conjunction with increasing use of reporting requirements, was consistent with this objective. Section 36 of the Asylum and Immigration (Treatment of Claimants, etc) Act (2004) created provision for the electronic monitoring of those over the age of 18 who are subject to immigration control. This includes both the use of voice recognition technology and other forms of electronic monitoring (tagging and tracking) as an alternative to detention "for those at the lower end of the risk spectrum, or for those who in the absence of suitable sureties would otherwise have remained in detention."

A number of countries have used various forms of electronic monitoring in order to supervise asylum seekers who would otherwise be detained or who have been released from detention. In the United States for example two programmes are currently in use: the Electronic Monitoring Program (EMP) and the Intense Supervision Appearance Program (ISAP). The EMP was initially created and implemented with the goal of providing a cost effective alternative to detention and was piloted in seven field offices but has since expanded nationwide. The EMP currently utilizes telephonic reporting with voice verification, radio frequency with ankle bracelets and global position satellite. The ISAP is designed to supervise those released from detention by ensuring compliance with conditions of release, immigration hearings and immigration judge orders. The ISAP employs case specialists to closely supervise participating aliens utilizing a variety of tools such as curfews, electronic monitoring devices and community collaborations that support the participant.

Although new technologies offer a potentially appealing alternative to detention, the evidence from existing schemes such as the EMP and ISAP noted above suggests that increased electronic monitoring is unlikely to contribute significantly to improved procedures for returning families to countries of origin where their applications for asylum are unsuccessful. This is because electronic monitoring does nothing more than enable the authorities to know the whereabouts of the individuals concerned yet it is widely accepted that absconding is not the main problem in this context (Centre for Social Justice 2008). In other words electronic monitoring does not address the perceived need to detain families in order to facilitate their removal at the end of the asylum process. Moreover as with all electronic monitoring techniques – including those used in the criminal justice system – tagging is reliant upon the cooperation and compliance of the person who is being monitored. Without this cooperation the tag can simply be removed. This would appear to make the system superfluous: if asylum-seekers must co-operate with electronic monitoring in order for it to function, it is not clear why the system is needed at all since a willingness to comply with immigration controls has already been demonstrated (Crawley and Lester 2005).

All the available evidence suggests that there are better, more effective and less expensive alternatives to detention than electronic tagging and tracking. Indeed it is possible that the extension of electronic monitoring schemes would, in fact, result in the *increased* detention of, for example, if there are problems with the technology

itself (a commonly occurring issue in relation to some voice recognition and tracking systems) or if the family fails to comply with monitoring requirements (for example, where a curfew or residence requirement is inadvertently or unavoidably broken).

### **3.2 Reporting (including incentivised compliance)**

Reporting is the most widely used alternative to detention and requires asylum seekers to attend a designated location on a regular basis. Reporting requirements are generally imposed when individuals are granted Temporary Admission or after release on bail. The purpose of reporting is to ensure that there is regular contact between those subject to immigration control and the authorities. Because reporting is the simplest and least intrusive of all alternatives to detention it is used in a significant number of countries. In France for example, there is no official reporting system, but in effect this is the main control mechanism. Asylum seekers and others subject to immigration control need to renew their 'authorisation de séjour' papers every three months, and also need to collect financial assistance every month, which requires a fixed address. In addition, those who fall under Schengen agreements need to renew their Schengen stamp once a fortnight (ECRE 1997). This means applicants must effectively report to the authorities between once every ten days to once every three weeks or so.

The use of reporting as a mechanism for maintaining contact is not without its problems. Current reporting mechanisms in the UK are not considered user-friendly particularly for families with children. Factors that can affect their effectiveness are primarily related to the frequency of required reporting and the distance from where the person lives. Requirements may be as demanding as having to report several times a week or even daily, at a particular time of day, perhaps some distance from home. This increases the risk that applicants will miss their slot and be deemed to have failed to report (Crawley and Lester 2005). The frequency of reporting requirements also needs to be considered in conjunction with the fact that asylum seekers have very limited income, and those deemed to have reached the end of the process possibly have no recourse to funds at all.

There are more sophisticated form of reporting, often described as 'incentivised compliance' which negate some of these difficulties (Crawley and Lester 2005). One of the most widely cited examples is the Appearance Assistance Program (AAP) that was piloted in the United States by the Vera Institute on behalf of the immigration authorities. The AAP represents an attempt to move away from rather crude one-way contact management system to create a two-way system that provides information to asylum seekers whilst monitoring their whereabouts. This programme, which operated in New York for three years until 2000, could be categorised as a reporting system but has elements of the case work and contact management model (see section 3.4) that set it aside from crude reporting schemes. These elements include one-to-one caseworker relationships with an emphasis on mutual trust, assistance with accessing services – particularly legal advice and representation – and the provision of general and specific information on the asylum process and the progress of participants' cases. When the AAP ended in March 2000 it had supervised more than 500 individuals with an appearance rate of 93% and average costs of supervision which were 55% lower than those associated with detention (Crawley and Lester 2005).

In order to assess whether incentivised compliance programmes similar to the AAP could be an alternative to the detention of children in the UK context, it is important to understand the factors behind the programme's success. The project's evaluation shows that information provided by the AAP contributed to participants' evolving awareness of laws, options, and consequences of non-compliance. In addition, the sense of belonging to a programme served to ease feelings of alienation and motivated them to comply. The AAP evaluation concluded that the more non-citizens feel they are a visible, legitimate part of their adopted country and have a sense of belonging the more they are willing and motivated to respond with co-operation and compliance. This feeling of legitimacy stems from feeling 'within the system' and documented, as opposed to invisible or underground. The provision of information and support to asylum seekers can make the asylum process more credible and sustainable and can enable families to make more informed choices about their future, including returning to their countries of origin where this is appropriate. This approach is holistic and works precisely because it is in place from the beginning of the process and not simply at the end when relationships of trust have not been developed or have broken down. What is not clear from this pilot however is whether such a reporting scheme can contribute not only to contact management but to increased confidence in the decision making process and a willingness to return if the final decision is a negative one.

Given what is known about the use of reporting schemes such as the AAP, one possible alternative available to the Government would be to develop the reporting system which already exists in the UK context into a more meaningful, positive and ideally two-way process. This would enable the reporting process to be directly linked with casework contact and would ensure that families could get information about their case, explanation of delays and that they would have the opportunity to raise any concerns or difficulties they experience. If such an approach were to be pursued reporting mechanisms would need to be made more user-friendly and flexible to the needs of families with children. In addition the Home Office would need to cover the cost of all reporting requirements.



### **3.3 Supervised accommodation**

One mechanism for improving contact between asylum seekers and the authorities is to accommodate asylum seekers while their application for asylum is being determined and to ensure that meaningful contact and information, including legal advice and representation, is available *in situ*. Maintaining contact through supervised accommodation can take different forms. These range from large accommodation centres in isolated areas that do not differ significantly from reception or removal centres, to 'clusters' of private flats, through to a simple and verifiable requirement to live at a designated address.

Supervised accommodation is already used by many states, particularly in Europe, to monitor asylum seekers whilst their asylum claim is processed. The nature of the centres and the restrictions placed on freedom of movement vary greatly. In some countries, movement is restricted in practice as asylum seekers have to report to or stay in their accommodation centers at certain times. In other countries asylum seekers are not allowed to choose their place of residence, but may do so under certain conditions or at a certain stage of the asylum procedure. In some countries, asylum seekers are free to leave their place of residence without any authorisation or by submitting a formal request which is routinely accepted. Others have a more stringent system of limited days of absence, reporting obligations or virtually no possibility of leaving apart from in exceptional circumstances.

The extent to which supervised accommodation is an appropriate and less damaging alternative to the detention of children is dependent upon the form that this accommodation takes and the restrictions that it entails. In Germany, Switzerland and the Netherlands, residence in a collective centre is compulsory for part or all of the asylum procedure. NGOs, social workers and medical practitioners have reported problems with compulsory collective accommodation, including depression and a loss of independence. The Swedish model by contrast involves a period of initial accommodation in the Carlslun reception centre where the health and support needs of families are assessed followed by release to a regional refugee centre made up of groups of flats in small communities close to the central office reception. A caseworker is assigned to each asylum seeker on arrival. This caseworker explains the refugee determination process and an asylum seeker's rights during the time they are awaiting a decision. The caseworker also ensures that asylum applications are processed correctly and that legal representation and interpreters are provided if necessary. Residents are required to visit the reception office caseworkers at least once a month, to receive their allowance, news on their application, and a monthly need and risk assessment. Referrals to counselling and medical care are also provided by caseworkers. During their time at the reception centre, all residents are free to move around with minimal supervision. Living in the group flats is not a requirement, though registering and staying in touch with the reception office is. This level of combined monitoring and support has proved beneficial to both asylum seekers and the authorities. Applicants have been more willing to comply with asylum decisions, even when these end with a deportation order (ECRE 1997).

A model of supervised accommodation has also been introduced in Belgium although this takes a rather different form to that seen in Sweden and engages with asylum seekers at the end rather than the beginning of the asylum process. In October 2008 the Belgian Government announced that families with children pending removal would no longer be detained in closed detention centres and instead has piloted an alternative arrangement in which families live independently (in 'maisons de retour') and receive support from a 'coach'. There are parallels between this initiative and the 'Family Returns Project' and 'Alternatives to Detention' pilot established in Glasgow and Millbank (Kent) respectively. To date the pilot projects developed in the UK do not appear to have been effective in delivering their stated objectives of promoting voluntary return and preventing children from going into detention. In common with the supervised accommodation established in the Belgian context, such initiatives are targeted specifically at those who are already considered by UKBA to have reached the end of the asylum process. As such there are arguably limited opportunities for building trust and confidence in the asylum process and for reassuring families that their applications for asylum have been properly considered. If only those who are considered as being at risk of absconding are placed in supervised accommodation centres then such centres do not provide an alternative to detention but rather increase restrictions for people who would not otherwise be detained. The impacts on children who are held there will therefore not be significantly different from those associated with the detention process. Moreover, the 'added value' of supervised accommodation lies in the caseworker approach. This can arguably be provided at lower costs and with less disruption to families in their existing accommodation without the need for new or alternative accommodation to be provided.

### **3.4 Case support and contact management**

It has been suggested throughout this paper that concerns about the quality of asylum decision making can undermine the return of families for whom it is determined there are no protection needs. A lack of access to high quality legal representation combined with legislative changes designed to speed up asylum decisions have resulted in some families becoming 'failed asylum seekers' even where significant protection concerns are outstanding. Families who are considered 'appeal exhausted' may never in fact have had their cases fully and properly considered because of a lack of access to good quality legal advice and representation, including at the appeal stage. Families who consider that their protection needs have not been met will seek to remain in the UK. The fact that a significant proportion of Removal Directions often cannot be enforced even when children are detained because there are legal issues which have not been properly considered is a reflection of this situation. In

addition it seems likely that there will be some families who do not have protection needs but who are nonetheless deeply anxious about the future for themselves and their children should they return to their country of origin.

Various models of case support and contact management have been developed around the world, primarily in Sweden and Australia and most recently Belgium (see above) in an effort to improve contact between asylum seekers and decision makers and to increase confidence in the decision making process. The models introduced in these countries reflect an emerging view within the literature on alternatives to detention that a 'case management' approach, tailored to the level of 'risk' that each individual presents, offers a viable way of achieving an effective and efficient immigration system whilst avoiding widespread immigration detention and other problems associated with more restrictive measures. In the cases of Sweden and Australia, applying case management principles has been part of wider efforts to reform the processes and cultures within their immigration systems and introduce an alternative way of handling cases from the outset, rather than simply an alternative way of enforcing a refusal decision. A common feature of these models is the presence of a case manager, separate from the decision-maker, who is a constant point of contact to guide an asylum seeker through the asylum processes. The case manager ensures that the asylum seeker understands these processes, has access to appropriate legal advice and can meet his or her welfare needs. By reducing the stress placed on asylum seekers in this way, it is possible to initiate a dialogue which encourages them to consider all of the possible outcomes as they pass through the process. Information and support on assisted return is provided as part of this process.

One widely cited example of the case support and contact management approach is the Hotham Mission in Melbourne, which has shown how community or church-based agencies are able to provide comprehensive support to asylum-seekers while also optimising compliance (Justice for Asylum Seekers Alliance 2002). Mission workers have taken on caseworker roles in empowering clients to make the few decisions they can and advocating for them between service providers and the Australian Department of Immigration and Multicultural Affairs (ADIMA). Their experience indicates that the provision of adequate legal representation to asylum-seekers, combined with an awareness of the immigration process, means they are more likely to feel they have had a fair hearing. In addition, the provision of further support, such as following-up on return or organising for the Red Cross to meet them, greatly assists an asylum-seeker whose application is refused to make the difficult journey home, and allows for third country options to be explored on a final negative decision. More recently the Australian Reception Transition and Processing (RTP) System which has been established as an alternative to mandatory detention includes the creation of a case worker system in which an independent service provider (for example, the Australian Red Cross) provides information, referral and welfare support to services to people claiming asylum, from the time of their arrival to the point of repatriation or settlement in the community. The main starting point for the RTP System is that families are not detained but instead are allowed to live in the community and are appointed a case manager, who is a contracted service provider responsible for the asylum seekers' wellbeing in regard to management of relations with DIMIA the Australian immigration authority), security providers, compliance and various support services. The case manager will assign case workers to work with all asylum seekers. A suggested ratio is (1:30). The case workers will promptly handle inquiries and complaints and provide advice and information to the asylum seekers. Every asylum seeker has a case worker, whose role it is to oversee the asylum seeker from arrival to outcome, settlement or return, inform the asylum seeker of their rights and of the processes for determining asylum applications, undertake a needs assessment, make appropriate referrals and prepare the applicant for all possible immigration decisions.

There are parallels between the RTP system and the 'Voluntary Sector Key Worker Pilot' which has been established in Liverpool. The most important aspect of this approach is that the case worker plays a pivotal role in bridging the gap in individual case management between the needs of the immigration authorities and the need to respect the rights and best interests of asylum seekers, including families with children. From the outset, the provision of information by the case worker to the asylum seeker about the claim process, and an individual's progress and likely outcomes, will allow individuals a degree of control in making decisions about their future and over their lives. A case work and contact management model would also open up the possibility of introducing an element of independent scrutiny at the end of the asylum process to ensure that there are no barriers to remove and that all aspects of the family's situation have been fully and properly taken into account. This is likely to deliver a more effective and humane process for family returns.

#### **4. Understanding and assisting the process of return**

In the UK, as elsewhere, there has been an increasing emphasis over the past decade on providing financial support and, in some case, reintegration assistance for those who decide to return to their countries of origin on a 'voluntary' basis. The objective of these programmes is to support the individual or family during return, and in some cases subsequently, in order that this return is durable. The Government recognises that voluntary return is the more sustainable and preferable approach to forced returns but is concerned that, to date, the uptake of this assistance has been low, particularly among families with children. It has been suggested by, among others, the National Audit Office (NAO 2005) that more should be done by the UK Border Agency to encourage voluntary returns by improving the information provided to asylum seekers about the support available to those who return through its staff, literature and website. It has been suggested that enforcement staff should be encouraged to promote the voluntary return option amongst those due for removal and that more extensive and effective contacts

should be established with community groups outside London and the South East who may be in contact with refused asylum seekers. The Immigration Minister similarly reflected on the need for improved marketing of existing return packages in the recent parliamentary debate on alternatives to detention.

There is some evidence from other countries that improved marketing of assisted return options to asylum seekers at the end of the process can increase rates of return. The Greater Toronto Enforcement Centre started the Failed Refugee Project in January 2000 to speed the removal of unsuccessful refugee claimants from Canada. Shortly after the Immigration and Refugee Board rejects a claim, immigration officers meet with claimants who are able to leave the country and encourage them to do so. The number of refused asylum seekers returning through this programme totalled 725 for 2000-01 and 1,354 for 2001-02. About 60% of the claimants returned after the personal interview. A timely follow-up investigation resulted in a further 20% leaving. An audit found that 80% of failed applicants were persuaded to return voluntarily (Office of the Auditor General of Canada 2003).

It is important to note however that there are particular issues relating to both families and the UK asylum system which may significantly undermine the success of efforts to persuade families that they should return. These issues cannot be resolved simply through more effective marketing of assisted voluntary return schemes. As was noted earlier in this paper, many asylum seekers have lost trust in the system's ability to deliver a fair decision, mainly because of inadequate legal support during the asylum process and concerns about the quality of decision making which is considered by many refugees and asylum seekers as being arbitrary and inconsistent. Asylum seekers who have reached the end of the legal process may have concerns that issues relating to their situation and the safety of their return have not been fully addressed. Moreover removing access to legal advice and forcing individuals and families into destitution by removing support at the end of the process in order to encourage them to return 'voluntarily' to their countries of origin seems likely to have undermined the integrity of the assisted voluntary returns programme. According to the Centre for Social Justice (2008) it may even have made forcible removals more difficult. There is a growing body of evidence that more families return to their country of origin of their own accord when they can trust that the system protects those who need protection and where more support and information is available to families planning return. The experience of the Swedish model, the Canadian Failed Refugee Project and, particularly, the Hotham Mission in Australia demonstrates that supporting families to make sure their protection needs are met and helping them to plan for return works. These models could be applied in the UK

These concerns about the voluntariness or otherwise of options for return at the end of the asylum process reinforce the overall theme of this paper that information provision needs to be built into the alternatives that are made available to asylum seekers from the very beginning of the application and throughout the determination process. The more that this information can be provided in partnership and through a wide range of different sources – including individualised caseworkers and legal representatives – the more likely will be the prospects of success in identifying and establishing genuine alternatives to the detention of children that focus less on control and more on facilitating and increasing contact and co-operation.

In addition there is a strong argument for removing the word 'voluntary' when talking about the assistance provided to asylum seekers who decide to return to their countries of origin. It is clear that many families do not want to go home but may eventually decide to do so in the face of limited options should they continue living in the UK. The use of the word 'voluntary' in this context implies a degree of choice and autonomy that many asylum seekers simply do not consider is available to them. What is important is not whether or not asylum seekers have decided voluntarily to return home but whether, in the context of the choices available to them, they are able to do so safely whilst exercising some control, albeit limited, on the circumstances and timing of their departure. The return to the home country could be timed, for example, to coincide with children's schooling, to allow for goodbyes to be said, for arrangements to be made for the return of possessions, and for housing and schooling possibilities to be identified.

This is a significantly different approach because it recognises that return migration is not always a process of simply 'going home' and that asylum seekers need to be reassured not only of their safety upon return but of the possibilities of re-embedding themselves in the home country. Ruben *et al* (2009) explore the return migration experiences of 178 refused asylum seekers and migrants who did not obtain residence permits to six different countries: Afghanistan, Armenia, Bosnia and Herzegovina, Sierra Leone, Togo and Vietnam. The authors argue that returnees face severe obstacles particularly when the decision to go home is not fully voluntary and suggest that return can only become sustainable when returnees are provided with possibilities to become re-embedded in terms of economic, social network, and psychosocial dimensions. There are several key factors that influence prospects for embeddedness, such as individual and family characteristics, position in the migration cycle, and the role of pre- and post-return assistance. It was also found that the possibilities for successful return were highly dependent on the living circumstances provided in the host country. Returnees who were enabled to engage in work, had access to independent housing and freedom to develop social contacts proved to be better able to exercise agency and maintain self-esteem.

The circumstances of return and the type and timing of assistance provided to refused asylum seekers can therefore substantially contribute to both their willingness to return and their ability to become re-embedded in the country of origin. To date most efforts to promote return have focused almost exclusively on the economic aspects of return, with varying degrees of success. Ruben *et al* (2009) suggest that current return assistance programmes only partly address the challenges of building sustainable livelihoods, leaving aside other – equally important – dimensions of embeddedness related to social networks, creating a feeling belonging, and reinforcing people's identities. Psychosocial assistance for reinforcing identity and feeling of safety is virtually absent. They argue that a more integrated approach is required which addresses both material and human needs and focuses on their re-incorporation into social as well as economic structures. Local voluntary organizations funded by European NGOs have a clear advantage compared to the highly static, fragmented, and host government – driven programmes of specialized return migration institutions, given their flexibility in tailor-made support options and their close relationships with the migrant communities. Return assistance cannot consist of merely incidental support after return, but needs to monitor the integral demands of returnees over a considerable time period. It should therefore be well-planned, demand-driven, and consistent in order to create prospects for embeddedness and sustainable return. Such an approach to return is only possible in the context of the broader changes to the asylum system which were outlined in the previous section.

## **5. Enforced removal options**

This paper has presented a number of alternatives to detention and an approach to assisted return which would significantly reduce the need for enforcement action to remove families who have no right to remain in the UK. There will nonetheless be a number of families, albeit a much reduced number, who will not have any rights to remain in the UK and who will simply refuse or fail to take up the assistance made available to them to return independently. This raises important questions about what might be done to enforce removal in these cases without resorting to detention. The options are limited but include separating parents and children and detaining one or more parents, same-day removals and self check-in.

The separation of children from their parents is a difficult and controversial issue and one that is never far beneath the surface in discussions about the detention of children in the immigration context. As a matter of policy, UKBA aims to keep the family as a single unit except in those cases where it is appropriate to separate a child from his or her parents if there is evidence that separation is in the best interests of the child (for example, if there is evidence that the child is suffering neglect or abuse at the hands of the parent(s) and needs to be taken into care in order to be protected).

A number of countries, most notably Sweden, sometimes separate children from one of their parents where a family's identity cannot be ascertained or there is a question of threat to national security. There is access to regular visitation and telephone contact and these cases are given first priority so as to ensure that the family is reunited as quickly as possible (Mitchell 2001). In cases where there is only one parent and a child, and a decision is taken to detain the parent, the child will normally be released into a group home for unaccompanied children with regular access to the parent (Field and Edwards 2006). This approach can only be understood in the context of a very different system of support for asylum seekers which is associated with rates of detention which are significant lower than in the UK and which are subject to statutory time limits (maximum three days). It also assumes that children are living in two-parent families and that either parent is capable of providing appropriate care should the other be detained. In reality this is often not the case.

Although evidence on the impact on separating children from parents in the immigration context is limited, there is broad consensus that such an approach is excessively penalising and traumatic for children and parents. It represents a violation of Article 8 ('right to family life') rights and, as such could, and most likely, would, be challenged in the courts. In addition this policy would not achieve the Government's stated aims of replacing the current system with an approach which ensures that families with no right to be in the UK are able to return in a more dignified manner. Indeed it seems likely that any attempt to separate parents from children would undermine the process of return by generating expensive and potentially long winded legal disputes over the best interests of children, particularly in devolved areas of the UK which are developing more explicit approaches for embedding the UN Convention on the Rights of the Child into domestic legislation, policy and practice.

Finally, it is important to acknowledge that the separation of children from parents would add significantly to the costs of the asylum system and create additional difficulties for local authorities who are already struggle to support separated asylum seeking children. The costs of separating children from parents and placing them in foster care are likely to be considerable particularly if, as seems likely given the shortage of local authority placements, these placements are provided by Independent Fostering Agencies (IFA). Local Authority minimum weekly allowance rates for foster care payments are between £125.09 (age 0-4) and £177.38 (age 11-15) outside London and even higher in the capital. In addition to the fostering allowance other payments (£50 - £200 per child) may be made to foster carers, depending on their experience and qualifications. On average, IFAs pay a basic weekly fostering allowance and fee of £400 per week for all ages of children but the fee charged to the client for the placement is usually double this amount (i.e. around £800 per week). Some IFAs also pay foster carer enhanced payments of up to double their standard rate, dependent on the needs of the child. Separating a child from his or her parent or

parents is therefore likely to cost a minimum of £2,500 per month and potentially considerably more than this. These costs would need to be multiplied for additional children and/or longer placements. The financial implications of separating parents from children in order to affect their removal are therefore considerable. This is not to mention the emotional and psychological costs of separation or the difficulties that would remain in enforcing removal in these circumstances.

A second potential option for removing families without the use of detention would be through the re-introduction of same-day removals. There are significant practical barriers to same-day removals given the complexity and circumstances of family cases. Just as importantly Ministers made a public commitment following the tragic death of Joy Gardner, that other than in the exceptional circumstances, people will not be removed on the same day. This is reflected in UKBA's family removals policy. To replace the detention of children with the re-introduction of a policy associated with this tragedy and to target families for same-day removals would be widely regarded as politically unacceptable and would not meet the Coalition Government's commitment to a humane and dignified approach to returns for families with children.

Where a family's application has been fully and fairly considered and all aspects of a family's circumstances considered by a legal representative at the end of the process, the family should be asked to comply with Removal Directions through self check-in. Self check-in allows for Removal Directions to be set, and for a family to make their own way independently to the airport. Although self check-in is in use, there is no evidence available on the extent to which self-check-in functions effectively or on factors that make self-check in more or less likely to take place. It seems unlikely that self check-in will be effective where a family is simply given a date to arrive at the airport. Rather families should be supported to return on an agreed date with the appropriate assistance and support. The time made available for families to self check-in once Removal Directions are set should not be arbitrary but rather should be based on the needs and best interests of children. A period of four weeks would seem to be the minimum amount of time needed by families to put their affairs in order. The date of the check-in should also be sensitive to the particularities of a family's circumstances. It would be inappropriate, for example, to remove children during an examination period or on their birthday in order to meet a pre-designated date or timeframe.

Only when the family has failed to comply with self check-in should enforcement action be taken. Where detention is considered necessary to affect removal in these circumstances there should be a statutory time limit on detention of no more than three days. If all aspects of the case have been fully considered prior to removal this is the maximum period required to organise flights and travel documents. If children are detained under any other circumstances or for longer periods then the Coalition Government will rightly be accused of failing to deliver on its promise to end the detention of children.

Any changes that are made at the 'hard end' of enforcement policy are necessarily contingent on the availability and use of alternative methods for securing the return of families where appropriate, as outlined in section 4 of this paper. There must be meaningful engagement with the family throughout the asylum process, the options for assisted return must be made known throughout the process and take account of the need for families to be able to become re-embedded social and psychologically as well as economically into countries of origin, and there should be an independent legal review of the case prior to enforcement action being undertaken. The family should be given every possible opportunity to comply with any Removal Directions that are set. And policy makers should be alert to the dangers of any potential gaps in policy and practice which might undermine the commitment to end the detention of children and to deliver a human returns policy for families at the end of the asylum process.

## **6. An alternative approach to family returns**

The alternatives to detention discussed in this paper focus on developing mechanisms for improving contact by providing support and information to asylum seekers from the beginning of the process and on enhancing the quality and credibility of the asylum determination process overall. These mechanisms include reporting, electronic monitoring, supervised accommodation, incentivised compliance and the introduction of a case work support and management system. The mechanisms vary significantly in the extent to which contact between the applicant and the decision-maker is a two-way process that also provides support and information to families. Although there is some overlap between the alternatives to detention that have been presented, most notably between some extended forms of reporting and the case work support and management system, it is the latter of these approaches which appears to offer the best possibility for ending the detention of children whilst increasing the confidence and trust in the system needed for families to return where their cases have been fully and properly considered. Existing evidence from Sweden and in particular Australia suggest that those approaches which provide the most support and information are more likely to open up genuine alternatives to the detention of children and to have beneficial impacts on the asylum determination process more generally.

In the UK context there have been several pilot schemes providing alternatives to detention for families with children. Two of these schemes, the 'Family Returns Project' and 'Alternatives to Detention' pilot established in Glasgow and Millbank (Kent) respectively provided alternative accommodation for families considered by UKBA as being at the end of the asylum process and able to return to their countries of origin. Although there are elements of both schemes which might usefully be replicated (for example, allowing families time to make practical

preparations for their departure which, in turn, enables teachers to provide appropriate support to children and their classmates), neither of these pilot schemes delivers the benefits of the case support and contact management model because information and support is provided to families only at the end of the process. This is reflected in the fact that the focus is primarily on return outcomes.

By contrast the 'Voluntary Sector Key Worker Pilot' which has been established in Liverpool more closely replicates the approaches seen in Sweden and Australia. The overall purpose of this pilot is to ensure that its clients support needs are effectively identified and met and that they fully understand the status of their asylum application, the determination processes involved, outcome implications and realistic options at each stage. Through working closely with assigned key workers in a 'dual planning' approach it is hoped that on final confirmation of asylum outcomes both successful and refused asylum applicants clients will be ready and able to implement realistic and well thought through plans that result in enhanced prospects for successful and fast integration for successful asylum seekers and increased prospects for return and reintegration for those whose applications for asylum are unsuccessful. The experience of non-governmental organisations working in other countries who have achieved both high compliance rates and improved welfare outcomes, suggests that the principles of building trust, maintaining dignity, information provision and community connection, have been key components. This approach differs considerably from pilot schemes in Glasgow and Kent because it offers a holistic approach, exploring all possible immigration outcomes and developing a level of trust between client and case manager throughout the duration of the asylum process.

Integral to the alternative approach outlined above is the provision of high quality legal advice and representation throughout the claim. This includes the period after status has been refused. The evidence presented in this paper suggests that alternatives to detention are meaningful only if they exist within a broader system of decision-making which ensures ongoing and consistent contact is maintained, and where asylum-seekers have information about their rights and are aware of their obligations. Quality legal advice and representation can provide an important mechanism for ensuring compliance by establishing confidence in the decision making process generally and by making applicants aware of their rights and obligations, acting as a conduit for flows of information between the applicant and the Home Office and for ensuring that families are aware of all the choices and options available to them, including the support available for return and reintegration. The Solihull pilot which provided early legal representation provides a framework for improving the quality and consistency of initial asylum decision-making by frontloading of the system and achieving 'cultural change' in the asylum determination process (Aspen 2008).

In relation to assisted return, the existing evidence suggests that in order to achieve the Government's stated objective of establishing a procedure which allows for the humane and dignified return of families with no right to remain in the UK, the current approach to 'voluntary returns' will need to be reconceptualised. Existing programmes for voluntary return are under-utilised and undervalued not simply because of a lack of information or awareness of such schemes but because of the way in which the process of return for families is understood. There is a strong argument for removing the word 'voluntary' when talking about the assistance provided to asylum seekers who are at the end of the process. This is not semantic but rather acknowledges that many families do not want to go home but may eventually decide to do so in the face of limited options should they continue living in the UK. Removing the word 'voluntary' reflects the fact that this is not necessarily the family's preferred option or 'choice' and that appropriate structures will need to be put in place to support the family upon return. At the same time it is important that return migration is understood as complex and multi-layered with social and psychological as well as economic challenges. Return migration is not just about the practicalities (for example arranging and paying for flights and immediate reintegration assistance) but also about establishing mechanisms for longer term social and psychosocial re-embeddedness. This is necessary to ensure that families are able to return with dignity and a sense of purpose. It will require meaningful dialogue with families about the fears and anxieties that they may have about returning to the country of origin. This will only be possible to achieve if there is confidence in the asylum system and trust that the information will not be used against the family, for example, to argue that the family's motivations for seeking asylum are not legitimate.

Finally, this paper has considered what steps might be taken to enforce removals at the end of the process for those families whose claims have been fully considered and subject to a legal review at the end of the process, and who decline appropriate assistance to return to the country of origin. A number of options are available to UKBA including separating children from parents, same-day removals and self check-in. It is clear that there are significant financial and safeguarding barriers associated with separating parents and children and that same-day removals would potentially put children at risk. Both separation and same-day removals would fail to meet the Coalition Government's stated aim of returning families in a humane and dignified manner. In this context the family should be asked to comply through self check-in once Removal Directions are issued. A minimum period of four weeks should be given to families to put their affairs in order. Only when the family has failed to comply with self check-in should enforcement action be taken. Where detention is considered necessary to affect removal in these circumstances there should be a statutory time limit on detention of no more than three days. If all aspects of the case have been fully considered prior to removal this is the maximum period required to organise flights and travel documents. If children are detained under any other circumstances or for longer periods then the Coalition Government will rightly be accused of failing to deliver on its promise to end the detention of children.



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## 70. WELSH REFUGEE COUNCIL

Review of the policy of detaining children  
Kate Smart June 2010

### **About the Welsh Refugee Council**

Welsh Refugee Council has twenty years experience of working with refugees, asylum seekers and refused asylum seekers. It provides confidential and independent advice services across Wales, advocates for the rights of refugees and asylum seekers, supports capacity building for refugee community organisations and promotes good community relations.

Welsh Refugee Council's work is guided by the core principle that the right to seek asylum is a fundamental human right. It believes that the UK's asylum system should be judged on whether it ensures that protection is given to those in need. Its vision is to ensure that refugees and asylum seekers are safe and that they get the support they need to rebuild their lives in Wales.

### **Position**

The government has announced that it will end the detention of children for immigration purposes. Before doing so it is undertaking a review of existing policy, and has invited comments. This paper sets out Welsh Refugee Council's position on the review of the policy of detaining children.

Welsh Refugee Council has long argued that the detention of asylum-seeking children is harmful and unnecessary. Ending detention of children is long overdue. Welsh Refugee Council welcomes the new government's commitment to end detention of children and urges the government to implement this immediately. Welsh Refugee Council believes that ending child detention should be unconditional and recommends that the government takes an evidencebased approach to developing policy in this area.

Welsh Refugee Council supports the position taken by the Refugee Children's Consortium, that:

1. Detention of children must end now, as it is clear that detention harms children; children and their families must be released immediately.
2. Children and their families should never be separated for immigration purposes.
3. Ending the detention of children is not dependent on establishing "alternatives to detention" projects, or new processes for families.
4. Discussion on policies and practice on returns are not needed to end the detention of children.
5. Discussions that focus on finding solutions to the problems at the end of the process need to consider a family's entire experience of the asylum and immigration processes. The provision of good quality legal advice throughout these processes is crucial.

### **HARM**

Welsh Refugee Council has seen at first hand, through visits by families to its advice centres, the trauma experienced by children who have been in detention. For example, we have seen children suffering physical manifestations of trauma such as enuresis and encopresis that were not present before they were detained. Furthermore, reports published by a range of authoritative sources have provided evidence, based on visits, interviews and medical assessments, to demonstrate the harm caused to children by detention. Examples are reports by the Children's Commissioner for England<sup>1</sup> and by the Chief Inspector of Prisons<sup>2</sup> on conditions in Yarl's Wood Immigration Removal Centre and the paper produced jointly by the Royal College of Paediatrics and Child Health, the Royal College of General Practitioners, the Royal College of Psychiatrists and the Faculty of Public Health<sup>3</sup>. For this reason, Welsh Refugee Council urges a speedy end to this policy.

### **SEPARATION**

Welsh Refugee Council is strongly against separating asylum-seeking children from parents. It believes that, if a policy were introduced of separating children in order that the parents can be detained, this would be as harmful as continuing to detain children. Such a policy would also be open to legal challenge, for example under Article 8 of the European Convention on Human

Rights which grants the right to private and family life and Section 55 of the Borders, Citizenship and Immigration Act 2009 which places on the UK Border Agency (UKBA) the duty to take account of the need to safeguard and promote the welfare of children. Welsh Refugee Council reminds the government of the widespread condemnation of the pilot to place the children of refused asylum-seekers into local authority care under Section 9 of the Asylum and Immigration Act 2004<sup>4</sup>.

### **AGE-DISPUTED UNACCOMPANIED CASES**

As part of the policy to end child detention, Welsh Refugee Council urges the government to provide for those unaccompanied cases that are subject to an ongoing age dispute about whether they are an adult or a child. Welsh Refugee Council has worked with distressing cases of traumatised, unaccompanied young people who have been detained despite evidence that they are aged 14 or 15 years old. Welsh Refugee Council is concerned about how difficult it can be for a young person who states that he or she is a child to over-turn an age assessment decision that has judged them to be an adult. Welsh Refugee Council asks the government to take steps to ensure that best practice is followed when conducting age assessments, that those who are the subject of an age-dispute are not detained and that young people are able to appeal effectively against age assessment decisions<sup>5</sup>.

## **REPORTING**

Welsh Refugee Council believes that detention policies should be reviewed in the light of evidence of the likely risk of absconding. Welsh Refugee Council's experience is that asylumseeking families in Wales are complying with reporting requirements and few abscond. UKBA has confirmed that: 'It does happen but it is not terribly easy for a family unit to abscond.'<sup>6</sup> There is no evidence that detention of families is necessary because of weaknesses in the reporting system. Welsh Refugee Council believes that the reporting system has the flexibility to respond to those cases of families that have been assessed as being at risk of absconding.

## **FAIRNESS**

It has long been argued that asylum-seekers are more likely to accept decisions reached on their case, if they believe the process has been fair. The evaluation of the Early Legal Advice Pilot in Solihull ('the Solihull Pilot') provided evidence of this.<sup>7</sup> Welsh Refugee Council's advice services have worked with families that have well-founded concerns about the fairness with which their case was processed. Welsh Refugee Council believes that more needs to be done to ensure that high standards are consistently maintained – for example in conduct of staff, use of interpreters, notice of interviews, style of interviewing, etc. – and urges the government to strive for higher standards in the asylum system.

## **LEGAL REPRESENTATION**

Central to the provision of a fair asylum system and fair consideration of cases, is availability of good quality legal advice for asylum-seekers at each stage of the asylum process. UKBA recognizes the benefits of enhanced legal advice provision as a result of the Solihull pilot. In Wales, provision of legal advice falls far short of that ideal.

Problems of accessing legal advice in

Wales are set out in Welsh Refugee Council's position paper on this subject.<sup>8</sup> Welsh Refugee Council urges the government to improve access to legal advice for asylum seekers, to implement the lessons learnt from the Solihull Pilot and to ensure joined up policy development between UKBA and the Legal Services Commission.

## **INFORMATION**

Information from a range of reliable sources, for example on the asylum process, on the implications of decisions on an asylum application, on conditions in the country of origin and on opportunities for voluntary return, should be provided to asylum-seekers at all stages of the asylum process. Welsh Refugee Council's advice services are already providing expert, independent and impartial information to asylum seekers and refugees throughout Wales. Welsh Refugee Council is keen to work with the government to improve the quality of information and advice available to asylum seekers.

## **SAFE RETURNS**

Welsh Refugee Council believes that ending detention of children should not be dependent on increasing rates of return. Welsh Refugee Council's experience is that many asylum seekers and refugees are eager to return to their country of origin when it is safe. The most common reason given for not wishing to return is fear about safety in the country of origin. Welsh Refugee Council is very concerned at reports that earlier this month (June 2010) claiming that Iraqis who were forcibly returned to Baghdad by UKBA were mistreated on their return<sup>9</sup>. Such returns disregard UNHCR's position that: 'Iraqi asylum applicants originating from Iraq's governorates of Baghdad, Diyala, Ninewa and Salah-al-Din, as well as from Kirkuk province, should continue to benefit from international protection in the form of refugee status under the 1951 Refugee Convention or another form of protection'<sup>10</sup>. Welsh Refugee Council believes UKBA decision-makers should take more account of conditions in the country of origin before concluding that it is safe for a family to return to countries such as Afghanistan, Iraq and Zimbabwe. The case for doing so is set out in more detail in a recent report by the Still Human Still Here Coalition<sup>11</sup>.

## **"VOLUNTARY RETURN" PROGRAMMES**

Welsh Refugee Council supports the work of voluntary return programmes to enable those who have decided to return home to do so, and welcomes the review's decision to consider how to make these more appropriate for potential returnees and how to monitor their effectiveness.

## **"ALTERNATIVE TO DETENTION" PROJECTS**

Welsh Refugee Council is aware that UKBA has run a number of 'alternative to detention' pilot projects with the intention of encouraging families to take up voluntary return. Welsh Refugee Council would like to remind the government of the poor track record of these projects, for example the projects based in Ashford and Glasgow – to date they have proved to be expensive, controversial, and not effective in increasing the take up of returns. Welsh Refugee Council's view is that such projects are unlikely to succeed where families continue to have fears about the safety of return to their country of origin.

## **STATISTICS**

As part of its commitment to evidence-based policy making, Welsh Refugee Council believes it would be helpful if quarterly asylum statistics, including statistics for numbers of asylum seekers taken into detention, could be provided for Wales, and not only for the UK as a whole. Further information about the need for asylum statistics for Wales can be found in the Welsh Refugee Council's position paper on the subject<sup>12</sup>.

## THE WELSH CONTEXT

The location of detention centres means detention has had a particularly detrimental effect in the Welsh context. As Wales has no detention centres, families dispersed to Wales who are taken into detention are moved hundreds of miles from where they have been living, away from communities that have offered them support and from legal advisors and other services that can advocate on their behalf. Welsh Refugee Council reminds policy-makers based in Westminster and Croydon that in Wales there is a tradition of welcoming asylum seekers and there is no appetite for tough asylum policies. Welsh Refugee Council is working closely with the Welsh Assembly Government<sup>13</sup>, Welsh community leaders, and the UKBA regional office for Wales and the South West to promote the development of a more humane asylum system.

1 The Children's Commissioner for England (2010) The arrest and detention of children subject to immigration control (follow up report). London, the Children's Commissioner for England

[http://www.childrenscommissioner.gov.uk/content/publications/content\\_394](http://www.childrenscommissioner.gov.uk/content/publications/content_394)

2 HM Chief Inspector of Prisons (2009) Report on an unannounced full follow-up inspection of Yarl's Wood Immigration Removal Centre London, HM Inspectorate of Prisons

[http://www.justice.gov.uk/inspectors/hmi-prisons/docs/Yarls\\_Wood\\_2009\\_rps.pdf](http://www.justice.gov.uk/inspectors/hmi-prisons/docs/Yarls_Wood_2009_rps.pdf)

3 Royal College of Paediatrics and Child Health, et al (2009) Intercollegiate Briefing Paper: Significant Harm - the effects of administrative detention on the health of children, young people and their families. London, Royal College of Paediatrics and Child Health, the Royal College of General Practitioners, the Royal College of Psychiatrists and the Faculty of Public Health

<http://www.rcpsych.ac.uk/pdf/Significant%20Harm%20intercollegiate%20statement%20Dec09.pdf>

4 <http://www.bia.homeoffice.gov.uk/aboutus/workingwithus/workingwithasylum/support/familysupportpolicy/>

5 One source of further information is the research report: Crawley, H. (2007) When is a child not a child? London, ILPA <http://www.ilpa.org.uk/publications/ILPA%20Age%20Dispute%20Report.pdf>

6 <http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmselect/cmhaff/970/09091604.htm>

7 The evaluation report states: 'Caseowners and legal representatives both reported that they thought there was a greater understanding and acceptance by the applicant of the reasons for a negative decision. Caseowners and legal representatives commented that because the applicant had been involved throughout the whole process the applicants seemed to appreciate that they had been able to put their case fully.'

Aspen, D. (2008) Evaluation of the Solihull Pilot. London, UK Border Agency and Legal Services Commission. Further information available at:

[http://www.legalservices.gov.uk/civil/immigration/5526.asp#Early\\_advice\\_pilot\\_in\\_solihull](http://www.legalservices.gov.uk/civil/immigration/5526.asp#Early_advice_pilot_in_solihull)

8 Smart, K. et al. (2010) Access to legal advice for asylum seekers and refused asylum seekers in Wales. Cardiff, Welsh Refugee Council

<http://www.welshrefugeecouncil.org/access-to-legal-advice-wrc-position/>

9 <http://www.independent.co.uk/news/uk/home-news/un-checks-claims-that-uk-officials-assaulted-iraqis-2004783.html>

10 <http://www.unhcr.org.uk/resources/monthly-updates/may-2010-copy-1/the-un-refugee-agency-cautionsagainst-european-deportations-to-central-iraq.html>

11 Williams, R. and Kaye, M. (2010) At the end of the line: Restoring the integrity of the UK's asylum system. London, Still Human Still Here

<http://stillhumanstillhere.files.wordpress.com/2009/01/at-the-end-of-the-line-2010.pdf>

12 Smart, K. and Crimes, T. (2010) Asylum Statistics for Wales. Cardiff, Welsh Refugee Council

<http://www.welshrefugeecouncil.org/asylum-statistics-for-wales-wrc-position/> 13 The Welsh Assembly Government has set out its commitments in a Refugee Inclusion Strategy.

Welsh Assembly Government. (2008) Refugee Inclusion Strategy. Merthyr Tydfil, Inclusion Unit, Welsh Assembly Government. <http://wales.gov.uk/topics/housingandcommunity/communitycohesion/publications/refugeeinclusion/?lang=en>

## 71. WEST CENTRAL & EALING LIBERAL SYNAGOGUES

Dear Sir or Madam,

I would simply like to add my voice to those who are protesting against the detention of children as part of immigration control. I believe that children suffer psychological and sometimes physical damage from this, which is an untenable situation for any civilised country.

Yours faithfully,

Rabbi Janet Burden  
West Central and Ealing Liberal Synagogues

## 72. WEST MIDLANDS STRATEGIC MIGRATION PARTNERSHIP

Dear Review Team,

The WMSMP Secretariat have also contributed to the review submission from LGA and ADCFS.

### Resume

Any changes in the process which results in detention of children and families implies a need for the wider review of the architecture and management of the asylum process.

1. In the recent submission by WMSMP to a UK BA consultation on reforming Asylum support, we recognised the peculiar difficulties in removing people, particularly those who have lived in the country for some time, who have reached the end of the formal Asylum process but fail to return home.
2. WMSMP recognise that many Local Authority supported cases cannot be removed by UK BA where the situation in their country of origin is still too dangerous to facilitate returns; where there may not be a safe routine of return; where they cannot obtain travel documents; or they may be too ill to travel.
3. The most effective focus, both in terms of cost and eventual outcome, for support was felt to be the development of a whole system, outcome based, multi-agency approach. WMSMP Secretariat believe that there a need for a greater understanding of why the reason why some Appeal Rights Exhausted (ARE) families refuse to comply. This should form the basis for understanding the methods in which these can be successfully addressed. It is considered that an end to end multi-agency approach should be developed and sustained with clear options and outcomes for the families and children outlined from the very start. It is believed this would increase understanding and trust in the overall process and create a better environment for compliance. Furthermore, that in a holistic and multi-agency approach to Care Plans for Asylum seeking families and children, that the potential and impact of the possibility of removal should be explored and explicitly incorporated in planning for the future.
4. Consideration should also be given to the experiences of other country processes in particular the Swedish example, the principles of supervised case work in the American Assisted Appearance Programme and the Family return Project in Scotland. It is important to contextualise the outcomes and to learn honestly from these experiences. ( The Centre for Social Justice (2009) Asylum Matters report provided an overview of a number of more successful approaches which encouraged voluntary return at the end of the asylum process)
5. UKBA should consider developing Pilots with Local Authorities through the UK BA Regional offices and Strategic Migration Partnerships before any national roll out, with an agreed programme evaluation process. Is it essential to incorporate the principles and drivers of the UK Border Agency's new Duty to protect the welfare, wellbeing and safeguarding of children. The review should also consider how the new policy might be applied to age disputed asylum seekers. The WMSMP Secretariat believe a more proactive removal and enforcement policy which addresses key issues in removing unsuccessful asylum seekers in needed. Greater synergy should be established and sustained between the implementation of a removal policy and the rest of the asylum process. The initial decision making process ( see paragraph 3), requires a realistic and ongoing assessment of whether or not an individual or a family can be returned. A more prescriptive and firmer action on enforcing removals is needed to reinforce the message that not complying does have significant consequences, more than just simply removing support. It is important to draw the distinction between removal children who are part of a family unit and the detention of children who may be UASC and at some point in the care of the Local Authority.
6. Any change in policy for children and families (see preceding paragraphs) should include a forthright assessment of how in practice it is likely to bring about compliance. The Family Returns Programme in Scotland may have contributed to the disappearance of numbers of families and immediate action on removal may be more effective than a protracted one.
7. WMSMP Secretariat would support an examination into the alternatives to detention and to ensure that the safeguarding, welfare and health needs of children are protected. There is a concern that families may have a negative view about a move to a hostel type environment, seeing it as a form of detention in itself. A consequence may be that they disappear from public gaze, increasing their vulnerability and those of the children. Local Authorities through their statutory responsibilities where their children go missing or are owed a Duty of care and protection may have to pick up these cases. There are other possible impacts upon families, such as change in schools, access to health care provisions and Legal support.
8. Local Authorities within the West Midlands region would be keen to work with UKBA and other stakeholders, to identify alternative ways to encourage families to return to their country of origin. The WMSMP Secretariat would recommend that where UKBA intends to remove a UASC from the UK, either due to their asylum claim or that they are covered by the Dublin 2 arrangements, such an individual remains under the care of the Local

Authority until the point of removal. The problems that are linked to possible absconding and the Safeguarding responsibilities of Local Authorities should be weighed against the unsuitability of detention and the current option for such people.

9. The LGA report that a UN study found certain factors affected the influence of any particular measure, for example reducing absconding or improving compliance. These include legal advice, ensuring asylum seekers understanding their rights and obligations, provision of adequate support and screening for family oblique, community ties or use of community groups to use guarantors oblique/sponsors. The UN also concluded alternative measures were less expensive than detention. The WMSMP Secretariat request that the Review Team give fresh consideration to the wider Recommendations of the Asylum Matters Report by the Centre of Social Justice who urged a reconsideration of the use of destitution to encourage people to return to their country of origin.

West Midlands Strategic Migration Partnership  
25th June 2010

Dave Newall  
Senior Policy Officer  
West Midlands Strategic Migration Partnership

## 73. WOMEN FOR REFUGEE WOMEN

### REVIEW INTO ENDING THE DETENTION OF CHILDREN

#### Submission by Women for Refugee Women

##### Introduction

Women for Refugee Women is a small charity dedicated to raising awareness of and challenging the injustices experienced by women and children who seek asylum in the UK. Over the last two years much of our work has focused on campaigning against the detention of families for immigration purposes. With the actor and director Juliet Stevenson we produced a performance event, *Motherland*, in 2008, which told the true stories of women and children in detention. This was shown at the Young Vic Theatre, at Westminster in Portcullis House at the invitation of the All Party Group on Refugees, and in Bedford at the invitation of Patrick Hall MP and Alistair Burt MP. We participated in the *New Statesman* campaign against the detention of families and we have worked closely with families who have been detained in other media work and lobbying opportunities. In doing this work we have come to know the true circumstances of families held in detention, and we have been struck that the reality is so at odds with the official rhetoric.

#### 1. Ending the detention of children

We are delighted that the government has announced that the detention of children will be ended. The detention of families is the imprisonment of children. No attempt to make the circumstances of their imprisonment seem more palatable can mitigate this. We have seen first hand how children who have been locked up have been traumatised and how the emotional effects of that trauma continue long after the detention has ended.

Our experience is qualitative; we have worked closely with a number of children and families to tell their stories in public events and in the media. In this work we have been struck by the human impact of this policy. For instance, in 2008 we told the story of a girl called \_\_\_ in the *New Statesman*, who had come to the UK with her mother from Cameroon in 2002 when she was 7 years old and was detained in Yarl's Wood in 2007.

\_\_\_'s story:

*Her mother had been imprisoned in Cameroon because of the political activities of her husband. But their first asylum application was made with \_\_\_'s stepfather, and automatically refused when his was refused, even though they were no longer living with him. They were held in Yarl's Wood for two months and taken to the airport for deportation on one occasion. After they were released from Yarl's Wood, the case was heard again and they were given leave to remain in the UK.*

"I was 12 when all this happened, and my sister was only four. I was asleep when I heard a noise. I thought it was Mum coming from the shop or something, so I went back to sleep. But after a while I heard my mum crying, so my friend and I went to check what was going on. I saw a policeman stood in front of my bedroom door. He said to me, "Do you know why I'm here?" I said no in a confused way. He said, "I'm here because your mum's asylum case got refused." I still didn't get it. Then I saw my mum crying her eyes out and rolling on the floor.

Then he asked me to go and pack my things because we are going to a family centre. I asked, how long for? He said he didn't know. I asked him, can I have a shower first, and he told me that there was no time and I had to be quick and pack some of my things and my little sister's things as well. They took us into a van. It was like a dream, or as if they were making a sad movie. Me and my mum were crying, and I reached out to hug her and tried not to cry for my little sister's sake.

The van was nasty and smelly. There were bars and glass separating them from us: it was like we were some kind of disease. We were driving for hours and they were in front laughing and acting like there was nothing wrong.

Then my mum start talking and saying things to me - that if she died I must never forget that I had a mother that loved me, that she did everything to save me from the horrible life that she had, and that me and my sister must always love each other because that is the only thing we might have left in this world. Then she was all quiet, and then I saw she was trying to kill herself. She had the seat belt around her neck and she was trying to choke herself. I had to bang on the glass then and they did stop the van for a bit.

Our first night in Yarl's Wood was just terrible. We couldn't eat and we couldn't sleep. There were special people there to look after my mum to stop her trying to kill herself again. I thought, if you are scared she will die, why won't you let us stay in this country? Because if she goes back to Cameroon she will die.

As the weeks went by I was asking myself: Are we going to stay in there for the rest of our lives? I was sitting in those rooms all day with no proper air to breathe. One day they took us to the airport to send us back to Cameroon. They put my mum on the aeroplane and put handcuffs on her. They told her they would



inject her to make her sleep if she made a fuss. But I stood outside the plane and started screaming. I wasn't going to go to that place where I knew we would not be safe and in the end, they took us off the plane because I made so much noise. They took us back to Yarl's Wood and then after that my mum managed to get a judicial review put through. After we were released we got leave to remain. But I don't think I can ever forget what happened to us there.

You don't know how it feels to be a kid full of dreams and to feel that nobody cares, that the dreams are not important to anyone. My little sister \_\_\_ is four years old. You think, well, she won't understand, but in her world \_\_\_ knew what was happening. She told my mum she hated the police because, "One morning they came to arrest us and you started to cry." She said to my mum, "When I will be old I will fight for you, I will fight for you when they come to arrest you again."

Our knowledge of individual experiences has been backed up by peer reviewed research into the effects of detention on children, which found that the psychological trauma produced by detention is serious and deep-seated.<sup>210</sup>

We know that our concern is now shared by many, not only in the refugee sector but throughout society. The work we and others have done has brought the scandal of the detention of children into the public consciousness. Writers, actors, doctors, psychiatrists, artists, politicians and church leaders are among those who have responded enthusiastically to the campaigning we have done on this issue. We know that if the government does not act on this in a just and timely way it will face continued and concerted dissent.

**The detention of children must end.**

## 2. Genuine reform

We are very aware of the current gap between official rhetoric and the reality of UKBA practice. While the current official policy is that children are detained for the shortest possible time, in fact detention often goes on for weeks and months. While current policy is that detention is used simply to facilitate removal, in fact often families who cannot be legally removed are detained, and the majority of detained children are released back into the community, many of whom go on to be given leave to remain.

We are also very aware of the gap between the rhetoric regarding the treatment of children and their actual physical treatment. Families tell us of being transported in caged vans, even though this policy is theoretically ended and UKBA spokespeople deny the practice. Children also tell us about being physically assaulted, being threatened with assault, or witnessing their parents being assaulted, by those employed to carry out government policy on detention and removal.

Given this poor record of the treatment of children and families, and the historical inability of government spokespeople to admit to the reality on the ground, we are concerned that an end to detention may be replaced by other punitive measures, such as inappropriate use of electronic tagging, reduction of notice of removal, or separation of families.

**It is therefore vital that when this policy is ended in theory, it is actually ended in practice. It is also vital that use of detention is not replaced by inappropriate use of other enforcement measures which could increase the suffering of children and the return of families to places where they may be at risk of persecution.**

## 3. The wider issues

We note that in the letter inviting responses to this review, David Wood asks for views on the wider issues regarding the treatment of families in the asylum process and how to promote voluntary return among those refused asylum.

Those who are refused asylum are often at the mercy of a very poor decision-making process. This has been documented<sup>211</sup> and we see it first hand among women and families who have fled genuine persecution and are in fear of their lives if returned, but who are irrationally refused asylum here.

**The UKBA decision making process is in need of reform to improve the quality of asylum and immigration decisions.**

We have also seen that there is a desperate need to ensure that families and everyone in the asylum process have access to quality legal representation throughout the determination process. Women for Refugee Women works with many women who experience great difficulty in finding good, or any, lawyers. This problem has been increasing over recent years, since the introduction of the fixed fee system. The crisis in legal aid has been exacerbated by the recent collapse of Refugee and Migrant Justice. Those women we work with whose cases were handled by RMJ are facing traumatic uncertainty, as it is not clear to anyone in the field how this gap in legal advice will be filled. Women for Refugee Women would be glad of an opportunity to put more evidence on the paucity of legal representation for asylum seekers and the impact of refusal to the Home Office.

If families who are genuinely in fear of persecution are turned down for asylum, they will naturally refuse to comply with removal. Evidence from other countries suggests that ensuring legal representation for asylum seekers in a

<sup>210</sup> Lorek et al, "The mental and physical health difficulties of children held within a British immigration detention centre: A pilot study" *Child Abuse and Neglect* 33:9, 2009 pp 573-585

<sup>211</sup> *Get it right: how Home Office decision-making fails refugees*, Amnesty International 2004 ; *Right first time? Home Office asylum interviewing and reasons for refusal letters*, Medical Foundation for the Care of Victims of Torture, 2004



transparent process in which they have confidence that they will be able to put their cases and to be heard hugely reduces the use of forced removal.<sup>212</sup>

**A review of legal aid funding arrangements is required so that families seeking asylum have access to quality legal representation throughout the determination process.**

**Conclusion**

WRW welcomes the proposal to end the detention of children. We believe that it is possible for the government to create and carry out a just asylum policy, and that ending the detention of children can be a first step along that path.

Natasha Walter, Co-ordinator, Women for Refugee Women

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<sup>212</sup> Asylum Matters: Restoring trust in the UK asylum system, Centre for Social Justice 2008  
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## 74. YARL'S WOOD BEFRIENDERS

Dear Sir,

I am writing in my capacity as a member of Yarl's Wood Befrienders. I have been volunteering with the Befrienders for some time and am now employed as one of the coordinators. I would like to express my support to the five principles proposed by the Refugee Children's Consortium in their response to the Terms of Reference for the Review. Furthermore, I would like to take up and expand on two of these points in particular.

Firstly, point (2) "*Children and their families should never be separated for immigration purposes*". Befrienders regularly visit women who have been split from their children while serving a prison sentence, and who are then taken directly into detention upon completion of this sentence, remaining separated from their children. Some of these women have been handed sentences of over a year and are recommended for deportation at the end of their sentence. Others have asylum claims or applications for Leave to Remain still ongoing. The transfer from prison to detention often appears automatic and there seems to be no meaningful assessment of whether there is a *need* for the women to be detained. Detainees are routinely presented with documents informing them that their detention has been ordered on the grounds that they are likely to abscond and that they pose a threat to the public. On the whole, these women have been imprisoned for shoplifting, minor drug offences or for obtaining false documents, and the likelihood of them being able to abscond with a child is very low. A box-ticking exercise to determine the detention of mothers away from their children is highly unsatisfactory.

Women often remark that, although the conditions in detention are on the whole better than those in prison, psychologically the experience is worse as they have no idea when they will be able to leave. How much more traumatic this state of unknowing must be when mothers are separated from their children is self-evident. It seems to me vital that compassion and understanding should be exercised upon the completion of prison sentences and each situation looked at carefully. In my opinion no parent should ever be separated from a child for the purposes of administrative detention.

I have been visiting a woman who has been detained for over a year whilst separated from her son, who is currently leaving care and whose personal situation leaves him very vulnerable. Repeated requests for Temporary Admission, including from her MP, have gone unanswered by the Home Office case owner. This is of immense distress and frustration to the lady concerned.

And turning to point (5), "*Discussions that focus on finding solutions to the problems at the end of the process need to consider a family's entire experience of the asylum and immigration processes. The provision of good quality legal advice throughout these processes is crucial.*" In detention, away from friends and relatives, the women we visit often lack the support they need to make considered assessments of the situation they are in. They often receive poor quality advice from solicitors, many of whom do very little to help their clients, and are nervous of taking on representation from the detention centre legal clinic, as they view this as part of the "system" trying to deport them. Equally, the provision of information about voluntary return at the end of a long refusal letter can either go unread, or equally contribute to the feeling that IOM is another guise of the Home Office. There must be some attempt made to engage families who are likely to face return which is separate from the Immigration legal process. This can never be done effectively while families or family members are detained. They must be given competent and realistic legal advice whilst in the safety of the community and have voluntary return presented to them by someone they see as truly independent from the Home Office.

I hope consideration will be given to these points and that the practices of detaining children and separating families will both end.

Yours faithfully

Tim Davies - Coordinator & Volunteer - Yarl's Wood Befrienders

### **Review into ending the detention of children for immigration purposes**

Yarl's Wood Befrienders, who have visited many families in Yarl's Wood during the past few years, welcome the opportunity to express their concern on the detention of children and families for immigration purposes as part of the review currently being carried out by the present coalition government.

We believe that detention of children and their families should not wait until alternatives are available. We have visited families who have been detained and have seen for ourselves many examples of the kinds of problems that children suffer that have been highlighted by the numerous reports that have been produced.

There is irrefutable medical evidence that detention damages children both physically and psychologically, which is why we believe that it should stop immediately.

We have been very concerned about the treatment of families during arrests and transportation into detention and the long lasting effects this has.

We remain concerned that decision making is still poor and that there is a lack of competent legal representation. No one is likely to volunteer for return if a decision is wrong and they face persecution on return, particularly where this involves putting their children into danger. Many of the families we have visited have gone on to gain permission to remain here when they have finally been able to obtain competent representation.

Ending detention of children should not use the separation of families as an acceptable alternative as this is equally damaging to children. We see many women who are separated from their children after a prison sentence, we also believe that this is a practice that should cease. No child should be separated from their parents unless there are compelling welfare or safeguarding reasons to do so.

The cost of detaining children and their families is extremely high compared to supporting them in the communities, which, in our view, is another compelling reason why detention should end.

The welfare of children throughout the asylum process should be the primary concern of the UKBA and should always meet the articles laid down in the European Convention on Human Rights and the UN Convention on the Rights of the child.

Accurate and truthful information re voluntary return should be sensitively proposed at an appropriate time by someone the family can trust. Many families have seemed unaware of any information about return, a sentence in a refusal letter is not likely to be even noticed at that time. – there is a great deal of negative anecdotal feedback about the provisions actually made for individuals or families. We believe it would be helpful if return schemes are better publicised and that clear reasons should be given for the Home Office refusing to approve an application.

Heather Jones  
Coordinator  
Yarl's Wood Befrienders

## 75. YORKSHIRE & HUMBERSIDE REGIONAL MIGRATION PARTNERSHIP

### REVIEW INTO ENDING THE DETENTION OF CHILDREN FOR IMMIGRATION PURPOSES: RESPONSE FROM THE YORKSHIRE AND HUMBER REGIONAL MIGRATION PARTNERSHIP

#### Introduction

1. We welcome the opportunity to contribute to the review of child detention and encourage UKBA to seek alternatives that minimise negative secondary effects upon asylum seekers, supporting organisations and local host communities.
2. This consultation response is submitted by the Yorkshire and Humber Regional Migration Partnership (YHRMP). In addition to our strategic role, the Partnership is also a substantial provider of accommodation for asylum seekers across ten local authority areas in our region. Background on YHRMP can be found at: [www.migrationyorkshire.org.uk/?page=aboutus](http://www.migrationyorkshire.org.uk/?page=aboutus).
3. This paper has been shaped through discussions with our Strategic Migration Group (SMG), through subsequent consultation within the wider region via our main partner agencies (drawing on input specifically from some of our local authority partners) as well as internal expertise within the Partnership.
4. The response also draws upon the related discussions at the YHRMP-UKBA regional consultation event held in January 2010 to discuss the 'Reforming Asylum Support' proposals, which was attended by representatives of over 40 organisations from different sectors. We have not sought direct input from UKBA representatives on the Partnership since they belong to the consulting organisation, although they are aware of the relevant discussions that have taken place.
5. Due to the range of organisations we work with, we are submitting some of the responses and questions raised by our partners during discussions on this consultation. Of course, not every individual in each organisation may agree with our submission in its entirety. It is, however, a fair representation of views expressed to us by our partner agencies.

#### Response to the Review

6. There are some general points of agreement among our local representatives.
  - Firstly, the 'principle' of non-detention of children is overwhelmingly supported.
  - Secondly, voluntary return is the main alternative that is supported for asylum seeking families who have exhausted their appeal rights. There are a range of suggestions as to how voluntary return could be improved, both in terms of take-up and implementation.
  - Finally, we do recognise that in limited circumstances, detention of families may be necessary in order to enforce return. Not returning those who have no right to stay in the UK has already had a long-term, negative effect for both asylum seekers and supporting agencies. A range of practical issues in relation to enforced return should be attended to immediately, in order to minimise negative health outcomes for returning families and in the longer term to ensure better relationships between UKBA and its stakeholders.
  - Government also needs to understand fully the implications of any policy prior to its implementation to avoid unintended consequences.
  - The long term answer requires a better quality asylum system that has the confidence of asylum seekers and partners.
7. Some detail of these points follows.

#### UKBA Engagement with Asylum Seeking Families

##### Closer Engagement

8. Support agencies generally agree that closer engagement between UKBA and asylum seekers during the asylum process is desirable in order to improve understanding of the individual's case and increase trust between the two parties.
9. This was recognised by UKBA as one of the key principles of the New Asylum Model, which originally laid emphasis upon increased and more consistent contact by initiating the caseowner model and by increasing the number of meetings they had with clients - beginning with the First Reporting Event (FRE) prior to the substantive interview.
10. We understand that information delivered at the FRE is now normally disseminated by post, but are unaware of why this change has taken place. We would advocate an evaluation of the increased contact through the FRE in order to establish its effects.

A reduction in contact, whilst understandable in terms of immediate resourcing issues, probably results in a less managed process, fewer returns and a greater cost to the public purse.
11. Other suggested means of improving engagement include caseowners visiting their clients in their accommodation, and caseowner contact with other relevant professionals such as social workers who have worked closely with the same client.
12. There is also room for improved engagement between UKBA and families and associated stakeholders that will help manager the end of the asylum process. A closer working relationship between the voluntary sector, local authorities and UKBA will help applicants to understand the different choices they face. Many of our stakeholders feel the onus should be on UKBA working more with voluntary sector and local authorities - not the other way

around. For example, consistent liaison between UKBA and relevant agencies when an individual is being removed from the UK would improve relationships and increase efficiency of services – so for example, an accommodation provider and the school where the child attended should be informed at the appropriate point in the process – the accommodation provider will be able to give access to the property, and the school will be able to inform staff and students that a pupil has been deported.

#### Early Legal Advice

13. A UN study found that certain factors, including legal advice, influence the effectiveness of any measure to improve compliance or reduce absconding<sup>1</sup>. A lack of legal advice is certainly an issue that causes difficulties for asylum seekers and creates much wastage of resources. Home Office statistics show around 31% of appeals were allowed in July-September 2009. 'Still Human Still Here' estimates that up to £13.5million in legal, accommodation and support costs could have been saved in 2008 if 95% of initial decisions had been correct. Granting early access to legal support should greatly enhance the quality of decision-making and therefore the confidence that clients and support organisations have in the asylum system.

14. Roll out of early legal advice is long overdue. The early advice pilot in Solihull began in October 2006 and an independent evaluation in 2008 recommended that this should become normal procedure. We would support immediate roll out early advice so it becomes the norm rather than the exception.

#### Changing UKBA Culture

15. Asylum seekers are more likely to comply with a system that they experience as fair and just. There is a continuing perception among agencies that UKBA operates from a starting point of a 'culture of disbelief' regarding asylum seeker cases. This perception is often shared by asylum seekers, and amplified by newspaper reporting of issues around case-owner attitudes, or around alleged mistreatment of asylum seekers by enforcement staff and contractors.

16. Whether such allegations are true or not, what they feed into is the creation of a polarised debate – an 'us' against 'them' argument, which does not deliver the best outcomes for anyone.

17. Similarly, independent inspections of Immigration Removal Centres consistently raise concerns about the welfare and treatment of detained children, while a recent investigation by the Bedfordshire Local Safeguarding Children Board at Yarl's Wood raised many safeguarding failures by many agencies at the centre. Improved trust in UKBA must begin with rectifying these serious problems. Training of detention and removal staff and increased monitoring, transparency and accountability of private sector contractors may be helpful. At the same time, partner agencies from all sectors need to work collaboratively with UKBA to have a shared sense of purpose on this agenda to create a more constructive relationship leading to better outcomes.

18. Asylum processes should be sufficiently flexible to reflect the sensitivity or complexity of an individual case; there are some circumstances where families' resistance to engaging with those they perceive to be 'the authorities' will be difficult to address in the time frames of application processing. For example, extreme fear of those in authority due to experiences outside the UK will be a long term barrier to engagement. The pressure to complete asylum cases quickly should not usurp the quality of the process.

19. An alternative that could circumvent widespread suspicion of decision-making would be to place responsibility for asylum decisions to independent panels, as undertaken in other countries including Canada. However, such a move should not be made quickly, and should be based upon a thorough understanding of the weaknesses as well as the strengths of such models.

#### Improving Voluntary Return

##### Information-Giving

20. Organisations across Yorkshire and the Humber support the proposal to give more information to asylum seekers on rights and return throughout the asylum process, rather than just at the end. There needs to be consistency and uniformity in the messages given across sectors, to ensure that false information is minimised and common misconceptions addressed (e.g. the belief that where children are born in the UK they will have additional rights to stay in the UK).

21. Many accommodation providers already make information available at accommodation facilities but this needs to be uniform practice. Some local accommodation providers, for example, have post-decision workers who work with asylum seekers who have received a negative decision and can, for example, assist in completing voluntary return forms. This intervention could be replicated in every accommodation setting.

22. The current way in which accommodation is contracted leads to inconsistencies in terms of quality and practice. Performance management becomes a narrowly contractual issue. In our region, where Local Authorities are a substantial provider of accommodation. We cannot comment on the accommodation provided by others but we do know that the broader responsibilities that LAs have (in terms of homelessness, safeguarding of children, cohesion etc), leads to a much clearer sense of responsibility when it comes to supporting individuals through the process.

23. When the new contracts for asylum support are tendered for, the specification must be clear on the support responsibilities of accommodation providers, and how these 'fit' with LA's statutory responsibilities – regardless of who is providing that accommodation.

24. A clear distinction should be made between giving impartial information about various choices - and persuading applicants to take any particular choice. It is imperative that information-giving should not be seen as coercive or anticipating a negative decision, and must be clearly defined to ensure that it does not constitute legal advice

(unless agencies are sufficiently resourced to be able to undertake training to the appropriate OISC accreditation level).

#### Draw on Existing Expertise

25. Two organisations in particular have expertise on voluntary return: IOM and Refugee Action. We would support sharing of this expertise to other support agencies. We also would support IOM and Refugee Action having more discretion and flexibility to shape return programmes.

26. There is also a growing body of logistical and policy expertise within LAs around returns – based on the work that many do to support the returns of destitute EU migrants. Whilst the circumstances are very different, the successes of projects around reconnections can provide some valuable learning in terms of supporting individuals through the process.

#### Improve Information about the Place of Return

27. Better access to communication with friends and family in the country of origin may encourage consideration of voluntary return. Information about the place of return needs to be easily available to both asylum seekers and support agencies. UKBA could provide resources for long-distance communication. Where contact has been lost, organisations like the Red Cross Tracing Service may be able to provide contact between asylum seekers and their families in their country of origin.

28. For those asylum seekers who genuinely fear for their safety in their country of origin, information could be supplied regarding how to contact appropriate organisations within the home country in the event of insecurity (e.g. UK embassy, IOM office, UN bases).

29. Other incentives to return may be effective, such as more substantial repatriation grants (which will remain significantly lower than the cost of supporting families in the UK) or access to training and education may help adults to feel that they can return to their country of origin with more opportunities and realistic prospects for a future life there.

#### **Alternative Family Returns Model and Non-Compliance**

##### Detention to ensure Enforced Removal

30. Better understanding among asylum seekers of their options should lead to more voluntarily return - but that it is not necessarily the case. Fear and perceived lack of safety of the country of origin cannot always be overcome. In situations where voluntary return is unlikely, we acknowledge that overnight detention may be necessary to effect a deportation. We would advocate that detention is only used immediately prior to a removal flight. There may be no realistic alternative to detention if a family is not complying with removal. UKBA must seek to avoid the process becoming protracted and impacting upon wellbeing of family members.

Detention should only be used where all alternatives have been considered, and where there are no remaining grounds for appeal or obstacles to removal (in order to prevent repeated periods of detention).

31. Local authorities already have responsibilities to vulnerable families and for the welfare of all migrant children (regardless of their immigration status), but have little legal powers to do anything with regard to non compliant families. Most migrant children are not 'Children in Need' under the Children Act 1989. We would not support reinstatement of Section 9 which allows children of destitute asylum seeking families to be taken into care.

Providing corporate care for migrant children would be an enormous duty, with financial and ethical implications. It would also require the LA to protect the child from deportation if the child believed that it was in their best interest not to be deported, and could then result in a right to remain until the age of 18, causing a range of detrimental effects upon the family, the individual and the local authority.

##### Alternatives to Detention

32. Our partner agencies fully support the principle of not detaining children, but have concerns that the Government does not fully understand the real implications of the commitment to end child detention or how difficult it would be to administer. Before moving to any new arrangements, we ask that there is a proper understanding of the implications of any new policy on local communities.

33. There have been a range of enquiries into alternatives to detention from different ideological positions (All Party Parliamentary Groups, UNHCR, campaigners, and the Independent Asylum Commission): they suggest a range of alternatives including reporting requirements, open centres, community supervision, electronic monitoring, detention of one parent and an independent caseworker model. We encourage the government to consider their findings anew.

34. One apparently successful initiative to encourage voluntary return - the Hotham Mission in Australia - has been advocated in the past by Refugee Council. This intervention featured intensive social-work and accommodation. Given the high return rate achieved by the project, this is an approach that should be seriously considered for replication.

35. There does remain a significant level of concern from within the local community that trying to effect removals from within the community may cause cohesion issues, and may lead to some families absconding. LAs have a statutory duty to ensure that children are safe, and absconding prior to removal may present a significant risk to children. However, whilst this is a concern, the likelihood of absconding when detention is not used needs to be evidenced. Some localities in our region are willing to consider being pilot areas to measure absconding rates where detention is not used.

36. In order to minimise absconding, UKBA should continue to support all refused asylum seekers until they are removed; this would also allow UKBA to be sure of where people are immediately prior to removal. An alternative to detention is house arrest and use of tagging for adults. This would mean a removal attempt is more likely to succeed.

### Recommendations

37. UKBA should consider the following suggestions:

- More frequent contact between caseowner and asylum seeker and with other professionals working with the client.
- Rollout of early legal advice for all asylum seekers.
- Serious attempts to reverse the culture of suspicion among UKBA staff – or introduction of independent decision-makers on asylum claims.
- Flexible targets that allow longer conclusion times for complex cases.
- Training and increased accountability for enforcement agencies.
- Clarity within new contracts on the role and responsibilities of accommodation providers at end of process, and a clear sense of how this related to LA responsibilities – particularly around children.
- Consistent information giving about voluntary return.
- Improved connections with the country of origin established prior to return.
- More incentives to return e.g. resettlement grants or training prior to return.
- Overnight detention only to facilitate enforced removal.
- Pilot a range of fully resourced alternatives to detention suggested by existing research.

Yorkshire and Humber Regional Migration Partnership  
June 2010

1 Field O with Edwards A (2006) *Alternatives to Detention of Asylum Seekers and Refugees*. Legal and Protection Policy Research Series. POLAS/2006/03 UNHCR; Geneva

<http://www.unhcr.org/cgi-bin/txis/vtx/protect/opensoc.pdf?tbl=PROTECTION&id=4474140a2>

2 See for example, Field O with Edwards A (2006) *Alternatives to Detention of Asylum Seekers and Refugees*. Legal and Protection Policy Research Series. POLAS/2006/03 UNHCR; Geneva

[www.unhcr.org/cgi-bin/txis/vtx/protect/opensoc.pdf?tbl=PROTECTION&id=4474140a2](http://www.unhcr.org/cgi-bin/txis/vtx/protect/opensoc.pdf?tbl=PROTECTION&id=4474140a2), Crawley H & Lester T (2005) *No Place for a Child. Children in UK immigration detention: impacts, alternatives and safeguards*.

Save the Children [www.savethechildren.org.uk/scuk\\_cache/scuk/cache/cmsattach/2414\\_no\\_place\\_for\\_a\\_child.pdf](http://www.savethechildren.org.uk/scuk_cache/scuk/cache/cmsattach/2414_no_place_for_a_child.pdf)

and Bercow J, Dubs A and Harris E (2006) *Alternatives to immigration detention of families and children*. A discussion paper by John Bercow MP, Lord Dubs and Evan Harris MP for the All Party Parliamentary Groups on Children and Refugees, supported by the No Place for a Child Coalition, July 2006.

[www.noplaceforachild.org/alternatives.htm](http://www.noplaceforachild.org/alternatives.htm).