

Response to the UKBA Review into ending the detention of children for immigration purposes

1 July 2010

Background

On 12th May 2010, the Coalition Government announced its intention to bring to an end the practice of detaining children for immigration purposes.¹ On 10th 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.²

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.

¹ See "The Coalition: our programme for government" May 2010 <http://programmeforgovernment.hmg.gov.uk/immigration/>

² See <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/26-end-child-detention/>

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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.³ We would be pleased to contribute further to developing thinking on these issues, particularly in the context of the upcoming review of asylum.

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.

³ 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.

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 possible⁴

⁴ 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).

- 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 experiences⁵

➤ 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)?

⁵ 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"*.⁶ 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).

⁶ *Hansard*, HC 17 June 2010 : Columns 213-214WH

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