



Children in detention

A Refugee Council policy paper

November 2003

Introduction

The Refugee Council is developing a series of policy papers on protection issues. The first of these, on returns, was published in October 2001 and is available on the Refugee Council website at: www.refugeecouncil.org.uk.

This second paper is on the detention of children in increasing numbers and often for reasons that are far from clear. This has become an issue of growing concern in the last twelve months. The Refugee Council is opposed to the detention of children under Immigration Act powers and will strive to bring its use to an end. This paper sets out the Refugee Council's position.

1. Background

1.1 The UK government is in the process of instituting a system for processing asylum applications, which is intended to be both speedy and closely managed. This was the rationale given for the introduction of induction centres, accommodation centres and reporting centres in the Nationality, Immigration and Asylum Act 2002. There is also provision of application registration cards and for accelerated and non-suspensive appeals. The Government asserts that all of these are designed to achieve the rapid processing of cases whilst keeping track of where people are.

1.2 In addition, there is the intention to expand the use of detention and detention centres have been re-designated 'removals centres'. Whilst there are currently approximately 2,000 bedspaces for detention, the aim is to eventually raise the permanent detention estate to 4,000 bedspaces. Currently, about 10% are places for children.¹

1.3 On 29 March 2003, there were 970 asylum seekers detained, 57% of them for more than 1 month, 24% for longer than four months. The figures do not identify how many of these are children.

1.4 Home Office officials have made it clear in Parliament and in meetings that the change of name from detention centre to removal centre is "intended to send a message" to people that they will be removed if they are unsuccessful in their asylum claim. They acknowledge that nevertheless, despite the name, people may be detained on arrival and held in detention during part or all of the process of dealing with their asylum application, not just immediately prior to their removal. In October 2001, it was announced that the whole list of criteria for immigration detention would be extended to families with children. The announcement said: "The increase in family detention accommodation will allow the detention of those families whose circumstances justify this (ie a risk of absconding, identities and claims need to be clarified or pre-removal) but who are not detained at present because they fall outside the detention criteria as qualified for families."

1.5 The 2002 Act also repealed those parts of Part III of the 1999 Immigration and Asylum Act, which made statutory provision for automatic bail hearings after 7 and 35 days. This means that it will continue to be the case that people are detained without any automatic independent judicial scrutiny. No maximum time limit is imposed for detention.

1.6 We thus have a policy of detention without limit of time, without automatic judicial scrutiny of the initial decision to detain or to maintain detention, of any asylum seeker, including families with children.

¹ Figures have become a little unclear with the temporary closure of planned provision at Yarl's Wood and Harmondsworth.

2. The Government's position

2.1 There have been a number of statements from the Government about why it feels the policy of detaining children is necessary. They essentially come down to a series of points, namely (*the Refugee Council responses are in italics*)

- that the numbers affected are very small – (*the impact on any child can be severe and the policy cannot be justified on that basis. In any event current places for children equal about 10% of the overall establishment. Although there are protests that cases are decided on their merits it is improbable that there are not pressures to ensure that available spaces are fully utilised*);
- that people are only detained for short periods – (*Bail for Immigration Detainees has had a number of cases stretching to several months and the current average for families is over 20 days*)²;
- that people are only detained in narrowly defined circumstances – (*the criteria for detention are notoriously wide (including such generalised concepts as "likely to abscond") and since October 2001 apply equally to children*);
- not to do so would make the operation of the immigration and asylum laws impracticable and would be open to widespread abuse – (*there is no evidence of this – indeed such as there is suggests the contrary. It is hence a disproportionate response*).

3. Statement of policy

The Refugee Council is opposed to the detention of asylum seeking children under any circumstances and will work strenuously to end a harmful practice carried out on the grounds of administrative expediency.

What follows is a list of simple principles that we would ask others to support. This is followed by a set of 'challenges to government'. Although we are adamantly opposed to any detention of children, we recognise that it is current policy to do so. We would therefore urge the Government that, as long as it persists with the detention policy, it should respond to these challenges.

Principle 1: The best interests of the child must always come first and hence children should never be detained. There are no circumstances where detention is in a child's interests or where better alternatives cannot be found.

Until October 2001, the policy was stated to be that families with children would only be detained immediately prior to removal and never for more than a few days (although in practice agencies have instances of lengthy detention of families, and detention at an earlier stage, at that time). The Government then announced that detention of families with children would take place on the same basis as any other case, including on arrival. This despite admitting that there was no evidence that families are likely to abscond³ and recent research evidence showing that people released on bail did comply with reporting requirements (these were not families and hence in theory higher risk cases).⁴

² This figure was given at the Detention User Group Meeting June 2003.

³ See the quote on P 12 of "A few families too many" by Emma Cole, published by BID in March 2003, where the Home Office acknowledges that the policy change was the result of a ministerial decision, not based on any actual evidence of the need due to the rates of absconding.

⁴ Maintaining contact: South Bank University SS Research Paper No16 – June 2002. "What happens after detained asylum seekers get bail": Irene Bruegel and Eva Natamba.

Principle 2: The Government should end its reservation to the UN Convention on the Rights of the Child (CRC) in relation to immigration matters.

The United Nations Committee on the Rights of the Child has suggested that the reservation does not appear to be compatible with the principles and provisions of the CRC, for example those relating to non-discrimination, and the best interests of the child. It observed in 1995 *"The Committee is concerned about the broad nature of the reservations made to the Convention by the State party which raise concern as to their compatibility with the object and purpose of the Convention. In particular, the reservation relating to the application of the Nationality and Immigration Act does not appear to be compatible with the principles and provisions of the Convention, including those of its articles 2, 3, 9 and 10"*.⁵

The Committee observed bleakly in 2002 that, *"notwithstanding the legal obligation inherent in the ratification of the Convention, many of the concerns and recommendations contained in its concluding observations on the State party's initial report have been insufficiently addressed. Those concerns and recommendations are reiterated in the present document."*⁶

The Refugee Children's Consortium (RCC) briefing on detention⁷ identified no less than 15 articles of the CRC which are breached by the UK's detention policy.

The RCC also observed that "it is important that the rights of the child are examined as part of the decision to detain the family, and not as an afterthought. Before making the decision to detain a parent, consideration should be given to the effect of this on the family, rather than deciding to detain the parent and then deciding whether it is in the best interests of the child to remain alone on the outside, or to be detained with the parent."⁸

Article 37 of the CRC provides — 'States Parties shall ensure that

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent or impartial authority and to a prompt decision on any such action.

Article 39 reads: "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".

When the Government sought to defend its position before the Joint Committee on Human Rights, the Committee responded: "We appreciate the Government's position, but draw attention to the fact CRC Article 3(1) requires the best interests of the child to be treated as a *primary* consideration. It should therefore be a *highly* important factor in making the decision".⁹

⁵ Concluding observations of the Committee on the Rights of the Child: *CRC/C/15/Add.34*. 1995

⁶ Concluding observations of the Committee on the Rights of the Child: *CRC/C/15/Add.188* Oct 2002

⁷ Quoted in Refugee Children's Consortium Briefing : Detention of Children in Yarlswood and Harmondsworth Immigration Detention Centres: 2001 (The members of the Refugee Children's Consortium at that time were: Amnesty International, ILPA, Bail for Immigration Detainees; Barnardos, British Agencies for Adoption and Fostering, The National Children's Bureau, The Children's Rights Alliance, The Children's Society, The Medical Foundation, The NSPCC, The Refugee Council, Save the Children, UNICEF UK)

⁸ *ibid*

⁹ Joint Committee on Human Rights 17th Report 21st June 2002 HC 961 Para 89.

It is quite evident that that the Immigration Service does the opposite. It takes the decision to detain first and then considers the implications for the child, arguing for example that it is better for the child to be detained with the parents than placed into care. The best interests of the child are hence neither a primary consideration nor a highly important factor.

Principle 3: Alternatives to detention should always be used where children are involved to ensure compliance with procedures – in particular frequent reporting by parents and a requirement to reside at a named address.

As mentioned above, the extension of the detention policy was introduced without any evidence suggesting that people do abscond and the evidence of "Maintaining Contact"¹⁰ suggests otherwise. Furthermore, there is very little discussion or guidance offered within the bail guidelines issued by the Chief Adjudicator¹¹ to provide advice to Adjudicators when considering applications for bail about what alternatives might be appropriate as an alternative to detention.

The active consideration of such alternatives is recommended in the UNHCR guidelines, which refer to reporting requirements, with people released possibly on their own recognisance; residency requirements or even "open centres".¹²

Principle 4: Where the age of an unaccompanied child is in dispute, independent procedures should be in place to speedily resolve these. These procedures should provide a final decision to be used by all agencies. The child should never be detained whilst these procedures are being followed.

How to resolve age disputes is a long standing area of concern which, because it is difficult to resolve, remains as a problem and leads to many children being wrongfully detained. The main difficulty is that there no reliable medical test of sufficient sensitivity to satisfy the narrow limits required and in the absence of this children end up detained by default.

Principle 5: Families should never be separated by detention.

It is not acceptable for children to be separated from their parents if this decision is not based on the principle of the best interests of the child.

Children should not be detained simply to avoid them being separated from their parents. Where this seems a likely outcome then the whole family should not be detained and an alternative should be found. The child's interests should always be paramount and the government should take as wide a view as possible as to what the best interests of the child may be.

Principle 6: Family members and relevant organisations such as social services should always be informed if a member of a family is suddenly detained.

There have been incidents whereby members of the family have been completely unaware of what has happened for some days. In one instance a child had been left at school and Social Services spent two days tracking down the parents. In another a man suddenly phoned from Krakow, his family not having heard from him for two days.

The Home Office would argue that these are isolated incidents and hopefully this is so. Nevertheless they emphasise the need to have procedures in place to ensure that there is

¹⁰ Maintaining contact: South Bank University SS Research Paper No16 – June 2002. "What happens after detained asylum seekers get bail": Irene Bruegel and Eva Natamba.

¹¹ Bail; Guidance Notes for Adjudicators Third Edition May 2003.

¹² UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, February 1999.

communication and that what is already a traumatic experience is not made considerably worse by insensitive treatment.

The Chief Inspectors Report¹³ said in relation to Haslar, for example: "Detainees were given insufficient warning of their next move and were unable to prepare themselves or inform their families, friends or legal representatives what was happening to them. ...There was no removal plan, which ensured that their affairs in the UK were closed and they knew what to do on arrival at their next destination. No-one would choose to board a plane in these circumstances and it was inappropriate to expect detainees to do so." Similar comments were made about Tinsley House where families are held.¹⁴

4. Challenges the Government needs to address

4.1 No families with children should ever be detained longer than seven days.

Her Majesty's Chief Inspector of Prisons said in her recent report on Dungavel: "*We are separately concerned about the welfare and development of children within a locked-in custodial setting, where there is a high level of insecurity, and without the freedom to engage with wider society and establish other social and cultural relationships. It remains our view that, however conscientiously and humanely children in detention are dealt with, it is not possible to meet the full range of their developmental needs.*

We therefore remain of the view that the detention of children should be an exceptional course, and only for a very short period – no more than a matter of days. We also believe that the guiding principles that underlie international and domestic law on children should be brought into decisions to detain, and to continue to detain, children and families".¹⁵

3.2 Any detention of children beyond seven days should be automatically subject to independent judicial oversight.

Refugee Council opposed the repeal of statutory right to a bail hearing contained in the 1999 Immigration and Asylum Act in the 2002 Act. We believe strongly that it is important to ensure that immigration detainees benefit from judicial oversight of the decision to detain them.

3.3 All staff involved in the process of detaining children, including those involved in making the decision, should have adequate training both in child care and child protection issues.

It is a matter of concern that the Immigration Service originally entered into contracts with organisations responsible for the detention of children without clear operating standards on issues of child protection and training. These are now belatedly being developed but the earlier failure suggests a lack of awareness of the need to protect children in these circumstances.

The Chief Inspector's report on Tinsley House¹⁶ commented that the Centre was "aware of the importance of protecting the children in its care and tried to do so conscientiously within the physical constraints of an environment that we did not consider to be suitable for anything other than very short stays of no more than a week. Formal links with the local Area Child Protection Committee were missing."

Local arrangements for the safeguarding of children should cover children living in removal centres.

¹³ Op cit: Para 5.15.

¹⁴ Op cit: Para 3.18.

¹⁵ HMIP Report on Dungavel Published August 2003 P45.

¹⁶ HMIP Summary of Findings of Inspection of Immigration Service Custodial Establishments April 2003, P15.

3.4 There should be an independent assessment of the needs of every child.

The Chief Inspector of Prisons made it clear that she was concerned that the impact on children goes deep: *"We recommend that there should be an independent assessment of the welfare, developmental and educational needs of each child in detention, carried out as soon as practicable after detention and repeated at regular intervals to advise on the compatibility of detention with the welfare of the child and to inform any decision on the necessity for detention, or continued detention".*¹⁷

3.5 We are opposed to the detention of children under any circumstances. However, where this does occur, education should comply with the national curriculum and be subject to inspection by OFSTED.

Her Majesty's Chief Inspector of Prisons was very clear in her view outlined in her report on Dungavel and quoted above.

We believe that the provision and monitoring of education within detention facilities should be the responsibility of the Department of Education and Skills in order to ensure consistency and equality.

The UNHCR guidelines referred to above state "during detention children have a right to education which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release."

3.6 Statistics should be routinely produced to show the numbers of children in detention, their age, the length of time detained and where those cases are at in the asylum process.

This is part of a wider concern that the Immigration Service still fails to produce this information for all detainees. Such transparency is particularly important where children are involved. On the one hand, the Minister suggests that time is kept to a minimum. Beverley Hughes, Minister of State said in an Adjournment debate on the 8 May 2003 that detention *"will always be for as short a time as possible and for no longer than is necessary. That period will vary from case to case, depending on individual circumstances. The average for families in detention is just a few days, although I accept that the variance is greater and that some families have been in detention for longer. I can tell my hon. Friend, however, that prolonged detention, as in the example of the family whom he identified who have been in Dungavel, is very much the exception rather than the rule. Most families who are detained, pending those few days, go on to be removed."*¹⁸

On the other hand HMIP is unequivocal: "We therefore remain of the view that the detention of children should be an exceptional *course, and only for a very short period – no more than a matter of days.*" (In fact, the average period of detention of children in the report on Dungavel for the period May 2002 – July 2003 was 28 days).¹⁹

It is absolutely crucial in such circumstances that regular and public monitoring is maintained. The longer detention goes on the more harm is done.

¹⁷ Ibid.

¹⁸ Hansard Column 927.

¹⁹ HM Inspectorate of Education update to HMIP Report on Dungavel August 2003.

5. Adoption and promotion of policy

5.1 The Refugee Council will seek to promote the principles outlined in this policy paper through lobbying and liaison with government.

5.2 The Refugee Council will continue to work with the Refugee Children's Consortium and other agencies to press for change to the current detention policy and practice in relation to children.

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Refugee Council