

Refugee Council

policy response



Refugee Council response to the UK Border Agency Code of Practice for Keeping Children Safe from Harm

April 2008

About the Refugee Council

The Refugee Council is the largest charity in the UK providing help and advice to asylum seekers and refugees. We campaign for their rights and help them rebuild their lives in safety. We work with refugees and those seeking asylum in England, at all stages of the asylum process and after they have been granted permission to stay. The Refugee Council has a long tradition of working with children, in particular through our Panel of Advisers for Unaccompanied Refugee Children (Children's Panel).

We believe that every refugee or asylum seeking child in the UK should:

- feel safe and secure, be listened to and have a responsible guardian to turn to;
- receive accurate advice, appropriate guidance and support throughout the asylum determination procedure thus ensuring the fairest outcome for them;
- be seen as a child and a refugee rather than primarily a refugee.

Response to the consultation document

General points

1. We do not believe that there should be a need for a separate Code under the UK Borders Act 2007; the UK Border Agency should be subject to the same requirement to have regard to the need to safeguard and promote the welfare of children as other similar organisations as required by Section 11 of the Children Act 2004.
2. Much of the document refers to action that UKBA officers should take if there are particular concerns about a child. The Code should highlight the need for positive action; all staff should be encouraged to consider children in every action they take, whether that be in policy development, design of operational procedures or face to face interaction with children and their families. (paragraph 3.1.3 says that the Code does this but it fails to do so in practice). This could be achieved by undertaking impact assessments before work is undertaken.
3. We are concerned that the current Code of Practice will not be adequate to ensure that children subject to immigration control are treated as children first and foremost, and their best interests given primary consideration. We do not accept that by having regard to the Code, the BIA is contributing to the wider aims of Every Child Matters (paragraph 3.1.10).
4. The draft Code does not make clear how binding it is, nor who would authorise departure from the Code and in what circumstances. We are concerned that the Code as currently drafted appears to accept that staff will detract from the Code and that recording these detractions makes the individual and/or the UKBA accountable. We urge the UKBA to ensure that the final version of the Code makes it clear that such detractions are not acceptable and will be treated as a very serious matter.
5. It is difficult to comment on the Code in the absence of the operational instructions. We request an opportunity to comment on these instructions.
6. Whilst we will endeavour to address most of the questions asked in the pro forma accompanying this consultation, we do not think it is appropriate to answer questions relating to policy development in this context (e.g. Q7). We also have concerns as to the wording of questions (e.g. Q9) where the respondent is limited to answering a very specific, closed question.

7. The consultation document does not address the issue of harm being caused by immigration processes themselves. We would highlight in particular:
 - a) children detained for immigration purposes
 - b) those whose claim to be a child is disbelieved by an immigration officer and are not afforded the safeguard of an assessment by a local authority
 - c) children subjected to limited support, for instance those families receiving vouchers at the end of the asylum process or where accommodation is inadequate or unsafe for children.
8. We are concerned that the draft Code does not address the issue of where the applicant's claim to be a child is not believed by the immigration officer. We are aware that work is underway to improve the age assessment process. Once this is completed, all processes will need to be incorporated into the Code.

Our comments on the individual sections of the consultation document are set out below. Our response to the consultation questions are at the end of this document.

Introduction to the Code (3.1)

9. We welcome the inclusion of contracted organisations in the introduction (paragraph 3.1.5), but this needs to be reflected consistently in the wording throughout the Code. This is particularly relevant in some areas of UKBA's operations, for example where contractors are responsible for provision of accommodation.
10. We would welcome clarification as to the remit of the Code, specifically whether it will apply to juxtaposed controls and whether or not it will apply to members of the UK Border Agency that were not part of the Border and Immigration Agency. We recommend that it be applicable to each of these groups.

Making specific immigration procedures and situations responsive to the needs of children (3.3)

11. We urge the UKBA to think creatively about how the asylum process can be amended to ensure that children are kept safe from harm and that any agency that needs to be aware of a child's whereabouts is kept informed whilst allowing children to have limited contact with UKBA until they are ready. We specifically ask that attention is paid to revising the screening process so that a child's claim can initially be registered and the screening interview conducted at a later date. We have considerable practical expertise in this area and would welcome the opportunity to discuss this in more detail.
12. In addition, as we highlight in our report 'Asylum seekers' experiences of the New Asylum Model' (January 2008) we believe that childcare should be provided by BIA as standard for when clients attend the substantive interview.

Children and detention (3.4)

13. We do not think that the Code will keep children safe from harm in detention. The policy of detaining children needs to be reviewed, and robust safeguards introduced as a matter of urgency. These must as a minimum include an independent automatic review of detention, an independent welfare assessment on arrival and every seven days thereafter and legal representation for all children.
14. We are concerned that the statement of policy concerning detention contained in the Code (that the agency "will only detain children as a last resort") does not reflect the requirement for

detention to be for the shortest possible period, and where all alternatives have been considered (we assume the operating instructions to staff concerning detention will provide more detail but do not have sight of these).

15. We refute the suggestion implied in paragraph 3.4.5 that that principle cause of anxiety for children in detention is the failure of their parent(s) to explain what is happening. Detention can be a very distressing and confusing experience for the whole family – there is often a lack of notice that detention and removal is to be enforced, a lack of information about the reasons for detention, and an absence of someone who can interpret for families who do not speak English. We are concerned that in some cases children are used by officials to explain a situation to a parent, because of the failure to arrange interpreters. These issues need to be addressed.
16. We think that paragraph 3.4.6 is misleading in suggesting that all families are detained only where their removal is imminent and justifiable. Greater emphasis must be placed on ensuring that the protection needs of families are met before removal is enforced or return is expected. We believe that in some cases detention is enforced where removal is neither imminent nor appropriate, and that detention criteria concerning cases only suitable for detention in exceptional circumstances (e.g. torture survivors and those with serious health needs) is not followed in all cases.
17. Paragraph 3.4.9 refers to not undermining parents' confidence and ability to care for their children - we are concerned that the detention regime itself takes control away from parents.
18. Paragraph 3.4.10 refers only to reviews of detention at 28 days - we are concerned that this paragraph fails to convey the requirement for detention to be justified at the point when the decision to detain is made, and at all subsequent reviews, which are at least every seven days. The results of these reviews must be communicated to families and their legal representative if they have one. We are particularly concerned that ministerial authorisations are not a transparent process, as families are not told what is happening, the outcome of the review and the reasons for the decision by the minister.

Identifying children who may be at risk of harm (3.5)

19. It is particularly difficult to comment on this section without sight of the operational instructions, however some general comments are below.

Care arrangements

20. Children who are separated from their parent or usual carer should be looked after by Children's Trusts under Section 20 of the Children Act 1989. On arrival, they should be immediately referred to the appropriate local authority and placed in safe accommodation appropriate to their needs; any assessment processes should be carried out whilst they remain in this accommodation. Based on the experience of our advisers who visit the screening unit, we know that children are left in unsafe arrangements for too long on their arrival, particularly when they arrive at the Asylum Screening Unit at Croydon.
21. Where there is any indication that a child may be the victim of trafficking, their safety should be the primary consideration. We remain extremely concerned that many children where there are concerns they have been trafficked go missing quickly, and this issue needs to be urgently addressed jointly by the Department for Children Schools and Families (DCSF) and UKBA.

Children with no adult to care for them

22. The section discussing children who arrive with no suitable carer makes a good start in raising concerns about groups of children who are at particular risk of harm. Identifying and safeguarding these children is a particularly difficult task and an individual's ability to adequately safeguard children in this situation is dependent upon the context in which the work takes place. Unless attention is paid to all procedures as well as the environment in which children encounter UKBA staff the extent to which children will be kept safe will be severely limited.

Children being looked after in a private fostering arrangement

23. We welcome the attention being given to private fostering arrangements, and the attempt to make staff more aware of this difficult issue. It will be particularly important to ensure that UKBA staff are clear as to their responsibility to ensure the safety of the child in the short-term, and how to liaise effectively with local authorities. We look forward to seeing the operating instructions that will support the Code, and will wish to comment in more detail at this point.

Referring children and working with other agencies (3.6)

Making referrals

24. The list of circumstances in which a referral to a relevant agency will be made is a good start. It needs to include any child who has claimed to be a child, even if their appearance very strongly suggests they are significantly older than 18 years of age. It also needs to include all children subject to detention as outlined in paragraph 8 of our response.

Working with others

25. We welcome the attention paid to following up referrals made to a local authority as this has been an issue of great concern to us. Whilst it will be appropriate to identify points of contact and details of procedure on a regional basis, operational instructions will need to be consistent as to how a child will be kept safe until a referral has been acted upon by a local authority.

26. We would observe that much needs to change in the relationship between UKBA and its stakeholders, in particular local authorities, before working together has realistic meaning. This means that in practice UKBA has to consider to what extent it should interfere with the best interests of a child subject to immigration control in order to meet its own administrative priorities. For example, we believe that looked after children should not be asked to comply with residence or reporting restrictions. The timing of the asylum process should fit in with assessment and care planning and may mean that children are allowed a short period of recovery to settle into a placement before the asylum process starts.

Local Safeguarding Children Boards (LSCBs) or ACPCs

27. It is unclear from the draft Code whether UKBA is intended to participate in LSCBs where there is any case of a child from overseas in that area. In general, we believe that the role of UKBA staff in LSCBs needs to be much stronger and that UKBA should be involved in scrutinising and auditing protection arrangements for all children from abroad. In addition, UKBA status within the Board must be clarified in view of the fact that they are not part of the statutory membership. Training and awareness issues for UKBA staff needs to be tied in with the LSCB training programme. Issues of concern need to be actively addressed through the Chair of the LSCB, who should have the key role in holding UKBA to account.

28. We believe that at the very least, UKBA must be involved in the LSCB in areas where there is a detention centre (all centres, not just those with family accommodation should be included because of the incidence of age disputes). Work should focus on the issues raised by children and families held in the centres, as well as age disputed young people. Regular presentations on the statistics of age disputes and children in detention should be presented to the local LSCB

along with the length of time they have been in detention and the plans for safe accommodation and release.

Children involved in family court proceedings

29. Question 11 asks us to consider the relationship between the Family Court and UKBA. We strongly believe that decisions made by Family Courts are based on the best interests of the child after careful assessment by suitably qualified professionals, and that should not be interfered with by UKBA. Whilst we understand the UKBA may need to pass information about the child and where relevant, the child's family, to those conducting these assessments, we do not believe that a child's safety should ever be compromised for the purposes of immigration control.

Information sharing (3.7)

30. The principles on information sharing stated in paragraph 3.7.1 are a good starting point for discussing the very sensitive issue of sharing confidential information about vulnerable children. Our concern is that while the UKBA does not have the same duty towards promoting the welfare of children as laid out in Section 11 of the Children Act 2004 confusion will remain as to how the responsibilities laid out in Working Together 2006 can properly be implemented.

Governance: accountability and inspection arrangements (3.8)

Accountability and transparency

31. We are concerned that the existing BIA complaints system will not be an effective avenue of redress for families or children. The 2007 Complaints Audit Committee report into BIA was highly critical. The report says:

"In the past year only 29% of cases alleging misconduct by named officials and contract staff were handled in time. Investigations into these misconduct complaints have in our assessment remained poor. Only 8% of complainants were interviewed, thus kicking off an inequitable consideration of the complaint. We found that 89% of investigations were neither balanced nor thorough, and that as a consequence, 83% of replies were indefensible."

32. Paragraph 3.8.2 refers to an intention to establish a record of children being detained. This is long overdue, as the policy change to introduce detention for longer periods than prior to removal was made in 2001. The information needs to be published as well as collected and should include information about the outcome of detention (release, removal or bail) and the numbers of ministerial authorisations in a given period and the outcome of those.
33. We agree that the Chief Inspector should include monitoring the Agency's performance in relation to children. We think this should include more robust evaluation and monitoring of UKBA pilot schemes established to explore alternatives or additions to detention and increase rates of voluntary return. Independent evaluation of pilots should also be carried out - for example, the A2D pilot in Ashford and the Clannebor pilot in Leeds have not been sufficiently or independently monitored or evaluated. As a result, it is difficult to assess whether children are being kept safe from harm, or whether the pilots are meeting stated policy objectives. Stakeholders should be invited to be involved in evaluation exercises and given the opportunity to review the data that is collected wherever possible.

Line responsibility and instruction systems

34. We welcome the attention paid to internal accountability including the need to make staff aware of opportunities to discuss concerns with those outside of their line management structure.

However, we are concerned that the Code as currently drafted appears to accept that staff will detract from the Code and that recording these detractions makes the individual and/or the UKBA accountable. We urge UKBA to ensure that the final version of the Code makes it clear that such detractions are not acceptable and will be treated as a very serious matter.

Staff recruitment and training arrangements

35. Whilst welcoming the commitment to train staff to different levels to reflect the extent to which their work involves contact with children we have some specific recommendations relating to the two training packages mentioned in paragraphs 3.9.4 and 3.9.5.
36. We agree that all staff whose work involves children directly or indirectly must receive training and support in order for them to consider their role and responsibility with regard to keeping children safe from harm. This is a complex area of work and one that we do not feel is appropriately delivered through an e-learning package.
37. Consideration should be given to extending the remit of the more in depth training to any member of staff whose decision making affects children, including policy and management staff, to ensure that they understand the implications of their decisions for the children affected.

Responses to consultation questions

Q1. It is proposed that there should be a requirement for Border and Immigration Agency staff members to record and explain their reasons on writing if they have departed from the Code or from any instructions issued in support of the Code. Do you think this proposal should be introduced?

As explained in paragraph four of this response, we do not feel it is appropriate to write a Code in such a way as to allow it to be departed from. The Code and its instructions must be adhered to by staff and contractors if the UKBA is serious about its commitment to its role in keeping children safe from harm.

Q2. If the proposed requirement is introduced, who do you think should review these recorded departures from the Code?

Individual departures should be reviewed through the line management structure. The Chief Inspector of the UKBA should have sufficient expertise to review departures and make recommendations accordingly. It is of the utmost importance that the requirements in the Code are given equal status to other rules and policies followed by UKBA staff; reviewed in the same way and those reviews made publicly available.

Q3. The Code reflects the view that the best people to care for a child and communicate decisions about his/her future, including the immigration process, are his/her parents. Do you think that the child's parents should have primary responsibility for communicating with the child about the immigration process?

Yes

Do you think that an explanation of the immigration process should ever be given to the child by Border and immigration staff members?

We do not think it would be appropriate for UKBA staff members to explain the immigration process to children. We acknowledge that sometimes parents and carers are unable to answer all of a child's questions on this issue. Legal representatives should be properly funded and where necessary, trained to help them communicate directly with children. However, we feel it may also be necessary for

independent agencies to be funded to assist with this advice and guidance. Families will have more trust in an agency with no interest in the process other than to help children and families understand it.

Q4. The draft Code indicates that the Border and Immigration Agency complaints system will be the appropriate route for complaints relating to the Code. Should there be a dedicated complaints system for children to access? If yes, what form should this complaints system take?

Yes, it will be appropriate to produce information about the complaints system that is accessible to children. Children should be able to speak to someone directly about their complaint rather than have to submit it in writing. Assurances will need to be provided that complaining about a service will not have any bearing on immigration decisions made in relation to the complainant. Adults should also be allowed to lodge complaints on behalf of children making it clear when this is done without the express agreement of the child.

Q5. Section 3 indicates that the Code will be supported by operation instructions that cover all the main occasions when the Border and Immigration Agency has substantive contact with children. Do you think it is appropriate to draw up operating instructions for each of these occasions/groups?

Interviewing of children to substantiate their claim and their circumstances; Yes
Children during enforcement activities; Yes
Children during detention activities; Yes
Children during escorting activities; Yes
Children and contractor led or other commissioned services; Yes
Special groups – missing children; trafficked children Yes

Please list any other occasions or groups for which operating instructions should be drawn up?

Process for dealing with age disputed asylum applicants
Asylum Support for families
Any new processes introduced relating to children.

Q10 Do you think that there should be a requirement for a written statement relating to the consideration of the effect of removal on the child?

The process for commissioning a report and the influence it has in decision making should be made transparent through further guidance. Whilst the concept of such a report is attractive to us, we are unable to answer unequivocally unless we understand by what method such an impact assessment would be conducted and by whom, as well as information about the weight such a report will be given and at what stage of the process it would be considered. The report itself would need to be made available to the family members concerned and their legal representative at the same time as the decision maker.

Q11 Do you have any comments on the approach of the Border and Immigration Agency when children are involved in Family Court considerations?

Our comments on the approach of the UKBA in relation to children involved in Family Court Proceedings are outlined above in paragraph 29.

Q13 The Code indicates that the appointed Chief Inspector of the Border and immigration Agency will look at the Border and Immigration Agency's performance in relation to children and proposes particular areas that might be inspected. Please indicate whether you think each of the following areas should be included in the list that might be inspected.

The reasons given for detaining families with children; Yes
The way that this contributes to the outcome of the immigration process; Yes
The nature and quality of recorded information about detention that is publicly available;
Yes
The health and wellbeing of a child throughout the detention process; Yes
The transport of children from one immigration centre to another; Yes

Are there any others that you would like to add?

It is not clear why all of the suggested areas relate to detention and what overlap in roles there will be between the Chief Inspector of the Border and immigration Agency and the Chief Inspector of Prisons. We believe that a list of areas that the Chief Inspector of the UKBA should inspect will relate to all areas of the Agency's work and not be limited to the detention of children.

Q16 Should the UK withdraw its immigration reservation to the UN Convention on the Rights of the Child?

Yes. The reservation has repeatedly been criticised as both unnecessary and at odds with the purpose of the Convention itself which is to afford the same rights to all children. We do not believe that lifting the reservation would give any additional rights to children relating to decisions made on their asylum and ECHR applications or prevent the UK government from exercising immigration control.

Removing the reservation would give a clear message to UKBA staff and beyond that while children live in the UK they should be afforded all the rights and protection of other children in the UK. It would assist in the development of UKBA as an agency that considers the needs of children in all it does and make it clear that the UK government does not condone differential treatment of children while they are under its jurisdiction.

We urge the UK to lift the reservation on the UN Convention on the Rights of the Child.

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