

Submission to the Joint Committee on Human Rights's (JCHR) inquiry into children's rights from Bail for Immigration Detainees and The Children's Society on the situation of children in immigration detention

Introduction

1. This submission is made jointly by Bail for Immigration Detainees (BID) and The Children's Society as part of our three-year partnership project 'Outcry!', funded by the Diana Princess of Wales Memorial Fund, to end immigration detention of children.
2. We believe that child asylum seekers and migrants are children first and foremost and should be treated as such regardless of their immigration status. We are opposed to the use of immigration detention for families as we believe its use is disproportionate and that children are harmed by the very act of being detained. We do not believe the government has made a case for detaining families and in our experience there is no evidence that they are systematically at risk of absconding if they are not detained. We also believe that at a cost of £130 per day¹ the detention of children is a shameful waste of taxpayers' money.
3. BID and The Children's Society both gave evidence to the JCHR inquiry on the treatment of asylum seekers. We welcome and endorse the findings of the JCHR that
'The detention of children for the purpose of immigration control is incompatible with children's right to liberty and is in breach of UK's international human right's obligations. [...] Asylum seeking children should not be detained.'²
We share the view of the JCHR's Chair that '[s]uch things should not happen in a civilised society'³ and that '[a]lternatives should be developed for ensuring compliance with immigration controls where this is considered necessary.'⁴
4. We are grateful for the opportunity to contribute to the JCHR's inquiry into children's rights. We would be pleased to provide further evidence in person to the JCHR or to provide further written information on any aspect of this submission. We would urge the JCHR to find suitable avenues to take evidence from families who have experienced detention themselves and we would be happy to help facilitate this.

Developments in law and policy affecting children in immigration detention

5. Since the JCHR's inquiry into the treatment of asylum seekers, there have been several legislative and policy developments affecting the government's responsibilities towards children in immigration detention:
 - On 18 November 2008 the government removed its immigration reservation to the UN Convention on the Rights of the Child. This move, long overdue, means that all children in the UK are entitled equally to the protections afforded by the Convention regardless of their immigration status.
 - On 6 January 2009 the UK Border Agency's (UKBA) Code of Practice for Keeping Children Safe From Harm came into force. The Code, issued under Section 21 of the UK Borders Act 2007, applies both to the Agency's staff and contractors working on behalf of the Agency, including those working with children in immigration detention. It is too soon to tell how the Code is being applied in practice.
 - During the passage of the Children and Young Person's Bill in 2008 the government agreed in future legislation to introduce a duty on UKBA equivalent to Section 11 of the Children Act 2004 to safeguard and promote the welfare of children. A clause to introduce this duty, which already applies to other public authorities such as the

¹ Hansard 11 Nov 2008 : Column 973W

² Joint Committee on Human Rights, The Treatment of Asylum Seekers: Tenth Report of Session 2006-07, para 259

³ Hansard 13 Dec 2007 : Column 145WH

⁴ Joint Committee on Human Rights, The Treatment of Asylum Seekers: Tenth Report of Session 2006-07, para 259

police and prison service, is contained within the Borders, Immigration and Citizenship Bill (clause 51).

6. We are encouraged to see UKBA confirming that '[t]he welfare of children within Britain's immigration system is a number one priority'⁵, that 'every child does matter, as much if they are subject to immigration control as if they are British citizens' and that children 'are seen first, foremost and fully as children rather than simply as migrants subject to immigration control'.⁶
7. However we are yet to see any tangible evidence of these commitments being translated into practical action that affects families in immigration detention. It is our view that despite the government's commitments, the situation for children in immigration detention is now as urgent and as damaging as it was when the Chair of the JCHR commented in February 2007 that '[the JCHR's visit to Yarl's Wood Immigration Removal Centre] has enabled us to lift a stone and find a pretty horrible picture underneath'.⁷
8. We would welcome the JCHR's recognition that for the government's commitments to have meaning, it must accept that the immigration detention of children is incompatible with their welfare. For example, we would have liked to see the government use the opportunity of the Borders, Immigration and Citizenship Bill to introduce a clause to end the immigration detention of children. We will be pressing them to do so.

Current immigration detention practice

9. Children continue to be detained for the purposes of immigration control and for increasingly lengthy periods contrary to government policy and in breach of Article 37(b) of the UN Convention on the Rights of the Child.
10. Despite its commitment to treating them as children first and foremost, UKBA's Enforcement Instructions and Guidance still stipulate that '[f]amilies, including those with children, can be detained on the same footing as all other persons liable to detention'⁸ with no particular consideration to their vulnerabilities as children. The general detention criteria, under which families have been detained since 2001, state that 'detention must be used sparingly, and for the shortest period necessary'.⁹
11. However, in her report of an unannounced inspection of Yarl's Wood conducted in February 2008, Her Majesty's Chief Inspector of Prisons (HMIP) found
 'The average length of stay of children had apparently increased [since her last inspection] from eight to 15 days although in some cases the total time detained was much longer [...] Of 450 children held at Yarl's Wood between May and October 2007, which included a period of chicken pox quarantine, 83 were held for more than 28 days'¹⁰
Put plainly, HMIP found that 18% of children (nearly one in every five) held during that six month period experienced more than a month of detention.
12. Based upon the findings of her inspection at Yarl's Wood, HMIP concluded:
 'The plight of detained children remained of great concern. While child welfare services had improved, an immigration removal centre can never be a suitable place for children

⁵ UK Border Agency, UK Border Agency commits to keeping children safe from harm, 6 January 2009

⁶ UK Border Agency, Code of Practice for Keeping Children Safe From Harm, January 2009, paras 1.6-1.7

⁷ Joint Committee on Human Rights, The Treatment of Asylum Seekers: Tenth Report of Session 2006-07, Q549

⁸ UK Border Agency, Enforcement Instructions and Guidance, para 55.9.4

⁹ UK Border Agency, Enforcement Instructions and Guidance, para 55.1.3

¹⁰ Her Majesty's Chief Inspector of Prisons, Report of an unannounced inspection of Yarl's Wood Immigration Removal Centre 4-8 February 2008, August 2008, paras 4.21-22

and we were dismayed to find cases of disabled children being detained and some children spending large amounts of time incarcerated. [...] Any period of detention can be detrimental to children and their families, but the impact of lengthy detention is particularly extreme.¹¹

13. In October 2008 the concerns of the UN Committee on the Rights of the Child also led it to recommend 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.'¹²
14. In our experience supporting families, detention is used neither sparingly nor as a last resort. Since mid-October 2008 BID has supported 28 families – the average period of their detention was 6.5 weeks. Frequently families were maintaining contact with the immigration authorities before they were arrested and detained and there was no reason to suggest they would stop reporting regularly. Four of the families have been removed and 11 families have been released from detention on temporary admission or granted bail.
15. A Freedom of Information Act request released on 16 May 2007 showed that over 40% of children detained at Yarl's Wood go on to be released.¹³ Despite repeated requests to do so the government does not routinely release information on the outcome of detention for families. However, based on our casework experience we do not believe this figure has altered and that approximately two out of every five families detained at Yarl's Wood are eventually released following unnecessary, expensive and traumatising periods in detention.

Statistics on children in immigration detention

16. We are extremely concerned that the routine data kept by UKBA and its contractors on the children it detains is so wholly inadequate that it makes it difficult to monitor or hold the government to account.
17. Our concerns relate to several types of information. Firstly the quarterly and annual statistics published by the Home Office on 'Control of Immigration'. These outputs provide such limited 'snapshot' information on children in immigration detention that it is not possible to track 'cohorts' or to know how many children were detained over a given period, the outcome of their detention, the children's nationality or at what point in a child's asylum claim they were detained.¹⁴
18. Concerns over data are shared by HMIP in her 2008 report of Yarl's Wood:

'We were concerned about ineffective and inaccurate monitoring of length of detention in this extremely important area.¹⁵ [...] the monitoring figures that were provided to the team to show length of cumulative detention were found to be wholly inaccurate. For example, children who we were confidentially told had been in

¹¹ Her Majesty's Chief Inspector of Prisons, Report of an unannounced inspection of Yarl's Wood Immigration Removal Centre 4-8 February 2008, August 2008, Introduction

¹² UN Committee on the Rights of the Child, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, 20 October 2008, para 71a

¹³ Freedom of Information Act request released on 16/05/07 containing data from 10/2005 to 09/2006

¹⁴ Home Office, Control of Immigration: Quarterly Statistical Summary United Kingdom, July – September 2008, Tables 8(a)-11. The only available information is the number of children detained on a given day broken down by gender, place of detention, length of detention and number removed from the UK directly from detention.

¹⁵ Her Majesty's Chief Inspector of Prisons, Report of an unannounced inspection of Yarl's Wood Immigration Removal Centre 4-8 February 2008, August 2008, Introduction

detention for 275 days were later said to have been in detention for 14 and 17 days.¹⁶

19. The UN Committee on the Rights of the Child also made the broader point that '[t]here is a lack of data on the number of children seeking asylum' and recommended that the government '[p]rovide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed'.¹⁷
20. We are also concerned about the level of management information UKBA keeps about the children it detains. For example, it is entirely unacceptable that statistics are not routinely gathered on the number of age disputed minors held in detention or the number of these disputed cases that are found to be children. This information is not being routinely collated by individual immigration removal centres or centrally by UKBA.
21. It is UKBA's policy 'not to detain [unaccompanied] children other than in the most exceptional circumstances'. However,
 'Where an applicant claims to be a child but their appearance very strongly suggests that they are significantly over 18 years of age, the applicant should be treated as an adult until such time as credible documentary or other persuasive evidence such as a full "Merton-compliant" age assessment by Social Services is produced which demonstrates that they are the age claimed'¹⁸
If statistics are not routinely collected (a) on the number of such cases held in detention and (b) the number who are later found to be children, we do not believe UKBA can itself know, or be satisfactorily held to account by others, on its policy.
22. This was brought to the attention of Lin Homer by voluntary sector members of the National Asylum Stakeholder Forum in November 2008 but at the time of writing we are still awaiting a decision by UKBA on whether this information will be collected and published. It would be useful for the JCHR to clarify UKBA's position.
23. This is particularly important given that the UN Committee on the Rights of the Child voiced its concern 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'¹⁹
24. We, like the JCHR,²⁰ believe that in cases where age is disputed the individual must not be detained until they are independently assessed as an adult.

Safeguards for children in immigration detention

25. We do not believe immigration detention is an environment in which children can be kept safe from harm. Moreover government safeguards to keep children in detention safe are confusing, contradictory and do not provide adequate protection for children. The fact that the government does not know how many children they detain, where or for how long is a safeguarding issue in itself.

¹⁶ Her Majesty's Chief Inspector of Prisons, Report of an unannounced inspection of Yarl's Wood Immigration Removal Centre 4-8 February 2008, August 2008, para 4.22

¹⁷ UN Committee on the Rights of the Child, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, 20 October 2008, paras 70(b) and 71(d)

¹⁸ UK Border Agency, Enforcement Instructions and Guidance, para 55.9.3.1

¹⁹ UN Committee on the Rights of the Child, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, 20 October 2008, para 70(a)

²⁰ Joint Committee on Human Rights, The Treatment of Asylum Seekers: Tenth Report of Session 2006-07, para 260

26. The stated aim of UKBA's Code of Practice is to prevent 'an identifiable state of affairs continuing where this is plainly having an adverse effect on a child.'²¹ We firmly believe that detention is one such identifiable state of affairs. We are disappointed that while the Code identifies detention and enforcement action as areas where particular attention must be taken to safeguard the needs of children, there is no stated commitment to look again at detention policies to analyse and make changes where it is clear that they cause harm.
27. Given the government's commitment to introduce a Section 11 equivalent duty on UKBA we believe the need to end the immigration detention of children and their families is even more pressing. Detaining children in immigration removal centres is never an appropriate response to safeguarding concerns, and does nothing to promote their welfare.
28. The mechanisms the government believes safeguard children in immigration detention continue to be unacceptably opaque and inaccessible to families. The vast majority of the families we support in detention have not heard of 'welfare assessments' or 'ministerial authorisations'. Documents from these procedures are not routinely disclosed to the families involved, the families do not know if they have taken place and are not aware of the function of these procedures in reviewing their detention.
29. We endorse the JCHR's previously stated concern that the detention process 'does not consider the welfare of the child, meaning that children and their needs are invisible throughout', that where a child's detention is reviewed 'assessments of the welfare of the child who is detained are not taken into account' and that '[i]t is difficult to understand what the purpose of welfare assessments are if they are not taken into account by Immigration Service staff and immigration judges.'²²
30. In February 2007 the former Immigration Minister, Liam Byrne MP, informed the JCHR that 'to date I have not refused any request for extended detention'²³ through a ministerial authorisation at 28 days. It would be helpful for the JCHR to establish the new Minister's record in this regard.
31. We are also concerned that the Code does not apply to children who have, or who have a family member who has, committed a criminal offence and are liable for a deportation order. The Code states they are excluded from the presumption in favour of not detaining a family and the policy to detain unaccompanied children only in the most exceptional circumstances.²⁴ We believe the Code's commitment to 'children first and foremost' should apply to all children.

The government's use of alternatives to detention for children

32. We welcome the government's commitment to alternatives to detention for children and their families. Our starting point for discussions on alternatives is that the first presumption must be freedom, and any restrictions on liberty must be proportionate. However we are concerned that the manner in which the government is piloting alternatives is ill-considered and causing further harm to some of the families involved.
33. The government's drivers for its practice models and evaluations have been cost and the number of families leaving the UK rather than on the experience of families going through the pilot or an understanding of what factors make families more likely to engage with options to remain or leave the UK.

²¹ UK Border Agency, Code of Practice for Keeping Children Safe From Harm, January 2009, para 1.8

²² Joint Committee on Human Rights, The Treatment of Asylum Seekers: Tenth Report of Session 2006-07, para 258

²³ Joint Committee on Human Rights, The Treatment of Asylum Seekers: Tenth Report of Session 2006-07, Q528

²⁴ UK Border Agency, Code of Practice for Keeping Children Safe From Harm, January 2009, paras 3.2 and 3.24

34. This is a missed opportunity as well as causing suffering to families caught up in coercive practices. For example in our review of the Millbank pilot in Ashford, Kent (which ended in summer 2008), families told us that it was never made clear to them why they were being sent to Millbank: they were simply given 14 days²⁵ to enter the pilot or have their support stopped. Some had less than a week to make arrangements to sell their possessions and take their children out of school. Some families did not know where they were going until they arrived at Millbank. The referral criteria for the pilot were so confused that some of those selected could not leave the UK because it had already been judged unsafe for them to return to their country of origin.

35. A 'family returns' pilot is due to commence in Glasgow in spring 2009 and we urge the government to learn from its experiences at Millbank and through other enforcement pilots such as Clannebor in Yorkshire and the implementation of Section 9. Threats and coercion do not encourage families, who have already suffered serious upheaval and distress, to comply. International experience, including in Australia and Sweden, provides evidence that successful schemes work in a supportive, transparent way, so that families and their advisers understand the system and can feel confident that they have been given a fair hearing.

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²⁵ Initially this was seven days.