

Detention of families in the UK

Update, February 2005

Bail for Immigration Detainees (BID)

1. Introduction

The purpose of this briefing is to highlight recent developments in the policy of detaining asylum seeker and migrant families under Immigration Act powers in the UK, and to provide information about current practices relating to the detention of children. In particular, it is intended that the contents will be of use to practitioners and others seeking to challenge detention of families.

Previous briefings have been published by BID on this topic in November 2003 and May 2004. See <http://www.biduk.org/library/policy.htm>

2. Change in policy - 25 October 2001

Prior to October 2001, the policy regarding families was that detention should be “*as close to removal as possible so as to ensure that families are not normally detained for more than a few days*” (White Paper, *Fairer, Faster, Firmer*, 1998). The change in policy announced by letter in October 2001, led to the pronouncement in the 2002 White Paper that families may be detained “*for longer periods than immediately prior to removal*”. In addition to being detained for removal, families may be detained for the purposes of making a decision on their asylum claim under Fast Track processes, currently operating at Oakington Reception Centre.

3. Where families are being detained

At February 2005, there are four centres being used for detaining families under Immigration Act powers with a total of 456 bed spaces. At 2 February, accommodation is allocated as follows:

Tinsley House Immigration Removal Centre near Gatwick airport **32 beds**
Dungavel House Immigration Removal Centre¹ in Lanarkshire **56 beds**
Yarl's Wood Immigration Removal Centre in Bedfordshire **232 beds**²
Oakington Reception Centre in Cambridgeshire **136 beds**

In BID's experience, it is common for families to be moved around between the centres.

Families at Oakington may be detained for the purpose of making a quick decision on their asylum claim, in which case they are automatically able to access representation by the Immigration Advisory Service or the Refugee Legal Centre. However, since May 2003, Oakington has also served as a Detention Overspill Facility (DOF) where families are held for removal purposes. Although these families share the same physical space as those in the Fast Track, they do not have the same entitlements. DOF families do not have automatic access to legal representation and are not automatically seen on arrival by the Refugee Council. In addition, BID have been informed that children in the DOF are not medically screened on arrival, unlike children in the Reception centre category. BID are concerned that families in this category are not able to access adequate legal representation to challenge their detention.

¹ A parliamentary answer received by Neil Gerrard MP on 9 December 2004 indicates that Dungavel House family unit in Scotland is now back in operation, having been temporarily used to house single adults since July 2004.

² This family unit opened on 27 January 2005

4. Current government policy

A letter from IND's Detention Services Policy Unit to BID dated 6 Feb 2004 states:

"The Government has no plans to change its current policy in respect of the detention of families with children. It is, of course, deeply regrettable that any families with children have to be detained, and as has been made clear on other occasions, it is not something we do lightly or gladly. Nevertheless, it is necessary in some cases. Alternatives to detention will have been considered in all such cases and assessed as being inappropriate. This is not a static process and all cases are kept under very close review to ensure that detention is maintained only where it is necessary and appropriate to do so."

Ministers have emphasised that detention is used only where necessary, and for short periods, and is subject to strict review procedures. Beverly Hughes MP, then Minister, wrote to BID on 5 June 2003 that; *"In those cases where a family is detained this will usually be for a short period, often for just a few days or even hours prior to removal. Every case is considered on its merits and detention will only usually be authorised where alternatives to detention have either failed or are considered unlikely to succeed."*

The Lord Bassam in May 2004 explained to parliament that very few families were affected by detention and that detention was for brief periods.

"It is a regrettable fact that some families with children can give rise to the same immigration and asylum concerns as single adults, particularly in terms of failing to leave the UK voluntarily when they have no lawful basis of stay here. The detention of some families may therefore sometimes be necessary as part of maintaining an effective immigration control and asylum system. We cannot exclude families with children from those controls.

*Having said that, I must stress that overall very few families are detained and that most of those who are detained are held very briefly just prior to their removal from the UK. There is a presumption in all cases in favour of granting temporary admission or release, and each case will always be considered on its merits."*³

A process of internal review arrangements for detained family cases is now in place. This process is set out in minutes of the Detention User Group (DUG), a quarterly meeting attended by IND officials and NGOs.

*"...family cases were reviewed within MODCU [Management of Detained Cases Unit] at day 7 (HEO), day 10 (SEO), and at days 14, 21 and 28 at AD [Assistant Director] level. Cases were reviewed in between these periods to make sure that actions on, for example Judicial Reviews, were progressed. The presumption was always in favour of release and there were no additional criteria to those published for the detention of children and families. Detention was considered on a case by case basis taking into account the needs of the child and the family."*⁴

The government view remains that *"it is open to a family at any time to challenge their continued detention through the courts or to seek their release on bail"*⁵. However, many families who have

³ Lord Bassam, 18 May 2004, HoL, Col 745

⁴ DUG minutes, 14 June 2004, Item 3 - Ministerial authorisations of children at 28 days

⁵ Letter from Lord Bassam to Lord Avebury, 5 July 2004

contacted BID have struggled to access bail procedures and have been unable to find a legal representative willing to challenge their continued detention. The government have argued that families are responsible for prolonging their own detention by resisting removal and making legal challenges.⁶ However, it is BID's experience that families are often victims of poor quality legal representation prior to detention, and poor quality decision making by the Home Office. Some are facing return to very volatile and dangerous countries and resistance is a rational response to the fear they have about harm on return.

5. Policy Developments: Requirement for Ministerial authorisation and commitment to introduce welfare assessments

On 16 December 2003, the Home Office announced some measures⁷ designed to respond to criticisms of child detention, including HM Inspectorate of Prisons (see Section 6 of this briefing) and many organisations and individuals involved in the case of the Ay family, detained for 12 months at Dungavel.

The key new measure was a requirement for the Minister to authorise the continuing detention of any child held in any removal centre for longer than 28 days. In addition, the announcement stated that after 21 days of detention in Dungavel, a welfare assessment would take place.

The changes were also a response to the case of Konan, where a woman was detained with a young child for more than six months. This detention was subsequently ruled to be unlawful for all but the first two weeks.⁸ In April 2004, Baroness Scotland explained the government's response to this case.

⁶ "Unfortunately, the period of detention may be prolonged as removal is deliberately disrupted by resistive behaviour by some family members or through deliberately belated legal challenges." (5 July letter to Avebury from Bassam)

⁷ Home Office Press Release, Stat 054/2003, 16 December 2003 "Following the recent inspections of Dungavel Immigration Removal Centre in Scotland by Her Majesty's Chief Inspector of Prisons (HMCIP) and Her Majesty's Inspectorate of Education (HMIE), the Government has decided to implement additional measures to ensure the welfare of detained families with children, including:

- the express authority of the immigration minister will be required to detain any child for longer than 28 days; and
- a senior Home Office official will have oversight of all children in immigration detention to ensure that there are no administrative delays which might extend their detention.

And specifically for those children detained with their families in Dungavel:

- the Home Office will ensure that the welfare and educational needs of any child who is detained at Dungavel for 21 days are assessed satisfactorily so that we can be assured that these needs are being met; and
- after consultation with the Scottish Executive, the Home Office is continuing to work with HMIE and the local authority to ensure that the educational provision at Dungavel meets the needs of individual children - particularly where children are detained for more than just a short period."

⁸ Ms Konan was detained for more than six months in 2002 with her young child. Repeated submissions were made to Home Office Minister, Beverley Hughes, requesting release. An application for judicial review was pending and there was evidence that the health of the mother and child were damaged by detention. The Minister repeatedly refused to authorise release. Ms Konan was finally granted bail. She has gone on to be recognised as a refugee in the UK. The Konan case (Case No: CO/4926/2002 [2004] EWHC 22 Admin)

illustrates why the requirement for Ministerial authorisation will not protect children against prolonged, even unlawful, detention. Beverly Hughes MP, then Minister for Immigration, stated in parliament: "...I authorise continued detention only where the issues are clear and where detention is necessary because there is no alternative."⁸ In a press statement on 16 December 2003, she stated that "We work hard to ensure that where children are detained this is for as short a time as possible. Unfortunately, in some cases repeated, and often groundless, legal challenges by their parents result in children being detained for a more extended period." In a case in the High Court, the judge ruled that all but the initial two week period of her detention was unlawful. The judge stated that detention in this case was "manifestly

“As regards the case of Ms Konan, referred to by the noble Lord, Lord Avebury, of course, we accept the court's view that the detention in this case was unlawful. We regret that it occurred. I say that without any hesitation. The detention procedures have been tightened up since the time of that case. The systems are in place to prevent a recurrence. That is why we have a closer and more frequent review of family-detained cases and ministerial authorisation of detention beyond 28 days. My right honourable colleague Des Browne, who is now the Minister dealing with those cases, will be asked to review the cases which go beyond 28 days.”⁹

In BID's view the changes announced by the Home Office are inadequate. It remains the case that there is no **independent** review of a decision to deprive a child of their liberty.¹⁰

a) Ministerial authorisations

Then Minister Beverly Hughes MP explained to MPs how the process of authorisation was intended to work in January 2004.

“The ministerial authorisation in respect of people coming up to 28 days in detention was one part of the package of measures that I announced. It also includes the appointment of a senior official to oversee all the families, particularly regarding case progression and the welfare of children, and report directly to me; enhanced detention review arrangements for family cases; and other measures to ensure that we have education facilities and social services links with authorities where there are removal centres in which families can be detained.

I do not think we need a legislative provision for the ministerial authorisation, and we will continue with it. I see cases every week, I get a full case history and I ask whatever questions I want. Although I have no concerns about the system, the need for officials to account to me for what is happening puts another pressure on the system. There are real difficulties with some cases, particularly with redocumentation, but I authorise continued detention only where the issues are clear and where detention is necessary because there is no alternative. On the other hand, we have released several families in recent months as a result of such scrutiny, and I assure hon. Members that we will continue with it.”¹¹

BID has obtained some information about how the process of Ministerial Authorisation is working in practice.

In a letter to BID on 7 October 2004, IND's Detention Services Policy Unit confirmed that *“Ministerial authorisation for the detention of a family beyond 28 days has never been refused.”*

contrary to the ... policy” (para 28) and noted that “...the fact that J(...)’s detention would involve the detention too of her very young child ought to have led to a recognition that detention must be for as short a time as possible”. In relation to the detention of mother and child, solely on the grounds that they were imminently removable and had not enough family ties in the UK, the judge said, “The claimant had never moved from the address at which she was required to live and her past record showed that she had complied with conditions of temporary admission, which included an obligation to report to the police...certainly [the child’s] and probably [the mother’s] health was being adversely affected by detention, the failure to release becomes the more inexplicable”. (para 25)

⁹ Baroness Scotland, 27 Apr 2004 : Column 714

¹⁰ See BID Press Release 17 December 2003 *New ‘safeguards’ on detained children are woefully inadequate, charity warns.* http://www.biduk.org/pdf/press/bid_press_release_new_safeguards_17_12_03.pdf

¹¹ Column Number: 416, 27/1/04 Beverly Hughes MP

The letter goes on to state that “...all cases are subject to rigorous review before they reach the Minister to ensure that continued detention is appropriate. Ministers have, on occasions, sought additional information about a particular case and, in some cases, have required further information to be provided in order to be satisfied that continued detention is appropriate and justified.”

A letter from Lord Bassam to Lord Avebury on 5 July 2004 states that families are not informed of the process of ministerial review.¹²

“Details of referrals to the Minister are not provided to the family or their representatives. These are internal review processes and do not constitute formal decisions which need to be communicated to the family concerned, who will in any case receive regular monthly updates on their case and the reasons for detention.”

The letter also outlines how the review process is conducted, without sight of the full file.

“It is not normal practice for Ministers to peruse the whole file of individual cases referred to them. The Management of Detained Cases Unit (MODCU) within IND maintains oversight of family cases involving detained children. Their role includes reviewing the appropriateness of detention and ensuring that, where detention is maintained, cases are progressed expeditiously. MODCU review individual cases on the basis of information relevant to detention obtained from the Immigration Service file and from Home Office records, with appropriate input from colleagues who have responsibility for day to day management of the case. Cases are monitored actively and, where detention may exceed 28 days, Ministerial authorisation is sought. The processes of review and Ministerial authorisation are based upon a full and comprehensive review of the case and detention will only be maintained where it is considered both justified and necessary. Once initial Ministerial authorisation has been received, MODCU continue to review the need for detention and provide weekly updates to the Minister to seek authority to continue detention where appropriate.”

b) Welfare assessments

The purpose of the welfare assessment at 21 days by social services was announced as being to ‘feed in’ to the system of ministerial authorisation at 28 days. The initial announcement about welfare assessments related only to children detained at Dungavel. Lord Bassam in the House of Lords said that “if successful” at Dungavel the social services assessment would be rolled out to other centres.

*“We are also exploring the possibility of drawing up protocols with local social services to conduct a welfare assessment at day 21 of a child's detention, which would then feed into the system of ministerial authorisation at day 28. This work is being carried forward initially in relation to Dungavel but, if successful, would be extended to other centres.”*¹³

There has been considerable delay in establishing the arrangements with Social Services to enable these assessments to be carried out. It is BID’s understanding that several welfare assessments have been carried out for children detained for longer than 21 days at Dungavel since October 2004. We

¹² This is confirmed in the minutes of the Detention User Group on 14 June 2004. “23. Simon Barrett [DSPU] explained that it was not possible for a family to challenge or appeal against the Ministerial authorisation of detention beyond 28 days although it was always open to a family to challenge the lawfulness of their detention through the courts. The authorisation was not a formal decision taken by the Secretary of State but rather an integral part of the internal review process for such cases. He also confirmed that there have not so far been any cases where authorisation has not been given.”

¹³ Lord Bassam, 18 May 2004, Col 747

understand that there is currently no mechanism in place for welfare assessments of children at Oakington, Tinsley or Yarl's Wood, but that discussions are still ongoing with local Social Services departments as to how the assessments will be resourced.

6. HM Inspectorate of Prisons (HMIP)

HMIP conduct announced and unannounced inspections of immigration removal centres in the UK. They have visited centres detaining families on a number of occasions.

In 2003, HMIP stated that

"...the detention of children should be an exceptional measure, and should not in any event exceed a very short period – no more than a matter of days. The key principle here is not the precise number of days ... It is that the welfare and development of children is likely to be compromised by detention, however humane the provisions, and that this will increase the longer detention is maintained.

*We therefore believe that there should be an independent assessment of the welfare, developmental and educational needs of each detained child, guided by the principles set out in international and UK domestic law in relation to children. This should be carried out as soon as practicable after detention and repeated at regular intervals thereafter, to advise on the compatibility of detention with the welfare of the child, and to inform decisions on detention and continued detention."*¹⁴

A report on an announced inspection of Oakington Immigration Reception Centre 21–25 June 2004, which was published on 9 November 2004, was damning of the failures of the additional review mechanisms that are supposedly in place for reviewing family detention:

"We also found that the mechanisms for deciding to detain children, and reviewing their detention and developmental needs, were not sufficiently robust. Under IND's own instructions, the detention of children is always a sensitive matter and should be decided at senior level (by an Assistant Director). We saw no evidence of such authorisation, and indeed on-site staff appeared unaware of the need for it. The instructions also require regard to be given to Article 8 of the European Convention on Human Rights: again, we saw no evidence that a balancing exercise between the necessity of detention and the welfare of the child had been carried out. The centre made conscientious attempts to identify and support children at risk of harm; but residential staff lacked the necessary qualifications, or support from social services. The concerns they did raise about children underline the need for independent review of a child's welfare and development after seven days, as we have previously recommended."

The findings of HMIP are in stark contrast to the statements made by Lord Bassam to parliament in May 2004.

"Children in detention are well cared for. Within the confines of detention, their needs are met. We care about those children. Staff at the centres, particularly in the family units, treat all detainees, including children, with great respect and humanity.

Each centre has in place robust policies and procedures for dealing with child protection issues. Links have been established with local area child protection committees, and local social services are always involved in any case of concern. Staff who deal with families are trained in child protection. There are excellent healthcare units at all removal centres, and

¹⁴ An Inspection of Dungavel Immigration Removal Centre, October 2003, HMIP, August 2003, p 45

*the healthcare needs of adults and children are met in confidence and with care and respect.”*¹⁵

BID understand that an ‘action plan’ is being drawn up by IND in response to HMIP’s report on Oakington.

7. Family Removal Guidance and pastoral visits

IND have given an undertaking to carry out ‘pastoral visits’ to all families that are to be removed from the UK, unless there is an issue of absconding. A note of March 2004 to the DUG states

“pastoral visits should be undertaken in all cases where families are to be removed. However, if there is evidence to suggest that a family (or an individual member of that family) would abscond following a pastoral visit, an immigration inspector may authorise removal without a prior pastoral visit.”

Instructions issued to staff regarding the procedure for family removals have been made public, and the Family Removal Policy was circulated to NGOs in October 2004. It includes provisions for use of control and restraint techniques for children by trained officers, and states that *“Any measure of force or control used against a minor must be justified on the grounds that the safety of the child or others would have been endangered had restraint not been used.”* The policy is due to appear on the IND website shortly.

8. Disclosure of statistics

Since December 2003, limited statistics on family detention have been included in the quarterly asylum statistics.¹⁶

The statistics for the second quarter of 2004 show that on 26 June 2004, 60 asylum seeker children were detained in removal centres under Immigration Act powers. This is double the number of children detained when the last snap-snot was taken in March 2004, and six times the number of children detained in December 2003, the first time child detention statistics were published by the government.

The figures for June 2004 also show that over 16% of children were detained for longer than 14 days – way above the maximum period of a few days recommended for children by HM Inspectorate of Prisons. On 26 June, 5 (8 %) children had been locked up for between 15 and 29 days, and a further 5 (8 %) for between 1 and 2 months. The other 50 (84%) children had been detained for 14 days or less.

There is still no disclosure of any information to show how old the children are, at what stage of the case they were detained, and no indication of the outcome of their detention.

9. What families experience in practice

Based on our casework experience, BID believes that children in immigration detention remain at risk of prolonged and unnecessary periods of detention. Families are often unable to access good quality legal representation and are therefore frequently not able to exercise their right to a bail application.

¹⁵ Bassam, 18 May 2004, Col 748

¹⁶ *“As at 27 December 2003, 10 people (1) (the majority being asylum detainees) who were detained solely under Immigration Act powers were recorded as being under 18 years old. Two thirds of those had been in detention for 14 days or less and the remainder had been detained for less than 3 months. These individuals were all detained as part of families whose detention as a group was considered necessary.”* Home Office, Asylum Statistics: 4th Quarter 2003.

In the twenty months between 1 February 2003 and 30 September 2004, BID assisted 36 families detained in removal centres. (Other families have contacted us but we have insufficient data on their cases to include in this analysis.) The ages of the children in the families ranged from a 12-day old baby (detained for 43 days before being released on temporary admission) to a 16 year old. The average length of detention in these 36 cases was 49 days (longest period of detention was 165 days and the shortest was 7 days). The outcome of detention in the majority of cases (20 cases) was release on temporary admission (TA). The average length of detention for those released on TA was 45 days. In 14 cases, the families were removed, the average length of detention being 43 days. In four cases, the family were released as a result of a bail application by BID, twice by BID and twice by the legal representative. The average length of detention for those released on bail was 70 days.

BID is concerned that children's health is effected by detention but that there are no mechanisms in place to ensure that welfare issues influence detention reviews. On a number of occasions, BID has commissioned independent medical reports to consider the impact of detention on the child. BID has no funding to commission medical reports, and has relied on the free services of practitioners from Medical Foundation and Médecins sans Frontières (MSF).

In a small study conducted by the Medical Foundation involving three families visited in detention by two child specialists it was discovered that the parent or parents were having serious difficulties in parenting and that their children were "failing to thrive", because of their past experiences, exacerbated by their detention in this country. In a letter to members of the House of Lords on 13 May 2004, Medical Foundation have stated that "*In each case, had release not been facilitated by bail or temporary release, then the Medical Foundation's concerns were such that social services would have been alerted. All three cases fell within the Medical Foundation's remit but none of them had been referred to the Medical Foundation upon detention*¹⁷."

BID's experiences, and those of the Medical Foundation, are starkly at odds with the view of the government regarding children's welfare, as expressed by Baroness Scotland in April 2004.

*"The present position is that the welfare of the children concerned is monitored constantly by the excellent healthcare and other staff in removal centres. Where there are concerns, those are addressed either locally or by the Immigration Service. That includes consideration of whether detention should continue in appropriate cases."*¹⁸

10. Lobbying for change

Throughout the passage of the Asylum and Immigration (Treatment of Claimants etc.) Act, the Refugee Children's Consortium¹⁹ worked with Members of the House of Commons and the House of Lords to oppose the use of detention for families and to seek safeguards if families are to be detained. These safeguards would include a time limit on detention, a prompt, automatic independent and regular review of the detention decision and the need to maintain detention, and an early welfare assessment of children in detention, in line with the recommendations of HMIP.

The Government rejected amendments in Committee in the House of Commons seeking to ban the detention of children under immigration powers and amendments to ensure that children would only be detained for a maximum of 7 days. There was cross-party concern about the detention of

¹⁷ Rule 35(3) of the Detention Centre Rules 2001 states that doctors shall report to the manager the case of any detainee who he is concerned may have been the victim of torture

¹⁸ *Baroness Scotland of Asthal: 27 Apr 2004 : Column 712*

¹⁹ The Refugee Children's Consortium is made up of children's charities and refugee charities. Current members are: *The Asphaelia Project, AVID (Association of Visitors to Immigration Detainees), Bail for Immigration Detainees, Barnardo's, British Agencies for Adoption and Fostering (BAAF), Children's Legal Centre, Children's Rights Alliance for England, The Children's Society, FSU, The Immigration Law Practitioners' Association (ILPA), The Medical Foundation for the Care of Victims of Torture, NCB, NCH, NSPCC, Redbridge Refugee Forum, Refugee Council, Refugee Arrivals Project and Save The Children UK. The British Red Cross, UNICEF UK and UNHCR all have observer status*

children. Amendments were tabled at Report in the Commons but not discussed due to lack of time.

During Committee in the House of Lords on 27 April 2004, the amendment was laid to probe how, and when, the Government intended to give effect to the recommendation of Her Majesty's Chief Inspectorate of Prisons relating to assessments. Concern was expressed from across the House about the detention of children. The Government was unable to provide evidence that they have made progress towards implementing the recommendation of HMIP regarding assessments and the Minister opposed the proposals for assessments, stating that; "*In all probability, it would add an additional layer of bureaucracy*" and questioning "... *whether it is necessary or workable*"²⁰.

BID is continuing to work with others in the sector to oppose the use of detention for children and families and to push for adequate safeguards to be in place if detention is to be used.

For further information, please contact Sarah Cutler, Policy and Research Officer, Bail for Immigration Detainees sarah@biduk.org 020 7247 3590/ 07870 643373 or visit our website at www.biduk.org

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²⁰ House of Lords Official Report, Hansard Vol. 660, No.74, Tuesday 27 April, Col 712