



UNIVERSITY OF
BIRMINGHAM

BiD Bail for
Immigration
Detainees

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Independent Chief Inspector of Borders and Immigration
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Via email: chiefinspector@icibi.gov.uk

Dear David Neal

We write to congratulate you on your appointment and to introduce you to our work. We also wish to take this opportunity to suggest an important area of the immigration system that would greatly benefit from your considered inspection.

We – the organisation Bail for Immigration Detainees and academic Dr Melanie Griffiths from the University of Birmingham – have recently released separate reports stemming from investigations into forced family separation within the immigration system. This is a topical issue of significant public concern, as highlighted recently by the deportation charter flights to Zimbabwe and Jamaica, in which men faced removal from partners and/or children in the UK.

Our work and research have raised a number of serious concerns regarding the quality of Home Office decision making in this domain. This includes our joint concern that the Home Office is systematically failing to carry out its Section 55 duty to consider the best interests of the child in decisions around immigration detention, removal, deportation, refused entry and the revocation of status; and failing to give proper consideration to the right to respect of family and private life under Article 8 of the European Convention on Human Rights. But to understand the full extent to which this is the case would require a systematic inspection with access to Home Office files and decision makers.

We are calling on you to consider carrying out such an inspection. We believe that such an inspection would complement the two very important previous ICIBI inspections on children's best interests: on the good character requirement in children's citizenship applications (2017) and on the best interests of unaccompanied asylum-seeking children (2018). We note that both these inspections were intended to be part of a series of inspections focused on the treatment of children within the context of borders, immigration and citizenship.

We are also concerned about the efficiency of immigration detention decision-making more generally in the light of spiralling unlawful detention pay-outs and encourage you to consider investigating this.

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About BID:

BID is an independent national charity established in 1999 to challenge immigration detention. We assist those held under immigration powers in removal centres and prisons to secure their release from detention through the provision of free legal advice, information and representation. During the period from 1 August 2019 to 31 July 2020, BID assisted 2,861 people, and it prepared 442 bail applications of which 339 were heard and 264 individuals were consequently released on bail. We attend the ICIBI AAR Forum and the Refugee and Asylum Forum.

About Dr Melanie Griffiths:

Melanie Griffiths is a Birmingham Fellow at the University of Birmingham and has spent 14 years researching the UK's immigration, asylum and enforcement systems. She has published on topics including the hostile environment, asylum appeals, immigration detention, deportation and Article 8 rights. She previously held posts at the Universities of Bristol and Exeter and as an MP's immigration caseworker. She has a DPhil from the University of Oxford.

Dr Griffiths led research funded by the Economic and Social Research Council investigating the impact of immigration enforcement on mixed-nationality families. This entailed observation of deportation appeals, interviews with representatives from the state, judicial and NGO sectors and interviews with 30 families consisting of British citizens with husbands or fathers with precarious immigration status.

Home Office duties and processes

The Home Office has a legal duty to safeguard and promote the welfare of children in the UK, and to treat their best interests as a primary consideration pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009 (BCIA 2009) and the UN Convention on the Rights of the Child (UNCRC), Articles 3, 9 and 12. Best interests form part of any Article 8 assessment involving a child. In the Supreme Court case *HH*, Lord Kerr stated that best interests 'must always be at the forefront of any decision-maker's mind'.¹ He said:

*This calls for a sequencing of, **first, consideration of the importance to be attached to the children's rights** (by obtaining a clear-sighted understanding of their nature), then an assessment of the degree of interference and finally addressing the question whether extradition justifies the interference. This is not merely a mechanistic or slavishly technical approach to the order in which the various*

¹ Paragraph 98, *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25.





*considerations require to be evaluated. It accords proper prominence to the matter of the children's interests.*²

The Home Office's own policies set out clear guidance with regard to safeguarding and promoting the best interests of children, and the process necessary to comprehensively assess these best interests.

Where a Home Office decision will have an impact on a child – for instance the decision to separate a family for the purpose of immigration detention, removal or deportation – it must treat the best interests of any child(ren) affected by the decision as a *primary consideration*. The case should be referred to the Office of the Children's Champion (OCC), an internal Home Office body that offers advice to decision-makers on the implications of decisions on the welfare of children³. Local Authority Children's Services (LACS) should be contacted if they have had involvement with the family⁴. The Home Office is required to update the ICD.5025 form with details of the best interests considerations.

We are concerned that the Home Office is systematically failing to follow its own policies when it separates families by immigration detention, removal and deportation. We rarely see evidence of cases having been referred to LACS or the OCC when parents are detained, and Home Office decision-letters issued to detainees (Monthly Progress Reports or Bail Summaries) rarely refer to the Section 55 duty. If the Section 55 duty is referred to this is little more than a brief mention. However, without access to full Home Office files, we are unable to ascertain the extent to which the Home Office is complying with its duties. It would also be helpful if the ICIBI could investigate the role of the Office of the Children's Champion in these cases.

In 2019 BID conducted an analysis of 28 case files of parents in detention where we made a bail application to the Home Office. In each of these applications we requested full disclosure of any correspondence with the OCC or LACS, citing evidence of the Home Office's failure to show that it had complied with its section 55 duty or its own policies by considering the best interests of the child in decisions to detain or maintain detention up to that point. In 12 of these cases the Home Office had already accepted that the client had a genuine and subsisting relationship with a child in the UK, in the remaining cases we made arguments to this effect in the application. Not a single response to these bail applications contained evidence that the OCC had been contacted and in only one case was there evidence that a local authority had been contacted. Otherwise the responses failed to mention the Section 55 duty at all, and in 25 of 28 cases detention was maintained.

² Paragraph 144, *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25.

³ for instance, Home Office *Introduction to children and family cases – v10.0 Valid from 28 July 2014* page 21
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/488920/Intro_v10.0.pdf

⁴ See, for instance, Home Office policy *Family Separations Version 4.0, Published for Home Office staff on 11 December 2017* page 18
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666491/family_separations.pdf





When children face parental separation by being taken into care because of parental abuse or neglect, and when children are subject to child arrangement orders as a result of family breakdown, detailed legal and administrative processes take place, in which children are often legally represented and their wellbeing and interests protected. It is remarkable then that parents with insecure immigration status - who are typically caring, capable and committed parents - can be separated from their children with so little safeguarding and legal protection. Home Office failures in this regard not only amounts to a serious child protection issue, but also brings negative publicity and costly damages claims⁵.

Harm caused

There is a wealth of evidence in the public domain that illustrates the serious and irreversible harm that children suffer through separation from their parents. BID's [research report](#) published in June 2021 examines the devastating impact of the deportation system from the perspective of those it affects, in particular the families it forces apart and the children that grow up without a parent as a result. The report highlights the extreme practical, financial and emotional hardship that people face and the long-term impact on children. We also document the multiple barriers to justice that families face which have worsened since the removal of legal aid for immigration cases.

[Research](#) published by Dr Melanie Griffiths, also in June 2021, found that families with an individual with insecure immigration status face harm that is severe and wide-ranging and includes damage to physical and mental health, income, financial security and relationships. Children show regression of behaviour, such as bed wetting, attachment and abandonment issues and serious detriment to their education and wellbeing. Some of the participants' children self-harmed or even attempted suicide. These affects were felt by the whole family, including the British citizens.

Lack of data

Despite the seriousness of these issues and concerns found, it is extremely difficult to monitor these issues as the Home Office does not store data on the number of parents separated from their children through immigration detention, removal or deportation. BID's Freedom of Information Requests on this issue have consistently been refused on the basis that the data "is not held in a reportable field on [their] case management system". We are worried that the lack of information recorded in a reportable field means that family life or children's best interests are not properly flagged on the Home Office's system. Both BID and Dr Griffiths came across individuals in whose cases the Home Office ignored or denied the existence of children in documents relating to detention, while elsewhere the same people challenged their deportation on the basis of their

⁵ For instance, see the case of AJS and AJU, the Home Office was ordered to pay £50,000 compensation after a 3-month period of immigration detention was found to be unlawful, "as a breach of section 55 Borders, Citizenship and Immigration Act 2009, and Article 8 ECHR." Court order is available here <https://bhattermurphy.co.uk/files/documents/Sealed%20Order,%20Statement%20of%20Reasons,%20Schedule-JAF20180711140336516.pdf>. The story was covered in BBC news, The Guardian, and Channel 4 news.





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relationship to their children. If the Home Office were systematically aware of the presence of children in detention and deportation cases, it would more effectively discharge its section 55 duty and best interests duties.

These matters could not be more serious. It is vital that the Home Office's compliance with its legal duties is systematically monitored so that it can be held to account and learn lessons from any failings.

Unlawful detention claims

It recently emerged that the Home Office was [forced to pay out £9.3m](#) in compensation in 330 cases of unlawful detention last year. This was a 35% increase from the year before, when £6.9 million was paid out to 272 individuals. The figures are immense, but the significant rise from the previous year suggests that the Home Office is not learning lessons from past wrongful decisions. In The Independent newspaper's article hyperlinked above, the Home Office said that the department is "committed to learning lessons from any case where we concede or the courts deem unlawful". It would be useful to know what assessment the Home Office has made of the reasons for the increase, and what learnings the department has gained from previous cases where it has been found to have acted unlawfully. We would encourage this as an additional area requiring urgent inspection.

We would be pleased to meet with you to discuss these matters further.

Yours sincerely,

Annie Viswanathan

Director

Bail for Immigration Detainees

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Dr Melanie Griffiths

Birmingham Fellow

University of Birmingham

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We have shared a draft of this letter with the following organisations who have each indicated their shared concern and support for the matters we raise:

BARAC UK

Families for Justice

Gatwick Detainee Welfare Group

Association of Visitors to Immigration Detainees

Immigration Law Practitioners' Association

Social Workers Without Borders

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Greater Manchester Immigration Aid Unit
Detention Action
Joint Council for the Welfare of Immigrants
Migrant Children's Project, Coram Children's Legal Centre

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