Last resort or first resort?

Immigration detention of children in the UK

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Executive summary

In 2009 more than 1,000 children in the UK were detained with their families for the purposes of immigration control.[1]

Medical studies have found that detention is associated with post-traumatic stress disorder, major depression, suicidal ideation, self-harm and developmental delay in children.[2] The attempted suicide of a 10-year-old girl in immigration detention in the UK in 2009 provided a stark reminder of the implications of these research findings.[3]

The then Labour government justified the detention of children on the basis that it was used only as a last resort, and for the shortest possible time.[4] It argued that in cases where families were detained, this was necessary for the purposes of immigration control for three main reasons: first, to prevent families absconding; second, to effect the imminent removal of families from the UK; and third, that if these families were not detained in order to be forcibly removed, they would have refused to leave the UK voluntarily.[5]

> ***"My experience in Yarl's Wood was that it was very unhealthy for children to be kept there… I felt dead inside me. Every day till now I couldn't and can't face the day peacefully. Every time I wake up, my heart would first beat rapidly and I would feel very scared inside me. This trauma is still planted in me and I don't know how to get rid of it."***
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> (Ben, research participant, 13 years old)

In order to examine the validity of these reasons for detaining families, Bail for Immigration Detainees (BID) and The Children's Society carried out detailed research into the cases of 82 families with 143 children who were detained during 2009, using data from 82 clients' case files, interviews with 30 family members and 27 legal representatives, and full Home Office files for 10 families.

Our research found that in a considerable number of cases, families were detained when there was little risk of them absconding, their removal was not imminent, and they had not been given a meaningful opportunity to return voluntarily to their countries of origin. Indeed, in a large proportion of cases, there were barriers to families returning to their countries of origin during the time they were detained, which meant it was not possible, lawful or in the children's best interests for the Home Office to forcibly remove them.

These findings are of grave concern, particularly given the considerable evidence of the ill health experienced by children in immigration detention. It is our view that such practice is at odds with the Home Office's duty under s.55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of children in its care.

The policy context regarding immigration detention of children has changed significantly since 2009 and early 2010, the period in which our research was conducted. In May 2010, the coalition government made a commitment to end the detention of children for immigration purposes.[6] However, it has since been announced that children will continue to be detained at Tinsley House Immigration Removal Centre, and in a new Short Term Holding Facility in Crawley, Sussex.[7]

While the findings presented here relate to decisions to detain children made in 2009, it is our view that they offer important lessons for the future treatment of children in the UK's asylum and immigration system, and also raise serious questions about the use of immigration detention for single adults. In order to avoid further inappropriate and damaging decisions about enforcement action against children, significant changes are needed to the Home Office's processes for managing families' asylum and immigration cases.

Decisions to detain families with children

In a number of cases, we found that children and their families were detained for long periods in an open-ended manner, when there was scant evidence that they were at risk of absconding, and despite legal, documentation or health barriers to their removal from the UK. On average, the 143 children in this study were detained for six and a half weeks.

Assessment of families' risk of absconding

At the time when this research was conducted, Home Office policy instructions stated that detention should only be considered where there were compelling reasons for concluding that it was necessary, such as evidence of a strong likelihood of the family absconding.[8]

The majority of families in our study reported regularly to the Home Office, both before and after their detention. These findings raise serious questions about why families who did not have a history of absconding were detained, in some cases for long periods, and how the Home Office assessed their risk of absconding.

- Only eight of the 82 families (9.8%) who participated in this research had any history of absconding before they were detained. Five of these eight families got back in contact with the Home Office voluntarily.
- Of the eight families who had a history of absconding, five were in contact with the Home Office for most of their time in the UK. These families typically maintained contact with the Home Office for a period of years before or after absconding.
- Thirty families, released between January and August 2009, were tracked for six months following their release from detention. All 29 families for whom we were able to obtain this data reported regularly to the Home Office for the entire research period.

> ***"I've never had any intention of running. All I'm trying to do is just keep my kids safe and keep myself safe. I've done nothing wrong, and I'm trying to show them that I am a good person, that the kids are good and we're trying to do everything they want."***
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> (Clare, research participant)

We also examined how the Home Office assessed the risk of absconding for the 10 families for whom we were able to obtain full Home Office files. In a number of cases, families' risk of absconding was assessed on the basis of inadequate or inaccurate information, and flawed criteria and reasoning. Procedures for assessing risk were not consistently followed.

Was removal from the UK imminent when families were detained?

We collected data on the extent to which the 82 families in this research were detained for periods while there were barriers to their removal from the UK. The evidence shows that these families could not be removed for the majority of the time they spent in detention.

- 78 families were detained for periods when they could not be removed, at an estimated cost to the taxpayer of £637,560.
- On average, families had no removal directions in place for 64% of the time they spent in detention.

- 61% of families were eventually released, their detention having served no purpose.
- Three families were forcibly removed to other countries but had to be returned to the UK as a result of documentation and legal barriers to their removal, at an estimated cost of up to £136,000.

Families detained despite having no travel documentation

- 11% of families were detained despite not having travel or identity documents. This meant that they could not be removed from the UK at the point when they were detained. One family was detained for 35 days while a member of the family did not have any valid travel documents.

Families detained despite legal barriers to removal

- On average, families could not be removed as a result of outstanding legal applications for 50% of the time they spent in detention.[9]
- One family's country of origin (Sri Lanka) was judged to be so dangerous at the time of their detention that the UK government was not forcibly removing people to this country.
- 63% of parents for whom we have this data did not know that their most recent legal applications had been refused until they were detained.[10] They therefore had no opportunity to challenge this decision outside detention, and, in a number of cases, were detained for long periods while they made such challenges.
- Of the 30 families for whom we collected post-detention data, 74% still had outstanding legal applications six months after their release.
- In the cases of three families who lodged judicial reviews in detention, it was subsequently found that the Home Office had made errors in the way their cases were considered, so they needed to be reviewed in full. We know of three further families who participated in this research who had been granted leave to remain in the UK at the time of writing this report.

> ***"Very, very stressful. We both, me and [my wife], see nightmares almost every night. This also affected us. I mean, this is torture, this is humiliation, with the child and family, to treat us in this way. Now I can see how inhuman behaviour is also carrying on in this country, but nobody knows about it."***
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> (James, research participant, describes his experience of the Home Office seeking to forcibly remove his family despite legal barriers to their removal)

Families detained despite health barriers to removal

At the time when this research was conducted, Home Office policy stated that people who were suffering from serious medical conditions would normally be considered unsuitable for detention and should only be detained in 'very exceptional circumstances'.[11]

- In the cases of 18 families – 22% of our research sample – ill health prevented the family being removed for part of their time in detention. These families were detained, in some cases for extended periods, despite family members being so unwell that ill health presented a barrier to removal.
- In four cases, family members were hospitalised or required urgent hospital treatment during detention, which presented a barrier to removal, at least during the period of their hospital treatment.
- Information about families' health situations was not consistently collected or considered before making decisions to detain. Reviews of detention did not function as an effective safeguard to prevent prolonged detention for children and did not register cases where ill health had become a barrier to removal.
- In one case, a mother refused over 60 meals while in detention, and reported that her son witnessed the aftermath of a suicide attempt. Reviews of the family's detention stated that there were 'no concerns' for the family's well-being and 'no medical issues'. Six months after the family's release, this child was still receiving counselling as a result of mental health problems he developed in detention.

Family decision-making on maintaining contact with the Home Office

We collected data on parents' decision-making about maintaining contact with the Home Office from case files and in interviews with 30 family members. Families variously cited their children's welfare, their family's need for access to healthcare, the need to avoid destitution, the desire to preserve their dignity, and pursuit of legal status as important factors in their decisions to maintain contact with the authorities.

For the small number of families who did have some history of absconding, we were able to obtain limited case file data that shed some light on their reasons for absconding. In some cases, families broke off contact with the Home Office following traumatic events such as a miscarriage or an episode of domestic violence, which increased their vulnerability.

Families' reasons for not returning to their countries of origin

When parents in this study were asked why they would not consider returning voluntarily to their countries of origin, they repeatedly said that they feared for their safety if they returned, and they did not feel that they had had a fair opportunity to put their asylum or immigration case forward.

- Many of the parents in this research reported that their family had experienced violence or threats of violence in their countries of origin, which included Somalia, Burma, Sudan, Sri Lanka and the Democratic Republic of Congo.
- Almost half (48%) of the 143 children in this research were born in the UK.
- Four of the mothers in this research had become pregnant by, or had children with, men who lived in the UK. These children would have been separated from their fathers if they were removed from the UK.

> ***"If it wasn't for my new solicitor, I would be in [my country of origin] now. I don't know how my life would have been – maybe they would have killed me already. There, you don't challenge the government like you do here. And when they return you back there, it's not going to be easy with you."***
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> (Linda, research participant)

Home Office communication of voluntary return

At the time when this research was conducted, Home Office policy stated that the option of voluntary return should always be considered before a family was detained.[12]

We found that:

- 63% of parents for whom we have this data did not know that their most recent legal applications had been refused until they were detained, and so had no meaningful opportunity to return voluntarily to their countries of origin.[13]
- Parents were given limited information about voluntary return schemes before being detained, and none of the parents for whom we have this data reported that they had received a face-to-face explanation of voluntary return options from the Home Office.
- Families commented that the point at which information about voluntary return was communicated to them was not well timed. Some families were sent this information while their asylum applications were ongoing and there were barriers to removing them from the UK; others received it after being detained.

Families' experiences of reporting and tagging

- A number of parents in our study were afraid and anxious about going to report, and where parents asked for alterations to reporting requirements on health grounds, these requests were not granted.
- Parents in three families were electronically tagged, and reported that this had a detrimental effect on their children. Tagging placed severe limits on parents and children's freedom of movement, exacerbated their social isolation, and increased the stress and anxiety experienced by parents.

Recommendations

- Children and their families should not be detained for the purposes of immigration control.

Access to legal advice

- Families should have access to good-quality, publicly funded legal representation from an early stage in their claim, and throughout the determination process. It is particularly important that families are able to access quality legal advice at the point when a legal application has been refused and the Home Office is preparing to take enforcement action.
- The frontloading model trialled in the Solihull Early Legal Advice Pilot should be rolled out for all family cases across the UK.[14]

Decision-making

- The Home Office must pay urgent attention to improving the quality of first instance asylum and immigration decisions in family cases. It should take immediate steps to implement recommendations from the United Nations High Commissioner for Refugees (UNHCR)'s Quality Initiative Project on areas of continuing concern in the determination process, including credibility assessment, workloads, and the provision of information to applicants.
- Effective procedures should be introduced by the Home Office to gather information about legal, documentation, health or any other barriers to a family's removal before enforcement action is initiated.
- The Home Office must ensure that family welfare forms are completed in full for each family, from the point of initial contact through to the conclusion of their case.
- Before a decision is taken to remove a family from the UK, thorough consideration must be given to the family's length of residence and ties in the UK, as well as the impact removal would have on the welfare of children in the family. An auditing process should be introduced to ensure that existing mechanisms such as Immigration Rule 395c are applied consistently in all family cases.
- A pre-removal assessment process should be consulted on with stakeholders, established and independently monitored. This process should have the power to require reconsideration of cases where serious questions are raised about the advisability of proposed removal. The findings of individual assessments should be documented and shared with the family and their legal representatives.
- Temporary or discretionary leave should be granted to families in cases where such an assessment finds that it is not advisable or reasonable to expect the family to return to their country of origin.

Monitoring of voluntary return

- Where families give their informed consent, outcomes for families who return voluntarily to their countries of origin through Refugee Action should be systematically monitored by an independent agency, and their findings made public.
- Such independent monitoring of voluntary return by families should also collect information about the reasons why families accept voluntary return, their individual needs, and other factors that help or hinder sustainable reintegration in their countries of origin.

Safeguards for enforcement action against families

Effective safeguards are needed to ensure that any enforcement action taken against families adheres to the following principles:

1. The safety and welfare of children should be protected effectively throughout the immigration and asylum process.
2. Enforcement measures should be time-limited, and should not be imposed indefinitely on families.
3. Enforcement measures should not interfere with families' access to the court, or their access to legal representation.
4. Enforcement measures should be proportionate to an evidence-based assessment of risk.
5. Decision-making processes about enforcement action should be subject to independent oversight and evaluation.
6. The reasons for any enforcement action taken against a family should be shared with the family and their legal representatives.
7. There should be effective, accessible routes available to families and their legal representatives to complain about and challenge decisions about enforcement action which the Home Office plans to take against families.
8. Children should be informed about decisions that will affect them, with parental consent. Children's wishes and feelings should be taken into account when such decisions are made. This should be planned and facilitated in an age-appropriate manner, which safeguards and promotes children's welfare.

Communication with families prior to enforcement action

- Case owners should inform parents and their legal representatives that a family's legal applications have been refused in a face-to-face meeting and in writing well before any enforcement action is taken against the family or removal directions are set. A reasonable amount of time – at least three months – following this meeting should be allowed for parents to consider their options, including voluntary return.
- Following such notification, enforcement action may in practice not be taken against a family within three months, either because of new legal applications by the family or delay on the part of the Home Office. In such cases, a reasonable further period of notice of planned enforcement action should be given to the family and their legal representatives.
- Funding should be made available for legal representatives to attend meetings at which voluntary return options are explained to families by Home Office staff.
- Families should be offered flexibility in the timing of voluntary return, particularly in cases where children have upcoming exams or family members have pre-existing courses of medical treatment which they need to complete before leaving the UK.
- Families and their legal representatives should be specifically asked, in writing, to provide any information about the family's health, travel documentation, and legal situation to the Home Office before any enforcement action is initiated against them.
- Before enforcement action is taken against a family, written consent should be requested from parents for the Home Office to access their family's medical records in every case.
- The Home Office should establish processes to ensure that expert, independent medical advice is available to Home Office staff concerning the appropriateness of enforcement plans in individual cases, in the light of the family's health situation.
- The Home Office must develop appropriate processes to monitor the health and welfare of children and parents who are subject to enforcement action.
- Appropriate processes should be developed for the Home Office to take into account the views of children subject to enforcement action on all decisions which affect them.

Communication with families following failed enforcement action

- When directions for a family's removal are cancelled, immigration officers should inform parents and their legal representatives of the reasons for this at the earliest opportunity, and in any case no more than 24 hours after the removal directions are cancelled.

Assessing absconding risk

- The Home Office's criteria for assessing absconding risk in asylum seeking and migrant families should be revised in the light of the evidence that is available on risk of absconding.
- Proper procedures should be established to provide a reliable assessment of families' risk of absconding. Risk assessments must be based on adequate evidence, properly fact-checked, and must take into account all relevant evidence.
- The Home Office should improve its procedures for recording families' histories of reporting and compliance, so that families are not wrongly recorded as having absconded.
- The Home Office's processes for assessing absconding risk should be subject to independent oversight and regular independent audits.

Reporting and electronic tagging

- A time limit should be introduced on the use of electronic tagging for the purposes of immigration control. In addition, limits should be set on the length of time parents are required to remain in their homes every day for electronic monitoring purposes.
- In two-parent families, only one parent should normally be subject to electronic tagging.
- The Home Office should publicly consult on and publish clear guidelines on the use of electronic tagging. Decision-makers should be required to consider the impact of reporting and tagging of parents on children's welfare, given the UK Border Agency's duty to safeguard and promote the welfare of children under s.55 of the 2009 Borders, Citizenship and Immigration Act.
- The Home Office should publish data on how many parents are currently being electronically tagged or required to report daily for the purposes of immigration control, and the length of time for which these parents have been subject to these contact requirements.
- If parents are electronically tagged or required to report, case owners or immigration officers should provide parents and their legal representatives with clear reasons and criteria for decisions about any contact requirements that parents are subject to.
- If parents are electronically tagged or required to report, a clear process for parents to request changes to their contact requirements should be introduced by the Home Office and communicated to parents and their legal representatives.
- The Home Office's processes for allocating contact requirements to families should be subject to independent oversight and regular independent audits.

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6 Cabinet Office (2010) *The Coalition: Our programme for government*, p21

7 UKBA (2010) *Review into Ending the Detention of Children for Immigration Purposes*, London; Home Office (2011) 'Family Returns Fact Sheets' published at Family Returns Seminar Church House, 10 March 2011 www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/296503/family-returns-fact-sheets

8 UK Border Agency (UKBA) (2011) *UK Border Agency's Enforcement Instructions and Guidance* 45.3, www.ukba.homeoffice.gov.uk/policyandlaw/guidance/enforcement/ Accessed in March 2010 and February 2011

9 This figure is based on data for 46 families for whom we had complete information.

10 This figure is based on data for 54 families for whom we had complete information.

11 UK Border Agency (UKBA) (2011) *UK Border Agency's Enforcement Instructions and Guidance* 55.10 , www.ukba.homeoffice.gov.uk/policyandlaw/guidance/enforcement/ Accessed in March 2010

12 UK Border Agency (UKBA) (2011) *UK Border Agency's Enforcement Instructions and Guidance* 45.3-4, www.ukba.homeoffice.gov.uk/policyandlaw/guidance/enforcement/ Accessed in March 2010 and February 2011

13 This figure is based on data for 54 families for whom we had complete information.

14 Aspen, J. (2008) *Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission*, London: HM Stationery Office

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