

# Refugee Children's Consortium

## **'Pre-departure Accommodation Operating Standards' Comments from the Refugee Children's Consortium**

October 2011

### **Introduction**

In September 2011, the UK Border Agency (UKBA) published its 'Operating Standards' for the new detention facility for families which has been opened in Crawley, Sussex. The Refugee Children's comments on these standards are set out below.

### **General comments**

In various places in the Operating Standards, it is not made clear which agencies will be responsible for implementing different aspects of the standards. For example, Annex O sets out policy regarding opening of detainees' mail, but does not say which agency would be responsible for doing this – Barnardos, G4S or the UKBA. Similarly, paragraph 2 of Annex T sets out requirements for staff to hold discussions with families prior to their departure from the UK, to identify potential issues which might prevent return, but does not state which agency will be responsible for this. There is clear potential for confusion on the part of agencies, families and those supporting them. Clarification is needed in this area.

### **Lack of Operating Standards on Healthcare or 'Managing Non-Compliance'**

It is very concerning to see that Annexes U and V, on healthcare and 'managing non-compliance' are completely blank. We would appreciate it if the UKBA could explain what guidance is being used in the interim period, while detainees are in the facility but these standards are yet to be published.

### **Additional guidance documents referenced in the Operating Standards**

A number of documents referenced in or related to the Operating Standards have not yet been circulated to stakeholders. We would appreciate it if the UKBA could circulate the following documents – without sight of them it is difficult to comment on sections of the Operating Standards:

- The new Family Welfare Form
- The Compact mentioned in Annex F, paragraph 1
- The facility's safeguarding policy
- The published instructions on use of control and restraint mentioned in paragraph 17 of Annex S, including any policies on use of control and restraint against children.
- The strategy which sets out the procedures involved in planning escorts outside the facility.
- The risk assessment which is undertaken in cases where families are escorted out of the facility.

### **Legal Advice**

We are very concerned that there is confusion about how the Detention Duty Advice (DDA) scheme will operate in the facility, and that neither the UKBA or the LSC have been able to clarify whether face-to-face DDA appointments will take place or not.

Several RCC members took part in tours of the family detention facility before it opened in August. We were informed that on arriving at the centre, families would be advised about the DDA scheme and asked if they wanted an appointment for half an hour's free legal advice. We were told that if the family wanted this, a face to face appointment would be arranged the next morning between Monday and Friday (this would not be available on the weekends).

However, Annex N of the Operating Standards states that families will be invited to access the DDA 'through a telephone consultation.' We do not feel that it is appropriate that families should access legal advice via the telephone rather than through a face to face appointment. Difficulties in communication can be exacerbated when discussions do not take place face to face, particularly where detainees may speak limited English and complex legal issues are being discussed. In addition, over the phone the detainee will not be able to show the legal representative their papers, so that the representative can understand the nature of the problem and what the relevant questions to put to the detainee are. In many cases a detainee might be unwilling or unable to discuss sensitive and critical information over the telephone. A history of sexual abuse or torture, or a physical condition such as AIDS/HIV are examples of things someone may not be prepared to talk about over the telephone.

A number of issues relating to legal advice are not addressed by Annex N, including what documents the UKBA will be able to supply families with if families do not have the papers relating to their asylum or immigration claim with them when they are detained. In addition, we were concerned to note on our visit to the detention facility that no printing facilities were available for legal representatives. Such facilities could be essential in situations where, for example, legal representatives would need to get statements signed by clients. We recommend that such facilities are provided and a requirement that they are provided is set out in the Operating Standards.

### **Families leaving the detention facility**

We are surprised and concerned to note that very little guidance is provided in the Operating Standards about the process by which families might be permitted leave the facility for outings, and the escort arrangements when families leave the facility. The Standards state at p2 that:

'[Families] may also make a request to leave the facility for short periods of time to undertake recreational activities subject to a risk assessment and suitable supervision arrangements.'

Paragraphs 13 and 14 of Annex S states that:

'There must be a strategy in place setting out the procedures involved in planning escorts outside the facility.

There must be a risk assessment undertaken for each escort.'

However, no details are given in the Operating Standards of what strategy governs the planning of escorting outside the facility, what criteria will be used to assess risk, or what the arrangements will be for supervision of families outside the facility. For example, it is not clear whether or in what circumstances adults would be handcuffed during escort outside the facility.

The RCC has numerous concerns about the UKBA's methods for assessing risk, including risk of absconding. BID and The Children's Society's concerns about the UKBA's recent practice in assessing risk in family cases are set out in detail in their report 'Last resort or first resort? Immigration detention of children in the UK.' Previous poor practice in this area means that it is vitally important that clear processes for assessing risk are set out in the Operating Standards.

Paragraph 18 of Annex S states that:

'Family members under escort should, wherever possible, normally travel in the same vehicle.'

It is not clear from this guidance what circumstances would lead to family members travelling in separate vehicles. In the experience of many RCC members, transporting children separately from their parents when escorting them into or out of detention can cause them extreme distress. The UKBA should therefore clarify here what circumstances would lead to families being separated, and stipulate that incidents of separation must be fully recorded.

It is not clear whether the types of activities families will be able to leave the facility for are limited, and whether, for example, it would be possible for families to leave the facility to visit their legal representative.

Paragraph 2 of Annex K states that 'Access to the outside [facility grounds] will be restricted between dusk and dawn.' It would be helpful to have clarification of what this means, whether families will be locked into the facility or whether they would be able to negotiate to go outside at the discretion of staff.

### **Forced entry into families' apartments**

Annex S states at paragraph 7:

'The duty manager may, however, authorise access to a family's apartment without the family's consent for reasons of safety or security, including in connection with securing the family's compliance with legitimate instructions.'

We are concerned that the circumstances set out here are broad, and subjective judgements about what is necessary to secure 'family's compliance with legitimate instructions' could lead to problematic decisions being made. We would recommend that the specific circumstances in which entry to a family's apartment will be forced should be briefly outlined. We would also recommend that incident reports should be logged in cases where entry to a family's apartment is forced.

We would appreciate clarification of what contingency plans have been agreed with the UKBA to manage security incidents at the facility, as mentioned at paragraph 9 of Annex S. We have numerous concerns about the way in which disturbances in detention centres,

including the Yarl's Wood family unit, have been managed in the past. It would be helpful for guidance to be set out on this issue.

### **Holding families in isolation**

We are concerned that that Annex Q sets out very broad circumstances in which families and individuals may be held in isolation. The Annex states at paragraph 1 that:

'The facility should contain a family care suite set aside for the accommodation of families or individuals manifesting disruptive or refractory behaviour.'

It goes on to state at paragraph 4:

'Should the behaviour of an adult resident be unmanageable through the use of the family care suite referred to above consideration will be given to the use of a cool down room for adult residents demonstrating individual incidents of disruptive or refractory behaviour.'

There is clear scope for subjective judgements to be made about what types of behaviour are 'disruptive', 'refractory' or 'unmanageable', and for arbitrary decisions to be made on the basis on these judgements. We recommend that the Operating Standards should set out more specific criteria for such decisions.

Annex Q notes that decisions to hold individuals or families in isolation must have 'regard for the dignity of the individual', but does not mention that in making such decisions staff should have regard to their duty to safeguard and promote children's welfare. We feel it would be helpful for this to be specifically mentioned here.

Furthermore, no mention is made in Annex Q of how the impact on children's welfare of holding individuals or families in isolation will be assessed or recorded, or how information will be obtained about children's wishes or feelings. No mention is made of whether or how information about incidents of isolation will be fed back to the family's UKBA caseowner or the independent family returns panel.

Annex Q states that individual family members may be held in isolation in the 'family care suite'. It does not specify that children will not be held in isolation here by themselves. The Annex should be amended to state that children will not be held in isolation in the 'care suite' by themselves.

We are concerned that no time limit is set on the holding of families in isolation, or the holding of adults in the solitary cell. Paragraph 10 simply states that adults will be held in the solitary cell 'until their behaviour becomes manageable.' No mention is made of what will happen in circumstances in which adults are extremely distressed or having a psychotic episode while in the isolation cell. It is very concerning that no processes are set out to deal with such eventualities despite concerns having been raised in relation to the mental ill-health of some of the parents in the family returns process. The standard mentions that 'a member of the healthcare team' will visit an adult in the isolation cell within one hour of their being held there; however, this member of staff may have no expertise in mental health.

No contingency arrangements are set out for situations in which the 'family care suite' is occupied and an incident arises where a family requests to be removed from the company of other detainees, or staff wish to hold another family in isolation.

Paragraph 18 of Annex Q states that families will be able to request a visit by an IMB representative or religious minister while in detention, but it is not made clear whether families will be informed that this option is available to them. No details are given of what arrangements will be in place for families or individuals being held in isolation to access faxes, phone calls, legal visits, visits by independent doctors, or other visitors.

#### **Information about child and parent welfare**

It is not clear from the Operating Standards what, if any, information about a family's health and welfare will be shared by the UKBA with Barnardos or G4S staff before a family arrives at the facility, beyond checks on suicidal/self harming behaviour. This needs to be clarified. Paragraph 1 of Annex G states that 'all staff' will make checks about suicide and self-harm; it would be helpful to know where and when the outcomes of these checks will be recorded.

Paragraph 14 of Annex A states that:

'Staff must be trained to recognise behaviour and signs that indicate anxiety, distress or risk of self-harm in adults and children. Information about those showing signs of vulnerability must be recorded and passed to the health care team and others responsible for the care of residents'

However, no mention is made here of whether or how this information will be passed to those within the UK Border Agency who have made the decision to detain the family and will make decisions about future enforcement action, or the independent family returns panel.

#### **Welfare support and outcomes of detention**

There appears to be an assumption in the Operating Standards that families will be leaving the UK on departure from the detention facility. For example, p2 of the Standards state:

'This document sets out the standard of service families can expect to receive as they pass through the facility from reception through to their departure from the UK. In particular it covers...

Welfare – the provision of advice and counselling to help families prepare for their return, and to deal with any distress caused by their impending departure from the UK.'

RCC members' experience in the past has been that families do not always leave detention by being removed from the UK. If there are circumstances which prevent their removal, they will be released back into the community. Welfare provision in the detention facility should therefore reflect the different possible outcomes for families following their detention.

Annex D, on welfare support, again suggests that return will be the outcome of families' detention. The Standard is:

'To ensure that families are provided with advice and counselling, as necessary, to help them prepare for their return, and to deal with any distress caused by their impending departure from the UK.'

Welfare concerns may be raised by or about family members for a range of reasons, which will not necessarily be directly related to their 'impending departure from the UK'. Furthermore, counselling 'to help [families] prepare for return' will not necessarily be the most appropriate response to psychological or emotional distress. The Standard should be

broadened to reflect the wider need for staff in the facility to provide welfare support to children and families.

In addition, we are concerned that staff should be trained to ensure that they understand the boundaries on offering impartial counselling to families which does not make assumptions about a family's legal position or what the eventual outcome of their case will be. It is important that staff do not stray into offering legal information or advice which they are not trained or qualified to give, and do not give the impression to families that they have an understanding of the families' legal situation when they do not.

Finally, there is no information in the Operating Standards about how staff would go about making referrals of children or adults to mental health services, or of adults to social services.

#### **Parental consent for discussions with children**

In various places in the Operating Standards, it is outlined that staff will have discussions with family members about the reasons for their detention, and departure from the UK. However, no mention is made here of whether parental consent will be sought before discussions are carried out with children, and how issues of consent will be negotiated. Clarification is needed in this area.

#### **Complaints Procedure**

Annex R sets out the procedure for dealing with complaints. It is clear from the timescales which are set out that in most cases families will have left the facility by the time the process of the investigating the complaint begins. We are concerned that no processes are set out to enable interviews to take place with family members to gather information about the complaint before they are forcibly removed from the UK, if this is the outcome of their detention. Furthermore, no processes are set out to seek information from families after they arrive in their country of origin. Where the detainee's complaint is about an injury they have received in an alleged assault, facilities should be made available to enable photographs of injuries to be taken, and detainees should be informed of that these facilities are available.

#### **Translation**

Annex A of the Standards states at paragraph 6 that:

'Children will not be allowed to translate during the admissions process except in very exceptional circumstances, which might include for example, situations where it has not proved possible to locate a suitable telephone interpreter. They must only be allowed to interpret when requested by their parents and provided they are of an age to understand proceedings.'

Similarly, paragraph 5 of Annex F allows for children to translate for parents during their stay in the detention facility. No mention is made here of considerations of child welfare, for example taking into account whether distress is caused to children by translating for their parents. Staff in the facility should know in advance when families are arriving and what language they speak, and so ought in the vast majority of cases to be able to arrange an interpreter. In cases where they cannot do so, it would seem more appropriate that any parts of the admissions process (or other situations where a translator is needed) which can reasonably be delayed should wait until a telephone interpreter has been arranged.

Incidents in which children translate for parents ought to be logged, and consideration of the issues mentioned above recorded in each case.

Annex F also states at paragraph 4:

‘It is acceptable to use other adult residents, visitors or staff to interpret for residents, provided that both parties agree and possible sensitivities are considered. Telephone interpreting may be used where necessary.’

Worryingly, paragraph 7 of Annex F further provides that other detainees or staff members may translate for detainees during medical appointments. It is unclear to us why the UKBA considers that it will normally be acceptable to use other detainees, visitors or staff to interpret for detainees. There are numerous reasons why this could be inappropriate. For example, in an instance where a husband was translating for his wife, there could be issues which the wife felt unable to disclose in the presence of her husband, such as culturally sensitive health issues or issues of abuse or domestic violence. Staff would only become aware of these sensitivities if they arranged a professional interpreter. Numerous HMIP reports record the issues which can arise between detainees and would it inappropriate to assume that interpreting by another detainee is acceptable.

The instruction does not specify what sensitivities should be considered here, nor does it require that incidents are recorded. It states that telephone interpreting *may* be used where necessary, not that it will be used where necessary. In our view, it would be more appropriate for the instruction to state that other detainees or staff could interpret if the detainee specifically requests this; otherwise, the assumption should be that an interpreter will be provided.

**Communications: post, telephone, fax and emails**

It is unclear whether procedures are in place to ensure that, if mobile phones are taken off families on arrival at the facility, they can record the numbers in their phone book so that they will subsequently be able to telephone their contacts.

In relation to the opening of detainees’ mail, Annex O should set out guidelines around the sharing of information and confidentiality in cases where detainee’s mail is opened by staff, where detainees are sending and receiving faxes, where phone calls take place in the hearing of staff and where staff are monitoring detainees’ internet use.

We also note that in other detention centres there are problems with internet sites being blocked which contain information which detainees may need to access, including UKBA policy documents. The Operating Standards should set out procedures for preventing and rectifying such situations.

Paragraph 15 of Annex O states that:

‘Each family member, including children, will be offered a free 5 minute telephone call to anywhere in the world on arrival at the facility. If the family has any subsequent need to make any further free calls, this will be at the discretion of members of staff, subject to an assessment of the family’s financial circumstances.’

We are concerned that there is clear potential for arbitrary decisions to be made here, and would suggest that criteria should be given to staff to enable them to make consistent and fair decisions so that families with limited means will be able to make phone calls.

**The Refugee Children's Consortium (RCC) is a group of NGOs working collaboratively to ensure that the rights and needs of refugee children are promoted, respected and met in accordance with the relevant domestic, regional and international standards. Its members are:**

*Action for Children, Asphaleia Action, Asylum Aid, AVID (Association of Visitors to Immigration Detainees), Bail for Immigration Detainees, BASW – The College of Social Work, BAAF (British Association for Adoption and Fostering), Catch 22, Children and Families Across Borders, Children's Legal Centre, Child Poverty Action Group, Children's Rights Alliance for England, The Children's Society, DOST, Family Rights Group, The Fostering Network, The Immigration Law Practitioners' Association (ILPA), JCORE, Medical Justice, The Medical Foundation for the Care of Victims of Torture, National Care Advisory Service, NCB, The Prince's Trust, RAMFEL, Refugee Council, Refugee Support Network, Royal College of Paediatrics and Child Health, Scottish Refugee Council, Student Action for Refugees (STAR), Voice, The Who Cares Trust, Welsh Refugee Council.*

*UNICEF, UNHCR, the British Red Cross, the Office of the Children's Commissioner, and Barnardo's all have observer status .*