



Review into ending the detention of children for immigration purposes: Response of Bail for Immigration Detainees and The Children's Society

1 July 2010

Bail for Immigration Detainees (BID) is a small independent charity that exists to challenge immigration detention in the UK. Since 2001 it has supported families in detention, or separated by detention, to make applications for bail. Visit www.biduk.org.

The Children's Society is a leading children's charity committed to making childhood better for all children in the UK. Visit www.childrenssociety.org.uk.

The **OutCry! campaign** to end the immigration detention of children is a partnership project between The Children's Society and Bail for Immigration Detainees (BID), funded by The Diana, Princess of Wales Memorial Fund. Visit www.outcrycampaign.org.uk.

Introduction

BID and The Children's Society very much welcome the new Government's commitment to ending the detention of children for immigration purposes. We have repeatedly condemned the inhumane practice of immigration detention of children which seriously harms children's physical and mental health.

The previous government argued that families were only detained as a last resort, after the refusal of asylum and immigration applications, to effect their imminent removal from the UK. As the former Immigration Minister Phil Woolas told Parliament in 2009:

'Families with children are detained to effect their departure from this country when they have no legal right to remain here. They are detained only as a last resort and for as short a time as possible.'¹

However, research by BID and The Children's Society found that many of the families we work with in detention have not been given a meaningful opportunity to return voluntarily to their countries of origin before being detained. In a considerable number of cases, there were barriers to families returning to their countries of origin at the time they were detained, which meant it was not possible, lawful or in the children's best interests for the UK Border Agency (UKBA) to forcibly remove them. BID has worked with a number of families who have been granted leave to remain in the UK after being detained for the purpose of forced removal.

There is clear evidence from overseas that far fewer families end up facing forced removal if steps are taken throughout the immigration and asylum process to address the barriers that

- prevent families best presenting their asylum/immigration claim,
- act as disincentives to families complying with the immigration authorities,

¹ *Hansard* HC, 12 Oct 2009, Column 534W

- make it harder for families to accept voluntary return if their asylum/immigration claim is refused.

For example, Mitchell's 2009 report on alternatives to detention in Australia found that 67% of the 1,514 people who have entered these projects since 2006 and were not granted leave to remain departed voluntarily.² Sullivan et al. found that 69% of the 165 participants who were released from detention to their New York pilot fully complied with the outcomes of their cases, either being granted status or departing voluntarily.³ In Sweden, 82% of all returns of refused asylum seekers in 2008 were made voluntarily.⁴ By comparison, in 2009, only 14% of returns of asylum seekers and migrants from the UK were made through the Assisted Voluntary Return schemes.⁵

We firmly believe that a similarly effective system as exists in other countries can be realised in the UK, but only once significant changes to the existing decision-making and case management system are made to ensure a more individualised, transparent and accountable approach.

As is outlined below, in order that the inappropriate use of detention is not replaced by inappropriate and ineffective use of other enforcement measures, changes are needed to:

- UKBA decision making and family case management, and the provision of legal advice to applicants, so that families are not targeted inappropriately for enforcement action.
- UKBA systems for assessing risk of absconding and decision-making about contact management, so that any requirements placed on families are proportionate and appropriate.

In order to examine the reasons given by the previous government for detaining families, Bail for Immigration Detainees and The Children's Society have 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, 10 families' full Home Office files, and enquiries to legal representatives we examined the extent to which these families were at risk of absconding, whether their removal was imminent when they were detained, and what opportunity they had to seek voluntary return before being detained.⁶ The recommendations for changes to the management of family

² Mitchell, G. (2009) Case management as an alternative to immigration detention: The Australian Experience Sydney: International Detention Coalition

³ Sullivan, E., Mottino, F., Khashu, A. and O'Neil, M. (2000) Testing Community Supervision for the INS: An evaluation of the appearance assistance programme, New York: Vera Institute

⁴ Centre for Social Justice (2008) Asylum Matters: Restoring trust in the UK asylum system London: Centre for Social Justice

⁵ Home Office (2010) Control of Immigration: Quarterly Statistical Summary, United Kingdom October-December 2009 London: Office of National Statistics

⁶ 79 families who were clients of Bail for Immigration Detainees (BID) or The Children's Society's Bedford office (TCS Bedford) were approached to take part in this research. These 79 families were the total number of BID or TCS Bedford clients who were released from detention or removed from the UK during 2009. In addition, five families who participated in a BID workshop in a detention centre in June 2009 and were subsequently released from detention were included in the research sample. Two families refused to take part in this research, so in total, 82 families participated in this piece of research. Within this sample, 32 families who were clients of BID or TCS Bedford were released from detention between January and August 2009. We sought to collect post-detention data for all of these families for six months following their release. One family refused to take part, so post-detention data was collected for 31 families.

asylum/immigration cases set out below are largely based on the findings of this research.

An immediate end to the detention of children

As a priority we want to see the immediate release of all families who are currently in immigration detention.

The Government's commitment to ending the detention of children is a welcome recognition that the harm which is caused to children by detention is too great for the practice to be justifiable. Medical studies have found that detention is associated with post-traumatic stress disorder, major depression, suicidal ideation, self-harm and developmental delay in children.⁷ The recent attempted suicide of a 10 year old girl in immigration detention in the UK provided a stark reminder of the implications of these research findings.⁸ The continued detention of children is clearly at odds with the UKBA's duty under s.55 of the 2009 Borders, Citizenship and Immigration Act to safeguard and promote the welfare of children.

Since the new Government's announcement on 12th May 2010 that they would end the detention of children for immigration purposes, BID and The Children's Society have worked with a number of children in detention who were in extreme distress following their incarceration. In some cases these children were receiving medical treatment which was disrupted by detention; in others we sought to refer children for psychiatric assessments because of concerns about the impact detention was having on their mental health. In this period, parents of some children in detention refused to eat in protest against their own and their children's imprisonment.

BID and The Children's Society are keen to engage in constructive dialogue with the Government over the coming months about improvements to the management of family immigration/asylum cases. However, given that there is no evidence that families are systematically at risk of absconding if they are not detained, the straightforward alternative to detention for these families is liberty. Ending the detention of children is an essential and urgently needed first step in improving the effectiveness of the UKBA's management of family cases.

Legal advice and decision making

In BID and The Children's Society's experience, the main barrier to families returning voluntarily to their countries of origin following the refusal of their legal applications is that they fear for their safety on return.

There continue to be very significant problems with decision-making by the UKBA on asylum cases, and with access to legal representation for applicants. As a result,

⁷ Lorek, A., Ehnholt, K., Nesbitt, A., Wey, E., Githinji, G., Rossor, E. and Wickramasinghe, R. (2009) 'The mental and physical health difficulties of children held within a British immigration detention centre: A pilot study' *Child Abuse and Neglect* 33:9 pp 573-585; Mares, S. and Jureidini, J. (2004) 'Psychiatric assessment of children and families in immigration detention – clinical, administrative and ethical issues' *Australian and New Zealand Journal of Public Health* 28:6 pp520-526; Steel, Z., Momartin, S., Bateman, C., Hafshejani, A., Silove, D.M., Everson, N., Roy, K., Dudley, M., Newman, L., Blick, B. and Mares, S. (2004) 'Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia' *Australian and New Zealand Journal of Public Health* 28 pp23-32.

⁸ Guardian 21/10/09 'Detained Nigerian girl found trying to strangle herself' Diane Taylor <http://www.guardian.co.uk/uk/2009/oct/21/detained-nigerian-girl-strangle-immigration>

families often do not feel that the UKBA has properly considered their legal applications, and in a number of cases this perception is justified.

Decision-making

A number pieces of research have found that the quality of decision-making in asylum cases in the UK can be compromised by time limits, varying quality in asylum interviewing practice, selective use of country of origin information or other evidence, and lack of accountability for decision making.⁹ Problems with first instance decision-making are clearly evidenced by the fact that 28% of appeals of the UKBA's decisions on asylum cases which were heard by the Asylum and Immigration Tribunal in 2009 were successful.¹⁰

In research carried out by BID and The Children's Society, post-detention data was collected for 31 families for six months following their release from detention. In the cases of three of these families who lodged Judicial Reviews in detention, it was subsequently found that the UKBA had made errors in the way these families' cases were considered, and their cases needed to be looked at again in full.¹¹ In addition, one family who lodged a judicial review during their detention had been granted leave to remain in the UK at the time of writing this submission, despite the UKBA earlier having detained this family for the purposes of forcible removal.

These findings show that changes are needed to the asylum/immigration determination system, to ensure that families' protection needs are consistently met, and that a greater proportion of families whose asylum/immigration claims are refused have confidence in this decision and are therefore in a position to consider returning voluntarily to their countries of origin.

Recommendation: The UKBA must pay urgent attention to improving the quality of first instance asylum and immigration decisions in family cases. The UKBA should take immediate steps to implement recommendations from 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. We would be keen for UNHCR to take a particular role in auditing the implementation of these recommendations in family cases.

Legal advice and representation

Extensive research has been done in recent years into the impact on immigration advisors and applicants of changes to legal aid provision and the introduction of fixed fees in the UK.

There is strong evidence that the overall supply of publicly funded asylum and immigration legal advice has dropped as experienced immigration advisors leave this type of work, unwilling to compromise on quality as funded time per case is reduced.

⁹ Tsangarides, N. (2010) *The Refugee Roulette: The role of country of origin information in refugee status determination* London: Immigration Advisory Service; UNHCR (2006) *Quality Initiative Project: Third report*, London; Baldaccini, A. (2004) *Providing protection in the 21st century: refugee rights at the heart of asylum policy* London: Asylum Rights Campaign; Smith, E. (2004) *Right first time? Home Office asylum interviewing and reasons for refusal letters* London: Medical Foundation for the Care of Victims of Torture

¹⁰ Home Office (2010) *Control of Immigration: Quarterly Statistical Summary, United Kingdom, October-December 2009*

¹¹ Of the 31 families surveyed, 21 had ongoing legal applications at the point when the research was concluded; four had been removed from the UK; one had been refused leave to remain; two had other barriers to removal from the UK and the outcomes of three cases were unknown.

Research and consultation submissions describe so-called 'advice deserts' for asylum and immigration advice in certain parts of the UK, cherry picking of less complex cases, early closing of cases, and delegation of work to paralegals.¹² One study showed a high proportion of asylum seekers are wrongly refused legal aid assistance at appeal stage.¹³

A survey by the LCF in 2008 revealed that in the wake of the introduction of the fixed-fee system, almost one in five law centres was threatened with closure and almost a half (49%) were in serious debt.¹⁴ This crisis in legal aid funding is underlined by the recent closure of Refugee and Migrant Justice (RMJ), one of the largest providers of publicly funded legal advice to asylum seekers and migrants in the UK. Given the dearth of quality legal advice in this area prior to RMJ's closure, it is unclear how the gap created by this new development will be filled.

Research by BID and The Children's Society found that 16 of the 31 families for whom post-detention data was collected did not have a legal representative for all or part of their time in detention. Several families reported that they had been poorly advised by previous legal representatives, and for this reason did not feel that they had a meaningful opportunity to put their case forward before being detained. A number of families reported that once they were detained, it became more difficult for them to access legal advice at the crucial point when they were seeking to challenge decisions which had been made on their case and consider what options were available to them. In some cases, these factors contributed to a lack of confidence amongst families in the decisions which had been made about their asylum or immigration case, and reduced the likelihood that they would consider voluntary return.

We note that in the letter inviting responses to this review into ending the detention of children, Dave Woods asks whether there is a need to review families' access to legal representation. In our view, this is clearly a matter to which the Home Office and the Ministry of Justice must pay urgent attention. If families are to have confidence in decision-making on their cases, and be in a position to consider voluntary return, they must have access to quality legal representation throughout the determination process. Changes are required to the current legal aid funding arrangements to ensure that families can access quality legal representation and there is sufficient funded time for the full facts in families' cases to be aired before decisions are made. This should include time for legal representatives to gather information from children where this is appropriate and necessary. In addition, adequate funded time should be allowed for legal representatives to have a full exchange of information with clients, in which applicants' expectations about the likely outcome of their claim can be managed and information about options including voluntary return can be provided by legal representatives.

¹² McClintock, J. (2008) *The LawWorks Immigration Report: Assessing the Need for Pro Bono Assistance*, London; Refugee Action (2008) *Long term impact of the 2004 Asylum Legal Aid Reforms on access to legal aid*, London; Smart, K. (2008) *Access to legal advice for dispersed asylum seekers* London: Asylum Support Partnership; AdviceUK (2008) *It's the System, Stupid! Radically Rethinking Advice: Report of AdviceUK's RADICAL Advice Project 2007-2008*, London; Constitutional Affairs Select Committee (2007) *Implementation of the Carter Review of Legal Aid Third Report of Session 2006-07 Volumes I & II* London: House of Commons; *Asylum Aid and Bail for Immigration Detainees (2005) Justice Denied: Asylum and Immigration Legal Aid - a System in Crisis*, London.

¹³ Louveaux, J. (2010) *Asylum Appellate Project: Final Report Exeter: Devon Law Centre*

¹⁴ *Law Society Gazette* 15/05/08 'Shifting Sands' Jon Robins
<http://www.lawgazette.co.uk/features/shifting-sands-1>

Recommendation: A review of the legal aid funding arrangements for family cases is required to ensure that families have access to good-quality publicly funded legal representation from an early stage in their asylum 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 UKBA is preparing to take enforcement action.

Recommendation: The frontloading model trialed in the Solihull Early Legal Advice Pilot should be rolled out for all family cases across the UK.

Recommendation: Current cases where UKBA is seeking to take enforcement action against families should be referred to Solihull Model legal representatives so they can advise families about their options.

Barriers to return

Research by BID and The Children's Society found that in a number of the 82 cases surveyed during the 2009 research period, families were detained when legal, health and documentation barriers meant that it was not possible, lawful or in children's best interests for them to be removed from the UK.

- 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.
- Information about families' health situations was not consistently collected or considered before decisions to detain were made. Reviews of detention did not function as an effective safeguard to prevent prolonged detention of children and did not register cases where ill-health had become a bar to removal.
- Nine families, 11% of our research sample, were detained despite not having travel or identification documents. This meant that they could not be removed from the UK at the point when they were detained. One family were in detention for 35 days while a member of the family did not have any valid travel documents.
- Six families had outstanding legal applications at the point when they were detained which meant that they could not be removed. In one case, these applications were not resolved until the family had been in detention for 19 days.
- Three families in this study 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.

In addition, in some cases the length of families' residence in the UK, family ties in the UK and the situation in their countries of origin raised serious questions about the appropriateness of attempting to remove them from the UK.

- In one case, a 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.
- 19 families, 23% of our research sample, had been in the UK for over seven years at the time when they were detained.
- 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.
- A number of parents felt that their length of residence and ties to the UK, and the impact which removal would have on their children had not been properly considered by the UKBA before a decision was made to remove them from the UK.

The cases outlined above demonstrate that a considerable amount of resources are being wasted, and unnecessary harm is being caused to children in attempts to remove families from the UK when this is neither possible nor lawful. Significant improvements therefore need to be made to the UKBA's methods for collecting information on families and making decisions about whether to remove them.

In some cases, it will be necessary for the UKBA to recognise that although a family may not meet the criteria for refugee status or humanitarian protection, in cases where they lack travel documentation, have no safe route of return to their country of origin, or have considerable lengths of residence or family ties in the UK, there will be profound barriers to them returning to their country of origin. The threshold which families in such situations must meet in order to make successful Human Rights claims is set very high, and yet there may be strong reasons why return or removal is not reasonable or appropriate. In such cases, serious consideration should be given to grants of Discretionary or Temporary Leave.

Recommendation: 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.

Recommendation: Effective procedures should be introduced to gather information about legal, documentation, health or other barriers to a family's removal.

Recommendation: 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.

Recommendation: 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.

Voluntary Return

Communication of voluntary return

BID and The Children's Society's research with 82 families who were detained during 2009 found that parents were given limited information about voluntary return schemes, and in many cases had no meaningful opportunity to seek voluntary return before being detained.

- 63% parents for whom we have this data did not know that their most recent legal applications had been refused when they were detained, and so had no meaningful opportunity to return voluntarily to their countries of origin.¹⁵
- 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 UKBA.
- Copies of some families' refusal of claim letters included information about voluntary return, yet others did not.
- Some families commented that voluntary return was communicated to them at a point when they were not in a position to consider this option. In some cases

¹⁵ We were able to obtain this data for 54 families, 34 of whom did not know that their most recent legal applications had been refused when they were detained.

- 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.
- In many cases, parents were mistrustful of voluntary returns schemes, and doubted whether they would actually be given financial assistance if they returned voluntarily to their countries of origin.

In BID and The Children's Society's view, the most appropriate person to provide families with initial information and advice about voluntary return is a quality legal representative. Unlike the UK Border Agency, IOM or voluntary sector support workers, a family's legal representative is in a position to assess their legal situation and advise them about what options are available to them. However, given the restrictions placed on legal representatives by the changes to legal aid funding arrangements described above, currently legal representatives are not often in a position to fulfil this role.

Recommendation: Case owners should inform parents and legal representatives that a family's legal applications have been refused in a face-to-face meeting and in writing 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.

Recommendation: 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 UKBA. In such cases, further notice should be given to the family and their legal representatives of planned enforcement action, at least three months before this action is taken.

Recommendation: Following the refusal of a family's legal applications, parents should be offered the opportunity of meeting with their UKBA case owner or an immigration officer to discuss the International Organization for Migration (IOM)'s voluntary return schemes. Legal representatives should be fully informed about such meetings, and funding should be made available for them to attend.

Recommendation: 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.

Recommendation: Action to inform families about the refusal of their legal applications and their voluntary return options should be documented on the family welfare form.

Re-entry Bans

A new policy was introduced in October 2008 of banning families who return to their country of origin through the IOM's voluntary return schemes from re-entering the UK for five years. This policy provides clear disincentives to families participating in these voluntary return schemes, particularly in cases where they have strong family ties in the UK. Furthermore, this policy will only be effective in deterring legal migration, as re-entry bans only prevent families re-entering the UK through legal routes. If the UKBA have concerns about the effectiveness of the visa regime, the most straightforward way of dealing with these would be for instructions on this matter to be sent to Ambassadors or High Commissioners who deal with visa applications abroad.

Recommendation: Families who return to their country of origin through the IOM's voluntary return schemes should not be automatically banned from re-entering the UK.

Monitoring of voluntary return

The current dearth of information on the motivations of and outcomes for families who do return voluntarily to their countries of origin create barriers to effective policymaking in this area.

Recommendation: Where parents give their informed consent, outcomes for families who return voluntarily to their countries of origin through the IOM should be systematically monitored by an independent agency, and their findings made public.

Recommendation: 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.

Case management of family cases

In their letter inviting responses to this review into ending the detention of children, the UKBA ask specifically for views on how the agency can improve its engagement and contact arrangements with families.

The main way in which the UKBA currently manages contact with asylum and immigration applicants is through regular reporting events, either at police stations or designated immigration reporting centres, which applicants are required to attend. The UKBA has also electronically tagged parents, and run pilots in which families are required to live in accommodation centres.

BID and The Children's Society are concerned that the unnecessary or disproportionate use of enforcement measures such as electronic tagging are both damaging to children's well-being and foster distrust of the UKBA amongst applicants. Research conducted by BID and The Children's Society has found the central factors in parental decision-making about compliance with the UKBA are child welfare considerations, and parents' desire that their immigration/asylum case is properly considered. Therefore, it is essential that any contact requirements and enforcement measures used by the UKBA are proportionate, subject to independent oversight, and consistent with the UKBA's duty to safeguard and promote the welfare of children, and that they do not interfere with family's ability to put forward their asylum/immigration case.

The alternative to detention pilots for families organised and evaluated to date by the Home Office include Clannebor, Millbank and the Section 9 Implementation Project. All of these interventions took place towards the end of process, after families' asylum or immigration applications had been refused. They all had in common the use of coercion and forced changes in families' circumstances, which were intended to encourage a change in mindset and an acceptance of voluntary return. For example, in the Clannebor pilot families were informed that they would be prosecuted for non-compliance if they failed to attend interviews to discuss voluntary return, and some families reported 'aggressive and sometimes threatening questioning' in these interviews.¹⁶ During the Section 9 Implementation Project families who were not seen to be taking steps to leave the UK were told that they could be made destitute and their children might be taken into the care of social services. The evaluation of the Millbank pilot which was commissioned by the UKBA acknowledged that its lack of success was in part due to poor communication with applicants and deficiencies in onsite support.¹⁷ There is evidence

¹⁶ Refugee Council (2007) Briefing: Operation 'Clannebor', London; Guardian 18/02/2008 'Charities attack 'distressing' asylum scheme', Lucy Ward <http://www.guardian.co.uk/uk/2008/feb/18/immigration>

¹⁷ Cranfield, A. (2009) Review of the Alternative to Detention (A2D) Project, London: Tribal

that these pilots were damaging to families¹⁸ but also that they were not successful in the UKBA's own terms, in that they did not lead to increased numbers of voluntary returns and they may have increased the risk of families absconding.¹⁹

The outcomes of these pilots demonstrate that coercive sanctions imposed on families at the end of process are not, in fact, an effective method of encouraging voluntary return or compliance. There is international evidence to suggest that enhanced provision of information, and better access to support and legal advice throughout the asylum or immigration process can result in higher rates of compliance and voluntary return.²⁰

Assessment of absconding risk

BID and The Children's Society have serious concerns about the way in which families' risk of absconding is currently being assessed:

- Research with BID and TCS's clients has found that only a minority of client families who were detained during 2009 had any history of absconding, and that the vast majority of families who we tracked after release from detention maintained full contact with the Home Office.
- BID and TCS's analysis of 10 families' full Home Office files showed that, in a number of these cases, families' risk of absconding was assessed on the basis of inadequate or inaccurate information, and procedures for assessing risk were not consistently followed.
- Analysis of families' cases did not show any clear correlation between factors which the UKBA regards as increasing the risk of absconding, and families' behaviour in terms of absconding or maintaining contact.
- In a number of cases, it was evident that an assessment of absconding risk was made on the basis of little contact with, or information about, the family concerned.
- Four families were wrongly recorded as having broken their reporting or residence restrictions.
- In most cases, factors which, according to UKBA criteria, would reduce the likelihood of families absconding (such as a history of reporting regularly) were not considered when risk of absconding was assessed.
- Once a family was in detention, and whether or not they made legal applications, both courses of action could be used to justify a judgment that they were at risk of absconding.
- In some cases, details of why a family was deemed to be at risk of absconding were only documented on their file in response to a bail application, at a stage when the UKBA was required to justify their decision to detain the family before a court.

¹⁸ BID and The Children's Society (2009) An evaluative report on the Millbank Alternative to Detention Pilot, London; Refugee Council (2007) Briefing: Operation 'Clannebor', London

¹⁹ Cranfield, A. (2009) Review of the Alternative to Detention (A2D) Project, London: Tribal; BIA (2008) Clannebor Project – The Way Forward, London; Home Office (2007) Family Asylum Policy: The Section 9 Implementation Project, London

²⁰ Mitchell, G. (2009) Case management as an alternative to immigration detention: The Australian experience Sydney: International Detention Coalition; Lutheran Immigration and Refugee Service, 2009 Alternatives to Detention Programmes, and International Perspective, Toronto; Sullivan, E., Mottino, F., Khashu, A. and O'Neil, M. (2000) Testing Community Supervision for the INS: An evaluation of the appearance assistance programme, New York: Vera Institute

Recommendation: The UKBA's criteria for assessing absconding risk in asylum seeking and migrant families should be consulted on with stakeholders and revised in the light of the evidence that is available on risk of absconding.

Recommendation: 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.

Recommendation: The UKBA should improve its procedures for recording families' histories of reporting and compliance, so that families are not wrongly recorded as having absconded.

Recommendation: The UKBA's processes for assessing absconding risk should be subject to independent oversight and regular independent audits.

Reporting and Electronic Tagging

In some cases where a family is deemed by the UKBA to be at risk of absconding, parents in the family are subject to electronic monitoring, either in the form of tagging or voice recognition.²¹ Parents who are tagged are required to remain in their homes for significant periods each day; tagging therefore places considerable limits on parent and children's freedom of movement. In other cases, parents are required by the UKBA to present themselves at reporting centres very frequently, in some cases daily.

Currently these mechanisms are often imposed in ways that appear arbitrary to families and without reference to the identified risk of absconding. They are also used without adequate assessment of the effect they will have on children.

BID and The Children's Society's research found that a number of parents in our study were afraid and anxious about reporting to the Home Office. Where parents asked for alterations to reporting requirements on health grounds these requests were not granted. Five parents in our research had requested changes to their reporting requirements on this basis and presented medical evidence to support this request, but in every case these requests had been refused.

Five parents in our research were electronically tagged, and were not allowed to leave their houses for significant periods every day. These parents reported that their tagging restrictions had a detrimental effect on their children. Parents were not able to attend school sports games or birthday parties with their children, and could not take their children outside the vicinity of their home because of the requirement for them to be in the house at certain hours every day. One father reported that being tagged, the family felt like 'they were imprisoned' that he suffered from stress and anxiety as a result of being tagged, and that this contributed to high blood pressure which he suffered from. The social stigma and restrictions of tagging contributed to families' social isolation.

In a number of cases parents were not given clear reasons for being electronically tagged or for increases in the frequency of their reporting requirements. In one case, tagging requirements which had previously been imposed by the Home Office were revoked by an Immigration Judge at a bail hearing as he concluded that it was not necessary to tag the family.

²¹ Current legislation permits electronic monitoring of adults under section 36(8) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

In the undesirable event that parents are electronically tagged or subject to stringent reporting requirements, the UKBA should be required to demonstrate that this measure is proportionate to an identified, individual risk of absconding and consider the impact of any contact management regime on the safety and welfare of children.

Recommendation: 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 which parents are required to remain in their homes every day for electronic monitoring purposes.

Recommendation: The UKBA 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 UKBA's duty to safeguard and promote the welfare of children under s.55 of the 2009 Borders, Citizenship and Immigration Act.

Recommendation: The UKBA 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 which these parents have been subject to these contact requirements for.

Recommendation: 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.

Recommendation: 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 UKBA and communicated to parents.

Recommendation: The UKBA's processes for allocating contact requirements to families should be subject to independent oversight and regular independent audits.

Accommodation Centres

Two of the 'alternative to detention' pilots which have been run to date by the UKBA have required families to relocate to specific accommodation.

From November 2007 to August 2008 UKBA ran the Millbank Pilot, which involved families moving to a supervised accommodation centre in Kent operated by the charity Migrant Helpline. Families selected for the pilot had their support withdrawn if they did not move to Millbank. Once there they were provided with information to help them consider how best to return to their home countries. Only one of the families involved in this pilot returned voluntarily to their country of origin, and the project was widely acknowledged to have been poorly conceived. Damian Green MP, now Minister for Immigration, made the following comments on the Millbank Pilot in parliament while his party was in opposition:

'I rise as a constituency Member, because the alternative-to-detention project that the Government started took place in my constituency and was pursued, at best, halfheartedly. It did not clearly engage any particularly serious part of the Government's thinking—if, indeed, it was a serious alternative to detention. I suspect that Members from all parts of the House want desirable alternatives to detention, but they have never been properly set out or tried. The experiment in my constituency was nothing like long enough, well resourced enough or serious enough to answer the question about whether we can have a proper alternative.'²²

²² *Hansard*, HC 2 Jun 2009: Column 217

Since June 2009, the Glasgow 'Family Returns' pilot has been in operation. Families in this pilot are required to move to specific accommodation, and are offered information to help them consider how best to return to their home countries, as well as being regularly reminded that if they do not co-operate with voluntary return the UKBA will attempt to forcibly remove them from the UK. It is not possible to comment in detail on this pilot because there is limited information in the public domain about it. However, we do note that to date, no families have returned voluntarily to their countries of origin following participation in this pilot.

BID and The Children's Society are concerned that unnecessary disruption and distress has been caused to families by the UKBA's requirement for them to move to specific accommodation as part of these alternative to detention pilots. For example, our evaluative report on the Millbank pilot concluded that:

'Establishing the pilot in a separate accommodation centre was unhelpful - thought must be given to the appropriateness of trying to explore return options for families in a designated centre rather than in the community. The housing of families who had been refused asylum in one place did not create a calm environment. A future pilot should seriously consider whether upheaval is a helpful way to build trust with families considering return. Allowing families to remain in the community with their normal routines intact seems a much more helpful way of building a trusting relationship, and enabling families to think through the options available to them in a calm way.'²³

Furthermore, in our view the Millbank and Glasgow pilots have not been successful in their aim of encouraging families to return voluntarily to their countries of origin because:

- Coercive sanctions imposed on families at the end of process are not an effective method of encouraging voluntary return or compliance. Such measures only increase families' distrust and fear of the UKBA, rather than encouraging them to engage in a dialogue about voluntary return.
- The design of these pilots has not acknowledged families' need to access quality legal advice in order to be able to assess the options available to them and discuss the implications of voluntary return for them with a legal representative.
- These pilots have not addressed the numerous issues of decision-making and communication with families in asylum/immigration cases which are raised above, and which create barriers to families engaging with voluntary return.

Notice of removal

BID and The Children's Society would like to take this opportunity to make it clear that we would be fundamentally opposed to any change which reduced the minimum 72 hours notice which is currently given to families that the UKBA is planning to forcibly remove them from the UK on a specific flight. As is noted above, there are numerous problems with decision making on asylum/immigration cases and access to legal advice. These issues have in the past resulted in families successfully appealing decisions on their asylum/immigration case, after having been detained for the purposes of forced removal. Any change which reduced the notice of removal currently given to families would further prevent them seeking legal advice and accessing judicial oversight of the decision of the UKBA to forcibly remove them. This would increase the risk that families

²³ BID and The Children's Society (2009) An evaluative report on the Millbank Alternative to Detention Pilot, London

who have well-founded fears of persecution in their countries of origin would be forcibly removed from the UK.

The Minister for Immigration, Damian Green MP, recently stated in debate in Westminster Hall on 'Alternatives to Child Detention' that the UKBA was considering setting directions for families' removal while families were in the community:

"The UK Border Agency would therefore set removal directions while the family is in the community, giving the family time to submit further representations and to apply for a judicial review if they wish to do so, as well as giving them time to make plans for their return."²⁴

In our view, the success of this approach will be highly dependent on the way such interventions are designed.

First, careful consideration should be given to the length of time which families are allowed to submit further representations or plan for return. As we set out above, in our view three months would be an appropriate amount of time to allow. If families have no immediate legal representation, they are likely to seek legal representation at this stage, and sufficient time should be allowed for them to obtain quality representation, have a full exchange of information with their representative, and be properly advised of the options available to them. If families are to engage with the option of voluntary return, it is likely that it will take time for a family who have spent many years in the UK, and may be managing complex issues such as serious ill-health, to make a decision which will lead to very substantial upheaval in their own and their children's lives.

In relation to the issue of timing, we note that there is a distinction between informing a family that their legal applications have been refused and they are liable to removal, and setting removal directions with a specific date and flight. In our view, it is important that families are first informed that their legal applications are refused so that they can consider whether to lodge new applications or engage with voluntary return. If families are only given notice that they are liable to removal with removal directions which give details of a specific date and flight for their removal in the very near future, this is likely to alarm parents. In circumstances where they are given very limited time to respond, families are less likely to be able to access *quality* legal representation and properly consider the option of voluntary return. In our view, rushing families at this stage will lead to a low take up of voluntary return.

Secondly, the success of this approach will be dependent on the quality of legal advice which families are able to access at this stage. As is noted above, in our view a review of the legal aid funding arrangements for family cases is required to ensure that families have access to good-quality publicly funded legal representation throughout the determination process. In particular, we would recommend that specific provision is made for families at the stage when they are informed that their legal applications have been refused, to ensure that they can be properly advised of the options available to them.

Thirdly, the success of this approach will be dependent upon UKBA effectively gathering any information about barriers to removing a family from the UK and conducting a pre-removal assessment to consider whether removal of a family is advisable. If families are approached when there are barriers to them returning to their countries of origin, it will

²⁴ *Hansard*, HC 17 June 2010: Column 213WH

not be reasonable to expect them to engage with the voluntary return process. In addition, informing families in this position that they are subject to enforcement action is likely to undermine their confidence in the immigration/asylum process.

Finally, as is noted above, there is a need for UKBA to revise its procedures and criteria for assessing absconding risk in family cases. If UKBA continues to be unable to provide a reliable assessment of risk which is based on adequate evidence and properly fact-checked, it remains unlikely that the agency will be able to provide effective contact management of family cases following the refusal of legal applications.

Separation of families

Since the new Government made the commitment to end the detention of children for immigration purposes, it has been unclear whether they are considering separating children from their parents as one way of implementing this change. On 2nd June, Baroness Neville-Jones, speaking for the Government in the House of Lords, said 'we certainly aim not to separate families from children or children from families.'²⁵ However, The Minister for Immigration, Damian Green MP, more recently stated in debate in Westminster Hall that enforcement measures being considered 'could involve separating different members of a family and reuniting them before departure, so that some family members stay in the accommodation they are used to.'²⁶

Currently, in a large number of cases, children are already separated from their parents who are held in immigration detention. In such cases, the parents are migrants to the UK who have committed criminal offences. Following the completion of their criminal sentences, they are held in immigration detention while the UKBA seeks to remove them from the UK. In some cases, children in these families are put into the care of Social Services or private fostering arrangements while their parents are held in immigration detention.

Since November 2008, BID's family team has worked with 21 families where children who are not detained have been split from their primary carer (in every case their mother) who is in detention.²⁷ During this time, 13 of these parents have been released from immigration detention, having been detained for an average of 326 days. Clearly, separating children from their primary carer for such long periods is likely to be very damaging both to the child and to their relationship with their parent.

BID and The Children's Society have worked with mothers who have been separated by immigration detention from children who are as young as three years old. As these mothers are the sole or primary carer in their families, their children are in most cases placed in the care of Social Services or private fostering arrangements. Some children have had to move between a number of unstable fostering arrangements, and endure the disruption caused by repeatedly moving or missing school as a result. In addition, children in this situation can be separated from their siblings if they are placed in different fostering arrangements.

²⁵ *Hansard* HL Deb, 2 June 2010, c252

²⁶ *Hansard* HC Deb, 17 June 2010, c212WH

²⁷ 18 of these families were single parent families. In two further cases the client's partner was in criminal custody, so the children of these families were in care outside detention. In one case, the child was in their father's care outside detention, but there were safeguarding concerns with this arrangement due to a history of domestic violence. In all 21 cases, the clients were female.

Mothers often have very limited contact with their children while they are detained. For example, in one case a mother was in immigration detention for five months before Social Services were able to negotiate for her to have half an hour's telephone contact per week with her six year old child. By contrast, while she was in criminal custody weekly visits were arranged so that she could see her children in person.

In some cases, child protection concerns have been raised about the care arrangements for this group of children. BID and The Children's Society have been contacted by mothers who are extremely concerned about the situations their children are in, but face barriers to exercising control over these care arrangements or contacting relevant bodies (such as Social Services) while they are incarcerated.

For example, one mother who was a client of The Children's Society was held in immigration detention for two years while her children, who were nine and three years old at the time, were placed in a private fostering arrangement. The older child in this family disclosed that they had been physically abused by their foster carers. Shortly before the mother was released from detention, Social Services were considering placing the children in local authority care because of safeguarding concerns about their foster carers. The children's social worker reported to The Children's Society that their ongoing separation from their mother was having a detrimental impact on both children. The younger child was having behavioural and emotional problems, and was referred to Child and Adolescent Mental Health Services, but this agency had cited the instability of the child's care arrangements as a barrier to them undertaking work with him. In this case, the mother was eventually released from detention and she and her children were granted discretionary leave to remain in the UK. She is currently pursuing a claim for damages against the UKBA for unlawful detention.

In another case, a mother was separated from her young son for several months while she was held in immigration detention. This client became pregnant by a UK citizen when she was sixteen and subsequently married her child's father. She experienced domestic violence at the hands of her husband, and after four years divorced him and was granted leave to remain in the UK on the basis of the domestic violence concession. An injunction prevented her ex-husband from having access to her son on the basis of his aggressive and violent behaviour. During the time this client was in immigration detention, her son was in the care of her ex-husband. This situation raised clear child protection concerns, and the client reported that her son told her that he had a bag packed in his room, waiting for his mother to come and get him and take him home, away from his father. In addition, this child had very serious health problems, and was receiving hospital treatment in the form of surgery. During her time in criminal custody, his mother had been able to arrange home visits to accompany her son to hospital, but after she was transferred to immigration detention she was no longer able to visit her son at all. This client was released on bail.

UKBA's stated aim in separating these families is to effect their forcible removal from the UK. However, none of the 21 cases BID has dealt with since November 2008, in which children are separated from their primary carer by detention, have so far led to a parent or child being forcibly removed. In most cases, there are complex barriers to removal during the parent's detention, including: a lack of travel documentation, ongoing legal applications, and ongoing family court proceedings. BID and The Children's Society have serious concerns about the way in which risk of absconding or re-offending is being assessed by the UKBA in these cases. The fact that 13 of these 21 parents have so far been released into the community by either the UKBA or the courts raises serious

questions about why they were held for such long periods, if it has now been deemed safe to release them.

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