

## Briefing paper on children and immigration detention – February 2009

‘The plight of detained children remained of great concern. While child welfare services had improved, an immigration removal centre can never be a suitable place for children and we were dismayed to find cases of disabled children being detained and some children spending large amounts of time incarcerated. We were concerned about ineffective and inaccurate monitoring of length of detention in this extremely important area. Any period of detention can be detrimental to children and their families, but the impact of lengthy detention is particularly extreme.’

- Ann Owers, HM Chief Inspector of Prisons, Report on an unannounced short follow-up inspection of Yarl’s Wood Immigration Removal Centre, 4 – 8 February 2008

### Why are children detained?

Every year around 2,000 children in the UK are detained for the purposes of immigration control. Since 2001, children subject to immigration control can be detained on exactly the same basis as adults. They are either the sons or daughters of asylum seekers or migrants and detained with their families, or are detained because the government believes that they are over 18. The government justifies their detention by arguing that they would abscond if released or that their removal from the country is imminent. They are the only children in this country who can be locked up indefinitely without the oversight of the courts and without having committed any crime.

The government has faced mounting criticism of its policy to detain children, including from the UN Committee on the Rights of the Child, the Children’s Commissioner for England, the UK Parliamentary Joint Committee on Human Rights, Her Majesty’s Chief Inspector of Prisons and the Council of Europe’s Commissioner for Human Rights. In response it committed to piloting alternatives to detention for families in Ashford, Kent (which ended in summer 2008) and Glasgow (to start spring 2009). In BID’s view it is not yet clear that these pilots present an alternative for those families most likely to be detained and we are concerned that aspects of the pilot at Ashford caused further harm to some of the families involved.

In 2008 the government also removed its immigration opt-out to the UN Convention on the Rights of the Child and committed to introducing a duty on the UK Border Agency equivalent to section 11 of the Children Act 2004 which requires it to safeguard and promote the welfare of children. Both steps are welcomed. But until these commitments lead the government to accept that the detention of children in itself is incompatible with the promotion of their welfare, we believe that the continued detention of children in the UK is contrary to these obligations.

### Key facts about the detention of children

- The government does not disclose the number of children it holds in immigration detention during a given period. It only gives ‘snapshots’ of how many are detained on a particular day. On 27 September 2008, 55 children were detained – 35 had been in detention for over two weeks.<sup>1</sup>

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<sup>1</sup> Home Office, Asylum Statistics: 3rd Quarter 2008 United Kingdom, November 2008

<sup>3</sup> Taken from a Freedom of Information Act request released on 16/05/07 containing data from 10/2005 to 09/2006

- Children detained with their families are held in one of three immigration detention centres: Dungavel House in Lanarkshire, Tinsley House near Gatwick Airport and Yarl's Wood, the largest of the three centres, near Bedford.
- Many children have been in the UK for significant periods of time before they are taken into detention – BID knows of one girl who was in the UK for six years before being detained at Yarl's Wood for three months. Many other children in detention were born in the UK and know no other home.
- Over 40% of children detained at Yarl's Wood go on to be released.<sup>3</sup> Their detention is unnecessary, damages their mental and physical health and wastes taxpayers' money.
- Families may be detained when they still have outstanding matters on their asylum or immigration cases. Many detained families have no legal representation or have received poor legal advice. BID knows of several families who have won their case to stay in the UK upon being released from detention and obtaining good legal representation.
- There is no evidence that families are systematically at risk of absconding if they are not detained. The education and health needs of children, friendship ties and the desire to be granted status in the UK all work against families 'disappearing'.
- Immigration detention also affects even more children than those who are actually detained. Government policy allows for families to be split by detention, for example if one parent is able to be removed from the UK and another is not. In some cases this leads to children being taken into the care of social services.
- Despite the government's Every Child Matters agenda, the government department responsible for the welfare of these children is not the child-centred Department for Children, Schools and Families, but the immigration-focused UK Border Agency.

## **Key concerns about the detention of children**

- **The impact of detention on a child's physical and mental health**

The impact of detention on children can be devastating. Taken from their communities, with little understanding of what they have done to deserve being locked up, detention can significantly impair a child's mental and physical health. One child that BID knows lost a third of her body weight while in detention. In February 2009 a family BID worked with were awarded £150,000 compensation after the government admitted their detention had been unlawful and had left one of the children suffering from post-traumatic stress disorder. The impact of detention on children is often compounded by the difficulties families face in accessing adequate health care while in a detention centre. BID believes the government's use of detention is wholly disproportionate and that children should never be detained. Detention is no place for a child.

- **Safeguards to keep children from harm in detention are not meaningful**

Government safeguards to keep children in detention safe are confusing, contradictory and do not provide adequate protection. In January 2009 the UK Border Agency introduced a statutory Code of Practice to keep children in the immigration system safe from harm. But the Code does not acknowledge the harmful impact of detention on children and does not require that families are released when a social worker documents concerns about a child's wellbeing. Instead, parents are often blamed for prolonging their family's detention on the basis that they should voluntarily leave the UK and bring an end to their detention. The Minister for Borders and Immigration must personally authorise the detention of a child for longer than 28 days. In February 2007 the former Minister, Liam Byrne MP, informed the Joint Committee on Human Rights that 'to date I have not refused any request for extended detention.'<sup>4</sup> BID believes detention itself damages children. While the government continues to detain children it has a duty to keep them safe and promote their welfare through meaningful safeguards.

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<sup>4</sup> Bail for Immigration Detainees, Obstacles to Accountability, June 2007, footnote 91

- **Decisions to detain are not subject to automatic judicial oversight**

The decision to detain a family and all subsequent automatic reviews of that decision are made from within the Home Office. The government never has to get the permission of a judge to sanction its decision to detain a family unless the family applies for bail. This leaves the onus on the family to know what bail is, to know how to apply for bail, to know what evidence needs to be gathered and to go ahead and make an application. For many families who do not speak English, who may be traumatised from their experiences and who are without the help of a lawyer, a bail hearing is not an accessible safeguard to end their detention. BID believes that government decisions to detain a family with children must be independently reviewed by a judge.

- **Detention is not used as a last resort or for the shortest possible time**

Government policy says that immigration 'detention must be used sparingly, and for the shortest period necessary'. This is not typically the experience of the families that BID supports in detention. Between October 2008 and January 2009 families supported by BID were detained on average for six and a half weeks. When they were detained some families had barriers that would stop them being removed from the UK, such as ongoing legal cases, but they were taken into detention anyway. Others were maintaining contact with the immigration authorities and there was no reason to suggest they would stop reporting regularly, yet they too were taken into detention. In 2008 the UN Committee on the Rights of the Child concluded that the UK government should 'intensify its efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time, in compliance with article 37(b) of the Convention.' BID believes the government's approach results in unnecessary, damaging and expensive detention.

- **The detention of children is not properly monitored**

Information kept by the government about children in detention is totally inadequate and in 2008 it faced censure about its data from Her Majesty's Chief Inspector of Prisons and the UN Committee on the Rights of the Child. The absence of comprehensive statistics makes it difficult to monitor the use of detention for children and to hold the government to account. Limited information is published but does not show how many children were detained over a given period, the outcome of their detention, the children's nationality or at what point in a child's asylum claim they were detained. While government policy is not to detain children who come to the UK to seek asylum on their own, it does not routinely keep statistics on the number of detainees who claim to be under 18 years old or the number who are later found by social services to be children. BID believes the government must be accountable for its policies and that it has a duty to collect and publish detailed information about its detention of children.

## **Case studies of the detention of children**

### **Family A**

The mother, father and three children of family A were detained together for one month at Yarl's Wood during 2007 before being released. When they were detained the children were aged between four and 12 years old and the mother was pregnant – during her detention she suffered a suspected miscarriage. Since they have been released, all the children have had problems sleeping. The youngest son talks constantly about handcuffs and police officers. The oldest son is deeply ashamed that his friends know he was detained. The family worry that he will run away because he is afraid the immigration authorities will arrest him again.

### **Family B**

'The conditions in detention are not good. The rooms are not ventilated, at night you cannot breathe properly because it is too hot. I had one room with two single beds and I shared a single bed with my son. We did not sleep well. The effects of detention for my children were bad. They have not had any stability. They didn't sleep at night. My daughter was very afraid. She kept asking, "What did we do wrong? Why are we in prison?" She has been cut off from school and she

now has difficulty socialising. She is very traumatised, and so is my son. The school in detention is not good. It is not really a school; it's a place to put kids. They can't sing; there is nothing to make their minds work. They are growing children and they need to learn something new. There is no story reading and the place is very cold. The children don't have warm clothes to put on because we left everything behind. If you request something it becomes a tug of war. In the minds of the staff you don't even exist as a person and they are not trained to look after children.' – Trude, detained at Yarl's Wood with her two children in 2005 and 2006

## **What is Bail for Immigration Detainees doing about the detention of children?**

Bail for Immigration Detainees (BID) [www.biduk.org](http://www.biduk.org), is a small independent charity that exists to challenge immigration detention in the UK. Since 2001 we have supported families in detention, or separated by detention, to make applications for bail. We have provided legal advice and information to over 200 families, resulting in release for many. We use evidence gathered through our casework to lobby the government. In 2008 we began a three-year partnership project with The Children's Society, funded by the Diana Princess of Wales Memorial Fund, to end the immigration detention of children and their families.

### **Further information**

All Party Parliamentary Groups on Children and Refugees, [Alternatives to immigration detention of families and children](#), July 2006

Bail for Immigration Detainees, [Obstacles to accountability: challenging the immigration detention of families](#), June 2007

Bail for Immigration Detainees, [Family rights bulletin for detained families](#), September 2007

Bail for Immigration Detainees, [A few families too many: the detention of asylum-seeking families in the UK](#), March 2003

HM Chief Inspector of Prisons, [Report on an unannounced short follow-up inspection of Yarl's Wood Immigration Removal Centre](#), 4 – 8 February 2008

Save the Children, No Place for a Child - Children in UK immigration detention: impacts, alternatives and safeguards 2005

UK Border Agency, [Code of Practice for Keeping Children Safe From Harm](#), January 2009

UN Committee on the Rights of the Child, [Concluding Observations United Kingdom of Great Britain and Northern Ireland](#), 20 October 2008

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