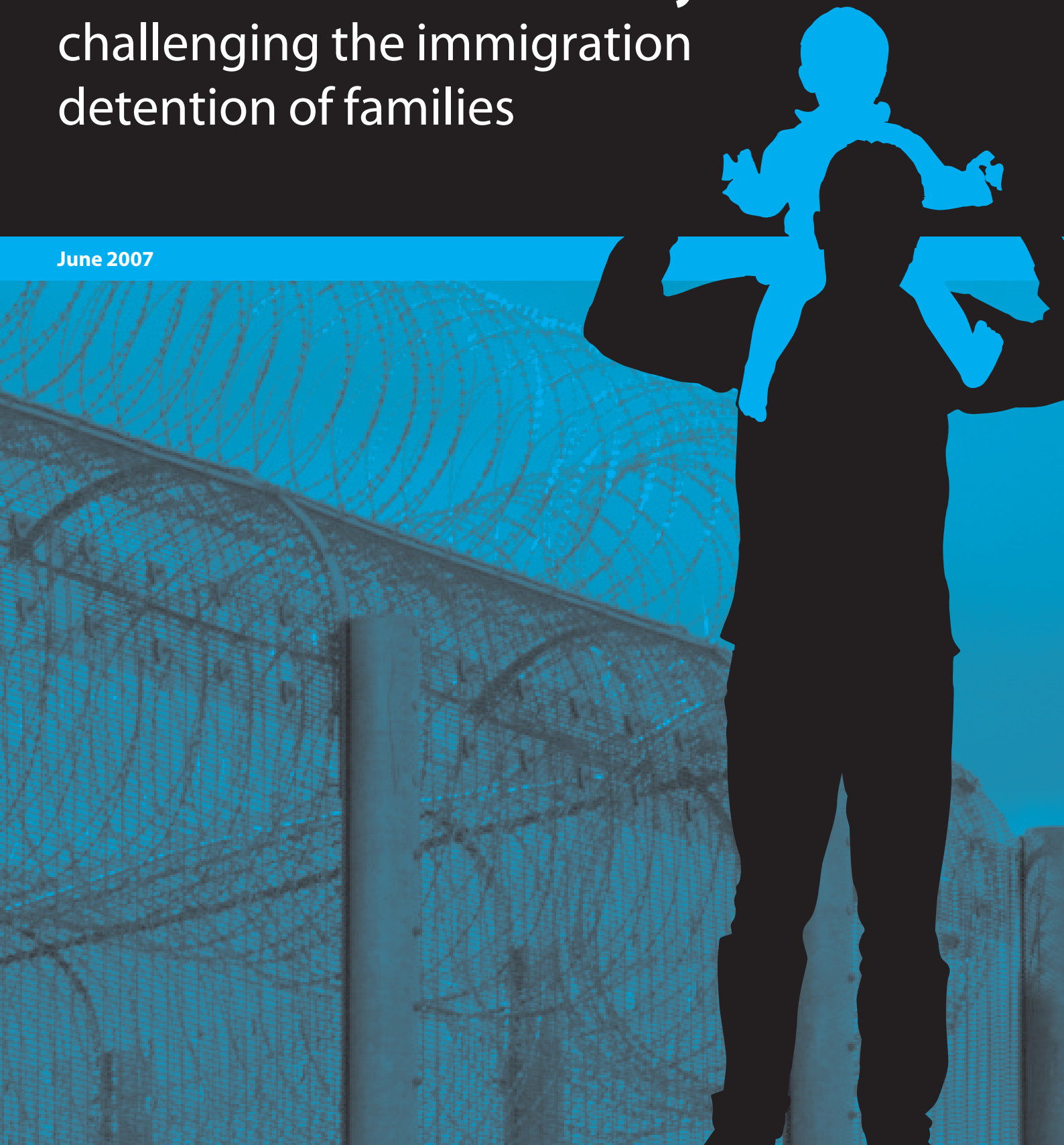


# **Obstacles to accountability:** challenging the immigration detention of families

June 2007



“...[the Committee’s visit to Yarl’s Wood Immigration Removal Centre] has enabled us to lift a stone and find a pretty horrible picture underneath. This is the gap between policy and practice.”

Andrew Dismore MP,  
Chair of the Joint Committee on Human Rights,  
Inquiry into Treatment of Asylum Seekers, February 2007

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<sup>1</sup> Q549, Joint Committee on Human Rights (JCHR) evidence session, 21 February 2007, see House of Lords/ House of Commons, Joint Committee on Human Rights, The Treatment of Asylum Seekers Tenth Report of Session 2006-07, Volume II, Oral and written evidence, HL Paper 81-II/ HC 60-II. Published on 30 March 2007. <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/8102.htm>

# Obstacles to accountability: challenging the immigration detention of families

By Emily Burnham and Sarah Cutler, Bail for Immigration Detainees (BID)  
With forewords by Lord Avebury and Trude.

June 2007, [www.biduk.org](http://www.biduk.org)



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## Foreword by Lord Avebury

The report of the parliamentary Joint Committee on Human Rights (JCHR) on the treatment of asylum seekers published in March 2007 includes detailed scrutiny of the UK's detention policy, measuring the UK's detention of children against our domestic and international human rights obligations.

The report is unequivocal in its conclusion that children should not be detained and that by doing so, the UK is in breach of its human rights obligations. The report, and the recommendations it makes, will be useful in the campaign for an end to the detention of children; but this is a longstanding issue, and the Committee's recommendations echo what has been said many times before.

So, how has the government got away with it for so long?

This handbook from BID is a timely overview of family detention policy and practice. It provides analysis based on BID's direct experience of challenging detention of individual children and families since 2001. It catalogues the piecemeal and ad hoc response of the Immigration and Nationality Directorate (IND) (now the Border and Immigration Agency) to the basic concerns raised by the decision to administratively deprive children of their liberty. It demonstrates how supposed 'safeguards' have failed to provide meaningful protection for children, in particular, welfare assessments and the process of ministerial authorisation. It shows that the lack of accountability for all aspects of the detention of children pervades every level of policy and practice, and is exemplified by the government's steadfast refusal to publish comprehensive statistics on the matter.

Legal challenges are in progress and it seems that it will take the courts to intervene to limit or end the deprivation of liberty of asylum seeker and migrant children, and uphold human rights standards.

In one case, a woman and her daughter detained for over six months in Yarl's Wood in 2002 brought proceedings against the Home Office and won substantial damages and a letter of apology. The immigration minister at the time, Beverley Hughes MP, had authorised the continuation of detention in the face of numerous representations that it was wrong, and it was ultimately found to be unlawful for all but two weeks. The woman gained refugee status, has held a job since, and has been granted a British passport, having successfully completed her citizenship test. Her child took nearly a year and a half to recover from the psychological trauma of detention.

In at least two other cases, breastfeeding mothers were separated from their infants on detention, and the Home Office modified their instructions, without giving up the power to detain women or their infants.

If there is good reason to think that the rights of children and mothers are being persistently contravened in UK places of detention, how much greater cause for anxiety should there be over detention in the 'juxtaposed controls' of the channel ports? The last time these places were inspected was August 2005; the Children's Commissioner has yet to visit them, and they are not even mentioned in the JCHR report.

Finally, the government is proposing to resolve the many cases where children's age is disputed – and consequently they may be detained as adults – by X-raying them, contrary to the advice of the Royal College of Radiologists. This practice was abandoned in 1982, and is described as "inaccurate, inappropriate and unethical" by the British Dental Association. Readers of this handbook may wonder if that expression applies equally to the detention of families.

## Foreword by Trude, an asylum seeker who was detained with her children in 2006

I came to the UK five years ago. I ran from Uganda where I was tortured and raped. I have two children.

I was first detained in 2005, for six weeks in Yarl's Wood. When I was released my daughter was too scared to return to the house, and I was too sick to look after her properly, so she stayed with a friend.

At the beginning of this year, the immigration service came to my house very early in the morning. They wouldn't tell me anything. They took my son from me. I left everything there, including my son. When I tried to grab him, they said I was fighting. I was asking, "Where are we going?" and they wouldn't tell me. They took me to Colnbrook for four days.

I was without my children and I was very unwell. They took my children away from me against my will. I was told they were in foster care. My son is asthmatic and has allergies and they didn't have the right medicine or food for him. I had depression and mental disturbance. I was asking, "Can you call my doctor?" I had been seeing a psychiatrist and I was supposed to be taking medication, but I couldn't in there. I couldn't even take a bath. I kept asking, "Can I see my kids?"

Next they took me to Yarl's Wood, and issued me with removal directions. They told me, "You will see your children at the airport." I told them, "I need my friends, my social worker and my doctor to survive." I told them that I couldn't look after my children on my own - I couldn't live in Uganda. I would be leaving everything and going to nothing. We would have to live on the streets. They didn't give me time to explain.

Ten days later, they took me to the airport. I resisted and they had to carry me. I was begging them to let me go. One man grabbed my neck and pushed it down to my legs and another sat on my back. I felt like I was going to lose my life right then. And I could hear my kids crying and screaming and begging. They saw how people were grabbing me to go on the plane. The pilot would not fly and we were sent back to Yarl's Wood.

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.

As for healthcare, you don't get what you need. I requested a psychiatrist, because of the trauma I experienced. I could not see one. They don't even organise appointments with a paediatrician. The life is really terrible.

I want to tell people that we need your support. Our children have gone through enough in this country because their parents lack status. Why do they need to suffer anywhere? Every parent wants to see their children growing in a sensible manner, having a life, associating with friends, having an education, eating well, sleeping well, enjoying life like other children in a developed country. They should not be locked up as if they are criminals.

We call upon anyone and everyone to look at this system which locks up children and denies them accessibility to a normal life in the future, stops their support and makes them destitute, starves them, leaves them sick and refuses them or their parents access to medical treatment out and inside detention. Every one of us has been a child in their life and everyone hated seeing their parents suffering. Please let all of us come together and give a chance to the futures of our children.

I will always continue to stand for the children and parents, hence my campaigns won't stop till we have heard a change, especially to the system of asylum seekers in Britain which locks up children.

Since I was released from detention, I have worked hard to campaign so that other children are not detained.

I hope people will keep supporting the fight against child detention. It is not good to cut off kids from going to school. They didn't do anything wrong and they don't understand why they are locked up.



# 1 Background and aims

The parliamentary Joint Committee on Human Rights (JCHR) stated in March 2007 that *“the detention of children for the purpose of immigration control is incompatible with children’s right to liberty and is in breach of the UK’s international human rights obligations... Children should not be detained and alternatives should be developed for ensuring compliance with immigration control where this is considered necessary.”*<sup>2</sup>

The aim of this handbook is to provide up-to-date analysis of current detention policy and practice to inform campaigners, lawyers, human rights organisations and parliamentarians who wish to challenge family detention.<sup>3</sup> The analysis is based on BID’s experience of providing free advice and assistance to families with children in detention since 2001.<sup>4</sup> A bulletin providing practical information on assisting individual families to obtain release is also being published by BID (see [www.biduk.org](http://www.biduk.org) for details).

Since the October 2001 change in policy that allowed for longer periods of detention for families under Immigration Act powers, up to 2,000 children a year have passed through detention.<sup>5</sup>

At May 2007, three immigration removal centres (IRCs) are used to detain families with children under 18.<sup>6</sup> The largest, Yarl’s Wood IRC, Bedford, was managed by GSL UK Ltd on behalf of the Home Office until April 2007, when Serco took over. The centre holds 405 people, including families. Tinsley House IRC, near Gatwick airport, managed by GSL UK Ltd, detains up to 140 people at any one time. Dungavel House IRC, in South Lanarkshire, is managed by Group 4 Securicor Justice Services (G4S) and detains around 190 people.

While the fundamental position remains unchanged – children are detained for indefinite periods – there have been some changes in practice, policy and the nature of obstacles to their release. These have come about directly and indirectly because of pressure from a wide range of quarters about the iniquity of detaining children.

The powers of administrative detention for those subject to immigration control have always been maintained firmly within the control of the executive. There is very little requirement for accountability and successive governments have resisted most attempts at introducing greater transparency.

2 JCHR report, Volume I, Report and formal minutes, HL Paper 81-I/HC 60-I.

3 Previous briefings have been published by BID on this topic in November 2003, May 2004, and February 2005: see <http://www.biduk.org/library/children.htm>

4 BID recorded contact from 125 families between 2003 and 2007. Many were provided with only initial advice before being released or removed. For those remaining in detention BID prepared applications for bail, referred to immigration and/or civil solicitors, obtained medical reports or provided advice on bail directly to families or to existing legal representatives. Since mid-2005 BID has had a staff post dedicated to challenging the detention of families.

5 See Crawley, H (2005) *No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards*, Save the Children, London; and Home Office statistics at <http://www.homeoffice.gov.uk/rds/pdfs06/hosb1406.pdf>

6 Note that previously both Harmondsworth and Oakington were used to detain families. The only centres never to have detained families are Lindholme, Campsfield, Dover and Haslar. Criticisms of the centres and the experiences of detained families have remained remarkably consistent, whichever the centre or private contractor involved.

The extension of detention for families with children has greatly increased the movement against immigration detention, particularly in Scotland. Families at risk of detention have taken part in this movement. The line between detention and removal has been blurred as it becomes clear that many of those classed as "failed asylum seekers" have been the victims of poor decision-making, compounded by poor legal representation.

The government has sought to deflect criticism of its family detention policy by introducing changes, including welfare assessments and a requirement for ministerial authorisation for detention beyond 28 days. However, in BID's experience, these policy changes have not introduced a real measure of accountability and the pronouncements of ministers have not translated into actions that protect children.

BID has written this handbook so that the failures of accountability are recorded and our casework experience is made available to those who wish to challenge government policy in this field.

Immigration policy is an area of fast change. A few days before publication of this handbook, on 25 June 2007, Immigration Minister Liam Byrne MP announced a series of measures designed to "*reform our arrangements to keep children who come into contact with the Border and Immigration Agency safe from harm.*"<sup>7</sup> On the same date, recommendations concerning family removal policy were published. Also, of course, many legal cases arising from detention several years ago are only now reaching the courts. However, it is important that these changes are placed in context and we hope that this handbook will prove useful beyond its absolute currency.

Another area of change is legal aid. The Legal Services Commission (LSC) proposes to introduce exclusive contracts for legal advice and representation in detention centres, from October 2007. BID is concerned that the proposals have not taken into account the needs or experiences of detained children and therefore may further reduce detainees' access to quality legal advice and representation.

**This handbook focuses on the following obstacles to accountability for detention of children.**

1. **The absence of a statutory or policy framework for detention of children in families:** children are detained under the same broad legal and policy framework as single adults, i.e. no "exceptional circumstances" are necessary to order a family's detention, in contrast to other groups, such as pregnant women and those with serious health problems.
2. **The failure to disclose detailed reasons for detention in individual cases:** this makes it very difficult to challenge IND's<sup>8</sup> assessment of why it is necessary to detain a particular family.
3. **The failure to consider alternatives to detention** including voluntary departure from the UK, in a systematic or meaningful way, and the failure to document any such consideration on a family's file.

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<sup>7</sup> The full details are available at: <http://www.bia.homeoffice.gov.uk/aboutus/newsarchive/childsafety>

<sup>8</sup> On 2 April 2007, IND became the Border and Immigration Agency. IND is used throughout this handbook as the content relates largely to pre-April 2007.

4. **No statutory accountability:** while the Home Office has accepted that the Children Acts apply to families in detention, the practical implementation of related policies has done little or nothing to alter the outcome for children at risk of being detained.
5. **Limited or no consideration of relevant human rights protections contained in the European Convention on Human Rights,** incorporated into the Human Rights Act 1998, in government policy or statements concerning the detention of children in families.
6. **Inadequate and flawed processes of ministerial authorisation for detention of children beyond 28 days:** the process of ministerial authorisation is characterised by contradictory guidance and statements of purpose, failure to consider health and welfare information, and failure to disclose the outcomes to families.
7. **Limited and inadequate child protection policies and inadequate welfare assessments:** welfare assessments do not have a clear purpose or route to influence outcomes for detained children and their impact and outcome are largely unmonitored.
8. **Lack of a coherent policy framework or meaningful consideration of the best interests of the child for situations involving children, in particular:**
  - Split families in detention
  - Families split by removal from the UK
  - Mothers separated from breastfeeding infants
  - Foreign national ex-prisoners split from their children when the parent remains in immigration detention at the end of their sentence.
9. **Obstacles that inhibit detained families from accessing their legal rights**
  - Limited access to legal advice and representation
  - Obstacles to challenging detention (bail, judicial review and civil actions)
  - Obstacles to challenging removal from the UK
10. **The failure to evaluate or monitor impact of detention on children.**
11. **The failure to disclose comprehensive statistics about child detention.**

## 2 Legal framework

### Key points

- Detention policy was devised so that families are detained under the same broad legal and policy framework as single adults, i.e. no “exceptional circumstances” are necessary to order a family’s detention. This excludes children from the protection set out in international and UK law.
- Increasingly, family detention policy is a fudge between competing statements regarding children’s welfare and the precedence of immigration control. However, this has largely not altered the experience of families in detention.
- Detailed reasons for detention and reviews of detention are not routinely disclosed to families, legal representatives or, in bail applications, to the Asylum and Immigration Tribunal.
- Disclosed pro-forma information concerning reasons for detention and reviews of detention is often flawed or inaccurate. This contributes to a lack of accountability for the decisions made.
- Stated policy is often not followed; this section deals with alternatives to detention and policy on voluntary returns.
- While the Home Office has accepted that the Children Acts apply to families in detention, it has taken limited steps to adopt policies and practices that will ensure that children in detention benefit from the provisions in these acts.
- Decisions to detain and maintain detention are being taken without full consideration of human rights, and there is little reference in policy guidance to protection contained in the European Convention on Human Rights.

### UN Convention on the Rights of the Child

Article 3 of the UN Convention on the Rights of the Child (UNCRC) states that: *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*

UNCRC Article 37b states that: *“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”*

The government introduced the policy of indefinite detention of families with children in 2001<sup>9</sup> without any formal recognition of the special legal status of children in international law.

<sup>9</sup> See p 60, Burnham, E. (October 2003) *Challenging Immigration Detention: A best practice guide*, Bail for Immigration Detainees/ILPA/Law Society, for a full explanation of the change in policy to allow for longer periods of detention of children than immediately prior to removal.

This action was in keeping with the UK government's decision in 1992 to lodge a reservation when it ratified the UNCRC. This meant that Article 22, extending the rights set out above (among others) to asylum-seeking children, did not apply in relation to their entry into, stay in and departure from the UK.<sup>10</sup> The reservation also extended this exclusion to all children subject to immigration control. The reservation has been criticised by the UN Committee on the Rights of the Child.<sup>11</sup> The UK parliamentary Joint Committee on Human Rights has repeatedly called for the reservation to be withdrawn, most recently in its 2007 report *The Treatment of Asylum Seekers*.<sup>12</sup>

This failure to make the best interests of the child a primary consideration is replicated by the government's refusal to make the IND subject to the duties on statutory bodies created under s.11 Children Act 2004 (in contrast to both the prison service and the police force). It was explicitly stated in parliamentary debates that: "*A duty to have regard to the need to safeguard and promote the welfare of children could severely compromise our ability to maintain an effective asylum system and strong immigration control.*"<sup>13</sup>

## Home Office policy

Chapter 38 of the Operational Enforcement Manual, or OEM (the policy statement against which decisions to detain/maintain detention are made), lists no special criteria for either initial or continued detention of children and families. They are detained under the same broad legal and policy framework as single adults, i.e. no "exceptional circumstances" are necessary to order a family's detention.<sup>14</sup>

The OEM contains a non-exhaustive list of factors that IND officials are supposed to take into account before deciding whether or not detention is "necessary".<sup>15</sup>

10 UN Convention on the Rights of the Child, Article 22 (1): "States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties."

11 UN Doc CRC/C/15/Add. 188 para. 49 2002

12 JCHR (2007), Para. 180 & 181 "Our principal concern is that the practical impact of the reservation goes far beyond the determination of immigration status, and leaves children seeking asylum with a lower level of protection in relation to a range of rights which are unrelated to their immigration status. The evidence we have received testifies to the unequal protection of the rights of asylum seeking children under domestic law and practice... We reiterate our previous recommendation that the Government's reservation to the CRC should be withdrawn." Note also that the government's stance on the UNCRC is repeated in the reservation entered against similar provisions in the EU Guidelines on Forced Removal.

13 Baroness Ashton, Hansard, 17 June 2004 column 996.

14 This contrasts with the position of, for example, victims of torture who have "independent evidence" of the torture for whom detention should be only in "exceptional circumstances" (See Operational Enforcement Manual, Chapter 38.10 at <http://www.ind.homeoffice.gov.uk/documents/oemsectiond/chapter38?view=Binary>). Note that in practice, victims of torture are still regularly detained, some even with independent evidence, and see R (D) v SSHD.

15 OEM, Chapter 38. In defending the case of S v SSHD (awaiting judgement at the time of writing), the Home Office recently sought to argue that the term "necessary" may be equivalent to "appropriate" (which is the wording of Article 37(b) UNCRC). In BID's view, the Home Office has never considered any welfare arguments when determining the "necessity" of detention, contrary to the underlying aim of the UNCRC.

These factors do not take into account the vulnerability of the person being detained or the likely impact of detention. Instead they mainly relate to assessing the risk of absconding and imminence of removal. The government's position is that no special statutory or policy framework is needed to protect children, because each individual family's case is dealt with fairly and by rigorous review and that *"alternatives to detention will have been considered in all such cases and assessed as being inappropriate"*<sup>16</sup> This decision-making process has been questioned, both in individual instances during legal action<sup>17</sup> and on a policy level by BID and others.<sup>18</sup>

The government's position on the detention of families has become increasingly unclear, as has the degree to which the OEM can be relied on as a statement of principle. This is illustrated by two examples: the first relating to the test that is applied to the detention of families, and the second relating to the policy for families who have outstanding judicial reviews.

In terms of the test to be applied by immigration officers when deciding to detain a family, the OEM sets out one view, but more recent statements which have not been incorporated into the OEM arguably undermine this. For example, a recent process communication from the Criminal Casework Directorate (CCD) states that: *"The detention of every child under immigration powers must be properly authorised. This requires that in each case the welfare of the child must be taken carefully into account when considering whether detention of that child is reasonable and appropriate."*<sup>19</sup> This contrasts with the "shortest period necessary" test contained in the OEM, where there is no mention of the welfare of the child.<sup>20</sup>

To BID's knowledge, this last policy statement was only disclosed following requests for information from BID. A different version of the same document was disclosed to BID a few weeks previously and then withdrawn as being a "draft" version. The now current CCD process communication states on its cover "Original 11/2/07 revised 19/2/07" and mentions no draft version. It remains unclear whether either version was or is actually being applied on an operational level.<sup>21</sup>

BID welcomes any shift of IND's position on the detention of families towards taking into account the needs of children. Home Office recommendations published on 25 June 2007 for removal policy for families appear to recognise the need to take into account the best interests of children in the context of the need to detain or continue detention, and that detention should only proceed where this is the most appropriate outcome. However, while it remains unclear whether such policies are more than superficial attempts to deflect criticism, we remain wary. Also the possible shifts still do not grant children the level of protection contained in the UNCRC.

<sup>16</sup> 6 February 2004, Simon Barrett letter to BID. Note that the term "inappropriate" in this context means inappropriate for the purposes of immigration control.

<sup>17</sup> See for example the case of Konan - CO/4926/2002 [2004] EWHC 22 Admin. In relation to the detention of mother and child, solely on the grounds that they were imminently removable and had inadequate family ties in the UK, the judge said: *"The claimant had never moved from the address at which she was required to live and her past record showed that she had complied with conditions of temporary admission, which included an obligation to report to the police... certainly [the child's] and probably [the mother's] health was being adversely affected by detention, the failure to release becomes the more inexplicable"*. (para 25)

<sup>18</sup> For example, see Crawley, H (2005), No Place for a Child.

<sup>19</sup> CCD process communication on "Detention of dependent children with FNPs" dated 19 February 2007. In fact, this policy statement was for a short time preceded by another which stated: "IND policy is that the detention of children should be exceptional and for the shortest possible time." (Contained in a letter from Jeremy Oppenheim to BID, 22 January 2007. See Appendix 2.)

<sup>20</sup> OEM, Para 38.1.

<sup>21</sup> See section on foreign national prisoners for more discussion on this document, reproduced in Appendix 2.

The second example of apparent departure from the OEM is contained in recent statements regarding the likelihood of release if a family lodges an application for judicial review. The OEM categorises a judicial review as an incentive to stay in contact with the immigration service and therefore a factor against detention. This position was underlined by Home Office statements, for example: *"If removal [of a family] failed for any reason (such as judicial review applications or intervention from groups such as represented here) cases were reviewed with a view to granting release."*<sup>22</sup>

In contrast, a 2007 bail summary for a case presented by BID stated: *"All families that lodge JR in order to frustrate removal are now being kept in detention and their cases will be expedited within a reasonable timescale."*<sup>23</sup>

Whatever the policy statements about how detention is used for families, the underlying issue remains: that there are no adequate mechanisms for enforcing accountability in decision-making. The lack of accountability is, in part, made possible by the refusal to provide routine disclosure to families. We look at two related areas in this context: consideration of alternatives to detention and the degree to which voluntary return options are available to families at risk of detention.

### Disclosure of reasons for detention

A significant problem is that the substance of decisions to detain and subsequent reviews of detention are not disclosed to the family, legal representatives or Asylum and Immigration Tribunal (AIT) when considering bail.<sup>24</sup> Indeed, they are never disclosed without action being taken by the family or a legal representative, usually either through a subject access request or disclosure in proceedings for unlawful detention. This means that it is very difficult to challenge IND's assessment of the case. This is particularly relevant in the context of bail proceedings despite the government's continued assurances that these provide sufficient oversight of deprivation of liberty.<sup>25</sup>

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<sup>22</sup> Minutes of Detention User Group meeting, 9 June 2003.

<sup>23</sup> For more discussion of judicial reviews see chapter 8.

<sup>24</sup> Detainees receive proformas relating to the reasons for detention and subsequent reviews (IS91R and IS151F forms).

<sup>25</sup> Liam Byrne in evidence to JCHR, 21 February 2007, in answer to questions 527 & 533: *"After seven days, people can apply for bail and IND must make its case to continue detention if we believe that is right. Where it is not right then an immigration judge will take the decision to free people. After the seven-day period, there is then no limit on the number of re-applications for bail that an individual can make."* **Q533 Baroness Stern:** *I think I heard you to say: we detain people not worrying too much about the information because we are confident that there will be a bail hearing in seven days and if we are wrong it will be put right at that stage. Is that basically what you said?* **Mr Byrne:** *No, that is not what I am saying. I am going to ask Matthew to talk about the criteria for detention. I was trying to be helpful by saying that there are, of course, when we make these decisions, safeguards around them."*



IND argues that it grants extra protection to families because the OEM sets out a system of reviews of detention that is frequent and conducted by increasingly senior officials.<sup>26</sup> However, BID is aware that reviews are conducted on the basis of information prepared by those making the original decision to detain (i.e. the port or enforcement officers) who generally continue to hold the actual file.<sup>27</sup> This was confirmed in 2004 in correspondence with Lord Avebury and Home Office Minister, Lord Bassam.<sup>28</sup>

The processes for reviewing detention have been criticised in a Joint Chief Inspectors' report for the fact that they are *"centralised administrative procedures and are not independent"*.<sup>29</sup>

The lack of disclosure and accountability is illustrated by the initial "reasons for detention" checklist (IS91R)<sup>30</sup> and the monthly progress reports given to all those in detention. In BID's experience, the checklists often include factors that are not relevant in the family's case or do not reflect the actual decision-making process as revealed by the disclosure of the IND's file. For example, the checklist contains the criteria: *"You have not produced satisfactory evidence of your identity, nationality or lawful basis to be in the United Kingdom."*<sup>31</sup> This reason has been given to a family even when there is no issue raised in IND's internal documentation as to identity or nationality and the family cooperated with obtaining travel documents for removal, thus demonstrating that there was in fact no dispute as to the family's nationality.<sup>32</sup>

The inadequacies of the checklist are mirrored in the monthly progress reports.<sup>33</sup> These outline the history of the case and routinely exclude points that are in the detainee's favour, such as a history of regular reporting. They often fail to give any reasons as defined by OEM criteria, and where reasons are given (generally reflecting the same factors as the IS91), there is, again, no acknowledgement of other issues. Often, the fact that children are detained is not even mentioned.

Monthly progress reports are the only routine formal means of communication between IND and a detained family, despite the fact that family cases are subject to greater frequency of reviews. This means that there is not even the pretence of disclosing the outcome of the reviews that must take place at, for example, 7 or 14 days of detention.

26 OEM, Chapter 38.8 Detention reviews: "Cases involving children are reviewed on a regular basis to ensure the decision to detain is based on the current circumstances of the case and detention remains appropriate. Managers in MODCU formally review cases where children are detained after 7 days in detention (by HEO), 10 days (SEO) and 14 and each subsequent 7 days (AD). A system of Ministerial authorisation for the detention of children beyond 28 days was announced in December 2003."

27 June 2004, conversation between BID and Management of Detained Cases Unit (MODCU).

28 A letter from Lord Bassam to Lord Avebury on 5 July 2004 outlines how the review process is conducted, without sight of the full file: *"It is not normal practice for Ministers to peruse the whole file of individual cases referred to them." The letter also states that families are not informed of the process of ministerial review. "Details of referrals to the Minister are not provided to the family or their representatives. These are internal review processes and do not constitute formal decisions which need to be communicated to the family concerned, who will in any case receive regular monthly updates on their case and the reasons for detention."*

29 Joint Chief Inspectors (July 2005), Safeguarding Children: The second joint Chief Inspectors' Report on Arrangements to Safeguard Children, para. 7.29, at [http://www.safeguardingchildren.org.uk/docs/safeguards\\_imagefree.pdf](http://www.safeguardingchildren.org.uk/docs/safeguards_imagefree.pdf)

30 OEM Chapter 38.9.4 states that "Form IS91 must be issued for each person detained including for each minor."

31 OEM Chapter 38.6.3 Form IS91R Reasons for Detention.

32 Disclosure obtained via civil proceedings.

33 Saadi judgement at the European Court of Human Rights ruled on the importance of reasons in the context of lawfulness under Article 5 ECHR. (Saadi v. UK [2006] (Application no. 13229/03) [www.echr.coe.int](http://www.echr.coe.int)) The court unanimously found a violation of article 5(2), which states that: *"Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."* Other than references to policy statements, the first time that Mr Saadi was given a reason for his detention was when his representative was informed on 5 January, when Mr Saadi had already been detained for 76 hours. The court found that this was not prompt and was therefore a violation.



## Alternatives to detention

International legal principles state that detention of minors can only be used as a "last resort"<sup>34</sup>, and ministers have repeated the position that detention is only authorised where no alternative exists.<sup>35</sup>

It is important to note here that government policy (upheld by the courts) is that families can be detained on purely administrative grounds for consideration of their claim in the fast track. Therefore, although fast tracking of families in detention is not currently taking place, it is not correct to say that families are only ever detained where there is no alternative.

In removal cases (where the Home Office accepts that consideration of alternatives is supposed to apply), the lack of routine disclosure of the reviews of detention described above means it is in practice very difficult to challenge a Home Office assertion that alternatives have been properly considered and rejected in a particular case.

Mr Justice Hodge, President of the AIT, expresses a similar concern in his evidence to the JCHR: *"The Home Office come along [to a bail hearing] and say, 'we do not think they will turn up. We think there is a danger of them absconding. They are disruptive', and produce those kinds of problems. Quite often, we worryingly think they are not as evidence based as they should be..."*<sup>36</sup>

Alternatives to detention have not been explicitly considered in the majority of cases where BID has seen disclosure. Instead, it generally appears that a decision to detain is axiomatic from a decision to remove, in that detention is inevitably seen to be "necessary" in this context. This has some parallels with the implementation of the policy on pastoral visits. In cases we know about, these appear to have been seen by the immigration service as optional rather than a core element of, and necessary to inform, the decision to detain itself (see section 3).

For example, in one case, there was clear evidence of the family cooperating with obtaining travel documents for removal prior to detention. However, in the file notes relating to the decision to detain, there is no mention of any alternative to detention having been considered.

In another case, a family was arrested at the same time as being served with a refusal of a fresh claim for asylum. The file notes reveal no consideration of any alternative to detention, although the family had maintained contact throughout their case with the immigration service and had been deemed so low an absconding risk that no reporting conditions were ever imposed. This family was quickly labelled as having the *"potential to be disruptive"* (after being detained) because the mother *"cried all through this morning's visit and slumped to the floor on a few occasions"*. This label of being disruptive was repeatedly relied on, together with the family's attempts to continue legal challenges against removal, to maintain detention for many months.

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34UNCRC and UN Rules on Juveniles Deprived of their Liberty at [http://www.unhchr.ch/html/menu3/b/h\\_comp37.htm](http://www.unhchr.ch/html/menu3/b/h_comp37.htm)

35 Tony McNulty MP, Answer to a Parliamentary Question, Hansard, 21 November 2005: column 1732W: *"Immigration detention is used sparingly and for the shortest period necessary. In all cases all reasonable alternatives to detention must be considered before detention is authorised."*

36 Mr Justice Hodge in evidence to JCHR, 5 February 2007 in answer to question 456

A campaign for alternatives to detention submitted a discussion paper by a cross-party group of MPs and peers to the Home Office in July 2006.<sup>37</sup> As this handbook went to print, on 25 June 2007, the Home Office announced in 'Keeping Children Safe from Harm' that *"The Agency has developed arrangements with Migrant Helpline to provide an alternative to detention for children... The key benefits of the scheme will be to reduce the number of children needing to go into an immigration removal centre, coupled with an increase in the number of families choosing to return home voluntarily."* (p4) No further details are available, but there has apparently been no official acknowledgement of the reasons behind families' reluctance to return.

The JCHR has commented on this matter:

*"We find the attitude of the Home Office towards families facing removal troubling. The Government seems at a loss to understand why families at the end of the asylum process do not simply take the money made available to them to return 'voluntarily' to their country of origin. And yet it seems clear that for the families concerned – many of whom have been effectively made destitute and face losing their children into the care system – the fears of return are very real. There is also evidence that many families are not aware that their case has come to an end until they are arrested early in the morning at their home address, and that in some cases families are detained before their case has come to an end, for example, if a fresh claim has been submitted or there is an outstanding appeal hearing."*

*We are concerned about the failure of the Home Office to develop alternatives to detention beyond the relatively limited use of voluntary check-in arrangements which are unlikely to be successful without a properly functioning casework model which can support asylum seekers throughout the process and make them aware of the different options available to them at different stages."*<sup>39</sup>

### Voluntary returns - a real alternative to detention?

This is an issue that the government frequently mentions in defending its policy of detaining families.

For example, Minister Liam Byrne has stated: *"As a parent it often makes me quite angry that parents are putting their children in that position. Where we have offered an IOM package of voluntary return that is worth thousands in integration assistance back in people's home countries, where we have organised voluntary returns and voluntary check-ins and parents then determine to continue to evade the laws, I think they are inflicting something which is unnecessary on their children."*<sup>40</sup>

In BID's experience, it is rare for families who are in detention to have previously been notified of a planned "self check-in" removal.

<sup>37</sup> Bercow, J, MP, Lord Dubs and Harris, E, MP, supported by the No Place for a Child coalition (July 2006). Alternatives to immigration detention of families and children - a discussion paper. Available at: [http://www.biduk.org/pdf/res\\_reports/alternatives\\_to\\_detention\\_july\\_2006.pdf](http://www.biduk.org/pdf/res_reports/alternatives_to_detention_july_2006.pdf)

<sup>39</sup> Para 328 & 329, JCHR (2007).

<sup>40</sup> Liam Byrne in evidence to JCHR, 21 February 2007, in answer to question 526.

Voluntary return packages are now available to those held in immigration detention. BID has been informed anecdotally that families who have applied for voluntary return while in detention have subsequently been forcibly removed without access to the returns package. In one case, a family applied for a voluntary return programme through the International Organization for Migration (IOM). They were waiting to hear whether they had been accepted when they were arrested and detained for removal. It appears that their application had been received by the Home Office department responsible for granting permission to the IOM to offer the returns package and had initially been accepted. However, within a very short timescale this decision was overturned in the face of the enforcement office issuing removal directions.

This would appear to contravene Home Office policy; information provided to BID about the workings of the voluntary returns programme for those at risk of being detained or who are already in detention states:

*"The VARRP [Voluntary Assisted Return and Reintegration] programme is open to all families who are failed asylum seekers or are in the asylum system including those who are in detention. Once an application is approved by the AVR team the applicants have 3 months in which to travel. During this time there should be no enforcement action taken against the applicants unless there are compelling reasons as to why this is necessary."*<sup>41</sup>

Immigration Directorates' Instructions (IDIs) state:

*"Unless removal directions are already set, officers should under no circumstances seek to remove those who have made an application for AVR without reference to and the consent of a senior manager in the AVR team. Seeking to remove (even via a voluntary departure) an AVR applicant will seriously compromise the integrity and independence of IOM."*<sup>42</sup>

## Children Acts

Children who are subject to immigration control are entitled to the protection of Section 31 of the Children Act (1989) if any child protection issues arise. They are also entitled to assistance under Section 17 of the act as children in need even if they are not in need of accommodation.

During the passage of the Children Act 2004, the government gave assurances that the strategy outlined in *Every Child Matters*<sup>43</sup> applies to all children.<sup>44</sup> However, the exclusion of IND, and its agents who run IRCs, from the safeguarding duties contained in s.11 CA 2004 undermines statutory accountability.<sup>45</sup>

<sup>41</sup> Email to BID from AVR Team, IND, Home Office, dated 01/02/2007

<sup>42</sup> Immigration Directorates' Instructions, February 06, Chapter 19, Section 6.

<sup>43</sup> Green Paper, *Every Child Matters* (Cm. 5860, September 2003): to ensure that all children are supported to be healthy, stay safe, enjoy and achieve, make a positive contribution and enjoy economic well-being.

<sup>44</sup> For example, see Baroness Ashton, Hansard, 4 May 2004, column 1086.

<sup>45</sup> See Crawley, H (February 2006), *Child First, Migrant Second: Ensuring Every Child Matters*, Immigration Law Practitioners' Association: "It is also important to recognise that although immigration agencies are excluded from the duty under Section 11 of the Children Act 2004, all children, regardless of their immigration status, are covered by the provisions of the Children Act 2004. The Children Act 2004 imposes a general duty of care on all professionals who come into contact with children."

The Children's Commissioner for England has stated: *"It is also clear that the goals of Every Child Matters, set up by the Government in 2004, are not being met with regard to this group of detained children. It is not possible to ensure that children detained at Yarl's Wood stay healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being."*<sup>46</sup>

The government's uneasy position on this issue is illustrated by two statements from Liam Byrne, Minister for Immigration. First: *"The government's commitment to the protection and welfare of children [in detention] is set out very clearly in government policy and indeed in the Children Act."*<sup>47</sup> Second: *"The task that Parliament has asked of the immigration service is to enforce the immigration rules. In undertaking that task, IND has to operate within the framework of child protection policy that is set out in legislation."*<sup>48</sup>

While the Home Office has accepted that the Children Acts apply to families in detention, it has taken very few steps to adopt policies and practices that will ensure that children in detention benefit from the provisions in these acts. The exclusion of IND from the safeguarding duties exacerbates this situation. The 25 June 2007 announcement that a government amendment to the UK Borders Bill would create a separate code of practice to help keep children safe from harm does not address BID's concerns.

In BID's view, the procedures for welfare assessments and an on-site social worker at Yarl's Wood do not ensure that children in detention receive the same level of protection as other children under the Children Act 1989. (For more discussion on welfare assessments and the ministerial assurances that have been given, see below.)

Meanwhile, it is apparent to those working with detained families, as it is to statutory bodies charged with inspecting detention centres, that all children who are kept in detention (even for a matter of days) are "children in need". As HM Chief Inspector of Prisons stated in 2002: *"It remains our view that, however conscientiously and humanely children in detention are dealt with, it is not possible to meet the full range of their developmental needs."*<sup>49</sup>

## Human Rights Act 1998

There is very little reference to the protections contained in the European Convention on Human Rights (ECHR) (incorporated into the Human Rights Act 1998) in government policy or statements concerning the detention of families.

There is no published IND guidance on the other relevant factors potentially arising from Articles 3 and 8 of the ECHR to be considered by officials when deciding whether to detain a family or when reviewing detention.<sup>50</sup>

46 Para. 34, Aynsley, Green, Prof. A, (December 2005) An announced visit to Yarl's Wood Immigration Removal Centre, 31 October 2005.

47 Liam Byrne in evidence to JCHR, 21 February 2007, in answer to question 523.

48 Liam Byrne in evidence to JCHR, 21 February 2007, in answer to question 524.

49 HM Inspectorate of Prisons (October 2003) An Inspection of Dungavel Immigration Removal Centre, 2003, para 9.8.

50 Note that Chapter 1, Section 10 of Immigration Directorate Instructions, May 2005, p5 states that *"It would generally be disproportionate to detain an entire family (and thus interfere with family or private life under Article 8), when any risk that the family would not meet the conditions for temporary admission or release would be successfully countered by the detention of one person only (ie the head of the household)."* In BID's experience, many of the families detained are mothers without partners in the UK.

The stance of the government contained in the OEM is that detention of families with children can be justified on the grounds of Article 8 ECHR because the policy allows the family to remain together (as opposed to detaining the "head of the household" as was used more often in the past).<sup>51</sup>

It is BID's experience from working with families in detention that decisions to detain and maintain detention are being taken without full consideration of human rights factors.

The main issues that we consider relevant from our casework are:

- 1) An almost total failure to balance all relevant factors to reach a proportionate decision under Article 8. This is discussed particularly in the context of reviews of detention, ministerial authorisation and welfare assessments.
- 2) A refusal to recognise that detention itself is a breach of Article 8 – in particular, the right to respect for private/family life and personal integrity. This is discussed in the sections on welfare assessments and the impact of detention on families.
- 3) There are additional Article 8 concerns in a number of individual cases of families helped by BID:
  - In a number of cases parents (particularly mothers) have been separated from their children during the process of detention – in some cases for several weeks.
  - Fathers have been separated by being held in a different detention centre from the mother and children.
  - Families have been separated by removal of one part of the family with the other part remaining in the UK.
  - Children have been reunited with a parent/guardian in detention for removal after a separation of months or even years prior to detention (for example, due to the parent having served a criminal sentence prior to being detained under immigration powers).
  - Children have been kept in foster care while their parent has been detained.See section 6 for further discussion of this issue.
- 4) The level of harm caused to children by detention may, in some cases, reach the Article 3 threshold. This is especially so given that the extra vulnerability of children potentially lowers this threshold.<sup>52</sup>
- 5) In addition, there is a positive duty on the state not to cause harm under Article 3.<sup>53</sup> Potentially this involves both a lack of adequate policies and a lack of implementation of existing policies. The failures to facilitate and ensure the proper implementation of the Children Act may be relevant here. These issues are discussed throughout this handbook.

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<sup>51</sup> See OEM Chapter 38.1.1.2. See also Liam Byrne in evidence to JCHR, 21 February 2007.

<sup>52</sup> E.g. Price and UK (2001) 34 EHRR 1285 – "The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim." (at 1292).

<sup>53</sup> E.g. Keenan and UK (2001) 33 EHRR 913.

- 6) There are potential breaches of Article 5 in respect of the failure to give adequate or accurate reasons for detention. (See the sections on reviews of detention and ministerial authorisations in section 4.) Also, in some cases, there may be a breach for length of detention without adequate steps being taken to remove, or where detention can no longer be said to be for the purpose of removal. The length of detention that would be necessary to reach the threshold of unlawfulness must take into account all factors, including the impact of detention.<sup>54</sup>
- 7) There are potential breaches of Article 6 where a family has sought to challenge the lawfulness of detention but is then removed from the UK. This may also be the case where removal takes place while a judicial review is outstanding (see section 8).
- 8) There are potential breaches of Article 2 of Protocol 1 (right to education), where children are detained for relatively long periods without access to a sufficiently high standard of appropriate education and where children have missed exams through being in detention.
- 9) There are potential issues of discrimination under Article 14 – for example, in relation to education as above. Another example may be where a mother and baby were being held with better facilities and care in a mother and baby unit and are then transferred to immigration detention.

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<sup>54</sup> See *R v SSH ex parte I* 2002, [2002] EWCA Civ 888. Case no. 2002/0743.

### 3 Changes in the use of detention since 2001

#### Key points

- The courts have ruled that families can be detained for their cases to be fast tracked, for a short period, within a defined process.
- Family cases were fast tracked at Oakington Reception Centre until 1 October 2005. Some family cases at Oakington were subject to the non-suspensive appeals process.
- Families are not currently fast tracked in detention and are not subject to the 'super' fast track at Harmondsworth or Yarl's Wood.
- Family detention is now predominantly for the purpose of removal. Published family removal processes have been under review since May 2006.
- New arrangements are planned for Scotland when the Home Office reviews cases of families who have been in the UK for significant lengths of time.
- The current family removal policy (March 2006) sets out details of the process for:
  - a) 'Pastoral visits' (announced in December 2003). BiD's experience is that visits are not always conducted and stated policy is not always followed.
  - b) 'Control and restraint' techniques for use on children.
- Current policy limits detention of families to 72 hours at Dungavel House and Tinsley House IRCs, after which time, if not released, families are moved to Yarl's Wood IRC.
- Transfers between IRCs are common and stated policy is not followed in some cases.
- Families can be held at short-term holding facilities (STHFs) and there are concerns about child protection arrangements in STHFs.

#### Fast tracking family asylum claims

One of the initial outcomes of the change in family detention policy in 2001 was to subject families to the detained fast tracking procedure set up at Oakington Reception Centre.<sup>55</sup> Indeed, this may be seen as one of the key reasons why the government initially introduced the policy change in relation to families. Fast tracking of initial decision was (and remains) part of the government's plan to remove more asylum seekers more quickly, although families are not currently fast tracked in detention.

<sup>55</sup> Fast tracking of family cases began at Oakington in 2002 and lasted until the centre closed to families in October 2005.



Fast track procedures allow for detention on criteria of nationality and that the claim appears to be one *"which can be decided quickly"*. There are exclusions for certain groups of asylum seekers (e.g. torture survivors) but these exclusions exist more in theory than in practice.<sup>56</sup> The House of Lords has confirmed that it is lawful to detain individuals or families for seven to ten days while their applications for asylum are fast tracked.<sup>57</sup>

In BID's experience at that time, most families were released from Oakington following an initial decision on their asylum claim, after a relatively short period of detention, to pursue any appeals from outside detention.

This changed with the introduction of non-suspensive appeals (NSAs) in 2002.<sup>58</sup> The NSA procedure allowed for an initial decision and then, (if the case was refused and certified as manifestly, or later, clearly unfounded), removal from the UK without an in-country right of appeal. The government produced a list of countries that were presumed to be safe, with claims from these countries usually judged to be "manifestly" or later "clearly unfounded".

It became the norm for families to be detained for removal. Detention, especially for some nationalities (such as Jamaicans), became prolonged.

It is BID's experience of the NSA fast tracking of families that cases with serious human rights issues were not properly represented or considered. This lack of concern extended to the treatment of families in detention whose traumatic history was never considered in decisions to maintain detention.

One illustration of the hidden impact on families detained for removal was the categorisation of part of Oakington as the "Detention Overspill Facility". Detainees in this section were prevented from being able to access the on-site legal advice services after their initial claims were rejected (even though the only means of challenging their removal was by judicial review). A number of such cases were referred for civil actions, with the Home Office choosing to settle in many of them.

The family unit at Oakington closed in early October 2005. At May 2007, family cases are not being fast tracked. A letter to BID from the Director of Detention Services dated 30 September 2005 stated that: *"Although the closure of the family block at Oakington will reduce the number of family cases processed in detention, IND will continue to detain families where a quick decision on their claim is considered possible and detention is considered necessary and appropriate in the individual circumstances."* To BID's knowledge, IND did not continue to fast track families after the closure of Oakington family facility.

Families were not included in the 'Super Fast Track' which was introduced for men at Harmondsworth in April 2003 and women at Yarl's Wood in May 2005. This procedure extends the administrative detention of the Oakington fast track through the appeals process.

<sup>56</sup> Saadi v SSHD [2002] UKHL 41 (HL) confirmed in relation to families by ID & Others v SSHD [2005] EWCA Civ 38.

<sup>57</sup> Nationality, Immigration and Asylum Act 2002, sections 94 and 115.

<sup>58</sup> <http://www.ind.homeoffice.gov.uk/6353/aboutus/tippingpointsresults.pdf> "The Tipping the Balance target states that the number of failed asylum applicants removed each month exceeds the number of new asylum applicants who, it is predicted, will not be granted leave to remain in the UK, as a result of their asylum application."



## Family removal policy

Since the closure of Oakington family unit, government policy appears to have shifted so that the vast majority of family detention has been initiated for the purpose of removal. This must be seen against a background of increasing political pressure to increase removals of unsuccessful asylum seekers and the announcement of a Public Performance target called Tipping the Balance, whereby the number of removals must exceed the number of new, "unfounded" asylum claims.<sup>59</sup>

The first family removals policy was disclosed in October 2004. The current version was published in March 2006.<sup>60</sup> Parts of the policy have been extended, particularly in relation to the splitting of families by removal (see section 8).

A review of removal policy for families was announced in May 2006.<sup>61</sup> The recommendations were published on 25 June 2007, and if implemented will have an impact on some aspects of practice about which BID is concerned. At the time of writing, it is too early to assess whether this review will benefit children.<sup>62</sup>

Following considerable pressure by campaigners in Scotland, the Scottish Executive and the Home Office have discussed *"the best balance between enforcing immigration court decisions and children and families' welfare"*.<sup>63</sup> In October 2006, following a visit to Scotland by Immigration Minister, Liam Byrne, the Home Office stated that arrangements would be established for 'lead professionals' to *"take an active part in focussing on the interests of children who are being removed from the country with their families"*.<sup>64</sup>

The Home Office intends to review all cases of those who have been in the UK for some time, as part of the 'legacy programme'.<sup>65</sup> BID understands that a Memorandum of Understanding (MoU) between the Scottish Executive, Glasgow City Council and the Home Office has been drawn up which aims to review the cases of families who have been in Scotland for some years:

59 <http://www.ind.homeoffice.gov.uk/6353/aboutus/tippingpointsresults.pdf> "The Tipping the Balance target states that the number of failed asylum applicants removed each month exceeds the number of new asylum applicants who, it is predicted, will not be granted leave to remain in the UK, as a result of their asylum application."

60 Family removal policy (EPU 2/06). <http://www.ind.homeoffice.gov.uk/documents/oeminterimnotices/familyremovals?view=Binary>

61 *"Inspired by experience in Scotland, there has been a comprehensive review of the best practice on family removals which will be published soon and will be applied across the UK."* Home Office press release, 26 October 2006. <http://press.homeoffice.gov.uk/press-releases/Minister-Visits-Scotland>

62 <http://www.bia.homeoffice.gov.uk/6353/aboutus/familyremoval>

63 Home Office press release, 26 October 2006, at: <http://press.homeoffice.gov.uk/press-releases/Minister-Visits-Scotland> *"In the last resort, where no option but enforced removal remains, the Scottish Executive and the Home Office have worked closely to ensure the greatest care and consideration given the inevitably complex circumstances in such cases. The Home Office will work openly and collaboratively with Scottish health, education, welfare and police services on how we carry out our operational activity, including engagement with 'lead professionals' in cases involving children and recognising differences required by devolved services."*

64 Ibid.

65 In July 2006, the Home Secretary announced that there was an asylum "legacy" of around 450,000 cases, and the Home Office would clear this legacy within five years. To deal with these legacy cases, the Home Office has established a separate directorate – the legacy directorate. For more information, see ILPA Legacy Cases Information Sheet, 5 April 2007, at <http://www.ilpa.org.uk/info%20service/Info%20sheet%20Legacy%20Cases.pdf>

*"To ensure that the Home Office has relevant information about the health, welfare and education of asylum seekers to inform its decisions about family removals in cases covered by the legacy review, including matters concerned with their timing and handling. To demonstrate that the needs and rights of children and families are informing decisions about planned removals."*<sup>66</sup>

To BID's knowledge, there is no equivalent mechanism proposed for families in England or Wales.

Of particular note in the original family removal policy are the instructions on pastoral visits and control and restraint. (Note these issues are discussed in the just-published review of family removals and practice is likely to change soon – contact BID for details.)

### Pastoral visits

The family removal policy introduced a "pastoral visit" procedure by which families who are to be detained for removal are visited just prior to the arrest.<sup>67</sup> Note that the family removal policy does not technically cover all families who are being detained (for example, when families were detained for the Oakington fast track or after an initial arrest by police for a criminal offence which is not pursued but the family is held under immigration powers). The pastoral visit was introduced in response to criticisms that families were being taken away without any understanding of their health or other needs.

The purpose of the visit has been explained to parliament as follows:

*"17. Before a family is due to be removed the Immigration Service will undertake a pastoral visit. The visiting officers will aim to assess the family's circumstances and identify whether there are any special needs which must be catered for when it comes to the removal process. The fact that a mother is breast-feeding is one such factor to be taken into account.*

*18. The officers will also aim to establish an appropriate time to effect the removal of the family in order to cause the least possible disruption and to safeguard the well-being of all those concerned.*

*19. An individual risk assessment is conducted in each case in order to determine the risk of absconding. The risk may vary according to the stage in the process and a reporting centre may be the best location for detention to take place if it is considered that, for instance, service of a negative decision may prompt a family to sever contact with IND."*

<sup>66</sup> MoU accompanying letter of 28 March 2007, from Education Department, Scottish Executive, to stakeholders.

<sup>67</sup> "There has been a ministerial undertaking that pastoral visits should be undertaken prior to all family detention visits. Pastoral visits are for the gathering of information regarding the circumstances of the family concerned and ensure that important issues such as medical or special needs are taken into account when deciding on arrest, detention, transportation and/or removal." para 4, family removal policy (disclosed October 2004, updated March 2006). Note that the policy of pastoral visits was already in effect by December 2003 –(minutes of Detention User Group meeting, 9 December 2003).

There is also a procedure by which a pastoral visit can be avoided on the grounds that it is likely to make a family abscond prior to their arrest.<sup>68</sup> In BID's experience, not all families have been visited and, on files in such cases seen by BID, there is no evidence that policy was followed in obtaining Immigration Inspector authority to withhold a pastoral visit. The Home Office does not keep a record of cases where pastoral visits were not conducted.<sup>69</sup>

The limitations of the policy are also revealed where, for example, a woman was detained for the Oakington fast track who had given birth several weeks previously. She was neither recognised as a family at the time of her arrest, nor would she have been covered by the family removal policy in any case, as she was not being detained "for removal".

The pastoral visit procedure refers to an "appropriate time" to carry out an arrest. In fact, in BID's experience, families are always detained early in the morning (unless the arrest is not pre-planned or takes place at a reporting centre). This practice has led to widespread criticisms. The Home Office has defended its actions in this regard by saying that early morning raids are necessary to ensure that the family is detained when they are all together.<sup>70</sup> However, it is BID's experience that single-parent families with babies and pre-school age children are also detained in this manner.

### Control and restraint

The family removal policy included authority for the use of control and restraint (C&R) techniques against children (para. 12).

It is BID's understanding that by 9 December 2003, the then Immigration Minister Beverley Hughes had "recently" given agreement in principle to officers working with families to receive training in the control and restraint of children. Minutes of the Home Office Detention User Group state: *"The use of control and restraint techniques will only be authorised in a situation where a child poses a danger to itself or others (eg if a child attempts to run into traffic or where the child is attempting to physically harm others). Once officers have received training, the use of such techniques will be closely monitored."*<sup>71</sup>

Subsequent correspondence between BID and Detention Services in October 2004 revealed that officers were trained in C&R but no instances of use had been filed.<sup>72</sup>

It appears from BID's casework experience that police are called upon when control and restraint is to be used. We are aware of one case where it was apparently used for removal of a child.

68 "Where there is good reason to suggest that a pastoral visit would adversely affect our attempts at removal (e.g. if there is evidence to suspect that the family may abscond following a pastoral visit), a written report or file minute detailing the reasons for the suspicion, must be submitted to an Immigration Inspector (HMI). The HMI will then decide whether or not the pastoral visit should be undertaken." para 5, family removal policy (disclosed October 2004, updated March 2006).

69 Minutes of Detention User Group, 4 October 2004.

70 See: <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070205/text/70205w0016.htm#07020558000068>

71 Ibid.

72 See letter from Judy Weldon, Detention Services Policy Unit, IND, to BID, dated 7 October 2004.

BID also understands that a Memorandum of Understanding was drawn up between Bedford Hospital and Yarl's Wood IRC, a version of which referred to the use of C&R on children being taken to hospital appointments. A subsequent version had this provision removed.

Another aspect of control and restraint in relation to families is when such practices are used on parents in the presence of their children. This has apparently taken place in a number of cases that BID is aware of. In one example, two children witnessed their father being restrained prior to being boarded on an aircraft for removal. They described thinking that their father had been killed, as his body had gone limp before he was carried onto the plane.

### Three-day limit at Tinsley House and Dungavel House

Following pressure from campaigners in Scotland against Dungavel and arising from the criticisms contained in the Her Majesty's Inspectorate of Prisons for England and Wales (HMIP) report of Tinsley House in 2002, the government announced a policy of limiting the length of time families could be held at these two centres to 72 hours.<sup>73</sup> A report of an inspection of Dungavel House by HMIP in December 2006, published in May 2007, states that *"During 2006, 122 children had been held in the centre, usually for less than 72 hours. However, eight children had been held for more than three days, and two for 32 days."*<sup>74</sup>

### Transfers between centres

Families are frequently moved around the detention estate, sometimes travelling from one centre to another and back to the previous centre in the course of detention. These journeys, particularly to and from Dungavel, are always long and often harrowing with many accounts of insufficient attention paid to the needs of children. Stops are often made at short-term holding facilities (STHFs), which frequently do not have facilities for families. Concerns about the movement of families, and its impact on children, have been expressed by the JCHR.<sup>75</sup>

In BID's recent experience, the number of transfers appears to have reduced to some extent. However, concern is now centred on the families that are moved from Dungavel to Yarl's Wood, a consequence of the three-day limit on detention at Dungavel and Tinsley House. A number of problems have been reported to BID by legal representatives in Scotland, who say that the move disrupts access to lawyers, and that once the family is in Yarl's Wood it is extremely difficult to make a referral to a new legal representative.

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73 In fact, detention at Tinsley appears to have been time-limited prior to this public announcement: see letter dated 4 July 2004 from Lord Bassam to Lord Avebury.

74 'Report on an announced inspection of Dungavel House IRC, December 2006', HM Inspectorate of Prisons, May 2007, p 12

75 See JCHR (2007), para 249.

The movement of families would appear to contravene the government's previously stated policy on transfers, which specifies that: *"Transfers for whatever reason are kept to a minimum"*. The policy also states that: *"Transfers may sometimes be arranged for domestic or compassionate reasons or to enable a detainee to be more easily visited by a representative."*<sup>76</sup> BID has no experience of whether this policy is operated.

### Short-term holding facilities

Families with children can also be detained under Immigration Act powers at STHFs, which can be residential or non-residential.<sup>77</sup> There are some 30 non-residential STHFs, mostly at ports and reporting centres, where anyone (including children) can be held, although depending on staff and conditions some may decide not to hold families. Of the four residential STHFs (Colnbrook, Manchester Airport, Port of Dover and Harwich), only the last two admit families with children, but BID understands this happens very rarely. Use of STHFs is supposed to be limited to five days or seven if removal directions are imminent. A report on the announced inspections of four STHFs published in January 2005 expressed concern about the lack of facilities for families and the lack of child protection policies and enhanced Criminal Records Bureau checking of staff.<sup>78</sup>

A report on the unannounced inspections of three short-term non-residential immigration holding facilities by HM Chief Inspector of Prisons noted that all locations can and did hold children and families for short periods. A number of issues of concern were identified, for example:

*"1.29 In marked contrast to the understanding shown by custodial staff, some IND staff seemed unaware of any particular duty of care towards detained children beyond not holding too many for too long."*

*1.30 The mother detained with her son that morning (see paragraph 1.10) relied on her son to speak for her even when the inspection team used an interpreting service. This added to the child's stress and he was struggling to cope. They showed us some apparently official original documents from their home country. The son explained that these had arrived late and that he had sent copies to the Home Office. He did not know whether they had been considered. They had no current solicitor and the onus of pressing for clarification appeared to be on this 14-year-old child. We suggested that caseworkers on site should respond to the query but they were reluctant to intervene, stating that the documents had either probably been considered or no longer mattered since the asylum claim had been rejected. Another said they could only consider material submitted by a solicitor. Apart from being erroneous, this put the onus back on the child."*

*1.31 The impression given was of lack of training or interest in relevant legal and child protection responsibilities, and a considerable reluctance to deviate from fixed routines within the removal process."*<sup>79</sup>

<sup>76</sup> 'Criteria for transfers between removal centres', Detention Services, 2002 (see BID et al, *Challenging Immigration Detention: A best practice guide*, Appendix 5).

<sup>77</sup> See: [http://www.ind.homeoffice.gov.uk/6353/21395/Reliance\\_House.pdf](http://www.ind.homeoffice.gov.uk/6353/21395/Reliance_House.pdf)

<sup>78</sup> See HMIP (January 2005) *Inspection report of: Communications House, London; Lunar House, Croydon; Electric House, Croydon; Dallas Court, Manchester. June-October 2004.*

<sup>79</sup> See HMIP (2006) *Inspection report of: Reliance House, Liverpool; Sandford House, Solihull, West Midlands; John Lennon Airport, Liverpool. February-June 2006.*

## 4 Ministerial authorisation

### Key points

- Ministerial authorisation (MA) for detention of children beyond 28 days, and every seven days thereafter, has been required since December 2003.
- MA processes are flawed and do not protect children.
- MAs are not communicated to families, and are rarely disclosed to legal representatives in time for bail hearings. Challenges to disclosure through legal challenges or requests under the Freedom of Information (FOI) Act are too slow.
- The minister receives a summary of the case, not the full file.
- Information presented to the minister often does not include either significant welfare-related issues or an accurate analysis of why detention is deemed "necessary".
- MA is rarely, if ever, refused.

The requirement for ministerial authorisation of detention of any child beyond 28 days was formally announced on 16 December 2003.<sup>80</sup> This is a novel procedure, without precedent in immigration detention so far as BID is aware. Not based on any statutory or commonly accepted procedure, its definition amounts to a collection of Home Office statements.

In January 2004, the then Minister Beverley Hughes explained to MPs how the process of authorisation was intended to work.

*"The ministerial authorisation in respect of people coming up to 28 days in detention was one part of the package of measures that I announced. It also includes the appointment of a senior official to oversee all the families, particularly regarding case progression and the welfare of children, and report directly to me; enhanced detention review arrangements for family cases; and other measures to ensure that we have education facilities and social services links with authorities where there are removal centres in which families can be detained."*<sup>81</sup>

<sup>80</sup> See [http://www.biduk.org/pdf/children/update\\_feb\\_2005\\_detention\\_of\\_families\\_UK.pdf](http://www.biduk.org/pdf/children/update_feb_2005_detention_of_families_UK.pdf) for detailed information.

<sup>81</sup> During debate in Committee on the Asylum Treatment of Claimants Bill, Hansard, 27 January 2004, column 416.

## Disclosure of ministerial authorisations

BID's experience is that the ministerial authorisation process is flawed and represents no protection for children. The process is not independent, the outcome is not communicated to the family or their legal representative and it is therefore not subject to scrutiny except through legal proceedings that almost inevitably take place well after the event.<sup>82</sup>

The government has justified its position by stating: *"Details of referrals to the Minister are not provided to the family or their representatives. These are internal review processes and do not constitute formal decisions which need to be communicated to the family concerned, who will in any case receive regular monthly updates on their case and the reasons for detention."*<sup>83</sup>

It is common for BID to make a bail application for a family and to request in advance both the reviews of detention and confirmation of whether or not detention has been authorised by the minister. It is extremely rare to receive any disclosure either before or during the bail hearing and equally rare for an immigration judge to enquire whether detention has been authorised by the minister.<sup>84</sup>

## What information is considered

A recent government explanation of the purpose of ministerial authorisations has highlighted the limited nature of the exercise: *"The key thing I ask to see is the reason for why that family is in detention and why their detention is continuing and second the target date for the deportation."*<sup>85</sup> Note that this statement of purpose does not even refer to the welfare of children and arguably presents a departure from the original announcement by Beverley Hughes, quoted above.

The review process that leads to ministerial authorisation is conducted without sight of the full file.<sup>86</sup>

82 This is confirmed in the minutes of the Detention User Group on 14 June 2004: "23. Simon Barrett [DSPU] explained that it was not possible for a family to challenge or appeal against the Ministerial authorisation of detention beyond 28 days although it was always open to a family to challenge the lawfulness of their detention through the courts. The authorisation was not a formal decision taken by the Secretary of State but rather an integral part of the internal review process for such cases. He also confirmed that there have not so far been any cases where authorisation has not been given."

83 Letter from Lord Bassam to Lord Avebury, 5 July 2004.

84 Home Office files can be requested under Subject Access request procedures, which take 40 days, or under Freedom of Information Act requests, which are supposed to be responded to within 20 days.

85 Liam Byrne in evidence to JCHR, 21 February 2007, in answer to question 528.

86 "It is not normal practice for Ministers to peruse the whole file of individual cases referred to them. The Management of Detained Cases Unit (MODCU) within IND maintains oversight of family cases involving detained children. Their role includes reviewing the appropriateness of detention and ensuring that, where detention is maintained, cases are progressed expeditiously. MODCU review individual cases on the basis of information relevant to detention obtained from the Immigration Service file and from Home Office records, with appropriate input from colleagues who have responsibility for day to day management of the case. Cases are monitored actively and, where detention may exceed 28 days, Ministerial authorisation is sought. The processes of review and Ministerial authorisation are based upon a full and comprehensive review of the case and detention will only be maintained where it is considered both justified and necessary. Once initial Ministerial authorisation has been received, MODCU continue to review the need for detention and provide weekly updates to the Minister to seek authority to continue detention where appropriate." Letter from Lord Bassam to Lord Avebury, 5 July 2004.



Weekly conference calls are now arranged in which cases to be considered by the minister are discussed by immigration service staff, officials, the Yarl's Wood social worker and IRC staff.<sup>87</sup>

The Home Office has stated on numerous occasions that information about the welfare of the family in detention is passed from the detention centre into the review process (via the contract monitor and MODCU).<sup>88</sup> These statements pre-date the introduction of welfare assessments by social services.

It is BID's experience that the information presented to the minister often does not include either welfare-related issues or an analysis of why detention is deemed "necessary". For example, a mother was detained for consideration of her asylum claim through the Oakington fast track with her baby, who was six weeks old and had been born by caesarean section. When arrested, she said that she wanted to kill herself. This information was included by Oakington immigration service staff on the request for further detention from MODCU on the 13th day of detention. None of it was included on the request for ministerial authorisation prepared for the minister by MODCU on the 21st day of detention.<sup>89</sup> Further, the information presented to seek authorisation from the minister contained no reasons why detention was necessary, stated the timescale for obtaining travel documents to be "a few weeks" and contained no timescale for actual removal.

Even where the possibility of welfare concerns is acknowledged in the request for ministerial authorisation, many requests merely contain the phrase "there are no reported welfare concerns at present". This phrase was repeatedly used to describe a situation where the mother of two young children was on suicide watch and had also expressed a wish to put one of her children up for adoption in the UK; although the suicide watch was recorded, the potential impact on the children was not considered.<sup>90</sup>

### Is authorisation ever refused?

Based on statements by various ministers, it appears that from the introduction of the policy in December 2003 up until February 2007, authorisation has very rarely been refused.<sup>91</sup>

87 "A SEO SCW whose cases include that of a child whose detention beyond 28 days is to be considered by the Minister, will be required to participate in a conference call organised by MODCU every Monday morning at 11.00 am. In addition to colleagues in MODCU, these weekly conference calls are participated in by representatives from every LEO with a case which is to be considered by the Minister; by UKIS staff at Yarl's Wood, by the Yarl's Wood Children's Services manager, by the social worker at Yarl's Wood and by representatives of IND's Children's Champion. These conferences enable all interested parties to review all the relevant information about each case being submitted to the Minister. MODCU prepare and submit to Ministers weekly on children in detention." CCD Process Communication, 01/07, 'Detention of dependent children with FNPs'.

88 "The returns that are currently made from Yarl's Wood to MODCU include observations and concerns raised by the Child Services manager at the centre on all children regardless of their length of stay." Brian Pollett, Director UKIS to BID 30 September 2005 - when no social worker was employed at Yarl's Wood.

89 Obtained via disclosure requests in course of proceedings for unlawful detention.

90 Obtained via disclosure requests in course of proceedings for unlawful detention.

91 For example, Detention Services Policy Unit (DSPU) to BID 7 October 2004: "Ministerial authorisation for the detention of a family beyond 28 days has never been refused." Liam Byrne in evidence to JCHR, February 2007, in response to question 528: "To date I have not refused any request for extended detention."



This apparent lack of effective accountability has been explained in terms that: *"...all cases are subject to rigorous review before they reach the Minister to ensure that continued detention is appropriate. Ministers have, on occasions, sought additional information about a particular case and, in some cases, have required further information to be provided in order to be satisfied that continued detention is appropriate and justified."*<sup>92</sup>

In the case of one family detained for six months, the minister refused to authorise continued detention because of serious concerns raised by the social worker as to damage suffered by the children from continued detention. However, the minister requested release in unclear terms (i.e. whether they were to be released on temporary admission or bail) and the immigration service demanded sureties of £5,000, which were not available. The minister did not pursue his refusal of authorisation, apparently accepting the situation regarding sureties that was presented to him by the enforcement officers. This case reveals a clear picture of the prioritisation of immigration control over the interests of the children. The family was never in fact released.<sup>93</sup>

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<sup>92</sup> Detention Services Policy Unit to BID 7 October 2004.

<sup>93</sup> Disclosure obtained in course of proceedings for unlawful detention.

## 5 Child protection and welfare assessments

### Key points: child protection

- The government has been heavily criticised for the lack of adequate child protection policies and practices in relation to IRCs.
- Child protection policies and procedures have developed in an ad hoc, piecemeal way and have varied between centres.
- Current child protection procedures do not acknowledge the harmful impact of detention on both parents and children and the difficulties that may be caused directly as a result of detention.
- The immigration service has failed to act on child protection concerns in its decisions to detain and to maintain detention.

### Child protection

The government has been heavily criticised for the lack of adequate child protection policies and practices in relation to IRCs.<sup>94</sup> Their piecemeal development and implementation is also apparent.<sup>95</sup> In 2001/2, IND sought advice and training from the National Society for the Prevention of Cruelty to Children (NSPCC) in developing its child protection policies<sup>96</sup> but this had clearly not been effective in ensuring that proper procedures were in place at the time of the Joint Inspectors' comments in July 2005. The Children's Commissioner made favourable comments about the arrangements at Yarl's Wood in October 2005.<sup>97</sup> However, it is BID's understanding that the arrangements for Children's Services Manager have been in flux at Yarl's Wood since the permanent post-holder resigned in 2006, and pending the transfer of the centre contract to Serco from 1 April 2007.

<sup>94</sup> For example, Joint Chief Inspectors (July 2005), *Safeguarding Children: The second joint Chief Inspectors' Report on Arrangements to Safeguard Children*, para 7.32, states: "Custody officers generally received half-day child protection training, but there was no additional training for working with children. Not all staff who came into contact with children had been subject to enhanced Criminal Records Bureau checks." Para 7.35 states: "Apart from a routine medical examination, there are no systems for assessing a child's immediate welfare needs or vulnerability on arrival, including any risk of significant harm under s. 47 of the Children Act. There is little information provided or available to make such assessments. Processes are inadequate to determine parents' capacity or willingness to care for children, or to establish that they are indeed the parents of the child concerned. Moreover, it must be assumed that the longer the child remains in detention, the greater the risk of significant harm; and there are no procedures to instigate area child protection team strategy conferences for children whose detention stretches into weeks or even months."

<sup>95</sup> "We are pleased to report that after a long period of not meeting the Centre once more held regular Child Protection Welfare Group Meetings, including the attendance of Cambridge Social Services Department (CSSD). The group as required, adopted the Child Protection Policy provided by Detention Services Directorate and approved by the NSPCC. These meetings were chaired by the GSL Residential Manager. It was decided that concerns about unaccompanied minors/age dispute would also be included in the discussions. There were concerns in the slow involvement and not very efficient Social Services input, which required better monitoring by the Immigration Services, their employer." Oakington Independent Monitoring Board (IMB) report 2005, published January 2007, [http://www.imb.gov.uk/annual-reports/185734/Oakington\\_IRC\\_2005.pdf?view=Binary](http://www.imb.gov.uk/annual-reports/185734/Oakington_IRC_2005.pdf?view=Binary)

<sup>96</sup> NSPCC's work on Child Protection in Detention/Accommodation Centres. Briefing note to the Refugee Children's Consortium, Rhian Stone, NSPCC October 2002.

<sup>97</sup> Aynsley, Green, Prof. A, (December 2005), para 27.

In BID's view there are two troubling issues in relation to child protection policy. First, IND has sought to limit the definition of child protection to that of harm caused by an individual – whether family member, fellow detainee, or member of staff – thereby avoiding a context of detention itself potentially being a child protection issue. Second, child protection concerns are not always prioritised over immigration control.

The limitation of IND's child protection procedures is that they potentially lead to a separation of parent and child when the “best interests” solution would be the release of the family from detention. This is because the procedures do not acknowledge the harmful impact of detention on both parents and children and the difficulties that may be caused directly as a result of detention. This limitation reflects family detention policy, which refuses to make the best interests of the child a primary consideration.

In BID's experience, the immigration service has failed to act on child protection concerns in its decisions to detain and to maintain detention. In one case, a family was detained as a unit even after the wife made allegations of domestic violence against her husband. When the immigration service tried to remove the family, the husband was violent towards his daughter at the airport. However, the removal of the mother and children was only prevented by the daughter refusing to board the plane. The immigration service maintained detention of the mother and children and continued to allege that the mother had fabricated her account of violence from her husband.

In an example of the limitation of child protection policies described above, a family continued to be detained even where long-term detention had exacerbated a child's behavioural problems, as well as undermining a parent's mental health to the extent that the parent was no longer able to effectively look after the child.

In neither of these examples was any child protection procedure instigated so far as BID is aware.

#### Key points: welfare assessments

- Welfare assessments for children at 21 days of detention were announced in December 2003, but their implementation was delayed.
- Before welfare assessments, the IRC's privately contracted medical facilities were the only source of routine assessment. This was reactive and often inadequate. Concerns about children's welfare noted by medical centre staff were not formally reported to the Secretary of State, under the procedures required by the Detention Centre Rule 35.
- Implementation of welfare assessments has been piecemeal and procedures have varied considerably between centres.
- The legal status of welfare assessments remains unclear. The system rests entirely on ministerial statements and is not included in the OEM.
- The government has stated that welfare assessments were set up to inform decisions by ministers, yet MA has frequently taken place without an assessment being available.

- Arrangements between IND and local authorities differ and are not in the public domain.
- Bedfordshire Social Services are refunded by IND for the cost of employing a social worker at Yarl's Wood.
- The government has taken contradictory positions on the purpose and effect of welfare assessments, particularly regarding whether the assessment is confidential.
- Families, any legal representative, detention centre and immigration service staff are all unclear about the scope and purpose of the welfare assessment. In the absence of clear instructions and protocols there is limited scope for the welfare assessment to lead to positive outcomes for the children concerned.
- Families are not necessarily released even where the welfare assessment has documented concerns. Parents are blamed for prolonging their detention on the basis that they could return to their country of origin, and so end the family's detention.
- Concerns identified by assessments are not systematically followed up by way of referrals for specialist services outside detention. This reflects a failure to properly implement the Children Acts in respect of children in detention.

The intention to introduce welfare assessments was announced in December 2003. In June 2004, a parliamentary answer revealed that assessments were not yet in place at any centre.<sup>98</sup>

In June 2005, the Home Office is quoted as saying that no welfare assessments had taken place at Dungavel but that *"if children were detained for over three days they were now moved to Yarl's Wood."*<sup>99</sup>

### What happened before welfare assessments?

As we have stated, when the indefinite detention of families with children was introduced in 2001, there was no provision made for either assessing the potential or actual impact of detention on the family, particularly on the children.

The only possible source of routine assessment was the detention centre's privately contracted GP facilities. However, this was a purely reactive service, apart from a routine medical examination on entry (and even this did not take place at Oakington unless the parent requested it).

<sup>98</sup> Baroness Scotland of Asthal, Hansard, 24 June 2004, column WA146: "A system of welfare assessment at day 21 of a child's detention has not yet been introduced. We are continuing to explore the possibility of establishing protocols with local social services to facilitate these assessments. This work is being carried forward initially at Dungavel and, if successful, we would plan to extend it to other removal centres that may hold families with children." According to minutes of the Detention User Group of 24 January 2005, by January 2005 "a pilot assessment scheme was in place at Dungavel and Lanarkshire Social Services assessments had already been passed to Ministers."

<sup>99</sup> 'No child welfare assessments at Dungavel', Amy Taylor, *Community Care* magazine, 22 June 2005  
<http://www.communitycare.co.uk/Articles/2005/06/22/49821/exclusive-no-child-welfare-assessments-at-dungavel.html>

The Detention Centre Rules 2001 provide that: *"The medical practitioner shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or by any conditions of detention... the manager shall send a copy of any report under paragraphs... to the Secretary of State without delay."*<sup>100</sup>

Potentially there is a contradiction between the duty under the Detention Centre Rules, which implies a proactive approach to healthcare, and the type of service that has been contracted for in the detention centres.

It was BID's experience that, although concerns about children's welfare were sometimes noted by medical centre staff (in at least one case at Oakington a GP recorded a "failure to thrive"), there was no evidence from the medical records that the concerns were formally recorded under the procedure contained in the Detention Centre Rules. This illustrates the inadequacy of the provisions contained in the Detention Centre Rules and the failure of medical centres to undertake their duties in this regard.<sup>101</sup>

Also, arguably, there are problems with relying on the medical services both in terms of independence and expertise.<sup>102</sup>

### Introduction of welfare assessments

Welfare assessments were introduced in piecemeal fashion with significant variation between the systems operated at different centres.

Even after the policy on welfare assessments was announced in December 2003, this was not implemented for some time. The original policy announcement related only to Dungavel and it was not until October 2004 that assessments were carried out elsewhere.

At Oakington, assessments were introduced in June 2005 and continued until the centre was closed to families in October 2005. These were carried out by Cambridgeshire Social Services who visited families in the detention centre following referral by Oakington on day 14 of detention.<sup>103</sup>

At Yarl's Wood a different system was put in place, with the centre employing an in-house social worker working under the auspices of Bedfordshire County Council. A social worker was in place from January 2006 until she resigned in April 2006. Following this, there was no routine provision of assessments until a new social worker was hired in October 2006.

<sup>100</sup> Para 35, Detention Centre Rules 2001 at <http://www.opsi.gov.uk/SI/si2001/20010238.htm>

<sup>101</sup> Note that Medical Foundation for the Care of Victims of Torture has concerns about the lack of effective referral mechanisms for the identification of torture survivors in detention was set out in the evidence provided in the case of D&K. That case, although concerned with adults in fast track procedures, was concerned with Detention Centre Rules (34 and 35) on identifying and reporting allegations of torture. See: D&K case [2006] EWHC 980 (Admin).

<sup>102</sup> See HMIP Inquiry into the quality of healthcare at Yarl's Wood Immigration Removal Centre, 20–24 February 2006. [http://inspectorates.homeoffice.gov.uk/hmiprison/inspect\\_reports/irc-inspections.html/Yarl's\\_Wood\\_inquiry\\_final.pdf?view=Binary](http://inspectorates.homeoffice.gov.uk/hmiprison/inspect_reports/irc-inspections.html/Yarl's_Wood_inquiry_final.pdf?view=Binary)

<sup>103</sup> The intention was that families would be assessed on day 21. This did not always happen in practice due, the government has said, to lack of capacity at Cambridgeshire Social Services.

At Yarl's Wood, prior to January 2006 and between April and October 2006, there were no routine assessments of children.

It was the view of the Joint Chief Inspectors that "...[IND has not] ensured that appropriate child protection systems and links are in place, or that independent assessments are made about the welfare and developmental needs of each child. There are no effective protocols with relevant local agencies that have responsibilities for detained children under the Children Act 1989 and related legislation. Both of these features are essential to provide a framework for the consistent safeguarding and care of children in immigration removal centres."<sup>104</sup>

Further, the Joint Inspectors commented that: "Protocols agreed with councils are not sufficiently effective in ensuring that they are able to carry out their responsibilities under the Children Act 1989 or arrangements for convening a multi-agency strategy meeting if a child is assessed as being at risk of significant harm."<sup>105</sup>

The system in place in October 2005 is described by the Children's Commissioner in his report on a visit to Yarl's Wood: "Yarl's Wood has a procedure for the referral of child protection concerns and a policy on welfare assessment. Where a child has been in detention for 21 days, the Children's Services Manager will decide whether an assessment shall be carried out on the family. If the family are due for removal in the next 7 days, no action will be taken. If they are likely to be present for longer (i.e. for over 28 days) then a request will be made for an assessment from Bedfordshire Social Services. The policy indicates that social services are to treat the case as a Child in Need referral and will visit the family within 7 days of receiving the referral. At present the policy requires that the appointed social worker visits and conducts checks every 14 days as long as the family remain in detention."<sup>106</sup>

Note that the practice conflicts with the government's policy in which families would be automatically referred for assessment on day 21 so that the results could feed into the ministerial authorisation at day 28. The practice at Oakington, of referral on day 14, was not replicated.

HMIP's report on Yarl's Wood IRC in 2006 states:

*"2.6 There was still no evidence to suggest that the child's welfare was taken into consideration when making decisions about initial and continued detention. Documentation supplied by IND contained little or no information that was useful, or could contribute towards an initial assessment. Nor was there much evidence of authorisation or review at a senior level.*

*2.7 No initial needs assessment was undertaken following the arrival of a child, and the first assessment did not begin until a child had been detained for a minimum of 14 days. There had been some progress since the previous inspection, in that a social worker post had been established, and the post-holder had taken up post two weeks prior to the inspection. She had begun to complete detailed family welfare assessments, modelled on the Framework for the Assessment of Children in Need and their Families used in the community, and was in the process of completing three assessments, which had been prioritised for attention from a lengthy backlog.*

<sup>103</sup> Para 7.30, Joint Chief Inspectors (July 2005).

<sup>104</sup> Para 7.36, Joint Chief Inspectors (July 2005).

<sup>105</sup> Aynsley, Green, Prof. A, (December 2005), para 28.

*2.8 However, there were no systems or procedures in place to ensure that the detailed assessments that the social worker was carrying out would serve to inform advice to ministers about the continued detention of children. Indeed, the UKIS contract monitor who had responsibility for reporting to MODCU cases of children held beyond the 28-day period had not seen the forms, and had not given any consideration to using them.*

*2.9 Neither were there any formal arrangements in place with Bedfordshire Social Services to ensure that the completed assessments were considered as 'children in need' assessments, with a view to ensuring that appropriate services to meet identified needs were put in place.*

*2.10 Thus the assessments were as yet unlikely to serve any useful purpose, or to benefit the children detained in any way."*

In BID's experience, prior to January 2006 and between April and October 2006, families were not generally referred to Bedfordshire Social Services, even if their detention extended beyond 28 days. In one case, a family who had been detained for approximately four months at Yarl's Wood before their release as a result of a bail application, were then re-detained after two months. Despite a history of health problems/special needs in the family during their previous period of detention, the child had still not been referred to social services after almost three weeks in detention. The child was referred to social services by BID, but there was no substantive response from social services for a week, other than to notify Yarl's Wood that an assessment had been requested. The family were then released again after a bail application by BID. If it were not for this application for bail, the family would have been expected to remain at Yarl's Wood for more than 28 days (in addition to the previous period of detention) as there were outstanding legal proceedings, and yet there was no sign that the procedures outlined to the Children's Commissioner would be implemented.

During the earlier period of detention of the same family (in the autumn of 2005), a request for ministerial authorisation (obtained under FOI Act disclosure) stated: *"The Children's Services manager of Yarl's Wood IRC has confirmed that social services involvement is not automatic but sought only when it can be of positive benefit to a family situation."* This directly contradicts evidence given to the Children's Commissioner during the same period, which implies that all children will be referred if their detention is likely to exceed 28 days. It also contradicts statements made by ministers (see below regarding purpose of assessments) and is highly revealing of IND's (and the private contractors') perception of the limited and unchallenging nature of the welfare assessment exercise.

### **The purpose of welfare assessments**

The announcement of welfare assessments followed publication of critical inspection reports by HMIP into Tinsley House and Dungavel House in 2003, and HMIP's recommendation on the need to introduce a mechanism for assessing the impact of detention on children. It also followed critical comments by the High Court judge in the case of Konan, a woman detained for six months with her young daughter. This family had previously been highlighted to the immigration minister on a number of occasions without any action being taken to release her.<sup>107</sup>

<sup>107</sup> CO/4926/2002 [2004] EWHC 22 Admin.



The system of welfare assessments does not explicitly reference the duties and powers of social services under the Children Act 1989. Their legal status remains unclear, particularly as the system rests entirely on ministerial statements – instructions are not included in the OEM. The government resisted an attempt to put welfare assessments on a statutory footing during the passage of the Asylum and Immigration (Treatment of Claimants) Bill in 2004 on the grounds that this would be too bureaucratic.

This has allowed implementation to be delayed and piecemeal. Ministerial authorisation has frequently taken place without an assessment being available; the adequacy of the assessments is open to question and children in detention still do not receive meaningful protection under the Children Act 1989. On a more fundamental level, government policy has been to create a separate and inherently unequal system for children in immigration detention, while maintaining a façade of access and equality.<sup>108</sup>

### The link between welfare assessments and ministerial authorisation

The intended link between welfare assessments and ministerial authorisation was articulated by Lord Bassam: *"We are also exploring the possibility of drawing up protocols with local social services to conduct a welfare assessment at day 21 of a child's detention, which would then feed into the system of ministerial authorisation at day 28."*<sup>109</sup> This link has been confirmed in a number of other government statements.<sup>110</sup>

However, in BID's experience, ministerial authorisation has been granted in a number of cases where welfare assessments were not available, without any questioning as to why this was so. For example, a family who were detained at Oakington were referred to social services but no assessment was carried out for several weeks. The lack of an assessment was not pointed out in the request for ministerial authorisation and the summary merely stated: *"there are no reported welfare concerns at present."*<sup>111</sup> Authorisation was repeatedly granted without comment as to whether or not an assessment had been carried out.

Similarly, authorisation was granted for two families detained at Yarl's Wood for several months without any referral having been made to Bedfordshire Social Services. Again there was no indication of concern from the minister about whether or not any assessment had been carried out.<sup>112</sup>

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<sup>108</sup> See, for example, government statements that Every Child Matters applies to all children in the UK.

<sup>109</sup> Lord Bassam, Hansard, 18 May 2004, column 747. See also 27 April 2004 Baroness Scotland (column 714) who referred to "welfare and educational assessment".

<sup>110</sup> For example, see comments of Jeremy Oppenheim in evidence to JCHR, 21 February 2007.

<sup>111</sup> Obtained via disclosure for judicial review (judgment awaited).

<sup>112</sup> Disclosure obtained in the course of proceedings for unlawful detention.



## IND arrangements with social services

BID understands that agreements have been negotiated between IND and different local authorities regarding welfare assessments; however, these have not been disclosed. The fact that agreements are necessary illustrates the perception, apparently held by both IND and local authorities, that children in detention are not routinely entitled to the protections of the Children Act.<sup>113</sup>

This would appear to be confirmed by the fact that IND pays Bedfordshire Social Services to employ a social worker who is based at the detention centre rather than, for example, paying Bedfordshire for the additional work created by having so many potential children in need (as we understand is the case for other areas of asylum policy such as dispersal).

The Children's Commissioner has questioned the independence of the social worker's role at Yarl's Wood: *"The social worker will be employed by Yarl's Wood management company and will not be an independent member of staff as recommended by Ann Owers in her report, an inspection published in May 2005."*<sup>114</sup> This concern is also echoed by the Immigration Law Practitioners' Association (ILPA) in its policy paper *Child First, Migrant Second* on the grounds that the Home Office has backtracked from its commitment to provide independent assessments, and because *"social workers are unable to provide a good service to children who are detained because the setting itself undermines this objective and negates good practice."*<sup>115</sup>

## What is done with the welfare assessment?

The government has taken contradictory positions on the purpose and effect of welfare assessments. This is illustrated by the differing answers given as to whether the assessments are seen by immigration officers and senior officials responsible for reviewing the family's detention and how they are used. The important question of confidentiality must be seen against the background of a Home Office-instigated process apparently set up solely for the purpose of reviewing a family's detention.

In one statement, IND's implication is that the contract monitor (who is a Home Office official based at the detention centre) would see the welfare assessment, or at least have a detailed idea of what it contained: *"The contract monitor at Oakington provides information about the children detained at Oakington weekly to MODCU. This report would include information that the Centre has received from the assessment procedures. MODCU include this information in their weekly submission to the Minister seeking authorisation for continued detention."*<sup>116</sup>

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113 "Although the Reservation [to the UNCRC] has existed for some time, the difference with the current approach is the extent to which local authorities and others responsible for providing support and protection to children and their families have been actively encouraged to exclude children subject to immigration control from both the provisions of the CRC and the Children Act 1989 and Children Act 2004." Crawley, H (February 2006), page 8.

114 Aynsley, Green, Prof. A, (December 2005).

115 Crawley, H (February 2006).

116 10 August 2005, Sara McDonagh, DSPU, to BID.

A slightly different account defined the welfare assessment as confidential but suggested that there was a communication process between the assessors (Cambridgeshire Social Services in this case) and the immigration service, which belies total confidentiality: *"The full welfare assessments are treated as confidential and are not passed to MODCU or the Minister. However any concerns identified by the assessments are reported to MODCU and are included in the submission to the Minister."*<sup>117</sup>

During evidence to the JCHR about Yarl's Wood, the Home Office stated: *"They are reports that are done independently by a Bedfordshire social worker. We pay Bedfordshire to provide the service. As the Minister had said, they are reports that we use to consider the welfare issues relating to children during the period of their detention and we do take them into account. The minister takes them into account when he considers whether children should remain in detention beyond the 28th day, so they are taken into account by us, they do not go into the ether."*<sup>118</sup>

However, in one case that BID is aware of, the Home Office has taken the stance that it discharges its duties merely by referring families to social services for assessment on day 14 of their detention with the aim of assessment being carried out by day 21. It is then effectively up to social services to decide if, when and how to assess (and implicitly whether or not to follow up any concerns). In this case, the Home Office has also argued that the assessments were entirely confidential and it would be up to the social worker or the detained family to bring any particular concerns to the attention of the immigration service.<sup>119</sup>

In a further contrast, in another case, a copy of the full welfare assessment was forwarded to the immigration service on an apparently routine basis.<sup>120</sup>

It is clear that families themselves and their legal representative (if they have one), as well as detention centre and immigration service staff, are unclear about the scope and purpose of the welfare assessment. In the absence of clear instructions and protocols there is limited scope for the welfare assessment to lead to positive outcomes for the children concerned.

### **Are families released as a result of concerns raised in the welfare assessment?**

About 30% of detained families are released from immigration detention, the majority on temporary admission.<sup>121</sup> The process that leads to release rather than removal is generally quite complex, and without proper disclosure it is often not possible to ascertain what tipped the balance in favour of release. For this reason it is not possible to know how many families are released directly as a result of concerns raised in the welfare assessment. Further, it is not possible to know, even where concerns are raised in the assessment, whether it is the assessment on its own, advocacy by the social worker, or advocacy by people outside of detention (including campaigners and lawyers) that brings about release.

<sup>117</sup> 30 September 2005, Brian Pollett, Director, Detention Services, to BID.

<sup>118</sup> Jeremy Oppenheim in evidence to JCHR, question 553.

<sup>119</sup> This is the gist of the defence put forward by the Home Office in the course of unlawful detention proceedings regarding a detention that took place in 2005.

<sup>120</sup> Disclosure received in course of proceedings for unlawful detention. Not clear which immigration service body received report due to redacting of recipient of email.

<sup>121</sup> For example, figures released to BID following request under the Freedom of Information Act showed that of 540 children who left detention in the last quarter of 2005, 345 (64%) were removed, 180 (33%) were granted temporary release/admission and 15 (3%) were granted bail by a court.

An interesting view on the procedure is provided by evidence to the JCHR by Mr Justice Hodge: "We are not familiar with any kind of process which produces a social work report out of a removal centre or a detention centre into paperwork for us. It is possible that they go into the bail summary in some way or another, but we are not familiar with that happening so we do not see them."<sup>122</sup> The Home Office's response is "[welfare assessments] do contain a lot of sensitive, private information and it is not for us to present those reports to the bail hearing but is absolutely for the parents to use them, should they wish to do so".<sup>123</sup>

This stance places the onus on the child and his or her parent(s) to understand and make use of the welfare assessment, and fails to take into account the reality for many families of limited or no access to legal representation. The JCHR has commented:

*"It seems likely that given the limited number of bail applications made at Yarl's Wood and the lack of on-site legal advice and representation, parents simply do not have the necessary knowledge or the opportunity to request that the information they have been given about the welfare of their children is taken into account in the on-going decision to detain..."*

*We are concerned that the current process of detention does not consider the welfare of the child, meaning that children and their needs are invisible throughout the process – at the point a decision to detain is made; at the point of arrest and detention; whilst in detention; and during the removal process. We are particularly concerned that the detention of children can – and sometimes does – continue for lengthy periods with no automatic review of the decision. Where the case is reviewed (for example by an immigration judge or by the Minister after 28 days), assessments of the welfare of the child who is detained are not taken into account. It is difficult to understand what the purpose of welfare assessments are if they are not taken into account by Immigration Service staff and immigration judges."*<sup>124</sup>

BID is aware of cases where the assessment has apparently **not** led to release even where concerns have been raised by the social worker. We are also aware of cases where the concerns raised by the social worker are not even reflected in the review process (see section on ministerial authorisations).

The government's position is that welfare concerns are taken into account but that they do not preclude further detention, with the implication that immigration control takes precedence over the welfare of the child.<sup>125</sup> This position also blames the parent(s) for the suffering of the child on the basis that the parent could choose to return to their country of origin and so end the family's detention.

This position must be placed in the context of the increasing obstacles that families (and other asylum seekers) face in establishing their right to protection in the UK, most notably the lack of high-quality legal representation available, within the urgent timescale required, particularly in detention.

<sup>122</sup> Answer to question 453.

<sup>123</sup> Jeremy Oppenheim in evidence to JCHR, 21 February 2007, answer to question 553.

<sup>124</sup> JCHR (2007), para. 255 and 258.

<sup>125</sup> Baroness Scotland letter to Lord Avebury, 2004, "we are keen to ensure that children's welfare is taken into account".

### Adequacy of the welfare assessment process

In BID's experience, the welfare assessments, whether carried out at Oakington or Yarl's Wood, have never led to referrals for specialist services outside of detention, for example, Child and Adolescent Mental Health Services (CAMHS) or Adult Mental Health Services. This is so despite the need for such services being identified by social service assessments subsequently carried out after release from detention.<sup>126</sup>

The only referrals that BID has seen contained in welfare assessments, in terms of dealing with the impact of detention on the family, is for the over-stretched in-house counselling service provided by the medical centre at Yarl's Wood.

A further concern is that the impact of parental distress (including suicide risk) is glossed over in the assessments. In one case the social worker noted that *"the impact on ... of his mother's suicide watch is not known."*<sup>127</sup>

This must call into question the adequacy of the assessments being conducted, especially given that families are not necessarily released even following an assessment that raises serious concerns.

### Interpreting and translating

BID is unclear as to how current arrangements are made for families and children to understand the process, purpose and outcome of welfare assessments. In response to a query from BID to IND in 2005, it was stated: *"The issue of translation of welfare assessments for families at Yarl's Wood will be discussed with the social worker once this person is in post."*<sup>128</sup>

In BID's experience, welfare assessments are conducted without assistance from an interpreting service. This was the case for a family where the parents spoke very little English but the child was relatively fluent.

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<sup>126</sup> This happened in two cases where BID subsequently made referrals under s.17 Children Act 1989 after release from detention.

<sup>127</sup> Disclosure obtained for judicial review.

<sup>128</sup> Brian Pollett to BID 30 September 2005. Clearly this is also an issue for how welfare assessments are used to support applications for release by families, in the absence of good legal representation.

## 6 Policies relating to particular circumstances

### Key points

- Families who are detained as a family unit are sometimes split up in detention. Stated IND policy prioritises perceived control issues and makes no reference to child welfare considerations.
- Families may be split up by removal of only part of the family from the UK.
- October 2004 family removal policy required only the authority of an immigration service assistant director for a family to be split.
- March 2006 family removal policy contains a requirement for a clear audit trail, and in some cases, ministerial authority, for a split.
- There remains no explicit mention of the impact on or welfare of children and the reasons for authorising such a split are not disclosed to the family.
- Mothers have been separated from their breastfeeding children.
- Immigration Minister Liam Byrne has stated IND has no specific policy on the detention of breastfeeding mothers. The forthcoming revised family removal policy is likely to include specific guidance.
- The government focus since mid-2006 has directly impacted on the experiences of children whose parent(s) fall within the category of "foreign national prisoner".
- Children have been detained in IRCs following the end of criminal sentences, and have been separated from parents moved from prison to IRCs. IND has refused to reunite children with their parents on the basis that the immigration service does not want to prolong the detention of the child.
- Policy instructions concerning the children of foreign national ex-prisoners were released to BID in January 2007. These were subsequently said to be a draft and replaced with a second set of instructions, which provide less protection to children and introduce a requirement to seek ministerial authorisation to release a parent to be with the child. It is not clear when policy instructions on this issue were drawn up.

### Splitting families in detention

Families who are detained as a family unit are sometimes split up while in detention. When BID raised a concern about this following the experience of a family we were working with, we received the following response: *"It may sometimes be necessary to separate a family for reasons of security or control or for the safety of other family members. The decision to detain a family member separately from the other members of their family would be taken by the on-call manager (Assistant Director) on a case by case basis following a risk assessment and full consideration of the particular circumstances."*<sup>129</sup>

<sup>129</sup> 10 August 2005, letter from Sara McDonagh, DSPU, to BID.

There is no explicit reference to the welfare of the child in this statement and a revealing lack of involvement by social services (who would automatically be involved in any situation outside of immigration detention).

In BID's experience, in practice, the immigration service has prioritised what are perceived as control issues and failed to take into account any child welfare considerations. This is another example of where there is no provision for children in IRCs to receive the protection of the Children Acts.

In fact the policy statement does not take into account all situations where families are likely to be split up while in detention. For example, an adult son with serious (and well documented) mental health problems was due to be separated from his mother who was also his carer on the grounds that he was an adult. In this case the medical centre intervened to prevent this from happening.

The separation of families may become more prevalent with the new government focus on "foreign national prisoners". BID is aware of one case where the family has been separated while in detention due to the previous criminal conviction of the husband (even though this is for a non-violent immigration-related offence). For more discussion on this broader issue, see the section below.

A serious consequence for families split up in detention is that they are more likely to end up with separate legal representation, without this being in their best interests.

### **Splitting families by removal**

The first family removal policy (disclosed in October 2004) allowed for a family to be split up (potentially with permanent impact) by removal of only part of the family merely on the authority of an assistant director of the immigration service.<sup>130</sup>

The lack of any formal criteria for this to happen was defended in these terms: *"There are no set criteria for assessing the removal of incomplete families. This is so that, where such action is proposed, each case can be considered on an individual basis, taking all the relevant circumstances into account. A safeguard is provided with the requirement for authorisation at an appropriately high level due to the consequences of such a removal. There is no written policy on this point other than that contained in the Family Removals Policy."*<sup>131</sup>

BID is aware of a case where a pregnant wife and young child were left in detention in the UK while the husband was removed as a result of the wife lodging an asylum claim in her own right on which the husband was not put as a dependant, due to poor legal representation. This followed an earlier separation of the family while in detention (the husband was moved to a male-only detention centre) on the grounds of the husband's "disruptive" behaviour towards immigration/custody officers. This removal was opportunistic and inhumane and was made far easier to carry out due to the previous separation of the family in detention.

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<sup>130</sup> Family removal policy, undated (disclosed October 2004 and updated March 2006) para 11.

<sup>131</sup> 10 August 2005, letter from Sara McDonagh, DSPU, to BID.

In another case, a husband was removed and his wife and children left behind in detention. The family had been booked on two separate flights without notifying them. Some of the children were disruptive in boarding the airplane, having watched their father's violent treatment at the hands of the escorts. The mother was taken ill and her removal, and that of the rest of the children, did not go ahead.

In March 2006 a new family removal policy was introduced which contained a fuller procedure, and in some cases, a requirement for ministerial consent before a family could be separated by removal. The policy demands that: *"Additionally, when a decision is taken to split a family there **must** be a clear and transparent audit trail of the considerations that were given to try and keep the family together as one unit. This is to be done in **all** cases where a decision is being made to split a family whether at Assistant Director, Director or Ministerial level"* (bold in original).<sup>132</sup>

Still, there is no mention of the welfare of the children or the potential impact of the Children Acts in this procedure. Also, there is no procedure for disclosure to the family of the reasons used to justify the separation or any other means of enforcing accountability (other than judicial review). This is ironic for a policy that emphasises the importance of a "clear and transparent audit trail". In BID's experience, the Home Office has refused to delay a removal even where an MP has demanded evidence that the procedure had been followed. (Note this issue is likely to be affected by the recent review of family removals – contact BID for details.)

The Children's Champion at the Home Office has stated to BID: *"Decisions to remove 'incomplete families' have to be taken at a senior level and at Ministerial level in certain cases. These removals cannot take place without this level of authorisation. The arrangements for reviewing the detention of families and for assessing the welfare of the children help ensure procedures are followed. I have no formal role in monitoring these procedures except as part of the role I play in reviewing the detention of all those families whose detention is likely to last longer than 28 days. Families are told in writing of the reasons for their detention and these are formally updated when their detention extends beyond 28 days."*<sup>133</sup>

It is important to note that not all families who are separated are necessarily detained for 28 days prior to the removal. Also, in some cases the child may be detained shortly before removal and separation occurs (see section on foreign national prisoners, below).

### Separating breastfeeding mothers and their children

In BID's experience, breastfeeding mothers have been separated from their children. In one case this separation happened when the mother was arrested by police for a minor offence, was not charged and was passed to the control of the immigration service. The child was being looked after by a friend when the arrest happened. The mother was placed in immigration detention without the child for several weeks on the grounds that there was an outbreak of chickenpox in the detention centre to which she had been sent. The mother was no longer able to breastfeed by the time that the child was reunited with her. In addition, during the separation, the child had been highly distressed and had initially refused to be bottle-fed.

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<sup>132</sup> Family removal policy March 2006 para 5.4

<sup>133</sup> Jeremy Oppenheim, Children's Champion, letter to BID, 22 January 2007.



There was no evidence in this case that the impact on the child of maintaining the mother's detention had been considered. This is another situation where the "enhanced review arrangements" relating to families, as well as ministerial authorisation and welfare assessment, would not apply (until the child had itself been detained for 28 days).

BID is aware of several other cases where breastfeeding mothers have been separated from their child, including one woman who was detained after signing at her weekly early morning reporting event as required. The child was breastfeeding for health reasons and was described by the mother as "very dependent on me". She had been specifically requested **not** to bring her child with her on previous signing occasions, so had made arrangements to leave him with a neighbour. Her child did not accept bottles and would wait until she returned to be fed. At the reporting centre, the mother was told she was to be detained as her case had finished, and was told she would be taken to Yarl's Wood. She was refused permission to make a phone call to her neighbour or husband. She was finally allowed to telephone her husband on arrival in detention in the late evening. Her breasts were leaking milk, but she was not offered breast pads. She was not released until two days later. The whole family were very distressed and said that the child's sleep patterns and behaviour had deteriorated.

This case was taken up by Lord Avebury, and in response the minister stated that: "IND has no specific policy on the detention of breastfeeding mothers."<sup>134</sup> In further correspondence, dated 23 October 2006, the minister stated that the forthcoming review of family removal processes included a draft recommendation:

*"Specific guidance should be developed in relation to breastfeeding mothers and parents of young children. This should include a requirement that breastfeeding children should not be separated from their mothers unless there are compelling and exceptional circumstances which indicate this may be appropriate. Similarly, very young children should not be separated from their mother unless there are exceptional and compelling reasons for considering such action. Authority for such action should rest with an Assistant Director."*<sup>135</sup>

The minister stated that *"all the draft recommendations from the review will be given full consideration"*

In evidence given on behalf of the Home Office, Mr Hyde (a member of the Department for Education and Skills (DfES)-led national safeguarding board) said to the JCHR: *"Certainly separating a breastfeeding child from a mother is something that is not acceptable."*<sup>136</sup>

### Foreign national prisoners and separated children

In mid-2006, the government began to focus heavily on "foreign national prisoners" as a result of increased parliamentary and media attention on the Home Office's failure to consider for deportation convicted criminals who were not British citizens.

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134 Liam Byrne, Letter to Lord Avebury, 8 September 2006.

135 Liam Byrne, letter to Lord Avebury, 23 October 2006.

136 Evidence to JCHR, February 2007, answer to question 546.



This new focus has directly impacted on the experiences of children whose parent(s) fall within the category of "foreign national prisoner" and the results have caused concern.

In one case that BID is aware of, a woman was attempting to transit the UK on her way to another country in order to seek asylum. She was using false documents for her journey. She was arrested, charged, convicted and sentenced (including a recommendation for deportation) after brief contact with a criminal duty solicitor only, without receiving advice from an immigration solicitor. She had claimed asylum on her arrest, but this claim was not investigated. She gave birth in prison in a mother and baby unit. Some time after her sentence was finished, she was transferred with her very young baby to Yarl's Wood. Her asylum claim was still outstanding as was her appeal against deportation. She was only released following an application for bail by BID, after almost three months of immigration detention.

In another case, a mother and her nine-year-old child were detained without a pastoral visit being undertaken by the immigration service. Had a visit been conducted, they would have found that the child's aunt with whom they lived had already been approved as a temporary foster carer (when the mother was in prison). Instead of remaining with the aunt, the child spent a month with her in detention and suffered very significantly.

In another case, a husband and wife were both convicted of working illegally, using false documents. Their young daughter was taken into care as there was no one else to look after her. Some time after the mother's sentence was finished she was transferred to Yarl's Wood. The daughter remained in care, despite concerns put forward to the immigration service by the local authority over the continued separation and the daughter's reaction to this separation. The immigration service did not even respond to the local authority's correspondence on this issue.

When BID listed a bail hearing, the immigration service put forward the argument that they did not want to prolong the child's detention and therefore they could not reunite her with her mother. Meanwhile, the immigration service were responsible for a delay in obtaining travel documents for the family's return. They refused to release the mother on the grounds of her absconding risk (even though the mother had agreed to return to their country of origin once her husband's slightly longer prison sentence was completed). In this case, the mother and child were removed from the UK about two months before the husband was due to be released from prison.

When BID raised the outline of this case with the Children's Champion and requested details of policy instructions on children of ex-foreign national prisoners, we were sent an undated extract from *"Criminal Casework Directorate's instructions and guidance on the detention of children of foreign national prisoners"*.<sup>137</sup> This guidance set out a procedure for the consideration of cases where the child(ren) had previously been separated from their parent(s) as a result of a prison sentence. Note that this guidance was apparently not in force at the time the actions were being taken on the above case (November/December 2006). This guidance is attached at Appendix 2.

Subsequently we were informed that we had been sent a draft version. Another version was sent in March 2007. This version is attached at Appendix 3.

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<sup>137</sup> Jeremy Oppenheim, Children's Champion, letter to BID 22 January 2007.

Note that there are significant differences between the two versions of the policy, with the second version providing less protection to children than the first. For instance, the 22 January version states:

*"IND policy is that the detention of children should be exceptional and for the shortest possible time. **However this must be balanced with the presumption in UK law that it will be in a child's interests** to stay with their parent or to be reunited with their parent or carer at the earliest opportunity."* (emphasis added)

The 19 February version states:

*Para. 2 "**While in many cases it will be in a child's interests** to stay with their parent or to be reunited with their parent or carer at the earliest opportunity, **there will be exceptions, e.g. where detention would unnecessarily disrupt the existing care arrangements for a child** when removal is not reasonably imminent."*

The 22 January version states: "Getting these decisions right means that detention **cannot be justified** in every case. Sometimes, in order to safeguard the welfare of a child, it may be necessary to consider the release of the parent from detention." However, the later version introduces a requirement that "consideration should always be given to seeking Ministerial authority" before releasing a parent to be with a child.

*Para. 2 "Getting these decisions right means that detention **might not be appropriate or justifiable** in every case. Sometimes, in order to safeguard the welfare of a child, it may be necessary to consider the release of the parent from detention. **Such a decision is likely to require Ministerial authority.**"*

BID has requested clarification of when the 19 February policy came into force, and what previous instruction was in force, if the 22 January version was merely a draft. We have not as yet had a response.

## 7 Impact of detention on families

### Key points

- Families who have been detained have articulated concerns about the conditions in detention, the impact of detention on their children and their ability to parent while detained.
- The Home Office has not carried out any monitoring or evaluation of the impact of detention on children.
- A structured survey of detained children was carried out by HM Inspectorate of Prisons in 2006.
- Preliminary findings of a forthcoming independent study by paediatricians and a psychologist that aimed to assess the physical and mental health of detained children suggest that detained children were found to be experiencing significant physical and mental health difficulties of recent onset, which appeared to be directly related to the detention experience.
- Concerns articulated by families have not been addressed by IND.
- Some families have been removed from the UK without appropriate immunisations or protection against malaria. The Immigration Directorates' Instructions (IDIs) on this have been updated.

To BID's knowledge, the Home Office has never attempted to undertake any monitoring or evaluation of the impact of immigration detention on children in families.

HMIP carried out a structured survey of children at Yarl's Wood, to gauge their views of detention and the centre. The average period the interviewed children (aged 8 – 18) spent in detention was 23 days, the longest being 112 days.<sup>138</sup> The report states:

*"These interviews provide a child's-eye view of the detention process. Their comments and fears illustrate potently the distress of detained children, and their anxieties about their current and future situation. As well as raising serious concerns about detention, they illustrate the need to ensure that the child's welfare is a specific consideration in deciding to detain, maintaining detention and the process of removal."*<sup>139</sup>

A forthcoming independent report conducted by paediatricians and a psychologist aimed to assess the physical and mental health of children detained under Immigration Act powers. The qualitative interview-based study, using structured proforma and clinical interview, is the first of its kind in a UK detention centre.

<sup>138</sup> See Appendix 3, HMIP (2006), Report on an unannounced short follow-up inspection of Yarl's Wood IRC (13-16 February 2006). [http://inspectorates.homeoffice.gov.uk/hmiprison/inspect\\_reports/irc-inspections.html/yarlswood.pdf](http://inspectorates.homeoffice.gov.uk/hmiprison/inspect_reports/irc-inspections.html/yarlswood.pdf)

<sup>139</sup> Ibid, p 14, 2.11

Individual reports for families indicate that detained children experienced significant physical and mental health difficulties of recent onset, which appeared to be directly related to the detention process.

The findings are consistent with the experiences of detained families recounted to BID. When detained, children are taken from all their familiar surroundings, people and most of their possessions. They have often lived in these surroundings for years, sometimes for their entire life. They cannot eat familiar food, carry out familiar activities or routines or be cared for in a familiar way. New and frightening routines are introduced such as regular searches. They and their parents lose control over their own lives, sometimes with very serious effects on parent/child or both.

For those children released from detention, the effects continue in all the cases of children more than about one year old that BID has come across – fear of knocking at the door, fear of people in uniform, difficulty in sleeping or in sleeping apart from the mother, expectation that the same events will repeat themselves, games and stories relating to experiences from detention. BID has worked with several families who have been detained more than once, which compounds the trauma and distress of both the parent and the children.

The Home Office view is that the needs of children are met within detention.<sup>140</sup> The Children's Commissioner report into Yarl's Wood points out that: *"Yarl's Wood has a policy on safeguarding children which recognises the difficult circumstances that children may have accounted (sic) prior to their arrival and 'the unusual circumstances in which they find themselves'. This policy states clearly that the welfare of the child shall be the paramount consideration at Yarl's Wood."*<sup>141</sup>

In BID's experience, detained families do not perceive this to be the case. For example, families have complained of refusal to give milk to their children in the evening, lack of sufficiently regular food for breastfeeding mothers, refusal to provide special diets (for example, where a child suffers seriously from food-related allergies), lack of adequate sterilising equipment including even a lack of detergent to wash out babies' bottles, and no provision for toys in the rooms after the nursery is closed.<sup>142</sup>

The Joint Inspectors also expressed concern about both the lack of education provision and the impact on children of detention, stating that *"physical conditions were not appropriate for long-term detention and educational provision was particularly inadequate for older children"*.<sup>143</sup>

*"Even more concerning [than lack of educational provision] is the effect of detention itself on a child, which is likely to compromise children's ability to thrive. Children may have had traumatic experiences in their home country before coming to the UK. Inspectors found evidence that the additional effects of restrictions on children's movement and activities and of witnessing their parents' powerlessness had led, in some cases, to eating and sleeping problems and depression."*<sup>144</sup>

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139 Brian Pollett, letter to BID, 31 August 2006.

141 Aynsley, Green, Prof. A, (December 2005), para 34.

142 See letter from group of mothers at Yarl's Wood IRC – Appendix 1.

143 Joint Inspectors (2005), para 7.31 and para 7.33: "Educational provision in all immigration removal centres consists of a specified number of contracted teaching hours, but the quality of education is not stipulated and inspectors consider it deficient for all but the youngest children."

144 Ibid. para 7.33 & 7.34

The Children's Commissioner has reported on concerns, including the number of locked doors, problems with food and limitations on access to outdoor areas.<sup>145</sup> He has also highlighted the limited access to education facilities for detained children.<sup>146</sup>

Scotland's Commissioner for Children and Young People, Professor Kathleen Marshall, has stated:

*"Detention itself is inherently against the welfare of children and you cannot expect children's welfare to be served in that situation."*<sup>147</sup>

BID has also worked with families whose healthcare or treatment has been disrupted by detention. In our experience, little reference is made to the health status of children who are to be removed. Of particular concern is the removal of families from the UK without offering appropriate immunisations and inoculations.

In February 2007, Chapter 1, Section 8 of the IDIs<sup>148</sup> was updated to include guidance for giving families time to seek medical advice and arrange for any recommended treatment.<sup>148</sup> The guidance puts the onus on families to ensure the correct treatment is sought. However, the lack of notice of impending detention and removal given to families means that they may not have time even to take medication or the contact details for their health treatment with them into detention, let alone to seek medical advice on appropriate travel immunisations should they be removed.

### Travel immunisation and prevention of malaria

The Medical Justice Network has raised concerns about removal of detainees without having been provided with adequate or any anti-malarials. BID is aware of several cases where removal of families to malarial areas was delayed through judicial reviews while malarial drugs were provided. The Medical Justice Network briefing at <http://www.medicaljustice.org.uk/briefings/AntiMalarialsWhatCanBeDone.htm> explains more about the particular situation concerning malarial prophylaxis.

145 Aynsley, Green, Prof. A., (December 2005).

146 Ibid, para. 17 "Yarl's Wood has two permanent teachers on its staff and has also, since July, employed a supply teacher. The teaching facilities were well decorated and well equipped. Concerns about the facilities for older children expressed in the HMIP Report of February 2005 appeared to have been addressed and resolved. However, there were no secondary classes functioning during our visit, and only one secondary-age child was available to discuss the issue of education. We did not have the opportunity to speak to the secondary school teacher."

147 Comment made to conference in Edinburgh on 26 April 2004 (quote BBC News 26 April 2004) - from Medical Foundation briefing on the Detention of Children for the report stage of the Asylum and Immigration (Treatment of Claimants etc) Bill, 13 May 2004.

148 Available at: <http://www.ind.homeoffice.gov.uk/documents/idischapter1/>

149 IDIs see: "5.3 In some cases preventive treatment may be unnecessary because of immunity acquired before coming to the UK but a limited number of people, for example pregnant women and children under 5, may be particularly vulnerable to infection and therefore may need inoculation or other prophylaxis in preparation for their return. The time between notification that their appeal rights are exhausted and final removal should normally allow sufficient time for people to take medical advice from a general medical practitioner and arrange for and complete any recommended treatment."

"5.5 A person subject to removal cannot in principle claim any entitlement to remain in the UK to benefit from medical treatment. However, requests to delay removal for a short period to allow for preventive treatment should be considered on their merits in the light of medical advice and standard operational procedures before removal. This is particularly important when pregnant women, young children or unaccompanied minors are involved. However, the presumption should be that removal will not be delayed unless a doctor has confirmed that the treatment concerned is necessary prior to removal and the person subject to removal can show good reasons why it could not have been completed earlier."

In JN (CO/9371/05) 17 January 2006, Collins J stated:

*"I cannot believe that the Secretary of State would countenance the removal of pregnant women to a serious risk of malaria when the prophylaxis is readily available. Accordingly, I propose to direct that removal cannot take place until that prophylaxis is provided - it is only a question of giving her the necessary tablets."*

The updated IDIs include new guidance, "Inoculations and other preventative treatment (prophylaxis) for persons removed from the UK."<sup>150</sup>

The IDIs state:

*"5.7 Preventive treatment for malaria is a special case in that medication must be taken shortly before travel. People detained prior to removal may not therefore be able to make the necessary arrangements for themselves. Any malaria prophylaxis recommended as appropriate by the removal centre medical staff for pregnant women and children under 5 should normally be provided and **time allowed for it to take effect before removal**... Removal need not be deferred in any case where a detainee declines (on his or her own behalf or on behalf of a dependent child) to take malaria prophylaxis that has been provided on medical advice."*

The detailed information on malaria prevention in the IDIs and the attached Guidance by the Advisory Committee on Malaria Prevention includes discussion of the use of bed nets and 'bite prevention measures'. However, the IDIs make clear that detainees are expected to arrange nets on return:

*"5.9 It should also be noted that bed nets and other barrier protective measures are equally important in an endemic setting. However these, which are not provided free to British citizens, should be regarded as the responsibility of the detainee to obtain on return."*

Prior to the updating of the IDIs, guidelines prepared by a committee of medical staff throughout the immigration services detention estate, stated that children and pregnant women should be provided with chemoprophylaxis against malaria. Despite these guidelines some detainees were removed from the UK without appropriate prophylaxis.

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<sup>150</sup> Available at: <http://www.ind.homeoffice.gov.uk/documents/idischapter1/>

## 8 Obstacles to accessing legal rights

### Key points

- Detained families have no automatic entitlement to legal representation in detention.
- Obstacles to accessing legal advice include the merits test for legal aid funding, the Legal Services Commission (LSC) 'success target', changes in legal aid that have led to fewer legal aid lawyers and poor rates of pay for travel time for lawyers to visit detained clients.
- Families may turn to privately-charging lawyers, which often results in them obtaining poor advice and little or no representation.
- The LSC-funded Detention Duty Advice scheme provides on-site surgeries for free advice but it is not clear whether these have been useful to detained families.
- Forthcoming proposals for exclusive contracts for detained work may exacerbate the problem of access to advice.
- Applications for bail to the Asylum and Immigration Tribunal (AIT), judicial review to the High Court and civil actions for compensation are methods for challenging detention and seeking some degree of accountability.
- Obstacles to bail applications include the merits test, finding a lawyer to represent a family and a limited focus, which is not on the lawfulness of detention, and procedural limitations.
- Judicial review and civil actions can be inaccessible for detained families, but provide a broader remedy than bail, and are a crucial means of demanding accountability for detention decisions.
- The government has sought to prevent families from lodging 'last minute' legal challenges to stop a removal. Families who lodge applications for judicial review are now generally held in detention even though the process may take several weeks.

Access to high-quality legal advice is essential and this is one of the major problems that families in detention face. There are two aspects to this: first, obstacles that lie in the way of a family challenging their detention; and second, obstacles that detention creates for a family who are trying to challenge their removal from the UK.

Families who are originally detained at Dungavel House face additional obstacles if they are transferred to detention in England, as they usually will be prior to removal.



## Accessing legal advice

There is no automatic entitlement to legal representation in detention. Where a family has no money (the vast majority of families in detention were previously dependent on National Asylum Support Service (NASS) benefits), access depends on finding a lawyer who can offer legal aid, has the capacity to take on the case and who considers that the family's case is sufficiently strong to allow a grant of legal aid. The basic test is whether on a balance of probabilities any application or appeal is likely to succeed. However, the LSC also sets "success" targets for firms with immigration contracts that serve to discourage them from taking on borderline cases and also cases where the chances of success are considerably higher.

In BID's experience, it is often the case that families are not able to find a legal aid lawyer who is willing (and has the capacity) to take on their case. This situation was markedly exacerbated by the cuts in legal aid in 2003 and resultant closure of legal aid firms. The very poor rates paid for travel time are another important factor which discourages legal aid lawyers from attending clients in detention in order to take instructions.

In these circumstances, many families seek help from private lawyers, relying on financial help from friends to pay the fees or informal agreements to pay the fees later. In BID's experience, such arrangements generally result in families obtaining very poor advice and little or no representation, as the lawyers demand fees that the families cannot raise. The evidence seen by BID indicates that some lawyers do not advise families fully on what action they can or are willing to take without substantial payment. This is particularly the case in relation to judicial reviews.

With increasing pressure on legal aid firms, there is an increased likelihood that the solicitor or caseworker will take a conservative approach to eligibility for legal aid and also to refuse to take on a case that requires further investigation prior to potentially becoming eligible for legal aid, even where this work could be covered under Legal Help. In such cases, it is open to the firm to offer to continue representation on a private basis, thus placing the family in the same situation as described above. Under the proposed exclusive contracts for legal advice in detention due to come into force in October 2007, detention suppliers will no longer be able to privately charge former legal aid clients.<sup>151</sup> However, there is nothing to prevent other private solicitors without a detention contract from seeking to represent detainees.

In BID's experience, the introduction of the Detention Duty Advice (DDA) scheme in detention centres from December 2005 has not fundamentally altered this situation. This seems largely due to the short timescale that a family is usually given to obtain advice prior to removal.<sup>152</sup> The LSC evaluation of the first six months of the DDA scheme<sup>153</sup> does not consider its accessibility for families and does not present data on the profile of detainees who accessed it (e.g. age, gender, and family status). There is also a serious question mark over the scope of the scheme itself: from the difficulty of assessing a case usually with very limited paperwork and no face to face interpreting in the half-hour slot allowed, to the quality of some of the law firms contracted by the LSC to provide advice sessions and the ability of detainees to complain if they are not properly represented.<sup>154</sup>

<sup>151</sup> See LSC Draft Immigration Specification for Exclusive Detention Contracts  
[http://www.legalservices.gov.uk/civil/docs\\_for\\_consultation/unified\\_contract\\_specification.asp](http://www.legalservices.gov.uk/civil/docs_for_consultation/unified_contract_specification.asp)

<sup>152</sup> Note that IND policy change 'Relating to the circumstances in which removal will be deferred following challenge by judicial review' states: "From 12 March 2007 IND will give at least 72 hours notice of removal, including two full working days. The last 24 hours of the 72 hours will include a working day." See: <http://www.ind.homeoffice.gov.uk/6353/6356/changeofpolicy.pdf>

<sup>153</sup> See the On-site Immigration Detention Advice Pilot Evaluation at  
[http://www.legalservices.gov.uk/docs/civil\\_contracting/onsite\\_detention\\_pilot\\_evaluation.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/onsite_detention_pilot_evaluation.pdf)

<sup>154</sup> See BID's research on the fast track at Harmondsworth, July 2006, and forthcoming research on the scheme at Yarl's Wood, which involve many of the same law firms.



The government's forthcoming proposals for legal aid, in particular the exclusive contracting arrangements for detention work, will further exacerbate many of the current problems.<sup>155</sup>

The nature of legal representation was recently criticised by Mrs Bird, an immigration judge, in her evidence to the JCHR: *"Things are getting more difficult with the cuts in legal aid. You have more people who are appearing before you unrepresented. Often they may be represented but the level of representation could have been better... The quality of representation has gone down. I have been doing this since about 1995 so I will have noticed that..."*<sup>156</sup>

### Obstacles to challenging detention

There are two main methods of challenging the detention of a family – a bail hearing before the AIT and a judicial review before the High Court.<sup>157</sup> A civil action for compensation (before the county court or the High Court) provides a further mechanism that can operate to demand accountability for unlawful detention.

### Applications for bail

*"...where individuals are detained, of course they have access to bail proceedings".*<sup>158</sup>

There is no entitlement to an automatic bail hearing. Access to a bail hearing depends on finding a lawyer who is willing to take on a family's case. In some circumstances, BID can make bail applications for detained families. Otherwise a family is entitled to represent themselves and may seek assistance from BID. This option is clearly less satisfactory in almost all cases.

It is possible under an LSC contract to represent a family purely for a bail application and this has been confirmed by correspondence with the LSC, especially in relation to the DDA scheme. However, in BID's experience, lawyers have been generally unwilling to take on a case purely for a bail application and access to bail is therefore often dependent on finding a lawyer willing and able to take on the family's substantive asylum or immigration case. This may be due to the problems with legal aid funding outlined above.

There remain significant problems with sureties, as many solicitors demand these before they will apply for bail. This relates to the merits test for Controlled Legal Representation (CLR), the legal aid used for a bail hearing.<sup>159</sup> In addition, in BID's experience, the right to a review of a decision to refuse CLR is often not explained, contrary to professional obligations.<sup>160</sup>

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<sup>155</sup> See the report of the parliamentary Constitutional Affairs Committee, *Implementation of the Carter Review of Legal Aid*, 18 April 2007 at: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/223/22302.htm>

<sup>156</sup> Evidence to JCHR, February 2007, in answer to question 460.

<sup>157</sup> For the methods of challenging detention, see Burnham, E. (October 2003) *Challenging Immigration Detention: A best practice guide*. See also the BID Notebook on Bail. Both are available on the BID website, [www.biduk.org](http://www.biduk.org)

<sup>158</sup> Liam Byrne in evidence to JCHR, February 2007, question 531.

<sup>159</sup> For a discussion about applying the merits test and considerations about sureties, see *Challenging Immigration Detention* op cit, chapter 6.

<sup>160</sup> See BID Bulletin 18 (May 2006) - Bulletin on the LSC Pilot Project for Detainees at <http://www.biduk.org/obtaining/notebook.htm>

The bail procedure is also limited in focusing not on the lawfulness of detention (which would require a judge to take a view on a much wider range of factors), but on the question of whether a family is likely to abscond if released. In BID's experience, there is even a reluctance to consider factors such as whether Home Office policy or procedure has been followed in the decision to detain/maintain detention.

This limited view of bail has been confirmed by Mr Justice Hodge in his evidence to the JCHR:

*"...when somebody is applying for bail, our judiciary wants to know: are they likely to turn up on the next occasion that they are required to turn up; are they going to have a fixed address at which they can live; are there usually going to be sureties who will stand for them to make sure that they do attend and are they likely to be removed if they have been through the system very quickly or if they are on the fast track records, and they lose, are they likely to be removed very shortly? If the answer to those is all in favour of the appellant, I hope the judges will be granting bail. That is what the judges are really focusing on..."<sup>161</sup>*

There are further procedural limitations: there is no formal transcript of the proceedings or of the judge's decision and judges' written reasons for the refusal of bail do not always include all the oral remarks. There is no right of appeal against a refusal of bail. The problems with accountability in the Home Office's decision-making processes are easily repeated in the bail process. In addition, bail summaries setting out the reasons why the Home Office oppose bail usually only arrive the day/afternoon before; decisions are often summary only and sometimes are illegible (both problems for unrepresented applicants). No fares are paid for bailed applicants to reach accommodation or for sureties to attend court.

While it is possible to make repeat applications for bail, which is, of course, a very necessary protection, it is quite often necessary to do this. Mr Justice Hodge noted that about 30% of bail applications are withdrawn, with no decision being made. He attributed this partly to failures by the Home Office to provide the information necessary for the judge to make a decision.<sup>162</sup> However, with the problems in legal representation and families frequently relying on privately funded legal assistance, a repeat application for bail is frequently problematic.

### Claims for judicial review

With the limitations of the bail procedure, the only means of obtaining release on the basis of unlawful detention is a claim for judicial review (or, in some circumstances, a similar claim for habeas corpus).<sup>163</sup> Judicial review is a much broader remedy than bail, for example, allowing applications for disclosure, injunctions against removal, compensation to be awarded and declarations of unlawfulness. If the judicial review proceeds to a full hearing, the decision may be relied on in other cases. It is therefore a crucial means of demanding accountability for detention decisions.

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<sup>161</sup> Evidence to JCHR in answer to question 455.

<sup>162</sup> Evidence to JCHR 2007, answer to question 440: "The statistics show that something like 30% of bail applications are withdrawn, probably because the information is not full enough."

<sup>163</sup> A judicial review may be accompanied by an application for bail from the High Court. Generally, if permission is granted on a judicial review, the Home Office will grant temporary admission.

There are several factors that can undermine the usefulness of judicial review as a mechanism for accountability. First, the Home Office seeks to settle some judicial reviews (and civil actions - see below) before the full hearing takes place. There are incentives built into the system to force settlement: payment of part of the Home Office's costs if the application ultimately fails, and reduction of compensation by means of the statutory charge if the application succeeds.

Second, there are serious obstacles to making an application for judicial review. It is a lengthier, more complex, expensive and therefore inaccessible process than applying for bail and it is rare for families to obtain their release by this method.

Third, in BID's experience, lawyers can be hesitant to initiate a judicial review on the basis of unlawful detention where a family is facing imminent removal, even after a lengthy period of detention prior to removal. Partly this stems from problems in actually preventing a removal where a judicial review has been issued on the grounds of unlawful detention, as the Home Office may argue that the family can pursue their case even after they have been removed.<sup>164</sup>

Concern about judicial review as an effective remedy against detention has been voiced by, among others, the Commissioner for Human Rights, Mr Gil-Robles.<sup>165</sup> However, judicial review bears the potential to bring about changes in government policy and thus remains a significant tool in the movement against the use of detention of families.

### Civil actions for unlawful detention

A civil action, in many respects, is similar to a claim for judicial review. The very significant difference is that a civil action cannot demand a family's release from detention.<sup>166</sup> Also, it has traditionally been a far slower process than judicial review, although most cases are now being resolved within about a year. In BID's experience, these differences mean that families have rarely launched civil actions while they remain in detention.

Civil actions are a crucial means of demanding accountability. The government unsuccessfully attempted to halt the use of civil actions to claim compensation for unlawful immigration detention.<sup>167</sup>

Civil actions are prey to the same issue as judicial reviews – the Home Office tends to offer to settle prior to the court's decision. The same incentives towards settlement apply in both cases and the Home Office may demand confidentiality about the amount of compensation awarded.

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<sup>164</sup> This gives rise to arguments under Article 6 ECHR and see decision of Quah Quah.

<sup>165</sup> Report by Mr Gil-Robles, Commissioner for Human Rights, Council of Europe, on his visit to the United Kingdom, 4-12 November 2004, Comm DH(2005)6, para 60.

<sup>166</sup> Except, potentially, where a civil action has been lodged in the High Court. In this case, interim remedy, in the form of an application for High Court bail, may be requested. Note also that the Home Office may release on temporary admission once the particulars of claim are filed.

<sup>167</sup> *ID and others v The Home Office* [2005] EWCA Civ 38. Lord Justice Brooke: "I know that the Home Office is concerned with the practical implications of a decision of this kind. The evidence of the interveners showed, however, that when the Home Office determined to embark on the policy of using powers of administrative detention on a far larger scale than hitherto, the practical implementation of that policy threw up very understandable concerns in individual cases ... so long as detention, which may cause significant suffering, can be directed by executive decision and an order of a court (or courtlike body) is not required, the language and the philosophy of human rights law, and the common law's emphatic reassertion in recent years of the importance of constitutional rights, drive inexorably, in my judgement, to the conclusion I have reached."

Civil actions have been an important means of obtaining disclosure about detention practice in individual cases. In particular, they have revealed the nature of the records kept in relation to individual detainees and the procedures adopted to obtain ministerial authorisation. This in turn has greatly assisted the understanding and detailed criticism of government policy.

### Obstacles to challenging removal

The ability of families to challenge their removal is very limited once they have been detained. Further information relevant to the substantive asylum or immigration matter, if it comes to light during detention, is often dismissed as an attempt to obstruct removal.<sup>168</sup>

In December 2003, a Home Office press release stated that measures in the Immigration and Asylum (Treatment of Claimants) Bill would *"make it much more difficult for families to frustrate removal in this way by lodging last-minute judicial review applications"*.<sup>169</sup>

This sentiment is echoed by Liam Byrne in his evidence to the JCHR in February 2007: *"I have to say – and I am generalising now on the basis of documents I read each week – overwhelmingly the reason for extended detention is because the parents have decided to lodge a last-minute judicial review."*<sup>170</sup>

These statements contradict the detention policy contained in the OEM, which states: *"A person who has an appeal pending or representations outstanding might have more incentive to comply with any restrictions imposed, if released, than one who is removable."*<sup>171</sup>

The OEM also asks: *"What are the individual's expectations about the outcome of the case? Are there factors such as an outstanding appeal, an application for judicial review or representations which afford an incentive to keep in touch?"*<sup>172</sup>

It is BID's experience that families who have lodged applications for judicial review challenging their removal or deportation are now generally held in detention. This was not the case when the family detention policy was introduced. This is despite the fact that the judicial review process generally takes a minimum of four to five weeks.

This hardening of the Home Office's stance presumably reflects the pressure to achieve removal targets. It fails to take into account several common factors: first, families quite often have representations that are outstanding at the time of their detention and the refusal is served at the time of their arrest, often at the same time as removal directions (meaning that the family considered that its case was still going until surprised by the arrest). Second, in many areas of the country where families are dispersed, it is very difficult or almost impossible to access legal advice (especially where one firm has refused legal aid and there is nowhere to turn to access a second opinion). Third, families have often been the victims of poor decision-making earlier in the process - including both Home Office and AIT decision-making, which in turn has not been effectively challenged prior to detention.

<sup>168</sup> For example, the Medical Foundation has told BID that in cases where children have been detained with their parents for removal it is their experience that children raising allegations of torture, on their own account, at a late stage have been summarily ignored and those allegations treated as simply a device to obstruct removal. (Email from Syd Bolton, Medical Foundation, to BID, April 2007).

<sup>169</sup> Stat 54, Home Office press release dated 16 December 2003.

<sup>170</sup> JCHR treatment of asylum seekers, answer to question 528.

<sup>171</sup> OEM para 38.1.

<sup>172</sup> OEM para 38.3.

## 9 Statistics

The absence of comprehensive statistics has made it difficult to monitor the use of detention for children. In turn, this has made it harder to hold the government to account. For instance, how can the argument be tested that most children are detained only for a few days, if there are no figures?

For several years after 2001, there was very little official information published about the number of children detained. Following considerable pressure from BID, other NGOs and parliamentarians, limited statistics in the form of 'snapshots' of the number of children detained on a given day were included in the quarterly asylum statistics from December 2003.<sup>173</sup> These gave no cumulative picture. More detailed figures were sometimes provided in response to parliamentary questions,<sup>174</sup> but were of limited use in building a comprehensive picture of the number of children detained, length of detention and the outcome.

Following further pressure, official statistics have now improved somewhat. Home Office Quarterly Asylum Statistics provide a snapshot figure of the number of children detained on one day each quarter, broken down by average length of detention.<sup>175</sup>

*"As at 30 December 2006, 45 people detained solely under Immigration Act powers were recorded as being less than 18 years old. 25 of these had been in detention for less than one month, 15 for between one and two months and the remainder for between two and three months."*

The quarterly statistics now also record the number of children who have left detention in a three-month period, what proportion had sought asylum, what sex they are, how long they were detained, and the outcome of their detention (removal, bail or release).<sup>176</sup>

*"Of the 330 minors recorded as leaving detention during Q3 2006 (a fall of 26% from Q2 2006 (445)), 290 (88%) were asylum detainees. 270 (81%) of all minors had been in detention for 7 days or less, 15 (5%) for 8 to 14 days and a further 20 (6%) for 15 to 29 days. All minors had been detained for less than three months at the end of their period of detention."*

Figures for the third quarter of 2006 show that 330 children left detention during this period, 165 (50%) of whom were removed from the UK, the remainder were released on temporary admission and a small number bailed.<sup>177</sup>

<sup>173</sup> 27 April 2004, Hansard, column 708.

<sup>174</sup> For example, 27 April 2004, Baroness Scotland, column 713: "Between 27 February and 25 March 2004, 95 families were taken into detention. Of 99 other families, 69 families were removed and 30 were released. There have been 134 children removed or released. The average time that those 134 spent in detention was 9.8 days."

<sup>175</sup> At: <http://www.homeoffice.gov.uk/rds/pdfs07/asylumq406.pdf>

<sup>176</sup> See tables 12 to 15 of previous reference.

<sup>177</sup> Table 15 of previous reference.

Despite these improvements, certain key information is still not routinely provided – for example, the nationality of detained children, analysis of outcome and duration of detention broken down by nationality and the number of children held in short-term holding facilities. These figures are important to be able to track patterns, such as the duration of detention for certain nationalities where re-documentation and removal is likely to be slow.

BID has obtained some statistics by way of requests under the Freedom of Information Act. For example, an FOI request showed that in the first three months of 2006, of the 460 children recorded as leaving detention, the largest nationality groups were from Pakistan (70 children) and Serbia & Montenegro (35).

BID recommends that the quarterly statistics include:

- numbers of families held in short-term holding facilities, the duration of their detention and the outcome
- the age of children detained
- a breakdown of nationality of children detained, further broken down by duration of detention and outcome.

## 10 Summary and conclusions

BID believes that the detention of children should end. While the UK government continues to detain families, urgent changes are needed to safeguard children against the worst excesses of current detention policy and practice.

There has been no shortage of recommendations by official bodies regarding family detention policy.<sup>178</sup> The most fundamental (and repeated) recommendations include: a return to the pre-2001 policy of detention of no more than a few days, an independent assessment of the needs of children within a short period of their arrival and an automatic bail hearing after seven days of detention. BID supports all of these recommendations. None have been implemented.

Children in detention still do not receive meaningful protection under the Children Act 1989. Government policy has been to create a separate and inherently unequal system for children in immigration detention, while maintaining a façade of access and equality.<sup>179</sup> The announcements of the Home Office on 25 June 2007, continue this trend by proposing a separate and lesser system for a code of practice for the Border and Immigration Agency, rather than ensuring immigration agencies are bound by S11 of the Children Act 2004.

This handbook is designed to be a tool for those committed to ensuring that ‘every child matters’, including those liable to detention under Immigration Act powers. It is not intended to be a campaigning report, and does not set out to provide detailed recommendations to the Home Office or other statutory agencies concerning the detention of children. However, taken together the contents clearly demonstrate that urgent action is needed, not just by the Home Office, but by other government departments and agencies who have allowed the Home Office to play the trump card of ‘immigration control’ to make these children invisible. In particular, BID believes that action is needed by the Ministry of Justice<sup>180</sup>, the Legal Services Commission and the Asylum and Immigration Tribunal to ensure effective access to the courts, with appropriate legal representation and public funding, where necessary. Action is also needed by the Department for Education and Skills, the Department of Health and social services departments.

BID’s experience of assisting detained families leads us to conclude that detention of children can be challenged, both in individual cases and on a policy level. Dedicated action is needed to assist detained children.

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178 See for example, HMIP (2006), JCHR (2007), Joint Chief Inspectors (2005), Children’s Commissioner (2005).

179 See, for example, government statements that *Every Child Matters* applies to all children in the UK.

180 Until 9 May 2007, the Department for Constitutional Affairs.

**BID's recommended action for holding detaining authorities to account by supporting/representing individual families:**

Families and support organisations should liaise with legal representatives to:

- request disclosure of the full file, by way of a request under the Data Protection Act
- consider whether a civil action may be appropriate, and make a referral accordingly
- ensure that families are accessing bail processes by way of the detention surgeries (appointments can be made via the library in the detention centre. The LSC should be informed if no appointment is provided, and there is emergency work needed)
- ensure that the merits test for legal aid funding is correctly applied by seeking a review of a refusal to grant legal aid, by completion of a CW4 form and referral to the LSC
- ensure that families are aware that, if they are detained for longer than 21 days, a welfare assessment will be conducted. Assist them to ensure that a copy of the full report is submitted for consideration by the minister if the family wish
- ensure that families are aware that, if they are detained for longer than 28 days, their case will be reviewed by the minister, and assist them to seek detailed reasons for the outcome of the review
- ensure that families know that the Detention Centre Rules mean that if their children's health is affected by detention, or if they have been tortured, they should tell the medical centre and request to see proof that the information has been forwarded to the immigration service (port or MODCU).



## Appendices

1. Letter to BID from families in detention, March 2006
2. Extract from Criminal Casework Directorate's instruction and guidance on the detention of children of foreign national prisoners, contained in a letter to BID from IND's Children's Champion and Director of Social Policy, 22 January 2007
3. CCD Process Communication, 'Detention of dependent children with FNPs', dated 19 February 2007

## Appendix 1



### Home Office

#### Immigration and Nationality Directorate

Office of IND's Children's Champion and Director of Social Policy

[Jeremy.Oppenheim@homeoffice.gsi.gov.uk](mailto:Jeremy.Oppenheim@homeoffice.gsi.gov.uk)

Tel. 020 8604 6844 Fax. 020 8604 6887

22 January 2007

Sarah Cutler  
Bail for Immigration Detainees  
28 Commercial Street  
LONDON  
E1 6LS

BY E-MAIL

Dear Sarah,

When we met on 20 December principally to discuss alternatives to detention for families, you asked to meet to discuss the issue of the resolution of long-term detained cases. Subsequently, you undertook to provide further details of your concerns and once we have them my office will arrange the meeting.

You also asked if I could respond more fully to some of the questions you asked at the meeting, and highlighted those in your e-mail of 21 December. I am sorry it has taken me longer than I would have wished to reply and hope that you find the following helpful.

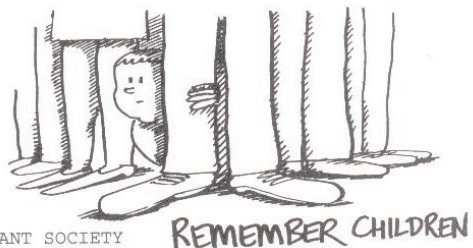
**What is the progress on the IND's action point related to the delivery of child protection training jointly by the social worker and the centre's trainer?**

All Detention Custody Officers (DCO) and non-operational staff (cleaners, kitchen staff, administrative staff, etc) at Yarl's Wood who come into contact



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with children receive child protection training. The training is conducted by the Training Manager and a DCO who has been trained by an NSPCC trained trainer. All new recruits go on a one-day initial training course. Refresher courses are run at least annually, but often more frequently. The Child Protection course also touches on other issues such as bullying, concerns of self-harm from teenagers, female mutilation and forced marriages.

**In response to the recommendation "The operational instruction regarding 'Safeguarding Children' should be urgently amended to reflect the practice and procedure for making child protection referrals set out in the protocol agreed with Bedfordshire Social Services. (2.85)", IND has indicated that the Social Worker and the Child Services Manager will be reviewing this policy. What is the status of this work?**

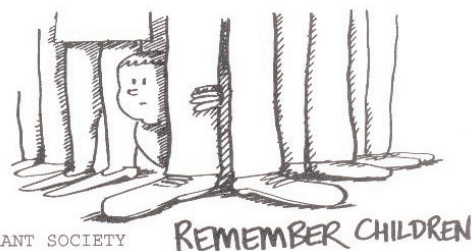
IND's professional adviser on children's issues (who is part of the Children's Champion team) is co-ordinating work involving Yarl's Wood's Children's Services Manager, the seconded social worker at Yarl's Wood and Bedfordshire County Council, to review arrangements to safeguard children in Yarl's Wood. This work is anticipating the outcome of the re-tendering of the contract to operate Yarl's Wood.

**We have noticed that one effect of the new focus on foreign national prisoners is that there are a number of mothers at Yarl's Wood who have children in care because the mothers were previously serving a prison sentence. What is the procedure for deciding on whether detention pending deportation is appropriate for this group? What steps are taken to ascertain the views of the local authority looking after the child before a decision is made? What is the procedure for re-uniting mothers with their children prior to deportation?**

The detention of every child of a Foreign National Prisoner (FNP) is individually authorised and in deciding whether that detention is necessary, the welfare of the child is taken into account. The procedure for this consideration differs according to whether the child is held with their mother in a prison's Mother and Baby Unit (MBU) or whether the child has lived in the community while their parent or carer has served a term of imprisonment. I attach the relevant extract from the instruction and guidance issued to caseworkers on this subject.



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**The Family Removals Policy of March 2006 contains a number of steps that must be taken before an incomplete family is removed – including in many cases, ministerial authorisation and a clear audit trail of decision-making. Families are also to be advised of the voluntary returns programme. What is the role of the Children's Champion in ensuring that these procedures are followed in all cases? What is the procedure for notifying a family of the reasons for the decision in their particular case?**

Decisions to remove 'incomplete families' have to be taken at a senior level – and at Ministerial level in certain cases. These removals cannot take place without this level of authorisation. The arrangements for reviewing the detention of families and for assessing the welfare of the children, help ensure procedures are followed. I have no formal role in monitoring these procedures except as part of the role I play in reviewing the detention of all those families whose detention is likely to last longer than 28 days. Families are told in writing of the reasons for their detention; and these are formally updated when their detention extends beyond 28 days.

I do hope that this information is useful; should you require any further clarification, please do not hesitate to contact me.

*Yours sincerely*

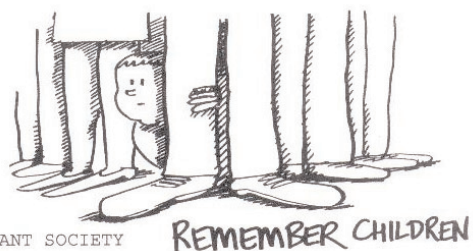
*Jeremy*

Jeremy Oppenheim



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### From Criminal Casework Directorate's instruction and guidance on the detention of children of foreign national prisoners

The detention of every child under immigration powers must be properly authorised. This requires that in each case the welfare of the child must be taken carefully into account when considering whether detention of that child is necessary and proportionate. IND policy is that the detention of children should be exceptional and for the shortest possible time. However this must be balanced with the presumption in UK law that it will be in a child's interests to stay with their parent or to be reunited with their parent or carer at the earliest opportunity. Getting these decisions right means that detention cannot be justified in every case. Sometimes, in order to safeguard the welfare of a child, it may be necessary to consider the release of the parent from detention.

Therefore it is important that before authorising the detention of any child of an FNP the following factors are considered

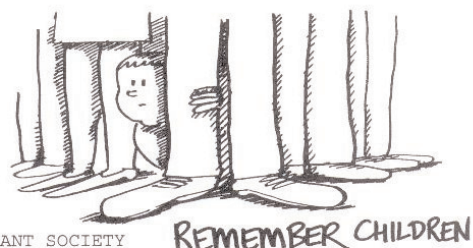
- a) For a child currently held with their mother in an MBU,
  - (i) whether, exceptionally, there is any information which indicates that mother and child should not remain together. The lead agency in any subsequent separation will be the relevant local authority children's services;
  - (ii) whether there is any information which indicates that the welfare of the baby would be adversely affected if the mother and baby were to be transferred to an Immigration Removal Centre – such information might relate to the mother's ability to look after her child if she continues to be detained away from the close support available in the MBU.

This information is most likely to be provided by the social worker attached to the MBU. If consideration is to be given to separating a child from their mother, the procedures for authorising such separation OEM chapters 38 and 58 must be strictly followed and based upon and co-ordinated with professional social work advice.

- b) For a child who has lived in the community (usually in the care of or with relatives or friends arranged by a Local Authority's (LA's) Children Service's department) while their parent or carer has served a term of imprisonment:



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- (i) whether, exceptionally, there is any information which indicates that the child should not be reunited with their parent or carer at all (for example, where the child was a victim of trafficking for which the parent or carer has been convicted);
- (ii) whether, when it is clear that it is in the child's interests that they should be reunited with the parent or carer, there is information which indicates that the welfare of the child would be seriously harmed if they were to be detained.

This information is most likely to come from the LA's social worker who will have had responsibility for the child during the parent's imprisonment. To obtain this information it is important that the CCD caseworker makes very clear in contacting the LA that IND is planning to detain the child as part of arrangements to remove the child with their parent or carer as they have no right to remain in the UK.

A decision not to reunite a child with their parent or carer (see above) must be taken on the basis of professional social work advice. If professional social work advice indicates that a child should be reunited but should not be detained, the SCW must balance the risk to the public the release of the FNP parent or carer may present.

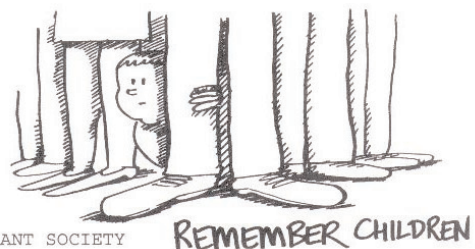
In the case of a child who is being reunited with their parent in detention, particular care needs to be taken by the CCD caseworker to ensure that arrangements for the transfer to Yarl's Wood, Tinsley House or Dungavel are clearly co-ordinated

- (a) with the parent(s), who may be assisted in planning the transfer with the social worker at Yarl's Wood.
  - (b) whoever has day to day responsibility for the child (sometimes the LA's social worker)
- and
- (c) with Yarl's Wood, Tinsley House or Dungavel staff.

This will ensure that the child will be properly prepared and looked after immediately before and during the transfer to Yarl's Wood, Tinsley House or Dungavel; and that their reception there and the reunion with the parent can be properly planned.



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## Appendix 2

CCD Process Communication		
TO: CCD Staff	Subject: Detention of dependent children with FNPs	PC No. 01/07
		Date: Original 11/02/07 revised 19/02/07

The purpose of this communication is to give instruction and advice on how the welfare of the children of FNPs should be considered in making decisions about detention.

1. The detention of the child or children of an FNP under immigration powers can arise in two circumstances:
  - a) where it is decided to continue to detain an FNP who gave birth to the child while serving her term of imprisonment (or immigration detention in a prison) and the FNP and child were held in a prison's Mother and Baby Unit (MBU) – MBUs hold mothers with their babies up until the baby is 9 months old;
  - b) where a child has been separated from their parent or carer (for example, a relative or other adult acting as the child's parent) during the parent's imprisonment, and it has been decided to reunite the child with the parent in an Immigration Removal Centre immediately prior to removal
2. The detention of every child under immigration powers must be properly authorised. This requires that in each case the welfare of the child must be taken carefully into account when considering whether detention of that child is reasonable and appropriate. While in many cases it will be in a child's interests to stay with their parent or to be reunited with their parent or carer at the earliest opportunity, there will be exceptions e.g. where detention would unnecessarily disrupt the existing care arrangements for a child when removal is not reasonably imminent. Getting these decisions right means that detention of that child might not be appropriate or justifiable in every case. The timing of decisions about children should be considered. Sometimes, in order to safeguard the welfare of a child, it may be necessary to consider the release of the parent from detention. Such a decision is likely to require Ministerial authority.
3. Therefore it is important that before authorising the detention of any child of an FNP the following factors are considered.



- a) For a child currently held with their mother in an MBU,

whether, exceptionally, there is any information which indicates that mother and child should not remain together. The lead agency in any subsequent separation related to the welfare of the child will be the relevant local authority children's services;

whether there is any information which indicates that the welfare of the baby would be adversely affected if the mother and baby were to be transferred to an Immigration Removal Centre – such information might relate to the mother's ability to look after her child if she continues to be detained away from the close support available in the MBU.

This information is most likely to be provided by the social worker attached to the MBU. If consideration is to be given to separating a child from their mother, the procedures for authorising such separation OEM chapters 38 and 58 must be strictly followed and based upon and co-ordinated with professional social work advice.

- b) For a child who has lived in the community (usually in the care of or with relatives or friends arranged by a Local Authority's (LA's) Children Service's department while their parent or carer has served a term of imprisonment:

whether, exceptionally, there is any information which indicates that the child should not be reunited with their parent or carer at all (for example, where the child was a victim of trafficking for which the parent or carer has been convicted);

whether, when it is clear that it is in the child's interests that they should be reunited with the parent or carer, there is information which indicates that the welfare of the child would be seriously harmed if they were to be detained.

4. This information is most likely to come from the LA's social worker who will have had responsibility for the child during the parent's imprisonment. To obtain this information it is important that the CCD caseworker makes very clear in contacting the LA that IND is planning to detain the child as part of arrangements to remove the child with their parent or carer as they have no right to remain in the UK.

5. A decision not to reunite a child with their parent or carer (see 3 b) (i) above) must be taken on the basis of professional social work advice. If professional social work advice indicates that a child should be reunited but should not be detained, the SEO SCW must balance the risk to the public the release of the FNP parent or carer may present.

6. The detention of any child of an FNP must be authorised, using the IS91



forms, by at least an AD in advance of their detention. In addition to the extra considerations relating to the detention of a child given in other parts of this instruction, detention will need to meet the normal criteria relating to the deportation of dependants found in the immigration rules and relevant detention forms and notices will need to be prepared and served in order to ensure that detention is on a legal basis. Additionally there may be the alternative of detention under port powers where existing children were dealt with at a port of entry.

### **Arranging transfers to IS detention accommodation**

7. It is important that the detention of any child is arranged through MODCU who control access to the dedicated family accommodation at Yarl's Wood, Tinsley House and Dungavel. (Families will only be accommodated in Tinsley House and Dungavel where detention is for a very short period prior to removal.) Accommodation will need to be booked well in advance and once confirmation has been received arrangements for the transfer of the family to Yarl's Wood, Tinsley House or Dungavel will need to be arranged.

8. Where a mother and baby are to remain in a prison Mother and Baby Unit (MBU) under IS detention MODCU **must** be advised that they are detained under immigration powers as soon as this decision is made, this is because ministers are advised weekly of the numbers of children detained under immigration powers. MODCU must also be advised if a child is born to a FNP detained under immigration powers in a prison MBU

9. In the case of a child who is being reunited with their parent in detention, particular care needs to be taken by the CCD caseworker to ensure that arrangements for the transfer to Yarl's Wood, Tinsley House or Dungavel are clearly coordinated

- (a) with the parent(s), who may be assisted in planning the transfer by the social worker at Yarl's Wood,
- (b) whoever has day to day responsibility for the child (sometimes the LA's social worker)

and

- (c) with Yarl's Wood, Tinsley House or Dungavel staff.

This will ensure that the child will be properly prepared and looked after immediately before and during the transfer to Yarl's Wood, Tinsley House or Dungavel, and that their reception there and the reunion with the parent can be properly planned.

### **Detention reviews**

10. The detention of every child of an FNP must be reviewed at 7, 10, 14 and 21 days. MODCU will carry out detention reviews in conjunction with the Case

Owner and SEO SCW in CCD. MODCU will prepare the documentation at 7, 10, 14 and 21 days, but preparation and issue of the IS 151F for the 28 day review will be the responsibility of CCD.

11. If there is information which indicates that a child's welfare may best be safeguarded by being released, the CCD SEO SCW will have to weigh up the possible risk to the public of releasing the parent with the child. A decision to release should only be taken at G7 level and consideration should be given in each case to seeking Ministerial authority. Very exceptionally, it may be decided (after careful consideration of advice from the social worker at Yarl's Wood) that the child should be released but not the parent. When any decision to release is made the SEO SCW will need to ensure that suitable arrangements for their care after release are in place. Yarl's Wood may be able to assist in making arrangements alternatively where the child was living in the community prior to their detention the Local Authority for that area will be responsible for making arrangements and will need to be contacted.

12. SEO SCWs reviewing detention are required to provide information about each child's case to MODCU if it is anticipated that a child will be detained beyond 28 days – NB this information will be required before the 21 day point is reached. This information will be used to advise the Immigration Minister who must authorise the continued detention of any child beyond 28 days. The social worker and the staff looking after the children at Yarl's Wood will also provide information about the welfare of the child.

13. A SEO SCW whose cases include that of a child whose detention beyond 28 days is to be considered by the Minister, will be required to participate in a conference call organised by MODCU every Monday morning at 11.00am. In addition to colleagues in MODCU, these weekly conference calls are participated in by representatives from every LEO with a case which is to be considered by the Minister, by UKIS staff at Yarl's Wood, by the Yarl's Wood Children's Services manager, by the social worker at Yarl's Wood and by representatives of IND's Children's Champion. These conferences enable all interested parties to review all the relevant information about each case being submitted to the Minister. MODCU prepare and submit to Ministers weekly on children in detention.

14. In cases where the SEO SCW is unclear whether to detain in the first place or whether to continue to detain following one of the reviews, referral for advice may be made either to MODCU or to the office of IND's Children's Champion

## Appendix 3

Nineteen families who were detained at Yarl's Wood and supporters of the No Place for a Child campaign drew up a list of complaints about conditions in the centre and what it means to be detained in these conditions. This list was sent to the Director of Detention Services in August 2006. The following is an exact copy of the list sent.

### Healthcare

- The healthcare nurses are very rude to the detainees and when they are supposed to offer their support and care to people.
- Pregnant mothers find it very difficult to cope in a distressing environment, some are even locked up with their little ones and how could such a mother cope with all that stress.
- The centre is not designed for wheelchair users. There are no wheelchair facilities.
- There is a lack of refrigerators to keep the children's antibiotics in and healthcare advise mothers to keep the medicines on the windows.
- There is a lack of proper medical equipment in the healthcare like thermometer, blood pressure machine, weighing scale machines and many other types of equipment especially for the children.
- Healthcare lacks proper doctors as the same doctor (Dr Edwards) deals with all cases, that's mental health, paediatrician, you name it.
- The social worker resigned three weeks ago and she has never been replaced even the welfare manager is resigning very soon and we haven't got any replacement as well. Sarah was the social worker and Mathew Beams.
- We have complained to Mr Mathew Beams about children's welfare on a number of things but he has never resolved anything. Like baby milk which is provided is not consistent it keeps changing we are told to use whatever is available there is a lack of variety of baby food.
- The food manager takes long to get back to us when we complain about the food in the dining. We have written a number of complaints in the kitchen book but we don't get answers. For example, about the toddler's milk, cooking spicy (chilli) food for the children, dry food.

### Education

- The education centre is very poor, Children don't even study but play for children who have been in the centre for more than two months have/are missing out on school at this crucial time of their future education. And my child has been in this centre for 5 months now and she has missed school in her crucial age so could I blame her in the future when she tells me that she doesn't want to go to school?
- The nursery is not equipped with good staff and qualified. Usually the children are not read for stories and sing for to learn or to develop their milestones. This has discouraged very many mothers to take their children in the nursery.
- The space in the centre is not quite big for the children to play or to make their way and there is no spare room, which have toys for children to play in when they are not in the nursery. Children are chased by the staff/officer every time to walk with their mothers every time and this create children to hate themselves and also get bowed out of the place.



- Now it's coming to summer and since there is lack of space it tends to become so hot and even in the rooms during the night since the rooms are not that big for them to play and even get fresh air.
- The conditioner is put on every day at around 8 am. This affects the children and the old people since most of us are allergic.

*SIGNED BY 19 WOMEN, Family Unit*

### Concerns of families in Yarl's Wood Detention Centre Crane Unit

- With baby milk we are only provided with Cow and Gate products anything like SMA gold you have to go to healthcare to obtain a special diet request for you to have it on the unit for your baby. Without this we are told to use any milk available. We feel this is unacceptable and switching baby's milk overnight is unhealthy.
- Baby food is always the same type ordered and that is egg custard, creamed porridge, rice pudding, chocolate pudding, mixed fruit, turkey and chicken casserole.
- The state of baby baths is unspeakable. They are dirty and not sterilised. We have to share baby baths hygienically this is not right.
- There are no detergent provided to clean baby bottles we are advised to use shampoo.
- Poor quality of nappies their water retention capacity is poor they are always dripping.
- Toddlers are not provided with pull-ups for potty training.
- They are provided with semi-skimmed milk and UHT milk.
- Meals comprise of sausages in gravy, mashed potatoes with cheese topping, baked beans, burgers, rice, chips with gravy and sometimes the food for children is spicy.

### CARE

- A lot of accidents are happening lately in the unit that is with the children while in school or nursery.
- The toys are a health hazard as they are out of order and still left in the playground for the children to use hence children get accidents.
- Social worker resigned and she has not been replaced.
- Child welfare officer is resigning and no replacement in place.
- Children are missing hospital appointments where no action is taken.
- No evidence of schoolwork for children to show mothers what they are studying.
- Lack of enough bed guards for children's safety while in bed.
- Children are only allowed to have one portion of food. It's against the rules to have seconds.
- Children are only allowed about 600 mls of milk a day.
- Mothers are traumatised due to the way they're handled by the officers in the centre, escorts and immigration officers and this kind of depression leads to mother become so harsh to their children.
- In most cases, children are not weighed and they don't record anything in their red books.
- There is no first aid as children's wounds are not dressed.
- Mothers have to carry buggies up two flights of stairs to go to all unit amenities.
- All bottle sterilisers and warmers do not have electrical safety certificates.
- There is no fridge to store antibiotics on the unit they are stored at room temperature.
- The same nail clippers are used on the entire unit without sterilisation.
- Hard disposable feeding spoons are provided for babies.
- There is no paediatrician allocated to the unit.
- Scissors used to cut children's milk cartons are also used to do other bits and pieces. These should be sterilised.
- Children's birth certificates are taken from parents and not returned on their release or removal.
- There is one working hot water machine on the entire unit for almost three weeks now.
- Phone cards charges per minute are too expensive.

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