

Fractured Childhoods:

The separation of families by immigration detention

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Under s55 of the Borders, Citizenship and Immigration Act 2009, the UK Border Agency has a duty to safeguard and promote the welfare of children.

However, this report presents evidence of cases in which the Border Agency repeatedly failed to safeguard children when making decisions to detain their parents, with appalling consequences for the children concerned.

Research was carried out into the cases of 111 parents who were separated from 200 children by immigration detention between 2009 and 2012. 85 of these children were in fostering arrangements or local authority care during their parents' detention.

Parents were detained without time limit, for an average of 270 days. In 92 out of 111 cases, parents were eventually released, their detention having served no purpose. In 15 cases, parents were deported or removed from the UK without their children.

'Dear mummy, I am missing you so much. When are you coming home? I cry in my sleep sometimes I just want my mummy back.'

Sophie, seven years old

It is difficult to imagine any other situation where children in the UK could be separated from their parents indefinitely and have such scant attention paid to their welfare. From 1st April 2013, Legal Aid ceased to be available to the vast majority of people making immigration claims. The complexity of immigration law means that it is extremely unlikely that parents will be able to successfully represent themselves. Bail for Immigration Detainees (BID) therefore anticipates that we will be dealing with very many more cases where parents are separated from their children by detention and removal from the UK.

Methodology

BID's family team dealt with 115 parents who left detention between January 2009 and July 2012. For this research, data were collected from 111 of these parents and their 200 children.¹

¹ Three parents did not consent to participating in this research. Another case was removed from the research sample because, after BID's family team began work with the client, it became clear that she did not fit the team's referral criteria. For the purposes of this research parents are defined as parents who were separated by detention from children under 18 living in the UK.

More detailed quantitative data were obtained for a small sample of 27 parents with 53 children, who BID submitted bail applications for between November 2010 and April 2012. Within this sample of 27 families, in-depth qualitative data were obtained from a sub-set of 12 families through research interviews and analysis of BID files. It was possible to obtain UK Border Agency files by Subject Access Request for five of these 12 families.

Harm to families

30 of the 53 children in the small quantitative sample of 27 families were British citizens. 11 children were two years old or less when their parent was detained, and 31 children were between three and 10 years old.

Children who participated in this research described the extreme distress they experienced during their parent's detention. They reported losing weight, having nightmares, suffering from insomnia, crying frequently, and becoming deeply unhappy, socially isolated and withdrawn. Some children were aware that their parent could be deported, and were extremely anxious about this.

'When you have a two year old asking "why is mummy in the phone and why can't you see mummy?" You don't know what to say.'

Sonia

Their parent's absence often meant that children's basic practical and emotional needs were not met.

Where single parents were detained, children were placed in care. Some children moved between unstable care arrangements, experienced neglect and were placed at risk of serious harm. Parents and carers outside detention often struggled to cope financially and emotionally. Children were seldom able to visit their parents in detention because of the distances involved and the prohibitive cost of travel, and parents struggled to pay for phone calls to children.

Case study: Beth and Daniel

Beth's grandfather, who was caring for her and her disabled brother Daniel during their mother's detention, became seriously ill and was admitted to hospital three times. Beth had to stop attending school to care for her brother and grandfather and missed her GCSE exams. She also had to deal with proceedings which were started to evict the family due to rent arrears.

Beth found it extremely difficult to look after her seven year old brother, who has very limited motor control and severe behavioural problems. During their mother, Christine's, detention, he was made subject to a child protection plan, deemed to be at risk of emotional and physical harm and referred to Child and Adult Mental Health Services. A Children's Services assessment found that:

'Daniel has found it very difficult being separated from his mother, he is keen for her to return home and often states that she is "coming home today" when she is not and becomes upset when he realises this is not the case.

[A] concerned neighbour rang to report that Daniel was playing alone in the road at 8pm, he was seen to fall and lay in the road, which is a bus route... he walks into people's houses and has poor awareness of danger and his own safety.'

Two months after his mother entered detention Children's Services received a report that Daniel had been hit by a car.

Despite receiving reports about the welfare of these children, the Border Agency detained their mother for 160 days before she was released on bail by the Tribunal. She subsequently successfully appealed the Border Agency's decision to deport her.

Young children often could not understand why their parent was not with them. Clare, whose daughters were aged between two and six when she was detained for 327 days, said:

'Their dad told me that the eldest used to cry, regular at night before she go to bed, asking "when is mummy coming home?" There were a lot of questions that they were asking that I couldn't answer. They would say "Oh so you don't love us, why you staying away from us so long?"'

Jenny, who cared for two year old Ella during her mother's detention, described how the toddler lost her appetite:

'She didn't want to eat; you had to force her to eat. She just start crying "mummy, mummy"... you know, the constant crying. Whenever she hear the door open she would go to the door, knocking on the door saying "mummy."'

'My daughter wakes up crying that she's dreamt her daddy's at home, and daddy takes her to school. And then she wakes up and daddy's not there. I want to cry now just talking about it.'

Angela

One of the foster carers who looked after seven year old Hana during her mother's detention said:

'At times she would sit by herself and break down and cry. When you asked her what is the matter, she say "when is my mum coming I want to go home with her."'

Parents described their profound grief at being separated from their children, and said they became extremely depressed and in some cases considered taking their own lives during their detention. Kayla, who was detained for 224 days, said:

'I never knew people could take your kids away out your life, just like that. They don't know the pain that you feel in your stomach, you feel it in your guts. Being with my kids now is like I'm alive again.'

Decisions to detain

The Border Agency did not contact any of the 53 children in the small quantitative sample of 27 families to ascertain their wishes and feelings before or during their parent's detention. In seven of the 10 cases where these data were available, it took the agency more than a year to contact Children's Services to inquire about children following their parent's convictions.

UK Border Agency documents including Monthly Progress Reports, bail summaries and, where these were available, detention reviews, were analysed for the qualitative sample of 12 families. In the majority of these cases, the Border Agency failed to take basic steps to safeguard children. In 11 out of 12 cases, the Monthly Progress Reports produced during parents' detention made no mention whatsoever of their children's welfare. Where evidence was presented to the Border Agency that children were experiencing extreme distress or neglect, this did not lead to



*I feel sad
about my mum*

Oliver, 10 years old

decisions to release parents from detention in any of the cases surveyed. In 11 out of 12 cases parents were released by the Tribunal on bail, their detention having served no purpose.

The only consideration of the welfare of Richard's children in his bail summary was a sentence stating that permission had been obtained within the Border Agency to split his family. Richard's daughter was hospitalised during his detention following an asthma attack.

In Christine's case, the Border Agency suggested that the existence of a child protection plan for her son addressed the concerns for his welfare, when this was plainly not the case. The third review of Christine's detention in her Border Agency file claimed that:

'Social Services are involved with the control of the children's care and have no issues with her detention at this time.'

In fact, Social Services had raised very serious concerns about the effect Christine's detention was having on Daniel, who was in an unstable care arrangement and at risk of serious harm.

Deportation and removal of parents

15 of the 111 parents in this study were removed or deported from the UK without their children at the end of their detention. Two of these parents were single fathers, and their children were left in care in the UK. In another case, a mother was three months pregnant when she was deported without her husband and two children.

In 14 cases, parents were deported or removed following convictions for criminal offences, and in one case a parent was removed after overstaying his visa. 12 of these 14 parents had committed non-violent offences, and 10 were sentenced to less than two years in prison. In four cases, parents had committed immigration offences such as possession of false documents.

In some cases, parents feared for their safety on return to their country of origin. One parent in the study was returned to Sri Lanka, another was returned to the Democratic Republic of Congo and two were returned to China.

'I love my mum very much and miss her a lot, please send her home to be with us - please don't send my mum to Angola again.'

Simon, aged eight

It is beyond the scope of this research to systematically examine the Border Agency's decisions to deport or remove parents. However, in a number of cases the information available on parents' BID files raised very serious concerns about the Border Agency's processes. In one case, a parent was not given any notice of his removal and therefore did not have the opportunity to take emergency legal action to prevent it. In another case a bail summary stated that a mother's two sons were 'content to remain in the UK under their father and stepfather's care' despite considerable evidence of the children's extreme distress at their separation from their mother.

Deportation decisions

Post-detention data were obtained for the 15 parents in the small quantitative sample of 27 families who had been released for more than six months at the end of the data collection period. Only one of these parents was deported at the end of their second period in detention. In seven cases, parents' immigration or asylum cases were ongoing six months after their release, and in seven further cases parents had been granted leave to remain in the UK at the time of writing.

It was possible to obtain copies of Border Agency 'Notices of Decision to make a Deportation Order' by Subject Access Request for three of these 15 parents. There was no evidence in these documents that the Border Agency considered children's wishes and feelings when making decisions to deport their parents with or without them.

Case study: Paul

Paul was deported from the UK without his two sons, aged 12 and nine, who were left in the care of his ex-girlfriend. Paul claimed asylum when he arrived in the UK, but his claim was refused. After living in the UK for seven years without having the right to work legally, or becoming fluent in English, Paul was convicted of an offence related to cannabis production. The judge described Paul as being part of a criminal organisation where 'the people who make most of the profit use people like you to do the work and take the punishment when caught.'

Paul was held in immigration detention for over a year before being deported. During his detention, his two sons wrote letters in support of an application for him to be released on bail. Dominic, aged 12, said:

Dear Sir/Madam,

It has been 2 years since my Dad was away. We really miss him. On Fatherday, we made cards but he wasn't there to see. Mom said Dad is going come back soon and we keep waiting every day.

Dominic, 12 years old

The Border Agency was aware of Paul's children, who were living with his then girlfriend. The agency did not consider the children's welfare in Paul's 'Notice of Decision to make a Deportation Order', or any of the Monthly Progress Reports or bail summaries on his BID file, beyond noting that Paul had provided limited information about them. The agency never made any inquiries to the children's carer about them, and deported Paul without taking any effective steps to investigate the children's care arrangement or the impact which his deportation would have on them.

Parents' and children's ties to the UK

Many of the children who participated in this research were born and grew up in the UK. Children often had very strong ties to family members in the UK, which would be severed if they were deported.

For example, Simone's partner looked after their son Ray during her prison sentence and detention. Ray was less than one year old when Simone was arrested and nearly four by the time she was released from detention. A children's charity support worker described his distress at not seeing his mother once she entered immigration detention:

'Ray does not really talk to anyone. When their mother stopped coming home [on visits from prison] Ray stopped eating properly for a while and got sick. [He] screams and cries when their mother finishes on the phone.'

The Border Agency planned to deport Simone with her two sons, and argued that her partner could leave the UK with her if he chose. However, Simone's partner has a young daughter from a previous relationship who he would be separated from if he left the UK. Simone explained:

'My partner's saying he's not sending back Ray to [my country of origin]. And they can't blame me for not leaving [my son].'

Simone was released after being detained for 118 days and successfully appealed her deportation.

In some cases, parents had lived in the UK for long periods while they awaited decisions on their cases by the Border Agency. For example, Natalie made a Human Rights claim and subsequently reported to the Border Agency every month for the next seven years. She did not have the right to work and could not claim any state support while awaiting a decision. She was then convicted of a criminal offence, which she said that she committed in order to pay for her son's school dinners.

Reuniting families at the airport

The Border Agency attempted to deport Faith with her partner and children. A bail summary in her file states that:

'It was intended that the four children would be reunited with their parents [at a reporting centre], or at Heathrow Airport, before the family boarded the aircraft.'

One of the children in this family was one year old when his mother went to prison, and had been separated from her for two years and five months. It is extremely concerning to see that the Border Agency thought it would be appropriate to reunite these children with their parents for a few hours to re-establish their relationship during the course of their deportation.

Safeguarding by Children's Services

Evidence was gathered on the action taken by Children's Services to safeguard children in the qualitative sample of 12 families.

Despite the very serious problems experienced by children in these families, in the majority of cases, there was no evidence in parents' BID or Border Agency files that Children's Services raised concerns with the agency about parents' detention or deportation. It is possible that Subject Access Requests for children's local authority files would reveal further contact between families and Children's Services. However, the evidence available from five parents' Border Agency files revealed serious gaps in the information from Children's Services which was considered by the Border Agency.

'Matthew has refused [counselling] as he does not wish to discuss his problems with anyone. His mother said he just locks himself in his room and cries.'

Child's Support Worker

Jenny cared for Lorraine's two year old daughter Ella during her 301 days in detention. The toddler was extremely distressed at her separation from her mother. Jenny explained that Children's Services were supposed to visit her but this never happened:

'Nothing seems to be done. Children's Services never visit my house. They were supposed to come around, see where I live, see how I manage Ella.'

There was evidence that Children's Services provided advice to the Border Agency about parents' deportation in four out of 12 cases. In all four cases, there was no evidence that Children's Services investigated children's wishes and feelings about their parent's deportation, or properly assessed how this would affect the children.

In two cases, parents' UK Border Agency files indicate that Children's Services informed the agency that they had no concerns about situations in which children would be separated from their parents by deportation on the basis of wholly inadequate information. In one case, the evidence on the file indicates that Children's Services approved the deportation of children without assessing how this would affect them.

Barriers to Removal

Parents in this study were detained for long periods for the purpose of being deported or forcibly removed from the UK. However, data from the small quantitative sample of 27 parents shows that, in most cases, these parents were detained despite barriers which meant that it was not possible, lawful or in their children's best interests for the parent to be removed:

- In 18 out of 27 cases, directions were never set for the removal of parents during their detention.
- The 15 parents for whom these data were available had pending immigration or asylum applications for, on average, more than four fifths of their time in detention.
- In 12 out of 27 cases, parents could not be removed for periods during their detention as the UK Border Agency lacked the travel documentation which would be required to effect their removal.

Risk Assessment

The cases surveyed in this research revealed very serious problems with the methods used by the Border Agency to assess parents' risk of absconding or reoffending.

Post-detention data were collected for the 15 parents in the small quantitative sample of 27 families who had been released for more than six months at the end of the data collection period. All 15 parents complied with the terms of their release and maintained contact with the Border Agency. This was confirmed by their legal representatives in the 14 cases where parents were represented.

'I am a bit gobsmacked that he's been told he's high risk'

Probation officer

Parents explained that it would be extremely difficult for them to abscond because of their need to access support, healthcare and schooling for their children. The BID files of the 12 parents in the qualitative sample showed that the Border Agency routinely failed to take into account factors which indicated that parents posed a low risk of absconding, such as long histories of reporting regularly.

In 14 out of 27 cases in the small quantitative sample, information was obtained about how the National Offender Management Service had assessed parents' risk of reoffending or risk of harm to the public on release. In 10 cases, parents were assessed by the National Offender Management Service as posing a low risk of reoffending or harm on release, and four parents were assessed as posing a medium risk. However, the Border Agency repeatedly argued that these parents needed to be detained as they posed a 'significant' and 'unacceptable' risk.

Recommendations

- Families should not be separated by immigration detention.
- While this practice continues, a time limit should be introduced on the separation of families by immigration detention.
- Any decision to separate a child from his or her parents must be subject to judicial oversight, and such proceedings should be within the scope of Legal Aid.
- Immigration matters should be brought back into scope for Legal Aid.
- Paragraphs 398 – 399B of the Immigration Rules should be revised to reflect the legal requirement for children’s best interests to be treated as a primary consideration when decisions are made which affect them (*ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4).
- Before individuals enter immigration detention, the UK Border Agency should, without exception, take proactive steps to find out whether they have children, and what the care arrangements for the children are.
- Before a parent enters immigration detention, when their detention is reviewed, and when a decision is made about their removal from the UK, a best interests assessment should be carried out with their children. This assessment should be carried out by a child welfare specialist who is independent of the UK Border Agency, and shared with parents, children and legal representatives. Government resources should be allocated to enable this to take place.
- The Border Agency should publish management information on the separation of families by immigration detention.
- Clear protocols should be established between agencies to ensure that where information about children and parents is shared, this is done in an appropriate and ethical manner.

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