

## **Information from Bail for Immigration Detainees: Families separated by immigration detention August 2010**

From November 2008 to August 2010, Bail for Immigration Detainee's (BID's) family team worked with 28 families where children who were not detained had been split from their parent (in nearly every case their primary carer) who was in detention.<sup>1</sup> The majority of these parents had committed criminal offences, and were being held in immigration detention following the completion of their criminal sentences, while the UKBA sought to remove them from the UK. During this time, 21 of these parents were released from immigration detention, 17 of them on bail. We have length of detention data for 19 of the clients who were released, and the average length of their detention was 307 days. The longest period of detention was 857 days, and the shortest was 63 days. Clearly, separating children from their primary carer for such long periods is likely to be very damaging both to the child and to their relationship with their parent.

In a number of cases, the length of time parents were held in immigration detention far exceeded the time they had served for their criminal conviction. For example, one of BID's clients served twelve months in prison and two years and four months in immigration detention, which meant that she was separated from her two children aged nine and six (at the time of our client's conviction) for three years and four months.

### **Child welfare and protection concerns**

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

Parents often have very limited contact with their children while they are detained. For example, in one case a mother was in immigration detention for five months before Children's Services were able to negotiate for her to have half an hour's telephone contact per week with her six year old child. By contrast, while she was in criminal custody weekly visits were arranged so that she could see her children in person. In a number of cases, BID separated family clients were able to arrange home visits to visit their children from prison, but in all 28 cases this was not possible once they were moved to an Immigration Removal Centre. In addition, the move to an Immigration Removal Centre from prison has in many cases meant that parents have been moved further away from their children geographically, but we do not know of any arrangements to facilitate children visiting their parents in immigration detention given this situation.

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

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<sup>1</sup> Of the 28 cases BID's family team have taken on all but three have been mothers, the remainder have been fathers. In one case, the child was in their father's care outside detention while their mother was detained, but there were safeguarding concerns with this arrangement due to a history of domestic violence.

### **Case Study 1: Child protection concerns<sup>2</sup>**

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

### **Case Study 2: Child protection concerns**

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

## **Imminence of removal**

The UKBA's stated aim in separating these families is to effect their forcible removal from the UK. However, to the best of our knowledge, none of the 28 cases BID has dealt with since November 2008, in which children have been separated from their parent by detention, have so far led to a parent or child being forcibly removed. In most cases, there are complex barriers to removal during the parent's detention, including: ongoing legal applications, lack of travel documentation, family court proceedings, and requirements for Children's Services to assess parenting capacity outside detention.

## **Barriers to removal: Legal applications and delays in deport action**

In many of the separated family cases BID has dealt with, it is apparent that failures within the UKBA are preventing the cases from being progressed within reasonable timeframes. For example, in a number of cases parents have waited for several months in immigration detention for the UKBA to serve them with a deportation decision. In addition, in some cases the UKBA has not taken action to progress immigration or asylum applications which were made by clients while they were in criminal custody, and these parents spend long periods in immigration detention while the UKBA considers these applications. For example, in one

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<sup>2</sup> This parent was not a client of BID, but this information was provided to us by our partner organisation, The Children's Society, who worked with this family.

case a client only received a refusal of her asylum claim nine months after she was detained under Immigration Act powers, and two years after the asylum claim was made.

### **Case Study 3: Imminence of removal**

The client had been in the UK for ten years, and had been granted discretionary leave to remain before being sentenced for a criminal conviction. She has a daughter who was born in the UK shortly after her arrival in the country. While serving her criminal sentence, she was served with a liability to deportation notice and her solicitors responded with reasons she should not be deported. Two months later, she was detained under Immigration Act powers, and six months after this she was served with a decision to deport. She was released from detention shortly after being served with this decision. She had no outstanding legal applications for the entire period of detention because she had not been served with a deport decision and therefore could not progress her case to appeal.

### **Case Study 4: Imminence of removal**

The client's child, who was born and grew up in the UK, was a toddler when the client was transferred to immigration detention following the end of her criminal sentence. The client applied for asylum three months after she was detained under Immigration Act powers and had ongoing legal applications for a considerable proportion of the subsequent eight months which she spent in detention. She never received removal directions during the eleven months which she spent in detention.

### **Barriers to removal: Family court proceedings and parenting assessments**

Decisions to separate families by detaining parents are apparently not taking into account the fact that continued detention in a number of cases is generating additional barriers to removal. In some instances, children establish ties to other family members caring for them outside detention which trigger Article 8 or family court proceedings and therefore create barriers to removal. In other cases, Children's Services or the Family Court are unwilling to give permission for children to be reunited with their parent for the purposes of removal without a parenting capacity assessment being undertaken first. Because such assessments need to take place in a 'natural environment' (ie. outside an Immigration Removal Centre), there is often an impasse on these cases as the UKBA refuse to release the client in order for a parenting capacity assessment to be undertaken. Contact is often not made by the UKBA with Children's Services until the client has been in detention for many months, and after this point a standstill is often reached on these cases.

### **Case study 5: Imminence of removal**

In one case a client was detained for four months before the UKBA began to make contact with the Children's Services departments with an interest in her children. Two months later, the UKBA discovered that it would not be possible to reunite the family while the mother was detained as Children's Services needed to carry out a parenting assessment, and would not be able to do so while the mother was in detention. Several months after Children's Services made this report to the UKBA, the mother was still detained with the case apparently at a standstill.

It is entirely unclear to us what policies or processes the UKBA is following to identify and resolve the types of cases described above, where requirements for Children's Services to assess parenting capacity coupled with continued detention create barriers to removal. The fact that in some cases parents are being detained for several months before information is obtained by the UKBA from Children's Services about whether it will be possible to reunite

the family for the purposes of removal raises serious questions about the steps the UKBA is taking to progress these cases and minimise the harm caused to children.

**Case study 6: Imminence of removal**

In this case, a mother was detained and separated from her three year old child for seven months before the UKBA started to investigate whether it would be possible to reunite the family for the purpose of removal. At this point, it became clear to the UKBA that there were a number of reasons why it would be problematic to arrange for the child to be deported with the mother, including that another relative had a resident's order for the child. The lack of action on the part of the UKBA meant that our client was detained for eight months without any imminent prospect of removal, before being released on bail.

In addition, we also note that the prolonged detention of a parent and separation of a family increases the harm which would be caused to a child's welfare if they were forcibly removed with their parent, and therefore potentially creates further barriers to their removal. Children who have spent their formative years in the UK are in any case likely to find removal to a country which is foreign to them very disruptive. This disruption will be seriously exacerbated if they are to be removed with a parent who they have been separated from for over a year by immigration detention. Prolonged separation of parent and child is likely to be a significant factor in relation to whether or not the child can safely or reasonably be expected to adjust to life in a country that may be largely or entirely foreign to him or her, because the child's capacity to make such an adjustment is likely to be seriously impaired or damaged to the extent that he or she does or does not have a strong, stable and familiar relationship with his or her parent.

We are also concerned that the UKBA are continuing to detain parents separated from their children in an open-ended manner while awaiting the outcome of family court proceedings. A recent report by the National Audit Office found that there are increasingly severe delays in the Children and Family Court Advisory and Support Service's (Cafcass's) throughput of cases. The report found that Cafcass received around 34% more care cases in 2009-10 than 2008-9, and that 'in June 2010, nearly five new care cases arrived [in the courts] for every one closing'.<sup>3</sup> As is set out below, we would appreciate clarification of how waiting times for family court proceedings are being estimated by caseowners and fed into detention review decisions where imminence of removal is assessed.

**Case Study 7: Imminence of removal**

This client's child was a toddler when the client was transferred to immigration detention following the end of her criminal sentence. During her time in immigration detention, the client became involved in a custody dispute concerning her child, who had been living in a private fostering arrangement while she was in prison and subsequently in detention. Children's Services produced a Child Protection plan for her child because of concerns including drugs related activities within the foster family and the child being underweight. The mother's relationship with the foster family broke down and a dispute arose over who was to have custody of her child in the long term. She instructed a family solicitor but failure by the detention centre and escort management to produce her at family court hearings caused delay in resolving her case. She was eventually released on bail after spending almost a year in detention, despite the fact that she could not be removed for much of this period due to ongoing family court proceedings.

<sup>3</sup> National Audit Office July 2010 'Children and Family Court Advisory and Support Service: Cafcass's response to increased demand for its services' HC 289 Session 2010-2011

### **Case Study 8: Imminence of removal**

This client entered the UK to join her husband on a family visit visa. However, her relationship with her husband subsequently broke down after he became abusive, and she sent her younger child to her family in her home country as she could not cope with both her two children during this difficult period. The client was unaware of the International Organisation for Migration's (IOM's) assisted voluntary return schemes, and began working using a false document to earn money for a flight to return to her country of origin. At this time, she was apprehended by the UKBA and convicted for using a false document. She applied for the IOM's Facilitated Return Scheme one month later, and did not appeal her deportation.

During the five months which the client spent in immigration detention, it was unclear whether it would be possible for the UKBA to reunite her with her older child, who was still in the UK, for the purpose of removal. At the point when she was released on bail no decision had been taken by the UKBA on how to progress the case. During her time in detention, the client's estranged husband refused to allow her any contact with her older child, so she instructed a family solicitor. However legal aid was refused on the grounds that there could be no merit in pursuing a residence order in favour of the mother who was detained and therefore did not have an appropriate address. The client found herself in an impossible situation, unwilling to return without her daughter but unable to take any action to gain custody of her. The UKBA appeared to have no process in place for resolving the situation or taking steps to reunite the parent and child for removal, and yet detained the mother in an open ended manner until she was released on bail.

### **Separating families for removal**

It is of grave concern to BID that in the absence of proper processes in this area, Criminal Casework Directorate are in some cases seeking to separate families for the purpose of removal. In such cases, the parent could be removed from the UK leaving their children here in the care of Children's Services, or in some cases in private fostering arrangements which give rise to serious child protection concerns. BID knows of cases where there are no known child protection concerns about a detained parent, and the UKBA's Children's Champions office has advised that a parent be released to allow a parenting assessment to take place so the family can be reunited, and yet the Criminal Casework Directorate caseowner has sought authority to split a family for removal. In such cases, it appears that this step is being taken despite the profoundly negative impact it could have on child welfare, because it serves the administrative convenience of the UKBA. In addition, it is also unclear to us that this strategy is an effective one even in terms of effecting a parent's removal from the UK, given that attempting to separate a family in this way is likely to lead parents to make Human Rights applications on the basis of the right to family and private life (ECHR Article 8).

### **Risk of reoffending**

Bail summaries in separated family cases frequently cite risk of reoffending as a reason for continuing to detain a parent who has in the past committed a criminal offence.

However, the effect of the European Convention on Human Rights is that the government's widely drawn powers to detain asylum seekers and migrants should only be used for the purposes of preventing unauthorised entry or removing people from the UK (ECHR Article 5(1)(f)). It is therefore entirely inappropriate for immigration detention to be used as an extension of the criminal justice system, to address the perceived threat that an immigration/asylum applicant may commit an offence at some point in the future.

Justice Hickinbottom's recent judgment in the case of *Adel Ben Mahfoud v SSHD* underlined this principle. In this case, the court found that the claimant's detention for a period of 38

months was not lawful, despite a real risk of reoffending, because immigration detention is only to be used for the purposes immigration control and deportation. Justice Hickinbottom stated in his judgment that:

'For the purposes of this claim, I accept the Secretary of State's view that it is very likely that [the claimant] will commit further crimes of acquisition, and he is also likely to breach any conditions imposed upon him. However, the Claimant cannot of course be detained simply to avoid that risk. Such detention would not be for the purpose of deportation.'<sup>4</sup>

## **Assessment of absconding risk**

BID has serious concerns about the way in which risk of absconding is being assessed by the UKBA in separated family cases. The fact that 21 out of 28 BID separated family clients have so far been released into the community by either the UKBA or the courts raises serious questions about why they were held for such long periods, if it has now been deemed safe to release them.

In BID's experience, foreign national prisoners serving criminal sentences are frequently not prioritised for a risk assessment by probation services as part of a pre-release plan. Where probation services has not carried out a risk assessment the Home Office's own assessments frequently resort to information dating from the time of the original sentence, and therefore do not meaningfully take into account changes in circumstance or behavior that have occurred during the applicant's prison sentence or period in immigration detention. BID is concerned that UKBA staff are not always following the steps outlined by the agency's own policy guidance when assessing risk, including seeking summaries of NOMS risk assessments and OASys reports before making a decision to detain.<sup>5</sup> For example, one NOMS Offender Manager informed BID that they had never been asked for an OASys summary by a Criminal Casework Directorate caseowner.

In order to examine the reasons given by the previous government for detaining families, Bail for Immigration Detainees and The Children's Society carried out detailed research into the cases of 82 families with 143 children who were detained during 2009, using data from 82 clients' case files, interviews with 30 family members, 10 families' full Home Office files, and enquiries to legal representatives.<sup>6</sup> While the findings of this research are specific to detained families, they raise broad concerns about the UKBA's criteria and processes for assessing absconding risk:

- Research with BID and TCS's clients found that only a minority of client families who were detained during 2009 had any history of absconding, and that the vast majority of families who we tracked after release from detention maintained full contact with the Home Office.<sup>7</sup>

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<sup>4</sup> [2010] EWHC 2057 (Admin)

<sup>5</sup> UKBA Enforcement Instructions and Guidance 55.3.2.6

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

<sup>7</sup> For the purposes of this research, absconding is defined as a consecutive series of failures by a family to meet the reporting requirements set for them by the Home Office, and/or to reside at the fixed address which the Home Office has recorded for them, where there is no adequate explanation for these failures.

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

For more information about this briefing please contact:

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## Questions for the UK Border Agency

1. Can you provide references for the documents which set out government policy and procedures on separation of families through immigration detention?
2. Have there been any cases in the last ten years (or any period for which this information is available) where children have been separated from their primary carer when this parent was forcibly removed from the country and the children remained in the UK, in the care of Children's Services or private fostering arrangements?
3. In the last year (or any period for which this information is available):
  - a) How many children have been in the care of Children's Services or in private fostering arrangements while their primary carer was held in immigration detention?
  - b) What is the average length of time these children have been separated from their parent by immigration detention?
  - c) In how many of these cases have children been separated from their parent for: over three months, over six months, over a year, over eighteen months or over two years?
  - d) How many of these children were: 0-2 years old; 3-5 years old; 6-11 years old; or 12-17 years old at the point when their parent was detained?
  - e) What was the outcome of the parent's detention in these cases? How many were released, removed from the UK or continue to be detained?
4. In the last year (or any period for which this information is available), how many children have been separated from one parent who was held in immigration detention, while the child remained outside detention in the care of another parent?
5. In cases where children were cared for in fostering arrangements or by another parent while their parent was in detention, in how many cases does the UKBA have information about whether the child's care arrangements gave rise to child protection concerns which were identified by Children's Services? Of these cases, in how many instances were child protection concerns identified?
6. In how many separated family cases are family court proceedings or legal applications (by the parent or their children) a barrier to removal for the majority of the parent's time in detention?
7. What is the UKBA's official policy and procedure on the timing of initiation of deportation action by serving a notice in separated family cases? At what point in a parent's time in criminal custody or immigration detention is it intended that this should happen? What is the average time lag in initiation of deportation action by serving a notice after immigration detention has commenced in separated family cases?
8. In cases where children are in local authority or foster care, what is the UKBA's policy and process for engaging with Children's Services with a view to reuniting children with their parents after a criminal sentence has been served, and while the UKBA is seeking to remove the family from the UK? At what point in a parent's time in criminal custody or immigration detention is it intended that action should be taken to ascertain whether the family can be reunited for the purpose of removal? Does the UKBA have mechanisms in place to record and check whether caseowners have taken this action? On average, how long does it take caseowners to obtain this information from Children's Services after a parent is detained?



9. What is the UKBA's process for progressing cases where social work assessments in natural environments (ie. outside Immigration Removal Centres) are required in order for a family to be reunited for the purpose of removal?
10. What are the average waiting times for family court proceedings to be resolved in separated family cases? How is information about the timescales for family court proceedings gathered and fed into detention review decisions where imminence of removal is assessed? Is any guidance made available to caseowners concerning this issue?
11. What criteria and processes are used to assess absconding risk in separated family cases? In how many cases are end of sentence probation reports obtained by UKBA and fed into risk assessments for separated families? In cases where parents have served sentences of over twelve months, are OASys reports consistently obtained and considered by UKBA caseowners when assessing risk? What other official documents or means of risk assessment are systematically completed in these cases? Is any data collected on levels of compliance with reporting conditions by separated families after parents' release from detention?
12. What steps are the UKBA taking to safeguard child welfare in separated family cases?
- a) What information is gathered by caseowners on the child's health and welfare, and the impact which their continued separation from their parent is having in these cases?
  - b) How frequently is detention reviewed in separated family cases? Is child welfare consistently taken into account in these reviews?
  - c) How do the UKBA ascertain and take into account the wishes and feelings of an affected child in this situation?
  - d) Is information about the welfare and daily care of children consistently requested from parents in detention and fed into decisions to detain and maintain detention?
  - e) What procedures are in place to gather information from Cafcass or Children's Services in these cases, and what information is gathered if the child has not had contact with either agency? Are reports on children and advice from Children's Services (and Cafcass in cases where there are ongoing Family Court proceedings) consistently gathered and taken into account before a decision to detain is made and before each detention review? Does the UKBA have mechanisms in place to record and check whether caseowners have taken this action?
  - f) In cases where the UKBA becomes aware of private fostering arrangements for children which are unknown to Children's Services, what procedures does the agency have in place to share information with Children's Services? Are referrals consistently made to Children's Services in these situations?
  - g) How are the confidentiality issues raised by sharing information about children in this situation addressed in the UKBA's policy and guidance?
13. What policies, processes and support are in place to assist parents in detention to obtain information about their child's welfare, and to contact the relevant agencies if they have concern about their child's care arrangements?
14. What policies and resources are in place to ensure contact is maintained between parents in detention and children outside detention? What is the UKBA's policy on assisting parents to access and resource home visits to children, visits by children to Immigration Removal Centres or phone contact with their child?
15. If parents of separated families are released from immigration detention, what policies and processes are in place to ensure that parents are reunited with their children where appropriate, and children are safeguarded through this process? For example, what protocols are in place for the UKBA to co-operate with Children's Services in these cases,

and to provide suitable accommodation which will enable a parent to be reunited with their child, while minimising the disruption to the child's education and personal life?

16. Given the role of the UKBA's Children's Champion in advising caseowners about separated family cases, which statutory and voluntary sector agencies does the Children's Champion seek information from to base this advice on? Can external agencies make representations to the Children's Champion's office on behalf of separated family clients?

17. We note from section 4.1.1 of the 'Criminal Casework Directorate Children and Family Cases Process Instruction' (which was released via a Freedom of Information Act request earlier this year) that decisions to release parents in separated families from detention require Chief Executive authority. We would appreciate clarification of why it is thought appropriate that a decision to reunite a family should need to be made at a more senior level than decisions to separate families through immigration detention?

18. We would appreciate clarification of whether Family Welfare Forms are consistently completed and updated from an early stage in separated family cases, to inform operational decisions. We note that section 2.2.5-6 of the 'Criminal Casework Directorate Children and Family Cases Process Instruction' suggests that this form should be completed in cases where children are to be detained 'in order to detain the family prior to deportation'. This is the only situation in which the instruction specifies that a Family Welfare Form should be completed. However, section 45.1 of the UKBA's Enforcement Instructions and Guidance states that:

'The Family Welfare Form (FWF) consists of three parts and is the basis upon which key operational decisions including job-specific risk assessments will be made for each family case. It is therefore imperative that a FWF included on each family case file from the start of each family claim, and any changes to the family's circumstances be noted and considered at each stage of the process.'

19. Could we please have a copy of the 'Children's Services Referral Form' which is used by Criminal Casework Directorate, and is mentioned in the 'Criminal Casework Directorate Children and Family Cases Process Instruction'?

20. Could you please provide some information on the UKBA's Safeguarding Children Co-ordinators? It would be helpful to know what level of seniority they hold within the UKBA, where they sit within the agency's structure, and what training they receive.