# UKBA plans for pilots to remove families with limited notice and through open accommodation: Response of Bail for Immigration Detainees and The Children's Society

**December 2010**

**Bail for Immigration Detainees** (BID) is a small independent charity that exists to challenge immigration detention in the UK. Since 2001 it has supported families in detention, or separated by detention, to make applications for bail. Visit www.biduk.org.
**The Children's Society** is a leading children's charity committed to making childhood better for all children in the UK. Visit www.childrenssociety.org.uk.
The **OutCry! campaign** to end the immigration detention of children is a partnership project between The Children's Society and Bail for Immigration Detainees (BID), funded by The Diana, Princess of Wales Memorial Fund. Visit www.outcrycampaign.org.uk.

## Executive Summary

The mental and physical ill-health suffered by children in immigration detention is well-documented. Medical studies have found that detention is associated with post-traumatic stress disorder, major depression, suicidal thoughts, self-harm and developmental delay in children.[1]

BID and The Children's Society very much welcomed the new Government's announcement in May 2010 that the detention of children for immigration purposes would be ended. However, we are gravely concerned that children continue to be detained, and that some of the alternatives proposed by the Government pose serious risks to children's well-being.

We recognise that, in the current asylum and immigration system, some families will be forcibly removed from the UK. However, there is clear evidence from overseas that far fewer families end up facing forced removal if overall improvements are made to the immigration and asylum system. For example, in Sweden, 82% of all returns of refused asylum seekers in 2008 were made voluntarily.[2] By comparison, in 2009, only 14% of returns of asylum seekers and migrants from the UK were made through the Assisted Voluntary Return schemes.[3] We are calling on the Government to make much needed changes to the asylum/immigration system which would mean that families whose cases are refused would be more likely to return voluntarily to their countries of origin, including improvements to decision-making and families' access to legal advice.

[1] Lorek, A., Ehnholt, K., Nesbitt, A., Wey, E., Githinji, G., Rossor, E. and Wickramasinghe, R. (2009) 'The mental and physical health difficulties of children held within a British immigration detention centre: A pilot study' *Child Abuse and Neglect* 33:9 pp 573-585; Mares, S. and Jureidini, J. (2004) 'Psychiatric assessment of children and families in immigration detention – clinical, administrative and ethical issues' *Australian and New Zealand Journal of Public Health* 28:6 pp520-526
[2] Centre for Social Justice (2008) Asylum Matters: Restoring trust in the UK asylum system
[3] Home Office (2010) Control of Immigration: Quarterly Statistical Summary, UK October-December 2009

**Family Return Pilots**
BID and The Children's Society have a number of serious concerns about the design and implementation of the pilots which the UKBA is currently running to remove families in the North West and London:

- **The timescale of the pilots is too short.** Families who, in many cases, have been in the UK for several years, and have children who were born in this country, are being expected to make a decision to leave the UK in two weeks. Families need a proper opportunity to get legal advice on their options and plan for return. Instead, they are becoming frightened and distressed by a rushed-through pilot. Civil servants have informed us that there have been concerns in a number of cases about parents on the pilots self-harming.
- **The pilots do not have adequate safeguards** in place to protect child welfare and ensure that enforcement measures are applied proportionately. For example, the UKBA have informed us that medical information about families on the pilots is not being gathered in a consistent way. If information about a family's medical situation is collected, there is no process for Immigration Officers to access expert medical advice on how plans for enforcement action should take this information into account.
- **In some cases, children are attending the family return conferences at which issues such as forcible removal are discussed with parents.** We are concerned that there is considerable scope for children to become distressed during these conferences, and no support is being offered to them to help them to cope with these experiences.
- **It is unclear how the Family Return Pilots will be evaluated,** as the processes which families have experienced during the pilots have been subject to change, and information about the impact of the pilots on child welfare has not been collected.

**Family Returns Panel** (p15)
We welcome the UKBA's decision to initiate a Family Returns Panel, to assist with the planning of enforcement action against families. However, we have some concerns about how the panel will function. In particular, we want the UKBA to:

- Arrange, as a matter of urgency, for a pool of independent child welfare and health specialists to be assembled to sit on the Family Returns Panel. It is essential that an independent child welfare specialist and health specialist are available to attend all panel meetings, to offer advice on the issues raised by each family's case.
- Ensure that the panel shares with families and their legal representatives the specific reasons why enforcement measures such as limited notice of removal are being used in their cases, and the evidence on which this decision is based.
- Ensure that families and their legal representatives have a direct route to providing evidence to the Family Returns Panel about factors which may make certain enforcement measures inappropriate.

**Croydon accommodation pilot** (p18)
From December, the UKBA will be opening an accommodation centre in Croydon where families will be provided with bed and board support, and issued with directions for their removal from the UK. If families who are currently receiving asylum support refuse to move to this accommodation they will be made destitute. The UKBA previously ran an alternative to detention pilot in 2007-8, which required families to move to an accommodation centre in Millbank, Kent, or face being made destitute. Only one of the families involved in this pilot returned voluntarily to their country of origin, and there was some evidence that the pilot decreased the likelihood of families complying with the

immigration authorities.[4] More worryingly, families reported feeling 'coerced and frightened' and our independent evaluation found that there was a 'climate of fear' in the centre.[5] We are concerned that:

- The Croydon pilot will cause unnecessary distress and disruption to families, and could replicate some of the harm caused to children by detention.
- The UKBA is piloting a scheme which creates a situation in which children may be made destitute. We do not believe that it is acceptable to risk harming children in this way for the purposes of immigration control.
- Children will be held in the Croydon pilot accommodation for unacceptably long periods. While the pilot continues, families' length of residence at the centre should immediately be limited to 72 hours, after which families should be returned to their previous accommodation.
- Families will only be given one week's notice that they are required to move to the Croydon accommodation or be made destitute. This notice period is unreasonably short and should be extended.
- Families in the pilot will not be provided with any cash support and so, for example, will have no money for travel to visit legal representatives.

**Limited notice of removal** (p25)
As part of the pilots, the UKBA are planning to carry out 'surprise' removals of families, in which families will be given notice that they will be removed from the UK after 72 hours and within the next 21 days, but not told when this will happen. We are concerned that:

- This will create serious practical barriers to families accessing legal representation to challenge their removal, and therefore increase the risk that families who have well-founded fears of persecution in their countries of origin will be forcibly removed from the UK.
- The uncertainty of this situation is likely to cause considerable distress to families.

**Electronic Tagging and Reporting Requirements** (p26)
Safeguards are needed to ensure that electronic tagging and reporting requirements are used proportionately, including:

- Time limits on the use of electronic tagging
- Published guidance and criteria on the use of tagging
- The publication of statistics on the number of parents subject to tagging or required to present themselves at UKBA reporting centres on a daily basis
- Independent oversight and regular independent audits of the UKBA's processes for allocating contact requirements to families.

[4] *Hansard*, HC 2 Jun 2009: Column 217; Cranfield, A. (2009) Review of the Alternative to Detention (A2D) Project, London: Tribal
[5] Nandy, L. (2009) An evaluative report on the Millbank Alternative to Detention Pilot London: The Children's Society and Bail for Immigration Detainees

## Introduction

This paper is written in response to information circulated to stakeholders by the UK Border Agency (UKBA) on 8/11/10, which outlined the agency's plans to set up a Family Returns Panel, pilot the removal of families with limited notice, and to start an open accommodation centre for families in Croydon. The plans stated that all three of these measures would be implemented from 22/11/10. The plans are available online at: http://www.eelga.gov.uk/campaigns-and-projects/strategic-migration-partnership/asylum-refugee-integration-Copy.aspx

BID and The Children's Society are also taking this opportunity to outline concerns about the pilot projects which the UKBA have been running since July 2010 to forcibly remove families in the North West of England and London (referred to in this document as the 'Family Return Pilots').

## Guidance for enforcement action against families

BID and The Children's Society are extremely concerned that there is currently no published guidance on how enforcement is being managed by the UKBA in family cases nationally. The UKBA have informally mentioned to us that there have been changes to the way family cases are managed and in how decisions to detain families are made. However, no information and guidance on this matter has been published. This is of particular concern given that one of the stated aims of the UKBA's new processes with families is that:

'Families have to understand what is happening to them and have confidence in the decision-making process.'[6]

Given that families and their legal representatives do not have information available to them about the new enforcement processes which are being operated in family cases, it appears unlikely that families will have a good understanding of these processes or their place within them.

## The UKBA's pilots with families in the North West and London

Since June 2010, the UKBA have been piloting new processes to forcibly remove families from the UK. Two pilots are taking place, one in the North West of England and one in London. The UKBA published information on 16/12/10 stating that 96 families had participated in the pilots as of that date.[7]

So far, the pilot process has consisted of two stages. Initially, families are contacted and asked to attend a 'family return conference' at which Immigration Officers or UKBA caseowners explain to them that because they do not have any outstanding legal representations, they could be subject to forced removal within the next few weeks. The families' options in terms of returning voluntarily to their country of origin are explained to them. At this meeting, a date is set for the UKBA to visit the family to serve them with directions for their forced removal from the UK, normally two weeks from the first 'family return conference.' It is explained to families that if they make an application to leave the UK voluntarily within these two weeks, they will not be served with directions for their forced removal. If families do not make an application for voluntary return, they are then served with at least two weeks notice of the date and flight on which they will be required

[6] UKBA (November 2010) Open Accommodation: Accommodating families outside of detention, p3
[7] UKBA (16/12/2010) Press release 'New compassionate approach to family returns'

to leave the UK. In some cases, families will be expected to travel to the airport unescorted, and in other cases the UKBA will send escorts to take families to the airport.

From 22nd November, families who have not complied with these pilots by either returning voluntarily to their country of origin, or leaving on the date and flight given to them by the UKBA will be subject to the 'limited notice removal' and Croydon accommodation pilots which are outlined below.

BID and The Children's Society have a number of concerns about the way in which these Family Return Pilots have so far been designed and implemented.

**The need for wider reforms to the asylum and immigration system**

We are concerned that the UKBA have chosen to run pilots which focus exclusively on the end of the asylum and immigration process, and returning families to their countries of origin, rather than looking at the asylum and immigration process as a whole. The families who are entering UKBA's pilots in the North West and London will, in many cases, have been in the UK for a number of years. Given the extensive evidence available about the problems with decision-making on asylum cases and the barriers which families will face when accessing quality legal advice, it is likely that a considerable number of these families will not feel that they have had a proper opportunity to present their case, or that this case has been properly considered.[8] In a number of cases, this feeling may be justified. Where families do not feel that they have had a fair hearing, it is unlikely that they will make a decision within the pilot's two week timescale to return voluntarily to their countries of origin.

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

- prevent families best presenting their asylum/immigration claim,
- act as disincentives to families complying with the immigration authorities,
- make it harder for families to accept voluntary return if their asylum/immigration claim is refused.

For example, Mitchell's 2009 report on alternatives to detention in Australia found that 67% of the 1,514 people who have entered these projects since 2006 and were not granted leave to remain departed voluntarily.[9] Sullivan et al. found that 69% of the 165 participants who were released from detention to their New York pilot fully complied with the outcomes of their cases, either being granted status or departing voluntarily.[10] In Sweden, 82% of all returns of refused asylum seekers in 2008 were made voluntarily.[11] By comparison, in 2009, only 14% of returns of asylum seekers and migrants from the

[8] See, for example: Tsangarides, N. (2010) The Refugee Roulette: The role of country of origin information in refugee status determination, Immigration Advisory Service; UNHCR (2006) Quality Initiative Project: Third report, London; Refugee Action (2008) Long term impact of the 2004 Asylum Legal Aid Reforms on access to legal aid; Constitutional Affairs Select Committee (2007) Implementation of the Carter Review of Legal Aid Third Report of Session 2006–07 Volumes I & II House of Commons

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

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

[11] Centre for Social Justice (2008) Asylum Matters: Restoring trust in the UK asylum system, Centre for Social Justice

UK were made through the International Organisation for Migration's Assisted Voluntary Return schemes.[12]

We firmly believe that a similarly effective system as exists in other countries can be realised in the UK, but only once significant changes to the existing decision-making and case management system are made to ensure a more individualised, transparent and accountable approach. We are disappointed that the UKBA has not so far taken the opportunity of the Family Detention Review to make changes to the way it deals with families from the beginning of the asylum and immigration process, which could result in higher proportions of families whose claims are refused departing voluntarily.

Following the announcement in May 2010 that the detention of children would be ended, BID and The Children's Society participated in an intense series of meetings with the UKBA as part of the Working Group convened by the Diana Princess of Wales Memorial Fund. In these meetings, the Working Group put forward recommendations about how this change should be implemented, which largely focused on the wider reforms to the asylum/immigration system which are badly needed if families whose claims are refused are to return voluntarily to their countries of origin. It is particularly disappointing to us that very few of these recommendations have been taken on board by the UKBA.[13] We welcome the UKBA's plans to work with the UNHCR to improve the quality of decision making on family asylum cases, and to roll out the Early access to Legal Advice Pilot in the Midlands. However, we note that this project in the Midlands will unfortunately only benefit a minority of families, and the families who are participating in the UKBA's Family Return Pilots will not be able to avail themselves of this scheme to provide early access to legal advice. Given the recent cuts to legal aid funding, many of these families will face considerable barriers to accessing quality legal advice in order to assess the options available to them and discuss the implications of voluntary return with a legal representative.[14] We would therefore encourage the UKBA to work with the Ministry of Justice to urgently address the issue of access to quality legal advice for families in the immigration and asylum system.

BID and The Children's Society are concerned that, without wider changes to the asylum and immigration system, the current Family Return Pilots are unlikely to be successful, and the inappropriate use of detention may simply be replaced by the inappropriate and ineffective use of other enforcement measures.

**Timescales for the Family Return Pilots**

BID and The Children's Society in principle welcome the plans outlined in the pilot's guidance documents for parents to take part in meetings with UKBA staff at which details of the International Organization for Migration's voluntary return schemes are provided.[15]

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

[13] BID and The Children's Society's recommendations are outlined in our response to the Family Detention Review: http://www.biduk.org/154/consultation-responses-and-submissions/bid-consultation-responses-and-submissions.html

[14] A survey by the LCF in 2008 revealed that in the wake of the introduction of the fixed-fee system, almost one in five law centres was threatened with closure and almost a half (49%) were in serious debt - Law Society Gazette 15/05/08 'Shifting Sands' Jon Robins http://www.lawgazette.co.uk/features/shifting-sands-1. This crisis in legal aid funding is underlined by the recent closure of Refugee and Migrant Justice, one of the largest providers of publicly funded legal advice to asylum seekers and migrants in the UK.

[15] UKBA (November 2010) Limited Notice: A new method of notifying families of their removal from the UK, Introduction

However, since information about the Family Return Pilots was first shared with BID and The Children's Society, we have repeatedly expressed our concern that two weeks is an inadequate amount of time for families to consider returning voluntarily to their country of origin. We believe that it will only be possible for the UKBA to fulfill their aims, set out in their plans for the pilots, of building trust with families and increasing the numbers of families who depart voluntarily, if longer time periods are allowed for families to consider voluntary return.

In many cases, families on the pilots will have been in the UK for several years, and will have children who were born in this country. For them, the decision to return voluntarily to their country of origin is a long-term one which will have far-reaching implications for their children's welfare. In a number of cases, families will fear for their safety on return to their country of origin, and will be in urgent need of quality legal advice concerning their options. If they manage to make an appointment to see a legal representative, this may not be until after the two week timeframe given to them by the UKBA.

One mother whose family is part of the UKBA pilots spoke to BID and The Children's Society about her experiences. When asked about the impact which the two week timescale had on her, she said:

'It's very, very bad. I am in this country for five and a half years and suddenly I'm asked to leave in two weeks. It doesn't make sense. I try to keep going but it's difficult… I'm so afraid. I know that if I go back to [country of origin], my life is not safe, my little girl's life is not safe…. Just recently, the doctor, he gave me some medicine, for my high blood pressure, to help me calm down.'

This woman explained that her solicitor had put in fresh submissions to the Home Office on her behalf since she had met the UKBA for a family return conference. However, it was not possible for this to be organised in the two week timescale allowed by the pilots. She only had time to put in these representations because the UKBA did not come to her house to issue her with removal directions on the date they had given her. No explanation was given to her about why she was not issued with removal directions on this date.

As well as this type of anecdotal evidence, information has been shared with us by the Home Office which suggests that families are becoming frightened and distressed during the course of these pilots. Civil servants have informed us that there have been concerns in a number of cases about parents on the pilots self-harming, and that the seriousness of the self-harm risk has been confirmed by medical experts or Social Services in these cases.

BID and The Children's Society's evaluation of the Millbank pilot, a previous alternative to detention pilot run by the UKBA in 2007-8, found that one of the flaws of this scheme was that families were not given adequate time to consider returning voluntarily to their country of origin. This research found that:

**'**4-6 weeks was too short a period for families to explore return options…. Staff involved in the pilot felt that longer than 4-6 weeks was needed to form a positive relationship with families… in any future pilot longer timescales should be built in from the outset.'[16]

[16] BID and The Children's Society (2009) An evaluative report on the Millbank Alternative to Detention Pilot

There is also emerging evidence from a pilot being run by Refuge Action in Liverpool that engaging with families about voluntary return is a complex process which requires relatively long time periods. The 'Key Worker Pilot' was launched during 2010, and involves voluntary sector support workers meeting with families and individuals regularly during the course of the asylum process, and discussing their options with them, including voluntary return. Although a formal evaluation of the pilot has not yet been published, Refugee Action shared emerging findings from this work at the National Asylum Stakeholder Forum on 18/11/10. The learning from this pilot so far is that communicating voluntary return to families has been particularly complex, and has required longer periods of engagement. This has been in part because parents have many issues around their children's welfare which need to be discussed before they can speak about their legal situation. In addition, family claims can be complex because different members of the family may fear return to their countries of origin for distinct reasons.

The UKBA have informed us that two weeks is the minimum amount of time which families on the pilots will be given to consider voluntary return, and that if families request longer time periods then these requests will be considered by the UKBA. However, from the information which is available to us it appears that in practice, families are in most cases given a two week period to consider voluntary return, and we do not know of any criteria which would lead to families being granted longer time periods by enforcement teams. In addition, families on the pilots and the organisations supporting them have informed us that they have not been made aware that it would be possible to ask for an extension of the two weeks allocated to consider voluntary return. The UKBA have informed us that legal representatives are not told that this two week timescale is a negotiable one.

We are also concerned that families and their legal representatives are not being informed about changes to the two week timescale which is given to them by the UKBA. It has been reported to us that on a number of occasions the UKBA have given families a date on which they would visit their house to serve them with removal directions, but on the day in question the UKBA have not arrived. In these cases, families have not been informed of the reason for this event being cancelled, or what the new timescale is for the UKBA progressing their case. Inevitably, such poor communication leads to confusion on the part of families and undermines their trust in the process.

The UKBA's planning documents for the pilots state that, in some cases, families will be given an initial two week time period to consider voluntary return, but following this will move immediately to the Croydon accommodation centre or be given 'limited notice of removal'.[17] By contrast, most families will have removal directions set in the community before either of these options is considered. However, it is entirely unclear what circumstances would lead to families being sent directly to the accommodation centre or being given limited notice of removal, as no criteria for this is set out in UKBA's planning documents. This raises concerns that decisions in this area could be made arbitrarily.

Finally, it is unclear how the pilot process will be affected if barriers to a family's removal arise or come to light during the course of the pilots. BID and The Children's Society would recommend that if and when any significant barriers to a family's removal which last more than one or two days are resolved, the pilot process should be re-started with a family return conference which gives families the opportunity to consider returning voluntarily. In practice, these families may have not had any real opportunity to consider returning voluntarily from the outset of the process, as there may have been health or

[17] UKBA (November 2010) Open Accommodation: Accommodating families outside of detention, p4

legal barriers to them being removed from the UK which have only been raised and resolved during the course of the pilots.

**Safeguards for families on the Family Return Pilots**

It is of grave concern to BID and The Children's Society that the UKBA have not put in place adequate safeguards to protect the health and welfare of children and families who have been subject to the Family Return Pilots since June 2010, and will be subject to the new enforcement measures which are being piloted from 22nd November 2010.

Section 55 of the 2009 Borders, Citizenship and Immigration Act places the UKBA under a statutory duty to safeguard and promote the welfare of children. The UKBA's guidance for this legislation defines this duty as including responsibility for 'preventing impairment of children's health or development.'[18] It also states that:

'The key features of an effective system [include that]... Where possible the wishes and feelings of the particular child are obtained and taken into account when deciding on action to be undertaken in relation to him or her.'

We welcome the recognition by the UKBA, in their guidance for the pilots, that systems are needed take families' welfare into account when planning enforcement action:

'We must know our families better so that we can respond to their situation, in particular health and welfare issues, when managing their return.'[19]

However, we are concerned that, in practice, the UKBA do not have the mechanisms in place to ensure that information about families' welfare is consistently collected and acted upon appropriately in the course of enforcement action.

Despite the clear potential for severe distress and harm to be caused to children by the enforcement measures being trialed from 22nd November, the UKBA do not have any means of monitoring the impact on children of the pilots. There are no plans for reviewing children's welfare during the process, to find out whether their health or development has been impaired by this enforcement action, or to take account children's views when decisions are made which will affect them.

The UKBA have also informed us that medical information about families on the pilots is not being gathered in a consistent way. In some cases, written consent is requested from parents for the UKBA to access their medical records, so this information can be fed into decisions about enforcement action. However, the UKBA have informed us that in many cases this step is not taken, and the family is only asked verbally whether they have any health problems. This is despite the concern expressed by the Chief Inspector of UKBA in his recent report on family removals that families were being put at risk because 'appropriate information had not been obtained on medical issues in advance of any arrest.'[20] If information about a family's medical situation is collected, there is no process for Immigration Officers to access expert medical advice on how plans for enforcement action should take this information into account. Furthermore, the UKBA have informed us that they do not have any criteria outlining what types of medical

[18] UKBA and Department for Children, Schools and Families (2009) Statutory guidance for the UK Border Agency on making arrangements to safeguard and promote the welfare of children, 1.4

[19] UKBA (November 2010) Open Accommodation: Accommodating families outside of detention, p3

[20] Independent Chief Inspector of the UK Border Agency (2010) Family Removals: A Thematic Inspection January-April 2010 p16

issues are so serious that they would lead to families being taken off the pilots. The UKBA have informed us that they have not proceeded with removal action in the cases of some families on the pilots because of the serious health risks involved; however, these decisions have been made on the basis of ad hoc subjective judgements rather than as a result of effective systems to safeguard families being in place.

It is also unclear what process is followed if families on the pilots are referred to Children's Services because of child safeguarding concerns, and what criteria is being followed to make referrals of adults to Social Services. This is particularly concerning given that the UKBA have informed us that they have been making more referrals than ever before to Children's Services as a result of the numerous child safeguarding concerns which are arising during the course of the Family Return Pilots. There are clear risks that this situation could lead to enforcement action being taken inappropriately against children and families, who could suffer a great deal of harm as a result.

In addition, BID and The Children's Society are concerned that in some cases children are attending the family return conferences at which issues such as forcible removal are discussed with parents. In many cases, parents will have little choice about children's attendance as, for example, the conference may be held in their home and they may not have any access to childcare. In some cases, parents have been required by the UKBA to bring their children to family conferences. In others, families have been given no choice about whether the conference should take place in their home or at the UKBA reporting centre. The UKBA have acknowledged that the Immigration Officers who are carrying out the conferences are unlikely to have the necessary skills to communicate these very difficult matters to children, and that in any case they will be primarily focused on a discussion with the parents. The UKBA have also reported to us that in many cases parents have become very distressed during the course of family return removal conferences, in some cases expressing an intention to harm themselves or attempt suicide. We are concerned that there is considerable scope for children to become distressed during these conferences, and no support is being offered to them to help them to cope with these experiences. In addition, children's presence in family return conferences could prevent parents from disclosing sensitive matters, such as information about their health which the UKBA may need to know in order to make decisions about enforcement action which safeguard the family.

While we are concerned about children's participation in the family return conferences, the participation of children in the broader pilot process should not be overlooked, and needs to be properly planned and facilitated. There is currently a lack of clarity around which professionals will facilitate children's participation in the pilot process. It is important to consider the engagement with children in more detail to ensure that they are informed appropriately about decisions that will impact on them, and to seek their views and concerns in an age-appropriate manner, particularly around their safety and welfare. Detail needs to be provided around how participation is to be conducted, where, when and by whom. The family return conference may not be the most conducive situation in which to solicit meaningful input from a child but this could be something that an independent, trained specialist or support worker would address before the initial family return conference or in between the initial conference and the final family return conference, with parental consent. Children's views also need to be incorporated into the evaluations of the Family Returns Pilots.

**Evaluation of the pilots**

It is unclear to us how the Family Return Pilots will be evaluated, given that the processes which families have been subject to during the pilots have been repeatedly changed by the UKBA. As is outlined above, standardised processes do not appear to

be in place in a number of areas, including the collection of medical information, information sharing with families about changes to the pilot timescales, and decisions about whether children attend family conferences. The UKBA have informed us that different processes were operating in London and the North West at the outset of the process. For example, families were in some cases being given one rather than two family return conferences, and some families were not given written notice that a conference would take place at their home. Social Services checks were carried out at different stages in the process for different families.

In addition, it is unclear how decisions have been made about which families would be included in the pilot sample, and in at least two cases families who were taken off the pilots in the middle of the pilot process were detained and forcibly removed from the UK. Given that these pilots are intended to test how families will respond to a system where detention is not used as a sanction, the fact that families have been taken off the pilots and detained will create barriers to drawing conclusions from these pilots about what factors lead to families complying or not complying with immigration control.

Furthermore, the UKBA have informed us that key pieces of information, such as whether families had legal representatives during the course of the pilots, or whether they had legal representation during their asylum appeal, is not being collected. Information about families' reasons for complying or not complying with the requirements of the pilots is also not being collected, and there are no processes in place to monitor the impact of the pilots on child welfare. This will mean that any ability to evaluate the pilots, and draw conclusions about the reasons for families' compliance or non-compliance, will be very limited.

**Recommendations:**

- Instead of focusing their efforts on running pilots to remove families at the end of the asylum or immigration process, the UKBA should take immediate steps to address the problems with decision-making and access to legal advice which lead to enforcement action being taken against families inappropriately, and create barriers to families considering voluntary return.
- UKBA caseowners should inform parents and legal representatives in a timely manner that a family's legal applications have been refused. This information should be communicated in writing and via a face-to-face meeting, well before any enforcement action is taken against the family or removal directions are set.[21] A reasonable amount of time – at least three months – following this meeting should be allowed for parents to consider their options, including voluntary return.
- Following the refusal of a family's legal applications, asylum seeking and migrant parents in all regions of the UK should be offered the opportunity of again meeting with their UKBA caseowner to discuss the International Organization for Migration's voluntary return schemes.[22]
- Funding should be made available for legal representatives to attend family return conferences.

[21] The UKBA have informed us that in some cases the immigration or asylum claims of families on the current pilots were refused a considerable period before the families were taken into the pilot process.

[22] Parents on the Family Return Pilots are currently offered a meeting with an immigration officer to discuss voluntary return. We welcome this initiative in principle, but would recommend that parents are instead offered a meeting with their caseowner, and that these meetings are offered to parents across the UK, rather than only parents in the pilot areas.

- Families and their legal representatives should be informed in writing that the two week period which they are given to consider voluntary return may be extended if they can provide the UKBA with reasons for this.
- If there are changes to the dates on which families will be served with self-check-in removal directions, families should be informed of the reasons for this, and of any new timescale for the setting of removal directions.
- The UKBA should establish clear criteria for the circumstances in which families will not be given the opportunity to comply with self-check-in removal directions and will instead be referred directly to family return panel for a decisions on an enforced return plan.
- If significant barriers to a family's removal, which last more than one or two days, are raised at any stage during the course of the pilots, and are subsequently resolved, families should be offered a further family return conference, and the opportunity to depart voluntarily from the UK before enforcement action is taken against them.
- Families should be given a choice about whether the family return conference happens in their home. If they are not comfortable with this, the conference should take place at the UKBA reporting centre instead.
- Families and their legal representatives should be specifically asked, in writing, to provide any information about their health, travel documentation, and legal situation to the UKBA before the first family return conference.
- Written consent should be requested from parents for the UKBA to access their family's medical records in the case of every family on the pilots.
- The UKBA should outline clear criteria for how decisions will be made about whether a medical need or vulnerability makes a family unsuitable for participation on the pilots.
- The UKBA should establish processes to ensure that expert medical advice is available to UKBA staff concerning the appropriateness of enforcement plans in individual cases, in the light of the family's health situation.
- Clear guidance should be published by the UKBA outlining what will happen if children on the Family Returns Pilot are referred to Children's Services because of child safeguarding concerns, and what criteria are being followed to make referrals of adults on the pilots to Social Services.
- UKBA caseowners, rather than Immigration Officers, should oversee the entire pilot process and continue to have responsibility for families' cases until they are concluded.
- The UKBA should commission an independent evaluation of the Family Return Pilots, and should consult with stakeholders about the evaluation criteria and process.
- The UKBA must develop appropriate processes to monitor the health and welfare of children on the pilots, and the impact which the pilots are having on children, including seeking children's views to inform the evaluation.
- Appropriate processes should be developed for the UKBA to take into account the views of children on the pilots when decisions are made which will affect them.

## Safeguards for enforcement action against families

The inadequacy of the mechanisms which have been employed in the past to safeguard and promote the welfare of children during enforcement action has been demonstrated

by research concerning the immigration detention of children.[23] BID and The Children's Society are concerned that the safeguards planned for the new types of enforcement which are being piloted by the UKBA are also insufficient.

It is our view that effective safeguards are needed to ensure that any enforcement action taken against families adheres to the following principles:

1. The safety and welfare of children should be protected effectively throughout the enforcement process.
2. Enforcement measures should be time-limited, and should not be imposed indefinitely on families.
3. Enforcement measures should not interfere with families' access to the court, or their access to legal representation.
4. Enforcement action should be proportionate to an evidence-based assessment of risk.
5. Decision-making processes about enforcement action should be subject to independent oversight.
6. The reasons for any enforcement action which is taken against a family should be shared with the family and their legal representatives.
7. There should be effective, accessible routes available to families to complain about and challenge decisions about the enforcement action which is taken against them.

It is unfortunate that the UKBA have not adhered to these principles when taking enforcement action against families in the past. For example, HM Inspector of Prison's 2010 inspection of Yarl's Wood found that:

'What was particularly troubling was that decisions to detain, and to maintain detention of, children and families did not appear to be fully informed by considerations of the welfare of children, nor could their detention be said to be either exceptional or necessary.'[24]

Furthermore, it is our experience that decisions have been made to detain and maintain detention of families in the past despite there being barriers to families' removal, and there being scant evidence that families are at risk of absconding. Research by BID and The Children's Society has also found that the safeguards which were in place to safeguard children's welfare through the detention process did not function effectively.

**Enforcement action despite barriers to removal**

BID and The Children's Society carried out specific research looking at decisions by the UKBA to detain children during 2009.[25] We found that in a number of the 82 cases

[23] HM Chief Inspector of Prisons (2010) Report on an unannounced full follow-up inspection of Yarl's Wood Immigration Removal Centre; Independent Chief Inspector of the UK Border Agency (2010) Family Removals: A Thematic Inspection; Cutler, S. and Burnham, E. (2007) Obstacles to accountability: challenging the immigration detention of families, Bail for Immigration Detainees

[24] HM Chief Inspector of Prisons (2010) Report on an unannounced full follow-up inspection of Yarl's Wood Immigration Removal Centre p5

[25] 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 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. 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

surveyed during the research period, families were detained when legal, health and documentation barriers meant that it was not possible, lawful or in children's best interests for them to be removed from the UK. On average, families had no removal directions in place for 64% of the time they spent in detention, and 33% of families were detained for more than a month while they had no removal directions in place. Families could not be removed as a result of outstanding legal applications for, on average, 50% of the time they spent in detention.[26] In some cases, families were detained in an open-ended manner for periods of weeks, with no estimated timescale for resolving their outstanding legal applications. In addition, the timescales that were estimated for resolving applications were often inaccurate, as Immigration Officers anticipated that families' legal cases could be resolved more quickly than they actually were.

**Assessment of absconding risk**

This research 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. Pre-detention data was available for 80% of the 82 families in our sample, and 74% of these had not missed a single reporting event required by the UKBA. This research looked in detail at ten full Home Office files for family members, which we obtained via subject access requests. 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. Four families were wrongly recorded as having broken their reporting or residence restrictions. In most cases, factors which, according to Home Office criteria, would reduce the likelihood of families absconding (such as a history of reporting regularly) were not considered when risk of absconding was assessed.

We are concerned that the UKBA's current processes do not enable the agency to assess the risk of families absconding with any accuracy, and therefore make proportionate decisions about enforcement action. For example, the UKBA does not have any clear definition of what types or level of non-compliance should lead to a family being defined as having absconded.

**Ineffective health safeguards**

In addition, our examination of families' Home Office files found that reviews of detention did not function as an effective safeguard to prevent prolonged detention for children and did not register cases where ill health had become a barrier to removal. For example, in one case, a mother who suffered from sickle cell anaemia refused over 60 meals while in detention, and her son witnessed a suicide attempt by a young woman in the detention centre. Her son was receiving counselling as a result of mental health problems he developed in detention six months after the family's release. Despite this, reviews of the family's detention stated that there were 'no concerns' for the family's well-being and 'no medical issues'.

**Recommendations**

- Proper procedures should be established by the UKBA to provide a reliable assessment of families' risk of absconding. Risk assessments must be based on

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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.

[26] This figure is based on data for 46 families for whom we had complete information.

clear criteria and adequate evidence, properly fact-checked, and must take into account all relevant evidence.
- The UKBA should improve its procedures for recording families' histories of reporting and compliance, so that families are not wrongly recorded as having absconded.

## Family Returns Panel

The UKBA are proposing that a Family Returns Panel will make decisions about how families will be forcibly removed from the UK. This panel would be made up of UKBA staff and independent experts, and would be independent of the caseowner or enforcement team managing the case. An interim Family Returns Panel has been operating from 22nd November 2010, making decisions about cases on the North West and London Family Return Pilots.

BID and The Children's Society support the idea that people with expertise in health and child welfare should take part in decision making about how enforcement action is taken against a family. In principle, this should offer a means for health and child welfare considerations to be taken into account when decisions about enforcement action are made.

However, we would strongly encourage the UKBA to publish further information about how the panel will function. In particular, we would be interested to know:

- What information the Family Returns Panel will base its decisions on?
- Whether the Panel will review a family's entire Home Office file, or if a summary of this will be provided to the Panel. If a summary will be provided, who will prepare this, what types of information will it contain, and what checks will be in place to ensure that this summary is adequate and accurate?
- Whether the Panel will produce a written record of the reasons and evidence base for their decisions?
- What the particular skills of the members of the interim Family Returns Panel are, and what their role on the panel will be?
- The UKBA's planning document for the Family Returns Panel states that 'the final decision on how to proceed with a case will remain with the UK Border Agency for the purposes of this testing phase.'[27] We would appreciate clarification of what circumstances the panel would be overruled by the UKBA in, who within the UKBA will be making decisions about the enforcement action which will be taken against families, and what skills and knowledge of child safeguarding these decisions will be based on.

Without this information, it is difficult to comment in detail on the Family Returns Panel proposal. However, from the information which is available to us, we have the following concerns about the current plans for the operation of the panel.

Firstly, the UKBA is not planning to share with families or their legal representatives the specific reasons why enforcement measures such as limited notice of removal are being used in their cases. This will severely limit families' ability to challenge the evidential basis for these decisions. As we understand it, in practice, all the information which provides the basis for the Family Returns Panel's decisions will provided to them through the UK Border Agency. This is particularly concerning given the research carried out by BID and The Children's Society into the cases of 82 families detained during 2009, which found that decisions about enforcement action against families were in some

[27] UKBA (2010) Family Returns Panel: Piloting Ensured Return

cases made by the UK Border Agency on the basis of inadequate or inaccurate evidence.

Secondly, there will be no mechanism for a family or their legal representative to give their own evidence to the panel about factors such as health conditions which may make certain enforcement measures inappropriate. This is particularly concerning given that various issues may arise following the panel's decision and before an attempted removal. Families and legal representatives will need to have the ability to make the panel aware of such urgent issues in a timely manner. Furthermore, families or legal representatives may wish to raise issues or complaints about the conduct of their caseowner, or actions taken by enforcement staff during an attempted removal. In these circumstances, it would not be appropriate for this information to be routed to the panel through the caseowner or immigration team in question.

Thirdly, the UKBA have informed us that reviews of a family's case by the panel will only be triggered by failed removal action. The UKBA's Family Returns Panel planning document states that:

'Once a case is referred to the panel, as long as that case remains as part of the pilot, the panel will remain responsible for oversight of the case and subsequent case review and onward decision making.'[28]

However, there are no plans for the panel to take steps to review a family's case unless a removal attempt fails. This raises serious questions about whether children's welfare is indeed being 'placed at the heart of the process' as this document claims, or whether the process is structured around the goal of removing the family. We would recommend that regular intervals are set at which the panel will pro-actively review a family's case, considering all the available information about the impact of the pilots on the family's welfare and adjusting plans where appropriate in light of this information.

Fourthly, BID and The Children's Society have some concerns about the plans for the staffing of the Family Returns Panel. Currently, four of the seven members of the panel are UKBA staff, and the panel is considered to be quorate if four members attend a meeting. This means that decisions on individual cases could be made exclusively by UKBA staff. In our view, it is important that there are at least two independent panel members at every meeting. In addition, it is essential that an independent child welfare specialist and health specialist are available to attend all panel meetings, to offer advice on the issues raised by each family's case. There will inevitably be instances in which individuals are not able to attend panel meetings. Therefore, a pool of suitable specialists should be available to sit on the panel so that the quality of the panel's decision making does not depend on the ability of individuals to attend.

We are particularly concerned about the UKBA's current plans regarding the health professional who will sit on the Family Returns Panel. In meetings which we had with the UKBA immediately before the panel was to be launched on 22nd November, it was still unclear who the health professional(s) sitting on the panel would be. This is extremely worrying given that the UKBA have informed us that a number of families on the pilots have serious medical conditions, and that there is a high risk of some families on the pilots self-harming. It will not be possible for the panel to effectively assess and manage risks to the health of parents and children on the pilot if individuals from a pool of suitably skilled independent medical experts are not available to attend meetings of the panel.

[28] UKBA (2010) Family Returns Panel: Piloting Ensured Return

In addition, the UKBA's planning document states that the health professional 'may attend [panel meetings] only as appropriate for individual cases.' In the view of BID and The Children's Society, a medical expert should sit on every meeting of the interim panel, particularly given that the panel is trialing new processes, and it is not possible to predict what health issues will be raised during the pilots. In addition, we do not feel it is acceptable for panel members who do not have medical expertise to make a decision that a health professional's advice is not needed in a individual case, for example because no specific health issues have been raised so far in the case. In our view, it is the role of panel members to decide whether adequate information has been provided for them to make a decision about a family's case, and only a medical expert will be able to make a judgment about whether adequate information about a family's health is available, and assess this information properly.

Although we very much welcome the engagement of Department for Education colleagues in the Family Detention Review and have been working with these colleagues in the review process, it is unclear to us why colleagues from the Children in Care division will attend the panel rather than those from the Safeguarding division. Similarly, it would be helpful to clarify whether the senior social worker role currently filled by a representative from Bedford Council would be a statutory or non-statutory engagement and whether this role would be supplied by local Children's Services within the family's local authority area following the pilot testing period.

Finally, BID and The Children's Society would recommend that an independent immigration lawyer should sit on the panel. There are a number of circumstances in which the advice of an immigration lawyer could improve the quality of the panel's decision-making. For example, families may legally challenge the UKBA's decision to remove them from the UK during the course of the pilots. An immigration lawyer would be able to advise the panel about the possible consequences of such action, and the impacts it could have on a planned removal schedule or the likely success of an attempted removal.

**Recommendations:**

- As a matter of urgency, a pool of independent non-governmental child welfare and health specialists should be assembled, so that individuals from this pool are consistently available to attend meetings of the Family Returns Panel. An independent medical specialist should attend every meeting of the interim panel.
- The Family Returns Panel should be chaired independently
- Families and their legal representatives should have a direct route to providing evidence to the Family Returns Panel about factors which may make certain enforcement measures inappropriate.
- Families and their legal representatives should be specifically asked, in writing, to provide any information about their health, travel documentation, and legal situation to the panel which would be relevant to the panel's decision, and given clear deadlines regarding when to provide this information, so that it can be considered by the panel.
- The UKBA should share with families and their legal representatives the specific reasons why enforcement measures such as limited notice of removal are being used in their cases, and the evidence which this decision is based on. There should be an opportunity for families and their legal representatives to respond to this information before a final decision is made about the enforcement action to be taken.
- The Family Returns Panel should regularly review each family's case, considering all the available information about the impact of the pilots on the

family's welfare and the imminence of their removal from the UK, and adjusting plans where appropriate in light of this information.

- The Family Returns Panel should oversee all decisions made by the UKBA to take enforcement action against a family, including a decision to arrest a family as part of the 'required return' process.
- There should be at least two independent panel members at every panel meeting. In addition, it is essential that an independent child welfare specialist and health specialist are available to attend all panel meetings, to offer advice on the issues raised by each family's case.
- Arrangements should be made for an independent immigration lawyer to sit on the Family Returns Panel.
- The Family Returns Panel should produce a written record of the reasons and evidence base for each decision taken about enforcement action which a family will be subject to.
- The UKBA should publish plans for the monitoring and evaluation of the Family Returns Panel's work.

## The Croydon accommodation pilot

As an alternative to detaining children, the UKBA are proposing to require families to move to an accommodation centre in Croydon where they will be provided with bed and board support, and issued with directions for their forcible removal from the UK. If families who are currently receiving NASS support refuse to move to this accommodation they will be made destitute.

BID and The Children's Society have very serious concerns about the UKBA's plans for a family accommodation centre in Croydon. The Croydon pilot is remarkably similar to previous pilots which the UKBA have run as alternatives to detention, which are outlined below. There is evidence that these pilots were damaging to families[29] but also that they were not successful in the UKBA's own terms, in that they did not lead families complying with immigration control, and they may have increased the risk of families absconding.[30] BID and The Children's Society are therefore concerned the Croydon pilot will be unworkable, and that unnecessary disruption and distress will be caused to families by the UKBA's requirement for them to chose between moving onto the pilot or becoming destitute.

We are concerned that rationale behind the UKBA's planned pilot in Croydon is flawed. In the planning documents for the Croydon pilot, the UKBA state that:

'We know that there will be some families who despite our best efforts, will not comply with offers to leave by Assisted or Required Return and who we need to send a clear message that their time in the UK is coming to an end. We consider that moving such families out of their existing accommodation and away from community links and ties they have built up will signal to them that they have reached the end of the road and enable them to understand that their removal will happen.'[31]

[29] BID and The Children's Society (2009) An evaluative report on the Millbank Alternative to Detention Pilot; Refugee Council (2007) Briefing: Operation 'Clannebor'; Refugee Council and Refugee Action (2006) Inhumane and Ineffective - Section 9 in Practice

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

[31] UKBA (November 2010) Open Accommodation: Accommodating families outside of detention, Para 11

However, evidence from previous alternative to detention pilots suggests that 'sending a clear message' to families through the use of coercion and forced changes in their circumstances is not an effective way of ensuring their compliance with immigration control, and can alienate families by increasing their distrust and fear of the UKBA.

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

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

'I rise as a constituency Member, because the alternative-to-detention project that the Government started took place in my constituency and was pursued, at best, halfheartedly. It did not clearly engage any particularly serious part of the Government's thinking—if, indeed, it was a serious alternative to detention. I suspect that Members from all parts of the House want desirable alternatives to detention, but they have never been properly set out or tried. The experiment in my constituency was nothing like long enough, well resourced enough or serious enough to answer the question about whether we can have a proper alternative.'[32]

BID and The Children's Society's evaluative report found that families in the Millbank pilot reported feeling 'coerced and frightened' and that there was a 'climate of fear' in the centre. The report concluded that:

'Establishing the pilot in a separate accommodation centre was unhelpful - thought must be given to the appropriateness of trying to explore return options for families in a designated centre rather than in the community. The housing of families who had been refused asylum in one place did not create a calm environment. A future pilot should seriously consider whether upheaval is a helpful way to build trust with families considering return. Allowing families to remain in the community with their normal routines intact seems a much more helpful way of building a trusting relationship, and enabling families to think through the options available to them in a calm way.'[33]

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

In addition, the UKBA have run several other pilots which sought to use coercive sanctions against families at the end of the asylum/immigration process to persuade

[32] *Hansard*, HC 2 Jun 2009: Column 217
[33] BID and The Children's Society (2009) An evaluative report on the Millbank Alternative to Detention Pilot

them to comply with the UKBA's wishes and depart from the UK. For example, in the 2007 Clannebor pilot families were informed that they would be prosecuted for non-compliance if they failed to attend interviews to discuss voluntary return, and some families reported 'aggressive and sometimes threatening questioning' in these interviews.[34] During the Section 9 Implementation Project families who were not seen to be taking steps to leave the UK were told that they could be made destitute and their children might be taken into the care of Social Services. There is evidence that these pilots caused very considerable distress to children and families.[35] In addition, evaluations by the UKBA revealed that they were not successful in the UKBA's own terms, in that they did not lead to increased numbers of voluntary returns and they may have increased the risk of families absconding.[36]

**Risk of families being made destitute**

BID and The Children's Society are extremely concerned that the UKBA is piloting a scheme which creates a situation in which children may be made destitute. We do not believe that it is acceptable to risk harming children in this way for the purposes of immigration control.

Research by BID and The Children's Society, including our examination of the cases of 82 families detained during 2009, has documented cases in which families have been inappropriately detained and subject to removal action, despite medical issues which meant this action was inappropriate, or legal barriers to their removal from the UK. Our evaluation of the Millbank pilot similarly found that families were inappropriately referred to the pilot in such circumstances.[37] In addition, as is noted below, it is likely that participation in this pilot will cause considerable distress to children and parents, and create barriers to parents accessing legal representation. It is therefore possible that for a number of reasons, parents who would otherwise comply with the requirements of immigration control will refuse to move to the Croydon pilot, and therefore be made destitute.

Indeed, our evaluation of the Millbank pilot found that in some cases, families on the pilot were not willing to move to the Millbank accommodation centre, but were willing to comply with immigration control and were proactively contacting the UKBA. However, the fact of being made destitute inevitably created barriers to families maintaining contact with the UKBA. It is our view that, by creating a situation in which families could be made destitute, the UKBA are unnecessarily alienating families and creating barriers to families complying with immigration control.

**Timescales for the Croydon pilot**

We are particularly concerned about the proposed timescales for the pilot. According to the UKBA's current plans families could be required to stay at the Croydon accommodation centre for up to 28 days.

The move to the Croydon accommodation centre may be very distressing for families, and could replicate some of the damage which is caused to children in detention. Despite the UKBA's assertion that this is intended to be 'open' accommodation, families'

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

[35] Refugee Council (2007) Briefing: Operation 'Clannebor'; Refugee Council and Refugee Action (2006) Inhumane and Ineffective - Section 9 in Practice

[36] BIA (2008) Clannebor Project – The Way Forward; Home Office (2007) Family Asylum Policy: The Section 9 Implementation Project

freedom of movement will be limited once they are in the Croydon Centre. They will not be given any cash support, and therefore in most cases will not be able to travel on public transport outside the immediate vicinity of the centre. They will have no means of buying food, and will therefore need to be at the centre for specific meal times. They will be subject to 24 hour monitoring by security staff, and have to register with reception when they move in or out of the building, as well as signing a daily register. The UKBA have informed us that, in the future they may introduce more secure accommodation centres including features such as curfews, CCTV monitoring, and regulations which would mean that only some family members could leave the accommodation at any one time, or family members who did leave the accommodation would have to be accompanied by a staff member.

In addition to imposing limitations on their freedom of movement, the move to the unfamiliar environment of the Croydon pilot is likely to be experienced by children as very disruptive. In the move, parents and children will lose the networks of support which they will often have built up with friends, extended family, religious congregations and support organisations in the place where they were living. Parents will have limited access to legal representatives, and may be very distressed about their situation. They will also be living at close quarters with families who may be similarly distressed, sharing bathrooms and a dining room. Parents will lose the ability to care for their children as they would in everyday life as, for example, they will not be able to cook for them or exercise any control over the food they are given. Families will not be able to follow their normal routines of children attending school and parents engaging in activities such as voluntary work, or travelling to a place of worship if this requires using public transport. If children are to remain in the Croydon centre for up to 28 days, the disruption to their education will be significant, particularly if they are in the process of studying for GCSE or A Level exams.

The longer families are in the Croydon accommodation centre, the greater the distress which is likely to be caused to children. Furthermore, if families lose the accommodation which they were previously living in, they may be relocated to a new part of the country and their belongings lost or destroyed in the process.

The UKBA's plans for the Croydon centre state that families may be required to stay at this accommodation while new legal applications which they have made are processed. This is of particular concern as BID and The Children's Society's research into the cases of 82 families detained during 2009 found that in a number of cases families were detained in an open-ended manner for periods of weeks, with no estimated timescale for resolving their outstanding legal applications. In one case, a family was detained for more than 80 days while there were legal barriers to their removal.

Furthermore, the Independent Chief Inspector of the UKBA's 2010 Inspection of family removals found that very low numbers of families were removed from the UK after being detained for over 14 days. This report looked at the cases of 880 children who were detained during the inspection period, and found that two thirds of all the children who were removed from the UK following detention were removed after spending 0-7 days in detention. Only 16% of children who spent 15-21 days in detention were removed from the UK following this – the remaining 84% were released.[38] These findings suggest that not only are long periods of detention damaging to children, they are also ineffective in that they are unlikely to lead to families being removed from the UK.

[38] Independent Chief Inspector of the UK Border Agency (2010) Family Removals: A Thematic Inspection January-April 2010 p27

We note that the UKBA's plans for the Croydon pilot state that 'We will do all we can to ensure the family is removed directly from open accommodation. This may include expedition of any judicial reviews which are lodged.'[39] However, it is important to note that the decision about whether a judicial review is expedited is made by the courts and not the UKBA, and even where judicial reviews are expedited such matters can be time-consuming. We therefore feel that it is entirely inappropriate that families should be required to stay in the Croydon pilot accommodation while the UKBA seeks to resolve their legal applications.

In addition, we note that the UKBA's guidance does not mention the issues of health or travel documentation as barriers to removal. BID and The Children's Society's research into the cases of 82 families detained during 2009 found that in the cases of 18 families, 22% of our research sample, ill-health prevented the family being removed for part of their time in detention. Nine families, 11% of our research sample, were detained despite not having travel or identification documents. This meant that they could not be removed from the UK at the point when they were detained. One family was detained for 35 days while a member of the family did not have any travel documents. We are concerned that in the absence of guidelines or processes to deal with these issues, families could well be held in the Croydon centre for considerable periods while it is not possible to remove them from the UK.

**Notice periods for families referred to the Croydon pilot**

The UKBA's plans for the Croydon pilot state that families will be given seven days notice of the requirement for them to move to this new accommodation. We are concerned that this period of notice is wholly inadequate, and will not enable families to make the necessary arrangements for this move. During the 2007-8 Millbank pilot, families were also given one week to move to the Millbank accommodation centre. Our independent evaluation of the Millbank pilot found that this short period of notice was one of the key problems with the pilot:

'Once identified for referral to the pilot, the time given to families to leave their accommodation and move to Millbank was too short. Initially they were given just seven days to decide whether to go before their accommodation and support was cut off, leaving them destitute. Later, the time allowed to families increased from seven to 14 days. However during this time they were required to digest the information they had been given, sell the majority of their possessions, arrange for the removal of pets, take children out of school and move to the centre. We came across one case where the daughter in the family had to make these arrangements because her mother did not speak any English.'

In addition to the all the matters noted above, families will also have numerous arrangements to make around healthcare and access to legal representation if they are to move to an accommodation centre in another part of the country. One week is an unrealistically short period to expect families to make these arrangements in. This timescale is likely to reduce the ability of families to comply with the pilot, and to result in distress to children.

[39] UKBA (November 2010) Open Accommodation: Accommodating families outside of detention, Para 25

**Criteria for referral to the Croydon pilot**
The UKBA's plans for the Croydon pilot state that:

'Families are likely to be transferred to open accommodation where: (i) Assisted and Required Return routes have been exhausted and failed, and (ii) Ensured removal with "limited notice" was also unsuccessful – or in some cases inappropriate'[40]

It is of concern to us that this guidance is so vague and imprecise. It states that families are 'likely' to be transferred to the Croydon pilot under these circumstances, but leaves open the question of whether there are other circumstances in which families will be referred to the pilot.

Furthermore, the guidance states that previous attempts to remove the family must have been tried and failed, but does not stipulate what reasons must have led to this failure. A removal attempt may have failed as a result of administrative failures by the UKBA or legal, health or documentation barriers to a family's removal. In such circumstances, the most appropriate course of action would appear to be to continue to engage with the family in the community, rather than moving them to the Croydon pilot.

We note that in order for families to be given limited notice of removal, documentary records of the reasons and evidence for this decision are required.[41] We very much welcome this recognition of the need for evidence based decision making. However, we do not understand why the UKBA's guidance does not also require documentary records to be kept of reasons and evidence to support decisions that families should be moved to the Croydon accommodation pilot.

**The health and welfare of families on the Croydon pilot**
We are very concerned that the UKBA's current plans for the Croydon pilot do not outline adequate safeguards to address the risks of harm to children and families during the course of the pilot.

For instance, the plans for the pilot which the UKBA have published do not outline any processes to monitor the health and welfare of children in this accommodation, or provide support to children. The UKBA's plans state that if families are not removed from the UK after being in the accommodation centre for 72 hours, their case will be referred back to the Family Returns Panel for further consideration. However, no plans are outlined for what information will be shared with the Panel, for example about the welfare of the children since moving to the centre, to enable them to make a decision about the family's continued residence in the centre. There also do not appear to be any plans for the family's situation to be routinely reviewed after this initial 72 hour review until they automatically leave the accommodation after 28 days.

We welcome the UKBA's undertaking that 'vulnerable families with specific medical needs' will not be placed in the Croydon accommodation centre.[42] However, we are concerned that there are no criteria for how decisions would be made about whether a medical need or vulnerability make a family unsuitable for the accommodation. In

[40] UKBA (November 2010) Open Accommodation: Accommodating families outside of detention, Para 13
[41] UKBA (November 2010) Limited Notice: A new method of notifying families of their removal from the UK
[42] UKBA (November 2010) Open Accommodation: Accommodating families outside of detention, Para 14

addition, as is outlined above, we are concerned that the UKBA's processes for obtaining and assessing medical information about families before initiating removal action are inadequate.

The UKBA's guidance on the Croydon pilot states that:

'If a family [member] makes such threats [to harm themselves or others] when already resident in open accommodation, a referral will be made to social services, and advice will be taken on whether to remove the family from the open accommodation and return them to section 95/section 4 accommodation.'[43]

While it is welcome that the UKBA would refer to Social Services in such cases, we are concerned that this is an inadequate safeguard, given that it is likely to take a significant period of time for Social Services to respond to this referral with advice. In the meantime, very serious harm could have been caused to children in the Croydon centre. Our understanding is that if self-harm issues were raised on the pilots, an urgent referral ought to be made to the NHS mental health local home treatment or crisis resolution team.

It is not clear from the proposals for the Croydon centre how child protection issues would be dealt with, whether centre staff would be trained in safeguarding and working with vulnerable adults, who would be responsible for Social or Children's Services referrals and whether arrangements are already in place locally to take on referrals.

Residence in the Croydon accommodation is likely to be a stressful experience for the families involved, and we are concerned that no plans are set out for support to be provided to children and parents, and no details are given about what play facilities will be available for children. Furthermore, the plans for children on the pilot to access education are inadequate. The UKBA's plans for the Croydon pilot state that children will be provided with 'age related work packs' rather than access to a school. The plans also state that 'local authority referrals are made in terms of the temporary placement of children at local schools where their stay in non detained accommodation looks like it will be longer.'[44] It is unclear from these plans at what stage a local authority referral will be made, and whether local schools will indeed have capacity to take children in at short notice.

**Access to legal advice for families on the Croydon Pilot**

One of the key safeguards which we believe should be available to families who are subject to enforcement action is access to quality legal advice. The move to accommodation in Croydon will, for many families, in itself reduce their access to legal advice as their legal representative may be based in another part of the country. We are particularly disappointed that the UKBA is not planning to provide any financial support or travel vouchers to enable families to visit their legal representatives. This will seriously impede families' ability to access quality legal advice and representation.

The introduction to the UKBA's planning document on 'Open Accommodation' states that the aims of their new processes with families include building trust and ensuring that families understand what is happening to them and have confidence in the decision-making process. Given that families' ability to understand their situation will be contingent upon their ability to access legal advice on this, it appears very unlikely that this pilot will be able to achieve the aims which the UKBA have set out for it.

[43] UKBA (November 2010) Open Accommodation: Accommodating families outside of detention, Para 14
[44] UKBA (November 2010) Open Accommodation: Accommodating families outside of detention, Para 29

In addition, if a family could access a legal representative, this would potentially assist with full information being provided to the Family Returns Panel when they make decisions about whether a family should continue to stay in the Croydon centre. A legal representative could advise the family about factors which the Panel may consider when making this decision, and assist with making representations to the Panel.

**Recommendations**
BID and The Children's Society do not support the Croydon accommodation pilot. However, while the pilot is in operation, we recommend that:

- Clear criteria should be produced which outline what circumstances families should be referred to the Croydon Pilot in.
- Families should only be housed in the Croydon accommodation for a maximum of 72 hours, after which they are returned to their previous NASS accommodation. Families should not be referred to or remain on the Croydon pilot while there are legal, documentation or health barriers to their removal from the UK.
- Families should be given a longer period of notice that the UKBA wishes them to move to the Croydon pilot.
- The UKBA must develop processes to monitor the health and welfare of children in this accommodation, provide support and activities for children and families, and manage risks of harm, including self-harm and child protection issues.
- The UKBA should outline clear criteria for how decisions will be made about whether a medical need or vulnerability makes a family unsuitable for this accommodation pilot.
- The UKBA should outline how the agency intends to assess whether families abscond during the pilot and what the response will be to families who are deemed to have absconded.
- Financial support should be given to families to enable them to travel to visit their legal representatives, and carry out other activities such as travelling to a place of worship while they are on the pilot.

## Notice of removal

BID and The Children's Society would like to take this opportunity to make it clear that we would be fundamentally opposed to any change which reduced the minimum 72 hours notice which has in the past been given to families that the UKBA is planning to forcibly remove them from the UK at a specific time and date. Any change which reduces the notice of removal currently given to families will further prevent them accessing legal advice and judicial oversight of the decision of the UKBA to forcibly remove them. This would increase the risk that families who have well-founded fears of persecution in their countries of origin would be forcibly removed from the UK.

From 22nd November, as part of their pilots to forcibly remove families in the North West and London, the UKBA are planning to carry out 'limited notice' removals, whereby families are given notice that they will be removed from the UK after 72 hours and within the next 21 days, but not told when this will happen.

We acknowledge that, in this new process, families will be given 72 hours notice of their removal before any removal action is taken against them. However, the fact that families do not know the date and time of their removal will create practical barriers to them accessing legal advice. If families are without legal representation when they are given this notice of removal, they may find that legal representatives are unwilling to take on their case. This is because it will not be possible for legal representatives to predict

when they will need to carry out work on a family's case. Given that legal representatives are likely to have considerable caseloads to manage, it will be difficult for them to take on a case where there is no fixed removal date, as they will not be able to reliably assess what the impact of taking the case on will be for their ongoing casework.

BID and The Children's Society are also concerned that the uncertainty of not knowing what date or time they will be removed from the UK on is likely to cause considerable distress to families. The UKBA's planning documents for the 'Limited Notice' pilot do not set out any plans for support to be provided to children and parents during what is likely to be a stressful period, where for example there is a risk that family members may harm themselves. Such a situation may make it less likely that families will co-operate with the requirements of immigration control and remain in contact with the UKBA.

We note that the UKBA's planning document for the 'Limited Notice' pilot sets out requirements for enforcement teams to provide documentary evidence that families have previously been non-compliant. We welcome this acknowledgement of the need for enforcement decisions to be evidence based and proportionate. However, as is set out above, there is evidence that in the past the UKBA's staff have failed to accurately record families' histories of compliance or to take into account all the relevant evidence when making enforcement decisions. We would therefore welcome further details of how the quality of the documentary evidence in these cases will be audited by the UKBA.

## Reporting and Electronic Tagging

In some cases where a family is deemed by the UKBA to be at risk of absconding, parents in the family are subject to electronic monitoring, either in the form of tagging or voice recognition.[45] Parents who are tagged are required to remain in their homes for significant periods each day; tagging therefore places considerable limits on parent's and children's freedom of movement. In other cases, parents are required by the UKBA to present themselves at reporting centres very frequently, in some cases daily.

The UKBA has proposed that electronic monitoring or more stringent reporting requirements may be used as an alternative to detaining families.[46]

In the experience of BID and The Children's Society, these mechanisms are often imposed in ways that appear arbitrary to families and without reference to the identified risk of absconding. They are also used without adequate assessment of the effect they will have on children.

BID and The Children's Society's research into the cases of 82 families detained during 2009 found that a number of parents in our study were afraid and anxious about reporting to the Home Office. Where parents asked for alterations to reporting requirements on health grounds these requests were not granted. Five parents in our research had requested changes to their reporting requirements on this basis and presented medical evidence to support this request, but in every case these requests had been refused.

Five parents in our research were electronically tagged, and were not allowed to leave their houses for significant periods every day. These parents reported that their tagging restrictions had a detrimental effect on their children. Parents were not able to attend

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

[46] 'Review into ending detention of children for immigration purposes: working with families briefing event' 8th October 2010, Church House, Westminster

school sports games or birthday parties with their children, and could not take their children outside the vicinity of their home because of the requirement for them to be in the house at certain hours every day. One father reported that being tagged, the family felt like 'they were imprisoned', that he suffered from stress and anxiety as a result of being tagged, and that this contributed to high blood pressure which he suffered from. The social stigma and restrictions of tagging contributed to families' social isolation.

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

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

**Recommendations:**

- A time limit should be introduced on the use of electronic tagging for the purposes of immigration control. In addition, limits should be set on the length of time which parents are required to remain in their homes every day for electronic monitoring purposes.
- In two parent families, only one parent should normally be subject to electronic tagging.
- The UKBA should publicly consult on and publish clear guidelines on the use of electronic tagging. Decision-makers should be required to consider the impact of reporting and tagging of parents on children's welfare, given the UKBA's duty to safeguard and promote the welfare of children under s.55 of the 2009 Borders, Citizenship and Immigration Act.
- The UKBA should publish data on how many parents are currently being electronically tagged or required to report daily for the purposes of immigration control, and the length of time for which these parents have been subject to these contact requirements.
- If parents are electronically tagged or required to report, caseowners or Immigration Officers should provide parents and their legal representatives with clear reasons and criteria for decisions about any contact requirements that parents are subject to.
- If parents are electronically tagged or required to report, a clear process for parents to request changes to their contact requirements should be introduced by the UKBA and communicated to parents.
- The UKBA's processes for allocating contact requirements to families should be subject to independent oversight and regular independent audits.

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