

Consultation on changes to immigration-related Home Office statistical outputs: response of Bail for Immigration Detainees

Bail for Immigration Detainees (BID) is an independent charity that exists to challenge immigration detention in the UK. We work with asylum seekers and migrants held in removal centres and prisons to secure their release from detention. From August 2009 to July 2010 BID helped 2089 immigration detainees to prepare and present their own bail applications.

Introduction

This response addresses the questions posed in the consultation document, and goes on to raise concerns about matters which are not addressed by the consultation, including data on immigration detainees in prisons, length of detention and detention of children and their families.

Q1: Is the structure of topics appropriate?

In the absence of detail beyond the topic headings supplied in the consultation document it is hard to comment definitively. It is not clear what is meant by a 'virtual' topic, or a 'cross-cutting' topic.

The new set of topics proposed have the benefit of taking a more linear approach to immigration biographies, and offer scope for statistics and their analysis under a greater total number of headings. It appears logical to include the data currently presented in the eight tables of the *British Citizenship Statistics* in this group of topics.

Q2: Should the commentary and analysis of the data be shorter and focus on key points, but also provide longer-term trends?

We would welcome the introduction of narrative on longer-term trends.

Overall, we would welcome streamlining of commentary and analysis, though not at the expense of losing significant tables. In our submission to this consultation we have made recommendations, with reasons, for the retention of information that it is proposed be dropped, and for the introduction of statistics that are not currently published (see answer to Q5 and 'Further comments' below).

The revised format shown at Table 1.2 of *Control of Immigration: Quarterly Statistical Summary Q4 2020* is easier to read and understand.

It is not clear what is meant by 'key points', so it is not possible to offer comment on this.

Q3: Should the *Control of Immigration: United Kingdom Statistics, Control of Immigration: Quarterly Statistical Survey* and *British Citizenship Statistics* be combined?

Yes. See answer to Q1.

Q4: Should the table formats be presented in line with the above proposals?

Information on court proceedings and appeals

We understand that data on immigration-related court proceedings and appeals will in future be available from the Ministry of Justice or HM Courts & Tribunals Service. If this is to be the case we would not object to its removal from Home Office statistics.

Q5: Are there reasons why data should be retained? If so we would welcome information on the use you make of the data to be dropped.

Detained Fast Track – including decisions made, appeals lodged, and removals and voluntary departures made.

The UK Border Agency (UKBA) has made it clear in recent months at the National Asylum Stakeholder Forum and elsewhere that the Detained Fast Track asylum determination process is an essential element of its asylum programme going forward.

Given the centrality of the fast track scheme to UKBA's ongoing asylum processing it seems unusual that in 2010 Home Office Migration Statistics proposed to remove tables 2e, 2f, 2g and 2h on the Detained Fast Track in light of 'the introduction of a table relating to the non-suspensive appeals process; and the perceived low interest levels in these tables'.¹ This latest consultation now proposes that data on the Detained Fast Track is 'no longer reflective of the work that UKBA performs'. To the contrary, the Detained Fast Track is front and centre of UKBA's ongoing program of asylum application processing. Furthermore, it should be noted that the Detained Fast Track and the Non-Suspensive Appeal process are applied to different sets of people, making the substitution of a statistical table on one process (DFT) by a table relating to the other process (NSA) of questionable utility.

It is essential that data on the Detained Fast Track continues to be made available in Home Office immigration-related statistics. It is surely in the interests of transparency of the asylum process and decisions arising from that process that data on asylum decisions (both first decisions and those made at appeal), be published.

Where the asylum determination process involves loss of liberty of the individuals concerned, this requirement for transparency is all the more urgent. During an earlier period when data on fast track decisions and appeal outcomes was published by the Home Office it was the case that a significant minority of refusals in fast track cases were overturned at appeal. There is no reason to suggest that this situation has changed, but stakeholders no longer have any way of knowing whether it has. Removal of statistics relating to the Detained Fast Track is a backward step in terms of transparency around the workings of

¹ Home Office (2010) *Control of Immigration: Quarterly Statistical Summary, United Kingdom April-June 2010* p5

government agencies, and out of step with commitments which have been made by the Coalition in this regard.²

The suggestion that it is no longer necessary to publish statistics relating to the Detained Fast Track due to 'low interest levels' completely misrepresents the level of concern among a number of UKBA's stakeholders, including the Immigration Law Practitioners' Association (ILPA), the Refugee Council, and BID, about the safety of the fast track asylum process.

BID is extremely concerned that:

- The Detained Fast Track process is inherently unfair to asylum applicants. With only a small number of exclusion categories, in practice any asylum claim can be routed into the Detained Fast Track regardless of the complexity of the case or whether it can be heard properly within the accelerated legal time frame.
- Home Office policy on cases unsuitable for detention (such as victims of torture or trafficking) is routinely breached in the exercise of the screening process designed to route suitable case into the Detained Fast Track process.³ There is no published guidance on what factors would permit an asylum claim to be decided "quickly" and thus render it suitable for the Detained Fast Track process. 33.6% of the asylum applications made between 2006 and 2010 that were initially routed into the Detained Fast Track were later re-routed into the standard asylum process (3366 applications re-routed from a total of 10,024).⁴
- Furthermore, while the Home Office is always represented at Fast Track appeal hearings, there is no automatic publicly funded legal representation for asylum appeals in detention.

These concerns are shared by other organisations such as Human Rights Watch,⁵ UNHCR,⁶ and by parliamentarians.⁷

Q6: Should all data be published unrounded?

We would welcome the publication of all data in an unrounded format. In our work with immigration detainees, and specifically with detained children and families it has long been our experience that the numbers involved are sometimes in single figures (e.g. number of children held in detention at the end of a quarter). We also take an interest in length of detention. Where time in detention is long (over 12 months, sometimes over 4 years) the overall numbers are smaller but it is essential to have accurate unrounded figures.

It is our view that presenting a single type of data, such as numbers of children detained at a particular location, with unrounded figures, will not in itself reveal the identity of individuals. Care must be taken that multiple pieces of information on unrounded data sets are not presented together, as this could lead to individuals being identified.

² See for example The Cabinet Office (December 2010) *The Compact: The Coalition Government and civil society organisations working effectively in partnership for the benefit of communities and citizens in England*, which is backed by a new set of accountability and transparency measures.

³ Human Rights Watch (2010) *Fast-Track Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, pp33-40

⁴ *Hansard* HC Deb, 8 February 2011, c188W

⁵ *ibid*

⁶ UNHCR (2008) *Quality Initiative Project, Fifth Report to the Minister*

⁷ For example, three parliamentary questions have been asked relating to statistics on the Detained Fast Track since January 1 2011: *Hansard* HC Deb, 20 January 2011, c971W; *Hansard* HC Deb, 31 January 2011, c650W; *Hansard* HC Deb, 8 February 2011, c188W

Further comments

1. Data on immigration detention in prisons and length of detention

We believe that data on these variables should be collected (if it is not already) and made available under the proposed new topic 'Detention':

i) The number of post-sentence foreign nationals held in the prison estate.

We accept that these figures are currently available via the Ministry of Justice. However, with the number of foreign nationals held in the prison estate solely under Immigration Act powers now at around 600 individuals, this is a significant addition to the population in the immigration detention estate (currently standing at around 2750 prior to the re-roling of HMP Morton Hall in May 2011). This prison-held cohort of immigration detainees is equivalent to around 20% of the population of the immigration detention estate, and yet is not included in Home Office immigration-related statistics.

This data on time-served foreign nationals in the prison estate is currently collected, shared, and discussed monthly by both the Ministry of Justice and the Home Office⁸ so there should be little or no additional cost to make this figure available via the proposed new Home Office Statistics.

We see these changes to immigration-related Home Office statistical outputs as an opportunity to better reflect the actual numbers of people being detained under Immigration Act powers.

ii) Greater definition and accuracy in the data published on length of time spent in immigration detention

The current statistics on length of time spent by individuals in detention show at the end of any quarter how many persons have spent a range of periods in detention, starting with '7 days or less', through '4 months to less than 6 months', and currently ending with '24 months or more'. This presentation fails to accurately reflect the fact that there are a number of immigration detainees who spend three or four years in continuous detention. A reading of the current presentation of these statistics gives no hint of this state of affairs.

There is significant concern among detainees, their families and supporters, organisations working with detainees, and the legal profession, at the rise in numbers of long-term detainees. In BID's experience it was relatively unusual three years ago to encounter detainees who had been in detention for more than one year, and we would prioritise them for legal representation if they had no legal adviser. Now it is routine to encounter such individuals in the course of our casework, and we instead are forced to prioritise unrepresented detainees who have spent two, three or four years in detention.

We urge the Home Office to collect and publish more nuanced data on the length of detention, in order that all interested parties can consider and reflect on the financial cost to the public purse of such extended periods of continual detention, and the health and emotional cost to the individuals involved.

⁸ See Ministry of Justice (National Offender Management Service) and Home Office (UK Border Agency), (April 2009) *Service Level Agreement to support the effective management and speedy removal of foreign national prisoners*

All of this data on time served foreign nationals is currently collected, shared, and discussed monthly by both MoJ and the Home Office⁹ so there should be little or no additional cost to make this figure available via the proposed new Home Office Statistics.

2. Children and Immigration Detention

We are disappointed to note that, despite specific commitments having been made by the UKBA and the Minister for Immigration to improve the statistical or management information which is produced on families with dependent children, no mention is made in the consultation document of how these commitments will be fulfilled.

In his 2010 Inspection of Family Removals, John Vine recommended that the UKBA:

‘Publishes and analyses a clear set of management information in respect of families with dependent children to provide greater transparency and to fully inform policy and practice.’¹⁰

The UKBA accepted this recommendation ‘in part’, with the caveat that consideration would have to be given as to ‘whether these figures would be published as National Statistics or recorded as Management Information.’¹¹

Since this Inspection and the UKBA’s response were published, Damian Green, the Minister for Immigration, has referred to this commitment to improve the management information on families with dependent children in parliament.¹²

We would suggest that it is likely that there will continue to be high levels of scrutiny by parliament, the media and civil society of the detention of children and the separation of families by immigration detention. The regular publication of basic information on these subjects is vital to monitoring the UKBA’s implementation of their duty under s55 of the Borders, Citizenship and Immigration Act to safeguard and promote the welfare of children. It may also save considerable time, as repeated responses to ad hoc requests for information made through parliamentary questions and Freedom of Information Act requests are likely to be time consuming.

i) Immigration detention of children

Medical studies have found that immigration detention is associated with post-traumatic stress disorder, major depression, suicidal ideation, self-harm and developmental delay in children.¹³ The attempted suicide of a 10 year old girl in immigration detention in the UK in

⁹ *ibid*

¹⁰ Independent Chief Inspector of the UK Border Agency (2010) *Family Removals: A Thematic Inspection January-April 2010* p4

¹¹ UKBA (2010) *The UK Border Agency response to the Independent Chief Inspector’s report on family removals: a thematic inspection*

¹² *Hansard* HC, 23 Mar 2011, c1165W; *Hansard* HC Deb, 16 December 2010, c860W

¹³ 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; Steel, Z., Momartin, S., Bateman, C., Hafshejani, A., Silove, D.M., Everson, N., Roy, K., Dudley, M., Newman, L., Blick, B. and Mares, S. (2004) ‘Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia’ *Australian and New Zealand Journal of Public Health* 28 pp23-32.

2009 provided a stark reminder of the implications of these research findings.¹⁴ Research by the Children's Commissioner for England found that some children and their parents reported that the experience of arrest itself and short periods in detention caused extreme distress to children.¹⁵

The government announced in December 2010 that children would continue to be held in immigration detention in certain circumstances:

'When families arrive at the border, we sometimes need to hold them while enquiries are made to ascertain whether they can be admitted to the country and/or pending their immediate return. We will retain the right to hold such families, as well as families with individuals who may pose a risk to the public. This will be subject to appropriate Ministerial authorisation. This will be short detention, for a few dozen families each year, usually for less than 24 hours and only where logistics or safety makes pre-departure accommodation unworkable.'¹⁶

Furthermore, the government announced plans to hold families in 'a new form of pre-departure accommodation.' Under these plans:

'Families will be housed in special family accommodation which will consist of a secure and supervised building, exclusively used for housing a small number of families. Stays will be limited to 72 hours and linked to a specific removal date but exceptionally could be extended up to a week with ministerial authorisation where a removal fails, for example due to disruption by the family... Once in pre-departure accommodation, families will be allowed to leave the premises with permission on a risk assessed basis. We will allow children to have opportunity to leave the premises subject to a risk and safeguarding assessment and suitable supervision arrangements.'¹⁷

A 'Family Returns Factsheet' on pre-departure accommodation, which was published by the Home Office on 10 March 2011, explained that families will be deprived of their liberty in pre-departure accommodation under Immigration Act powers:

'Powers to require the family to remain at the accommodation are derived from Schedule 2 to the Immigration Act 1971. It will ultimately be operated in accordance with new Short Term Holding Facilities Rules.'¹⁸

BID remains gravely concerned about the effect which being arrested and held in immigration detention will have on children who go through the UKBA's new family returns process. It is vitally important that full statistics are collected on the immigration detention of children going forward.

We also note a recent report by the Independent Monitoring Board for Heathrow which raised very serious concerns about the conditions which children are held in in the short term holding rooms there:

¹⁴ Guardian 21/10/09 'Detained Nigerian girl found trying to strangle herself' Diane Taylor
<http://www.guardian.co.uk/uk/2009/oct/21/detained-nigerian-girl-strangle-immigration>

¹⁵ Children's Commissioner for England (2010) *The arrest and detention of children subject to immigration control*

¹⁶ UKBA (2010), *Review into Ending the Detention of Children for Immigration Purposes*, p5

¹⁷ UKBA (2010), *Review into Ending the Detention of Children for Immigration Purposes*, 5.7

¹⁸ UKBA (2011) 'Family Returns Fact Sheets' published at Family Returns Seminar Church House, 10 March 2011 www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/296503/family-returns-fact-sheets, p7

'We have continued to see people detained in unsuitable conditions. All are denied proper facilities for sleep. Access to proper facilities for washing is mostly a privilege, not a right... We have particular concerns about the detention of families and unaccompanied minors in these conditions, recorded in Section Eight. Unsuitability might be objectively tolerable if detention time in these conditions was very short. It is not.'¹⁹

The Board goes on to note that:

'Long detention in unsuitable conditions is inhumane for everyone subjected to it.'²⁰

It is crucial that full statistics are collected on the numbers of children detained, the length of time they are detained for, and the outcome of detention (release or removal) at all locations where children are held under Immigration Act powers, including:

- Tinsley House
- Short Term Holding Facilities, including the new facility being built in Crawley, Sussex
- The juvenile secure estate
- HM Prison Service Mother and Baby Units
- Police cells

ii) The separation of families by immigration detention

We are also extremely concerned that the UKBA continues to separate families by holding parents in immigration detention, while their children remain outside detention, in some cases in the care of Local Authorities.

In our experience, separating families, like the detention of children, has a severely damaging impact on children's welfare. In addition, we are particularly concerned that there is currently no time limit on how long families can be separated by immigration detention for. The Home Office is yet to produce any statistics or management information on the numbers of families separated for the purposes of immigration control, and the length of time which they are separated for. Without such basic information, it is simply not possible for the UKBA to have any sense of the impact which this policy is having on the welfare of children.

From November 2008 to August 2010, BID's family team worked with 28 families where children who were not detained had been split from their parent (in nearly every case their primary carer) who was in detention.²¹ During this period, 21 of these parents were released from immigration detention, 17 of them on bail. We have length of detention data for 19 of the clients who were released, and the average length of their detention was 307 days. The longest period of detention was 857 days, and the shortest was 63 days. Clearly, separating

¹⁹ Heathrow Independent Monitoring Board (2011) *Report of the Independent Monitoring Board on the non-residential Short Term Holding Facilities at Heathrow airport for the calendar year February 2009/ January 1010* Para 4.3-4.4

²⁰ Heathrow Independent Monitoring Board (2011) *Report of the Independent Monitoring Board on the non-residential Short Term Holding Facilities at Heathrow airport for the calendar year February 2009/ January 1010* Para 6.17

²¹ Of the 28 cases BID's family team took on all but three were mothers, the remainder were fathers. In one case, the child was in their father's care outside detention while their mother was detained, but there were safeguarding concerns with this arrangement due to a history of domestic violence.

children from their primary carer for such long periods is likely to be very damaging both to the child and to their relationship with their parent.

In some cases, child protection concerns have been raised about the care arrangements for this group of children.

Case Study: Child protection concerns²²

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

The UKBA's stated aim in separating families by immigration detention is to effect their forcible removal from the UK. However, to the best of our knowledge, none of the 28 cases BID dealt with between November 2008 and August 2010, in which children were separated from their parent by detention, led to a parent or child being forcibly removed during this period. In most cases, there were complex barriers to removal during the parent's detention, including: ongoing legal applications, lack of travel documentation, family court proceedings, and requirements for Children's Services to assess parenting capacity outside detention.

UKBA policy also allows for parents to be removed from the UK without their children, and yet no statistical or management information has been produced on how many cases this has happened in.

The Home Office should address the dearth of data in this area as a matter of urgency, by producing statistical or management information concerning:

- The number of cases where children are separated from their primary carer when this parent is forcibly removed from the country and the children remain in the UK, in the care of Children's Services or private fostering arrangements.
- The number of children in the care of Children's Services or in private fostering arrangements while their primary carer is held in immigration detention.
 - The length of time these children are separated from their parent by immigration detention for.
 - The ages of these children.
 - The outcome of the parent's detention in these cases: how many are released, removed from the UK or continue to be detained.
- The number of children separated from one parent who is held in immigration detention, while the child remains outside detention in the care of another parent.

²² This parent was not a client of BID, but this information was provided to us by our partner organisation, The Children's Society, who worked with this family.

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