

## Memorandum of evidence to Bright Blue's Immigration Commission 15<sup>th</sup> August 2014

1. Bail for Immigration Detainees (BID) is gravely concerned that the Home Office is separating many children from their parents for the purposes of immigration control, by detaining, removing or deporting parents. We urge Bright Blue to adopt recommendations to safeguard this vulnerable group of children.
2. BID's 2013 report '*Fractured Childhoods: the separation of families by immigration detention*' examined the cases of 111 parents who were separated from 200 children by immigration detention:
  - 85 of these children were in foster or local authority care during their parent's detention.
  - Some children moved between unstable care arrangements, experienced neglect and were placed at risk of serious harm.
  - Parents were detained without time limit, for an average of 270 days.
  - Children described the extreme distress they experienced – they reported losing weight, having nightmares, suffering from insomnia, crying frequently and becoming deeply unhappy.
  - In 92 out of 111 cases, parents were eventually released, their detention having served no purpose.
  - In 15 cases, parents were deported or removed from the UK without their children.
  - In one case, the Home Office deported a single father leaving his nine and 12 year old sons with his ex-girlfriend. The Home Office did not take any action to find out if the children's care arrangement was safe.
3. In most but not all cases the parents in this study had committed criminal offences, as a result of which the Home Office was seeking to deport them. 14 of the 15 parents who were deported or removed without their children had committed offences. In 12 cases, parents had committed non-violent offences, and four of these were immigration offences such as possession of false documents.
4. The research revealed serious problems with the Home Office overestimating the risk that parents would re-offend. Detailed data were gathered for a sample of 27 parents. In 14 out of 27 cases, it was possible to obtain information about how the National Offender Management Service had assessed parents' risk of reoffending or risk of harm to the public on release. In 10 cases, parents were assessed as posing a low risk, and four parents were assessed as posing a medium risk. However, the Home Office repeatedly argued that these parents needed to be detained as they posed a '*significant*' and '*unacceptable*' risk.

### **Case study: family separation**

During Christine's detention, her two children were cared for by their grandfather. He became seriously ill and was admitted to hospital three times. The older daughter, Beth, had to stop attending school to care for her brother and grandfather and missed her GCSE exams. Beth found it extremely difficult to look after her seven year old brother Daniel, who is disabled and has severe behavioural problems. Children's Services deemed Daniel to be at risk of emotional and physical harm, and found that: '*Daniel has found it very difficult being separated from his mother... [A] concerned neighbour rang to report that Daniel was playing alone in the road at 8pm... he walks into people's houses.*' Two months into Christine's detention Daniel was hit by a car. Despite receiving reports about the welfare of these children, the Home Office detained their mother for 160 days before she was released on bail by the Tribunal. She later won her deportation appeal.

## Legal Aid, Sentencing and Punishment of Offenders Act 2012

5. This Act removed the vast majority of immigration cases from scope for legal aid. As a result, large numbers of immigration detainees, including many parents, are no longer able to meaningfully challenge decisions by the Home Office to deport or remove them from the UK, even where these decisions are unlawful. In other circumstances where the state seeks to separate parents from children - such as action by local authorities to take children into care - legal aid is available to parents. In many cases, a parent's deportation means that their child will effectively be separated from them for the remainder of their childhood. Children may have been born in the UK, have strong ties to another parent or carer in the UK, and be in the appalling position of having to choose between their parents.
6. The 'Exceptional Case Funding' scheme was established to provide a safety net following the legal aid cuts outlined above. 235 exceptional case funding applications were made in immigration cases in 2013/14; only four were granted funding.<sup>1</sup> On 13<sup>th</sup> June 2014, the High Court found that the Legal Aid Agency had made unlawful decisions to refuse exceptional case funding in six test cases.<sup>2</sup> Exceptional Case Funding applications are made at the risk of non-payment. Very few solicitors are willing to apply, as it is not financially viable for firms to keep carrying out this work, given the considerable risk of non-payment. BID assists over 3,000 detainees per year. As of April this year, we had only successfully referred two cases to solicitors to make exceptional funding applications. In BID's experience, detainees lack the legal knowledge to make their own applications. Exceptional Case Funding is therefore not currently operating as an accessible safety net.

## Immigration Act 2014

7. Section 17(3) of the Immigration Act provides that '*foreign criminals*' and people the Home Secretary deems not conducive to the public good '*can be deported first and appeal after, unless that would cause serious irreversible harm.*'<sup>3</sup> There will be huge practical barriers to individuals appealing their deportation from abroad. In practice, s17(3) will prevent people from challenging their deportation, including where they would have won their appeal if they had been able to bring one in the UK. There are serious problems with the quality of Home Office decision-making, and in 2012/13, 32% of deportation appeals succeeded.<sup>4</sup> In BID's view, s17(3) will have grave consequences for child welfare; it has been criticised by the Joint Committee on Human Rights.<sup>5</sup>
8. In July 2014, the Home Office produced guidance on s17(3). This provides that, in the '*initial test phase*' of implementation, the 'deport first, appeal after' provisions will not normally be applied to parents where there is evidence that they are '*playing an active role in a child's life.*'<sup>6</sup>

**Recommendation:** Families should not be separated by immigration detention. While the practice continues, a time limit should be introduced on the separation of families by immigration detention.

**Recommendation:** The 'Exceptional Case Funding' scheme for legal aid should be revised so that it provides a meaningful safety net for cases affected by the 2013 legal aid cuts.

**Recommendation:** Home Office guidance on s17(3) of the Immigration Act should be amended to state that parents who play an active role in their child's life will not be deported before they can appeal, **including** after the 'initial phase' of implementation.

**Bail for Immigration Detainees** is a charity that provides legal advice and representation to asylum seekers and migrants held in immigration detention to secure their release.

**Contact:** Sarah Campbell, Research and Policy Manager, [sarahc@biduk.org](mailto:sarahc@biduk.org), 0207 456 9762

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<sup>1</sup> Ministry of Justice 24/4/2014 'Ad hoc Statistical Release: Legal Aid Exceptional Case Funding Application and Determination Statistics 1 April 2013 to 31 March 2014'

<sup>2</sup> *Gudanaviciene & Ors v Director of Legal Aid Casework & Anor* [2014] EWHC 1840 (Admin)

<sup>3</sup> Home Office October 2013 *Immigration Bill Factsheet: appeals (clauses 11-13)* <http://bit.ly/1gOp7y8>

<sup>4</sup> Home Office 15/7/12 *Impact Assessment of Reforming Immigration Appeal Rights*, p7 <http://bit.ly/1cvgmWm>

<sup>5</sup> Joint Committee on Human Rights 18/12/13 *Legislative Scrutiny: Immigration Bill* Eighth Report of Session 2013-14

<sup>6</sup> Home Office July 2014 'Section 94B certification guidance for Non European Economic Area deportation cases' p4