



UKBA POLICY ON DETENTION OF CHILDREN

Why children are detained (recommendation 1)

11 Million's principal recommendation is that the administrative detention of children for immigration purposes should end. UKBA agrees that the detention of children and their families is regrettable – but we differ on whether the recommendation is realistic in practice.

UKBA fully recognises its responsibilities towards children. We are now subject to a statutory Code of Practice on Keeping Children Safe from Harm which came into force in January of this year and we will soon be subject to a duty to carry out our functions having regard to the need to safeguard and promote the welfare of children (clause 57 of the Borders, Citizenship and Immigration Bill). This will bring us into line with other public bodies who are already subject to the equivalent duty in section 11 of the Children Act 2004.

But our responsibilities towards children have to be exercised alongside our duty to enforce the laws on immigration and asylum. This includes ensuring that people leave the UK when we and the independent courts have found them not to have a legal right to be here. We would much prefer it if families in this position left the country voluntarily. Unfortunately, some families refuse to do this, even when provided with numerous opportunities to do so, including incentives provided under the Assisted Voluntary Returns Scheme. Advice about this scheme will include information about families who have actually returned under AVR, (with an opportunity to contact those who have returned successfully), as well as the opportunity to talk to IOM caseworkers. But where families still refuse to leave, UKBA has to be able to enforce removal and a short period of detention is a necessary, albeit unfortunate, part of that process. It must be remembered that it is the parents' refusal to comply with UK law that makes this action necessary. We also consider that maintaining the family unit together, including any children, is preferable to splitting the family. It is for this reason that we think that 11 Million's first recommendation is impractical.

Alternatives to detention (recommendation 3)

We do, however, fully accept the importance of exploring community-based alternatives to detention (recommendation 3). This has not proved easy: a pilot project which we ran for 12 months in 2007/08 in Ashford, Kent led to only one family being returned. But we remain committed to this area of work and are now applying the lessons learned in Kent to a new project which has recently been launched in Scotland. This pilot, which is on a smaller scale,

aims to encourage refused asylum-seeking families in Glasgow to return voluntarily to their home country. The project is a partnership between Glasgow City Council, the UK Border Agency and the Scottish Government. The families will stay in designated flats where they will receive targeted help to prepare for their voluntary return to their home country. The project will be fully evaluated and may provide a basis for future supported accommodation sites if its aims are achieved.

Detention as a last resort (recommendation 2)

In the meantime, we agree with 11 Million that detention should be used only in clearly defined circumstances, as a last resort and for the shortest period of time (recommendation 2). Chapter 55 of the Enforcement Instructions and Guidance (EIG) makes clear that “all reasonable alternatives to detention must be considered before detention is authorised” and sets out the factors to be taken into account when considering the need for initial or continued detention, including:

- the likelihood of the person being removed and the timescale;
- any evidence of previous absconding;
- any evidence of a previous failure to comply with conditions of temporary release or bail;
- whether the subject has taken part in a determined attempt to breach the immigration laws (e.g. entry in breach of a deportation order, attempted or actual clandestine entry);
- a previous history of complying with the requirements of immigration control (e.g. by applying for a visa, further leave, etc);
- the subject’s ties with the United Kingdom, whether he or she has close relatives (including dependants) here, whether anyone relies on him/her for support, and whether he or she has a settled address/employment;
- the subject’s expectations about the outcome of the case, and factors such as an outstanding appeal, an application for judicial review or representations which afford incentive to keep in touch;
- any risk of offending or harm to the public;
- whether the subject is aged under 18;
- a history of torture;
- a history of physical or mental ill health.

The EIG also makes clear that, once detention has been authorised, it must be kept under close review to ensure that it continues to be justified. A careful and detailed procedure is in place for monitoring the detention of children. The Family Detention Unit in UKBA reviews the detention of children at days 7, 10, 14 and every 7 days thereafter. The Family Detention Unit also seeks from the Immigration Minister weekly authorisation to continue detention of those families with children who remain in detention beyond 28 days.

In practice, the Minister receives a weekly submission detailing all cases with the potential to reach 28 days’ detention and all cases where continued detention has been authorised previously. This submission is informed by a

conference call which takes place each Monday morning. The call is chaired by the Family Detention Unit and brings together officials from the relevant UKBA enforcement team, the independent social workers from Bedfordshire Social Services who are based at Yarl's Wood Immigration Removal Centre, representatives from the healthcare and children's services teams at Yarl's Wood, UKBA staff at Yarl's Wood and the UKBA Office of the Children's Champion. The call looks at each family in turn and considers factors such as the reasons for detention, progress towards the earliest possible removal and welfare concerns which might weigh against continued detention. We keep this system under constant review and make improvements where necessary.

We accept that some cases do result in periods of detention which are longer than we would wish. Families are not normally accepted into detention by Family Detention Unit until they are Appeal Rights Exhausted and removal directions have been set, but this does not prevent their making further representations which can cause delay. However, based on provisional data, we can say that last year the average length of detention was 15 days. The vast majority were there for under 15 days and, of those, nearly half left detention within a week.

We consider our approach to be in line with the requirements of Article 37(b) of the United Nations Convention on the Rights of the Child (UNCRC). (This requires States Parties to ensure that "no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time".)

Treatment of children in detention (recommendation 4)

11 Million recognise that "the detention of children is unlikely to end immediately" and have therefore made a number of practical recommendations aimed at improving children's experience of detention. We are grateful for 11 Million's willingness to work with us in this regard and have given careful consideration to each recommendation. Many we are able to accept or we believe that arrangements are already in place (or have been put in place since the Commissioner's visit) which meet the concerns expressed. Where we have rejected a recommendation, we have explained why in our table of responses to the individual recommendations.

Monitoring of detention and compliance with international standards (recommendations 5 and 4.1)

We believe that our approach to the detention of children complies with the UNCRC and the UN Rules on Juveniles Deprived of their Liberty. However, we accept that we need to do more in respect of monitoring and, specifically, the collection of data on the detention of children.

National Statistics on children in detention are published in the Control of Immigration: Quarterly Statistical Summary bulletins. They show the number

of those detained at the end of the relevant quarter (a snapshot view) by place of detention, sex, length of detention and country of nationality. They also show details of those recorded as being removed from the UK during the quarter upon leaving detention by age and place of last detention.

You will wish to note that we have allocated additional resources to this. Home Office statisticians are now preparing to publish statistics on children in detention, plus additional analyses on the number of children entering detention - by age, sex, nationality and place of initial detention – and the total number of children leaving detention. These will appear in the August 2009 issue of the quarterly 'Control of Immigration Statistics' Statistical Bulletin.

Accountabilities (recommendation 6)

11 Million asked for a statement of the accountabilities of the agencies involved in the detention and removal of families. The following summarises the main bodies involved, especially focussing on those activities which are not carried out directly by UKBA. We are, of course, happy to provide further details on any aspects of this as required.

Detention and escorting services are pre-dominantly delivered by private operators, details of whom are all available on the UKBA website. Arrest-trained UKBA staff can, however, also transport detained individuals to places of detention'.

Immigration Removal Centres (IRCs) are operated under contract with the Agency. Contracts are for the provision of residential care and reflect the need for Centres to be operated in accordance with the Detention Centre Rules 2001 (a statutory instrument) and a set of operating standards. The contractor also provides primary healthcare on site, with secondary healthcare accessed through referral to the local Primary Care Trust in the community.

Service delivery is monitored by a local UKBA Team, including a manager, ensuring that it complies with the terms of the contract and statutory requirements. The team also provides a contact management function acting as a conduit between the detainee and the case holders, ensuring immigration functions are carried out in accordance with UKBA policies. Immigration Removal Centres who care for children are operated by G4S (Dungavel House and Tinsley House) and Serco Home Affairs (Yarl's Wood).

The in-country and overseas' escorting contracts are held by G4S Care and Justice Services Ltd. They are responsible for the collection and delivery of detainees within the United Kingdom (e.g. visits to hospital, transfers to the airport for removal) and for taking vulnerable and disruptive detainees to the country of removal. Services are also contracted to Serco and MIS to assist with managing peaks in demand.

Independent Monitoring Boards are appointed by the Home Secretary, and are tasked with monitoring the treatment of detainees, reporting annually to

the Secretary of State, or bringing other matters to his/her attention in the interim as necessary.

Social Workers at Yarl's Wood IRC work under a grant agreement with UKBA. They are directly employed by and are independently accountable to Bedford Social Services, providing assessments on the welfare of children, playing a key role in decisions made on maintaining detention.