

## **Review into Ending the Detention of Children for Immigration Purposes: Working Group Proposals**

**October 2010**

### **Introduction**

In response to the Coalition Government's commitment to end the detention of children for immigration purposes the UK Border Agency (UKBA) undertook a Review and engaged with a range of experts and organisations during this process. The aim of the Review was to consider how the detention of children for immigration purposes would be ended.

As part of this review process a working group was established, comprising representatives of civil society and voluntary sector organisations and co-chaired by the Diana, Princess of Wales Memorial Fund and the UKBA. Over the summer of 2010, the working group spent over 32 hours meeting a variety of UKBA officials, international experts, academics and intergovernmental organisations, discussing the proposals which are presented below.

The original aim of the working group was that it would agree and publish joint recommendations with the UKBA. However, the UKBA has declined to sign up to any joint recommendations with the working group. We are therefore publishing here the recommendations which were agreed by the non-governmental members of the working group.

### **Principles**

The following shared principles were agreed by the working group with the UKBA at the start of the review process:

1. Children and their families should not be detained for immigration purposes and the health, welfare and best interests of children must be primary. Children and families who have protection needs or well founded immigration claims should be granted leave to remain in the UK.
2. Families whose protection needs have been fairly assessed, who have been refused protection or who have no valid leave or other lawful reasons to remain in the UK and are able to return to their countries of origin, should be assisted to do so in a manner which is safe and sustainable, and promotes children's welfare.
3. The welfare of children in the asylum and immigration system is a complex and difficult area of public policy that will require a wide range of organisations working constructively together to develop fair and humane solutions for the long term.

## **Analysis**

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, and make it harder for families to accept voluntary return if their asylum/immigration claim is refused.

The new policies and practices which are recommended below represent steps towards changing the process and culture within which asylum/immigration claims are considered, so that fewer families face forced removal.

Any enforcement measures which families are subject to should be proportionate, time limited, and subject to accountability and independent oversight. They should not interfere with families' ability to put forward their asylum/immigration cases, and should be consistent with the UKBA's duty to safeguard and promote the welfare of children.

## **Recommendations**

We recommend the following actions to the Minister:

- In the short-term, the urgent priority is to end the detention of children and families now, without separating families. The development of alternative returns models will be a complex and challenging process, requiring significant time and investment. It will not be acceptable to delay ending the detention of children while such a model is developed.
- Families should be taken out of immigration removal targets.

## ***Legal advice and quality of decision making***

- The UKBA should work with UNHCR on a thematic 'Quality Integration' project looking at the quality of decision making in family cases.
- A review of the legal aid funding arrangements for family cases is required to ensure that families have access to good-quality publicly funded legal representation from an early stage in their claim, and throughout the determination process. It is particularly important that families are able to access quality legal advice at the point when a legal application has been refused and the UKBA is preparing to take enforcement action.
- The frontloading model trialled in the Solihull Early Legal Advice Pilot should be rolled out for all family cases across the UK.
- The UKBA and the LSC should work together to ensure that in current cases where the UKBA is seeking to take enforcement action against families, these families have a full

and proper opportunity to seek and obtain legal advice about their options from a good quality, publicly funded legal representative.

### ***Decisions to remove families from the UK***

- Before a decision is taken by the UKBA to remove a family from the UK, there should be a senior level review of the international protection claim refusal decision including the protection of each dependant child.
- Before a decision is taken to remove a family, thorough consideration must also be given by the UKBA to the family's length of residence and ties in the UK, as well as the impact removal would have on the welfare and best interests of children in the family. An auditing process should be introduced to ensure that existing mechanisms such as Immigration Rule 395c and safeguarding considerations are applied consistently, fairly and compassionately in all family cases.
- Effective procedures should be introduced by the UKBA to gather information about every family's legal, documentation and health situation, the welfare of children in the family, and any other factors which could present barriers to a family's removal.
- A pre-removal assessment process, in which the advisability of removing a family from the UK is considered, should be consulted on with stakeholders, established and independently monitored. This process should have the power to require reconsideration of cases where serious questions are raised about the advisability of proposed removal. The findings of individual assessments should be documented and shared with the family and their legal representatives.
- Discretionary leave should be granted to families in cases where such an assessment finds that it is not advisable or reasonable to expect the family to return to their country of origin.

### ***Voluntary Return***

- Case owners should inform parents and legal representatives that a family's legal applications have been refused in a face-to-face meeting and in writing before any enforcement action is taken against the family or removal directions are set. 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 such notification, enforcement action may in practice not be taken against a family within three months, either because of new legal applications by the family or delay on the part of the UKBA. In such cases, further notice should be given to the

family and their legal representatives of planned enforcement action, at least three months before this action is taken.

- Families should be offered flexibility in the timing of voluntary return where there are good reasons why they cannot leave the UK in the immediate future. Such reasons would include, but not be limited to, children having upcoming exams or family members having pre-existing courses of medical treatment which they need to complete before leaving the UK.
- Families who return to their country of origin through the International Organisation for Migration's voluntary return schemes, or any other voluntary return route, should not be automatically banned from re-entering the UK.

### ***Assessment of absconding risk***

- The UKBA's criteria for assessing absconding risk in asylum seeking and migrant families should be consulted on with stakeholders and revised.
- Proper procedures should be consulted on and established to provide a reliable assessment of each family's risk of absconding. Risk assessments must be based on adequate evidence, properly fact-checked, and must take into account all relevant evidence particular to that family.
- In order to inform these discussions, the UKBA should share the information at their disposal, from their current processes for assessing absconding risk, with the voluntary sector and other stakeholders.
- The UKBA's processes for assessing absconding risk should be subject to independent oversight and regular independent audits.

### ***Enforcement action against families***

- The UKBA should publically consult on and publish full guidance on any enforcement or monitoring restrictions which are to be used in family cases.
- Any enforcement measures which are used against families should be lawful, proportionate, time limited, and subject to accountability and regular independent oversight. They should not interfere with families' ability to put forward their asylum/immigration cases, and should be consistent with the UKBA's duty to safeguard and promote the welfare of children.
- Full written reasons for any enforcement action taken against a family by the UKBA should be shared with the family and their legal representatives.

- If parents and/or their children are subject to enforcement action, a clear process for parents to challenge the UKBA's treatment of their family should be introduced by the UKBA and communicated to parents.
- The UKBA should publish quarterly data on how many families are subject to any enforcement action including electronic tagging, daily reporting and enforcement visits.

## **APPENDIX**

### **Membership**

The non-governmental members of the working group comprised:

Asylum Aid

Bail for Immigration Detainees

CITIZENS UK

International Organization for Migration (observer)

London Detainee Support Group

Medical Justice

Refugee Children's Consortium

Refugee Action

Refugee Council

The Children's Society

The Diana, Princess of Wales Memorial Fund

UNHCR