

REVIEW INTO ENDING THE DETENTION OF CHILDREN FOR IMMIGRATION PURPOSES: RESPONSE FROM THE YORKSHIRE AND HUMBER REGIONAL MIGRATION PARTNERSHIP

Introduction

1. We welcome the opportunity to contribute to the review of child detention and encourage UKBA to seek alternatives that minimise negative secondary effects upon asylum seekers, supporting organisations and local host communities.
2. This consultation response is submitted by the Yorkshire and Humber Regional Migration Partnership (YHRMP). In addition to our strategic role, the Partnership is also a substantial provider of accommodation for asylum seekers across ten local authority areas in our region. Background on YHRMP can be found at: www.migrationyorkshire.org.uk/?page=aboutus.
3. This paper has been shaped through discussions with our Strategic Migration Group (SMG), through subsequent consultation within the wider region via our main partner agencies (drawing on input specifically from some of our local authority partners) as well as internal expertise within the Partnership.
4. The response also draws upon the related discussions at the YHRMP-UKBA regional consultation event held in January 2010 to discuss the 'Reforming Asylum Support' proposals, which was attended by representatives of over 40 organisations from different sectors. We have not sought direct input from UKBA representatives on the Partnership since they belong to the consulting organisation, although they are aware of the relevant discussions that have taken place.
5. Due to the range of organisations we work with, we are submitting some of the responses and questions raised by our partners during discussions on this consultation. Of course, not every individual in each organisation may agree with our submission in its entirety. It is, however, a fair representation of views expressed to us by our partner agencies.

Response to the Review

6. There are some general points of agreement among our local representatives.
 - Firstly, the 'principle' of non-detention of children is overwhelmingly supported.
 - Secondly, voluntary return is the main alternative that is supported for asylum seeking families who have exhausted their appeal rights. There are a range of suggestions as to how voluntary return could be improved, both in terms of take-up and implementation.
 - Finally, we do recognise that in limited circumstances, detention of families may be necessary in order to enforce return. Not returning those who have no right to stay in the UK has already had a long-term, negative effect for both asylum seekers and supporting agencies. A range of practical issues in relation to enforced return should be attended to immediately, in order to minimise

negative health outcomes for returning families and in the longer term to ensure better relationships between UKBA and its stakeholders.

- Government also needs to understand fully the implications of any policy prior to its implementation to avoid unintended consequences.
- The long term answer requires a better quality asylum system that has the confidence of asylum seekers and partners.

7. Some detail of these points follows.

UKBA Engagement with Asylum Seeking Families

Closer Engagement

8. Support agencies generally agree that closer engagement between UKBA and asylum seekers during the asylum process is desirable in order to improve understanding of the individual's case and increase trust between the two parties.
9. This was recognised by UKBA as one of the key principles of the New Asylum Model, which originally laid emphasis upon increased and more consistent contact by initiating the caseowner model and by increasing the number of meetings they had with clients - beginning with the First Reporting Event (FRE) prior to the substantive interview.
10. We understand that information delivered at the FRE is now normally disseminated by post, but are unaware of why this change has taken place. We would advocate an evaluation of the increased contact through the FRE in order to establish its effects. A reduction in contact, whilst understandable in terms of immediate resourcing issues, probably results in a less managed process, fewer returns and a greater cost to the public purse.
11. Other suggested means of improving engagement include caseowners visiting their clients in their accommodation, and caseowner contact with other relevant professionals such as social workers who have worked closely with the same client.
12. There is also room for improved engagement between UKBA and families and associated stakeholders that will help manage the end of the asylum process. A closer working relationship between the voluntary sector, local authorities and UKBA will help applicants to understand the different choices they face. Many of our stakeholders feel the onus should be on UKBA working more with voluntary sector and local authorities - not the other way around. For example, consistent liaison between UKBA and relevant agencies when an individual is being removed from the UK would improve relationships and increase efficiency of services – so for example, an accommodation provider and the school where the child attended should be informed at the appropriate point in the process – the accommodation provider will be able to give access to the property, and the school will be able to inform staff and students that a pupil has been deported.

Early Legal Advice

13. A UN study found that certain factors, including legal advice, influence the

effectiveness of any measure to improve compliance or reduce absconding¹. A lack of legal advice is certainly an issue that causes difficulties for asylum seekers and creates much wastage of resources. Home Office statistics show around 31% of appeals were allowed in July-September 2009. 'Still Human Still Here' estimates that up to £13.5million in legal, accommodation and support costs could have been saved in 2008 if 95% of initial decisions had been correct. Granting early access to legal support should greatly enhance the quality of decision-making and therefore the confidence that clients and support organisations have in the asylum system.

14. Roll out of early legal advice is long overdue. The early advice pilot in Solihull began in October 2006 and an independent evaluation in 2008 recommended that this should become normal procedure. We would support immediate roll out early advice so it becomes the norm rather than the exception.

Changing UKBA Culture

15. Asylum seekers are more likely to comply with a system that they experience as fair and just. There is a continuing perception among agencies that UKBA operates from a starting point of a 'culture of disbelief' regarding asylum seeker cases. This perception is often shared by asylum seekers, and amplified by newspaper reporting of issues around case-owner attitudes, or around alleged mistreatment of asylum seekers by enforcement staff and contractors.
16. Whether such allegations are true or not, what they feed into is the creation of a polarised debate – an 'us' against 'them' argument, which does not deliver the best outcomes for anyone.
17. Similarly, independent inspections of Immigration Removal Centres consistently raise concerns about the welfare and treatment of detained children, while a recent investigation by the Bedfordshire Local Safeguarding Children Board at Yarl's Wood raised many safeguarding failures by many agencies at the centre. Improved trust in UKBA must begin with rectifying these serious problems. Training of detention and removal staff and increased monitoring, transparency and accountability of private sector contractors may be helpful. At the same time, partner agencies from all sectors need to work collaboratively with UKBA to have a shared sense of purpose on this agenda to create a more constructive relationship leading to better outcomes.
18. Asylum processes should be sufficiently flexible to reflect the sensitivity or complexity of an individual case; there are some circumstances where families' resistance to engaging with those they perceive to be 'the authorities' will be difficult to address in the time frames of application processing. For example, extreme fear of those in authority due to experiences outside the UK will be a long term barrier to engagement. The pressure to complete asylum cases quickly should not usurp the quality of the process.
19. An alternative that could circumvent widespread suspicion of decision-making would be to place responsibility for asylum decisions to independent panels, as undertaken in other countries including Canada. However, such a move should not be made quickly, and should be based upon a thorough understanding of the weaknesses as

¹ Field O with Edwards A (2006) *Alternatives to Detention of Asylum Seekers and Refugees*. Legal and Protection Policy Research Series. POLAS/2006/03 UNHCR; Geneva <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=4474140a2>

well as the strengths of such models.

Improving Voluntary Return

Information-Giving

20. Organisations across Yorkshire and the Humber support the proposal to give more information to asylum seekers on rights and return throughout the asylum process, rather than just at the end. There needs to be consistency and uniformity in the messages given across sectors, to ensure that false information is minimised and common misconceptions addressed (e.g. the belief that where children are born in the UK they will have additional rights to stay in the UK).
21. Many accommodation providers already make information available at accommodation facilities but this needs to be uniform practice. Some local accommodation providers, for example, have post-decision workers who work with asylum seekers who have received a negative decision and can, for example, assist in completing voluntary return forms. This intervention could be replicated in every accommodation setting.
22. The current way in which accommodation is contracted leads to inconsistencies in terms of quality and practice. Performance management becomes a narrowly contractual issue. In our region, where Local Authorities are a substantial provider of accommodation. We cannot comment on the accommodation provided by others but we do know that the broader responsibilities that LAs have (in terms of homelessness, safeguarding of children, cohesion etc), leads to a much clearer sense of responsibility when it comes to supporting individuals through the process.
23. When the new contracts for asylum support are tendered for, the specification must be clear on the support responsibilities of accommodation providers, and how these 'fit' with LA's statutory responsibilities – regardless of who is providing that accommodation.
24. A clear distinction should be made between giving impartial information about various choices - and persuading applicants to take any particular choice. It is imperative that information-giving should not be seen as coercive or anticipating a negative decision, and must be clearly defined to ensure that it does not constitute legal advice (unless agencies are sufficiently resourced to be able to undertake training to the appropriate OISC accreditation level).

Draw on Existing Expertise

25. Two organisations in particular have expertise on voluntary return: IOM and Refugee Action. We would support sharing of this expertise to other support agencies. We also would support IOM and Refugee Action having more discretion and flexibility to shape return programmes.
26. There is also a growing body of logistical and policy expertise within LAs around returns – based on the work that many do to support the returns of destitute EU migrants. Whilst the circumstances are very different, the successes of projects around reconnections can provide some valuable learning in terms of supporting individuals through the process.

Improve Information about the Place of Return

27. Better access to communication with friends and family in the country of origin may encourage consideration of voluntary return. Information about the place of return needs to be easily available to both asylum seekers and support agencies. UKBA could provide resources for long-distance communication. Where contact has been lost, organisations like the Red Cross Tracing Service may be able to provide contact between asylum seekers and their families in their country of origin.
28. For those asylum seekers who genuinely fear for their safety in their country of origin, information could be supplied regarding how to contact appropriate organisations within the home country in the event of insecurity (e.g. UK embassy, IOM office, UN bases).
29. Other incentives to return may be effective, such as more substantial repatriation grants (which will remain significantly lower than the cost of supporting families in the UK) or access to training and education may help adults to feel that they can return to their country of origin with more opportunities and realistic prospects for a future life there.

Alternative Family Returns Model and Non-Compliance

Detention to ensure Enforced Removal

30. Better understanding among asylum seekers of their options should lead to more voluntarily return - but that it is not necessarily the case. Fear and perceived lack of safety of the country of origin cannot always be overcome. In situations where voluntary return is unlikely, we acknowledge that overnight detention may be necessary to effect a deportation. We would advocate that detention is only used immediately prior to a removal flight. There may be no realistic alternative to detention if a family is not complying with removal. UKBA must seek to avoid the process becoming protracted and impacting upon wellbeing of family members. Detention should only be used where all alternatives have been considered, and where there are no remaining grounds for appeal or obstacles to removal (in order to prevent repeated periods of detention).
31. Local authorities already have responsibilities to vulnerable families and for the welfare of all migrant children (regardless of their immigration status), but have little legal powers to do anything with regard to non-compliant families. Most migrant children are not 'Children in Need' under the Children Act 1989. We would not support reinstatement of Section 9 which allows children of destitute asylum seeking families to be taken into care. Providing corporate care for migrant children would be an enormous duty, with financial and ethical implications. It would also require the LA to protect the child from deportation if the child believed that it was in their best interest not to be deported, and could then result in a right to remain until the age of 18, causing a range of detrimental effects upon the family, the individual and the local authority.

Alternatives to Detention

32. Our partner agencies fully support the principle of not detaining children, but have

concerns that the Government does not fully understand the real implications of the commitment to end child detention or how difficult it would be to administer. Before moving to any new arrangements, we ask that there is a proper understanding of the implications of any new policy on local communities.

33. There have been a range of enquiries into alternatives to detention from different ideological positions (All Party Parliamentary Groups, UNHCR, campaigners, and the Independent Asylum Commission)²: they suggest a range of alternatives including reporting requirements, open centres, community supervision, electronic monitoring, detention of one parent and an independent caseworker model. We encourage the government to consider their findings anew.
34. One apparently successful initiative to encourage voluntary return - the Hotham Mission in Australia - has been advocated in the past by Refugee Council. This intervention featured intensive social-work and accommodation. Given the high return rate achieved by the project, this is an approach that should be seriously considered for replication.
35. There does remain a significant level of concern from within the local community that trying to effect removals from within the community may cause cohesion issues, and may lead to some families absconding. LAs have a statutory duty to ensure that children are safe, and absconding prior to removal may present a significant risk to children. However, whilst this is a concern, the likelihood of absconding when detention is not used needs to be evidenced. Some localities in our region are willing to consider being pilot areas to measure absconding rates where detention is not used.
36. In order to minimise absconding, UKBA should continue to support all refused asylum seekers until they are removed; this would also allow UKBA to be sure of where people are immediately prior to removal. An alternative to detention is house arrest and use of tagging for adults. This would mean a removal attempt is more likely to succeed.

Recommendations

37. UKBA should consider the following suggestions:
 - More frequent contact between caseworker and asylum seeker and with other professionals working with the client.
 - Rollout of early legal advice for all asylum seekers.
 - Serious attempts to reverse the culture of suspicion among UKBA staff – or introduction of independent decision-makers on asylum claims.
 - Flexible targets that allow longer conclusion times for complex cases.

² See for example, Field O with Edwards A (2006) *Alternatives to Detention of Asylum Seekers and Refugees*. Legal and Protection Policy Research Series. POLAS/2006/03 UNHCR; Geneva www.unhcr.org/cgi-bin/txis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=4474140a2, Crawley H & Lester T (2005) *No Place for a Child. Children in UK immigration detention: impacts, alternatives and safeguards*. Save the Children www.savethechildren.org.uk/scuk_cache/scuk/cache/cmsattach/2414_no_place_for_a_child.pdf and Bercow J, Dubs A and Harris E (2006) *Alternatives to immigration detention of families and children*. A discussion paper by John Bercow MP, Lord Dubs and Evan Harris MP for the All Party Parliamentary Groups on Children and Refugees, supported by the No Place for a Child Coalition, July 2006. www.noplaceforachild.org/alternatives.htm.

- Training and increased accountability for enforcement agencies.
- Clarity within new contracts on the role and responsibilities of accommodation providers at end of process, and a clear sense of how this related to LA responsibilities – particularly around children.
- Consistent information giving about voluntary return.
- Improved connections with the country of origin established prior to return.
- More incentives to return e.g. resettlement grants or training prior to return.
- Overnight detention only to facilitate enforced removal.
- Pilot a range of fully resourced alternatives to detention suggested by existing research.

Yorkshire and Humber Regional Migration Partnership
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