



About Law Centre (NI)

Law Centre (NI) works to promote social justice and provides specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. The Law Centre provides advice, casework, training, information and policy services to over 400 member organisations in Northern Ireland. We are the main advisers on immigration law in Northern Ireland and facilitate the Immigration Practitioners' Group consisting of lawyers and voluntary sector organisations.

Ending the detention of children for immigration purposes

Law Centre (NI) warmly welcomes the Government's commitment to end the detention of children for immigration purposes. Clear evidence shows that detention harms children.¹ The systematic administrative detention of children and families is unacceptable under any circumstances.

We would urge the Government to implement its change in policy without delay. In the Queen's Speech in May 2010, the Prime Minister outlined the commitment in urgent terms— '*we will end the incarceration of children for once and for all*' – and yet no timeframe has been given.

The commitment to ending the detention of children does not go far enough as the Minister for Immigration has clearly indicated that powers will be retained to detain families for 'short periods before removal'.² No indication has been given as to what timescales are envisaged by 'short periods'.

The argument that families disappear if not detained is unfounded³: there is no established link between detention and effective removal. The NGO sector has consistently lobbied on this point for several years, and this has now been acknowledged by Minister Damian Green:

Detention under the system that we are getting rid of was not necessarily effective. Of the 1,068 children who departed from detention in 2008-09, only 539 were removed and 629 were released back. There are clearly difficulties with the

¹ Intercollegiate briefing paper compiled by Royal College of General Practitioners, Royal College of Paediatrics and Child Health, Royal College of Psychiatrists and the UK Faculty of Public Health, *Significant Harm: the effects of immigration detention on the health of children and families in the UK*, 8th December 2009. Available here:

<http://www.rcpsych.ac.uk/press/pressreleases2009/immigrationdetention.aspx>

² Hansard 17 Jun 2010 : Column 231WH

³ See Home Affairs Select Committee Report, *The Detention of Children in the Immigration Detention System*, November 2009, HC 73



*efficacy of removal and with taking away detention as an option-something that we are doing for all the reasons that have been advanced during the debate-but even with detention, more children were released back into the community than were removed. The old system was not particularly effective, and I am grateful to the right hon. Member for Leicester East for stating the actual figures, as they illustrate that fact tellingly.*⁴

The Government's commitment to ending child detention must be absolute. Those children who are currently detained must be released.

Northern Ireland impact

The decision to end detention of children in Dungavel, although welcome, has led to a temporarily worse position for persons detained in Northern Ireland given the travel times from Belfast to the South of England via the Scotland ferry. While Dungavel will no longer be used for overnight detention, we note that it may still be used for 'initial health and welfare screening' prior to transfer to Yarl's Wood.⁵ This gives rise to an unpalatable scenario of families being detained in Northern Ireland, transferred by van/ferry to Dungavel (a six hour journey) prior to transfer by van to Yarl's Wood (a nine hour journey).⁶ Clearly, it is wholly unreasonable to require families with children to undertake this sort of journey in one day. Furthermore, the degree of distress and anguish that may be associated with such prolonged travel times may well engage the Article 3 threshold of inhuman or degrading treatment. The ten year old daughter of one Northern Ireland detainee describes being transported with her siblings and mother from Belfast to Yarl's Wood via Dungavel in freezing winter weather wearing just sandals on her bare feet:

'We didn't have time to get any clothes. I only brought two pairs of unders, and I didn't have any socks'.⁷

Sir Al Aynsely-Green, the former Children's Commissioner for England, confirms that the process of arrest and transportation is deeply distressing for children.⁸ Therefore, there is a particular imperative for ending the practice of detaining children in Northern Ireland given the unacceptable journey times.

⁴ Hansard 17 Jun 2010 : Column 231WH

⁵ UKBA announcement on 19 May 2010 as available here:

http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2010/may/04detention_of_children

⁶ Even if the journey does not require a stop at Dungavel for screening purposes, the journey time is still extremely lengthy.

⁷ *No place for children* Alice O'Keefe, The New Statesman, 13 December 2007.

⁸ The report, referred to in the Westminster debate, is available here:

http://www.childrenscommissioner.gov.uk/content/publications/content_394

Alternatives to detention

The Minister for Immigration has stated that before the Government closes Yarl's Wood for the detention of families it needs to find effective alternatives.⁹ We believe that ending the detention of children is necessitated by standards of human dignity and human rights: it should not be dependent on establishing 'alternatives to detention'. Indeed, the straightforward alternative to detention is liberty.¹⁰

Notwithstanding our objection to linking the ending of detention to establishing alternatives to detention, we believe that there are models of good practice from other jurisdictions that could provide a useful template. In a comprehensive report in 2006, the UNCHR set out a series of alternatives to detention policies.¹¹ These guidelines may serve a useful starting point for developing a UK approach.

The 'Hotham Mission Asylum Seeker Project' in Melbourne, for example, is premised on a combined approach of effective legal representation and a 'case-management approach' incorporating housing and welfare support. The project is well established and has informed similar projects including the Swedish model, which builds on the principle of community-based support.¹²

The Swedish system perhaps serves as a useful comparison for the UK. In 2009, the number of asylum applications lodged in each country was not too dissimilar.¹³ However, while Sweden has just 200 detention places, the UK has more than fifteen times the amount and media reports assert that the number of detention places is expanding.¹⁴ Whereas detention is rarely used in Sweden, it constitutes a prominent place within the UK's immigration system. The Swedish approach raises questions about the necessity of the UK detention policies and may be a beneficial model for this review to consider.

⁹ Hansard 17 Jun 2010 : Column 211WH

¹⁰ See Refuge Children's Consortium *Briefing Paper for the Westminster debate on alternatives to child detention* on 17 June 2010. Available here: <http://www.welshrefugeecouncil.org/alternatives-to-child-detention/>

¹¹ UNHCR, *Alternatives to Detention of Asylum Seekers and Refugees* (Geneva: UNHCR, 2006)

¹² Details of the project can be found in John Bercow, Lord Dubs and Evan Harris, *Alternatives to immigration detention of families and children*, discussion paper for all-party parliamentary groups on children and refugees, July 2006.

¹³ In 2009, Sweden received 24,194 applications whereas the UK received 29,840. See UNHCR, *Asylum Levels and Trends in Industrialized Countries 2009: statistical overview of asylum applications lodged in Europe and selected non-European countries*, 23 March 2010, pg 13

¹⁴ See media reports of plans to increase UK's detention capacity from 3,100 to 3,730 with the extension of Harmondsworth. E.g. Guardian, *UK Detention Centre to double capacity*, 26 May 2010



A recent publication by Refugee Action Group suggests ways in which the Swedish model could be applied in Northern Ireland - the recommendations could also be of more general application in a UK-wide context.¹⁵

Alternatives to detention – the UK experience

Alternatives to Detention is an official priority advocacy area for UNHCR and it plans to hold a Global Roundtable on this topic in December 2010. We would like to see the UK playing a key role in this event. However, we believe that the UK's approach to the concept of 'Alternatives to Detention' has hitherto been unduly restrictive. We would like to see the UK adopting a broader approach: Alternatives to Detention can (and should) be able to encompass the case-management approach as exemplified by the Hotham Mission project and the Swedish system.

We note that the UK's 'Alternatives to Detention' pilot projects (i.e. Millbank and Glasgow) have so far focused on the *end of the process* for refused asylum families. The evaluation by Bail for Immigration Detainees and the Children's Society noted:

*[An] alternatives pilot cannot work in isolation from wider system change because by the time those families had reached the end of the process they were not able to trust or engage with the process effectively.*¹⁶

This underscores the need for whole scale reform of the asylum system. Any attempts that focus only the end of the process are likely to be ineffectual until the current problems in the system are tackled. Any reforms of the system must address the quality of initial asylum decisions and access to quality legal advice. These issues are discussed below.

Separating children

We are extremely concerned that the Minister for Immigration has indicated a willingness to separate different members of a family prior to removal.¹⁷ We believe that the UK should not go down this avenue. Moreover, to do so may be incompatible with the statutory duty of s.55 Borders, Citizenship and Immigration Act 2009, and Article 8 of European Convention on Human Rights (ECHR). In addition, this practice would risk

¹⁵ Refugee Action Group, *Distant voices, shaken lives: human stories of immigration detention from Northern Ireland* 2010. p21-23. The publication is available here: <http://www.refugeeactiongroup.com/download?id=MTg=>

¹⁶ BID & Children's Society, *An evaluation report on the Millbank Alternatives to Detention Pilot*. Available here: http://www.childrenssociety.org.uk/resources/documents/media/17148_full.pdf

¹⁷ Minister Damian Green cited in Hansard 17 Jun 2010 : Column 211WH

violating the UN Convention on the Rights of the Child which is clear on the issue of separating children from their parents:

*States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child.*¹⁸

Children should only be separated from their parents if there is a risk of significant harm to the child. Immigration purposes should not be used as a justification for separating children from their parents.

Wider reform of immigration detention

Wider reform of the UK's immigration system is urgently required. A recent letter to Ministers by Association of Visitors to Immigration Detainees (AVID) and endorsed by a number of refugee/human rights organisations highlights that:

*[The immigration system] is expensive, inefficient and damaging, unnecessarily depriving large numbers of their liberty indefinitely before releasing them. As such, it neither respects the civil liberties of those detained, nor meets the government's requirements for immigration control. Detention reform is therefore entirely consistent with this government's commitment to upholding civil liberties and making substantial cuts in public spending in lieu of the budget deficit.*¹⁹

We fully support AVID's recommendation for a moratorium on the opening of further immigration removal centres until an independent inquiry has fully examined the current use of detention.

It is inconceivable that the UK continues to operate a policy of indefinite detention for immigration purposes without judicial oversight. We urge the Government to introduce judicial oversight into the immigration detention system and to impose maximum time limits on detention. Evidence compiled by the UNHCR indicates that the UK is 'out of step' with most other European countries with regards to these two matters.²⁰ The lack of automatic judicial oversight in detention cases underscores the importance of ensuring that detainees have access to legal advice.

¹⁸ Article 9(1) UNCRC

¹⁹ AVID letter dated 23rd June sent to Minister Damian Green and Home Secretary Theresa May.

²⁰ Other than the UK, only a handful of European countries allow de facto indefinite detention. See UNHCR 2006 paper, supra, n.10

Quality of asylum decisions.

It is essential that the quality of initial decision-making on asylum claims improves. Figures for the first quarter of 2010 show that 27% of asylum decisions were overturned on appeal, which supports our assertion that decision making is of poor quality.²¹ Any post-decision measures relating to returns – whether designed to ‘encourage’ e.g. through monetary incentives or to ‘deter/punish’ e.g. through the use of detention or benefit sanctions – will be largely ineffectual in the current climate of poor quality decisions. The ongoing problem of administrative delays as well as the ‘culture of disbelief’ in the UKBA exacerbates the lack of faith in the system.

The Independent Asylum Commission found that ‘refused asylum seekers will be more likely to accept refusal and take voluntary return if they feel that they have had a fair hearing’.²² It is our assertion that improved decision-making would be an effective method of increasing the uptake of voluntary return.

Access to quality legal advice and representation

Access to quality legal advice and representation is an essential component in ensuring that asylum seekers have a fair hearing. Council of Europe Human Rights Commissioner Thomas Hammarberg rebuked the UK for its asylum policy in September 2008 and referred to a particular concern about the ‘serious reduction of legal aid provided to asylum seekers.’²³ The demise of Refugee and Migrant Justice (RMJ), the UK’s largest specialist national provider of asylum advice that represented 13,000 applicants including nearly 1,000 children, leaves an enormous gap in the provision of asylum advice. In the wake of RMJ’s collapse, the Government is urged to review the system of legal aid payments to ensure that other refugee organisations do not face similar risks. Quality legal advice is a critical component of the asylum system – it should not be regarded as peripheral.

As noted by the Independent Asylum Commission (above), better access to quality legal advice will assist the uptake of voluntary return.

However, we must caution that legal advice must be provided by independent, regulated Immigration Advisors if it is to be fair and effective. Information services offered by local authorities *cannot* be a substitute for individualized legal advice.

²¹ Home Office, *Control of Immigration: Quarterly Statistical Summary, Jan – March 2010*.

²² Independent Asylum Commission, *Safe Return: The Independent Asylum Commission’s Second Report of Conclusions and Recommendations – How to improve what happens when we refuse people sanctuary* (London: IAC, 2008), p3,

²³ Memorandum by Thomas Hammarberg following his visits to the UK on 5-8 Feb and 31 March – 2 April 2008, CommDH(2008)23, Strasbourg 18 September 2008

Recommendations

Our recommendations are as follows:²⁴

- The detention of children must end immediately and any detained children and families should be released. The ending of the practice in Northern Ireland is a particular imperative given the unacceptable journey times
- The outcome of the review should not result in children being separated from their parents for immigration purposes
- Ending the detention of children should *not* be dependent on establishing 'alternatives to detention' projects

In addition:

- The entire immigration detention system is in urgent need of review
- The quality of asylum decisions must be improved and administrative delays must be tackled
- Access to quality legal advice must be ensured throughout the asylum process (including during any periods of detention)
- Judicial oversight and maximum detention periods should be introduced into the system

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²⁴ These conclusions both reflect and build upon the Refugee Children's Consortium commitments outlined in their briefing paper.