

Review into Ending the Detention of Children for Immigration Purposes Joint Response from ADASS/ADCS Asylum Task Force, COSLA, LGA and WLGA

This response has been informed by the separate responses of the No Recourse to Public Funds Network and the Regional Migration Partnerships

Key points

1. Local government welcomes and fully supports the commitment from the UK Government to end the detention of children for immigration purposes and is keen to work with UKBA, alongside other key stakeholders, to identify alternative ways of encouraging families who have exhausted the appeals process to return to their country of origin. COSLA has already contributed to joint initiatives that encourage voluntary returns including the Informed Returns Initiative and the Family Return Project. Some early learning from this as well as an interim report are available from either COSLA or Glasgow City Council which could help inform other potential processes. We also have welcomed the move from UKBA to work with the International Organisation for Migration and the NRPF Network to try and improve the Assisted Voluntary Return Programme. We welcome the move to develop pilots with local authorities before any UK roll-out and look forward to a transparent and outcome focused evaluation process.
2. We very much support the wish to look at alternatives to detention. However, any future arrangements must ensure that the safeguarding, welfare and health needs of children are met, reflecting both local authorities' statutory safeguarding duties and the UK Border Agency's own duty to protect the wellbeing and security of children.
3. Local authorities have seen an increasing number of children being referred to social services departments on account of the destitution faced by families where the parents do not have access to public funds or, in some cases, UKBA Section 95 or Section 4 (Immigration and Asylum Act 1999) asylum support. In many cases, support under section 17 of the Children Act 1989 and the Children (Scotland) Act 1995, including accommodation and subsistence, has had to be provided. Therefore, any additional financial burden that may fall to local government as a consequence of any change to policy must be fully costed and resourced by UKBA.

Review question 1: How to improve engagement with families in dealing with asylum applications? For example, should the contact arrangements with those families and their access to legal representation be reviewed.

4. We recognise that there will need to be clear processes in place to ensure that immigration legislation can be enforced and that families do not put their children at risk by remaining in the UK unlawfully. We recognise the particular difficulties involving removing people, particularly those who have lived in the country for some time, who have reached the end of the formal asylum process but fail to return home.
5. We feel that a more effective focus, both in terms of cost and eventual outcome, would be the development of a whole-system, community based, outcome-focused, multi-stakeholder approach.

6. Consideration should be given to the successful experiences of other international processes, in particular from the Family Return Project (an alternative to detention project) in Scotland, Sweden, Australia, and the principles of supervised casework in the American Assisted Appearance Program. In addition, the development of any future model could build on the lessons learnt from other UKBA projects such as Clan Alba and Ebor and the Millbank project in Kent.
7. Ensuring that people have access to high quality, timely and consistent legal advice and representation will help increase their confidence in the process and assist in understanding the consequences of a negative decision. We would argue that access to legal advice is an important requirement for those going through the asylum process – as demonstrated in recent successful UKBA pilots - and will also help ensure that correct decisions are made the first time, reducing the need for appeals and legal challenges to decisions made.
8. A UN study found certain factors influence the effectiveness of *any* particular measure, for example reducing absconding and/or improving compliance. These did include legal advice - but also included ensuring asylum seekers understand their rights and obligations, the provision of adequate support, and screening for family/community ties or use of community groups to create guarantors/sponsors. It also concluded that alternative measures are less expensive than detention.

Review question 2: How can the current voluntary return process to increase the take up from families who have no legal right to remain in the UK be promoted and improved? What is the UK Border Agency's role is here and is there a role for others in engaging with families around this option?

9. Families must be informed as soon as possible after arrival about the possibility of a negative asylum decision and about the options for supported return. All the organisations involved in supporting families need to work together to ensure that parents make decisions that are in the best interests of their children. This could centre on recognising the limitations faced by parents in being able to care for their children in the UK; looking at all the options available that will keep the family together; and options that will give the children the best opportunity to thrive in the long-term. This also should involve working with parents to ensure children are kept informed throughout the process and are prepared if a return is to be the final outcome.
10. Where there have been no legal or practical barriers to return home, there has been success in working with families to return voluntarily through the International Organisation of Migration (IOM). The assisted voluntary return scheme should be promoted and fully explained at an early stage of the process, both by UKBA staff and other agencies supporting asylum seeking families to make them aware of this option - and the fact that a negative decision will require them to leave the country. Information on the Assisted Voluntary Return (AVR) scheme should be made available from all agencies, with a particular focus on support agencies, so that it is received from an independent source and is not seen to be linked to the asylum process. It then should be reiterated as an option throughout the process. The AVR scheme must retain full levels of funding to remain a viable option to families.

11. However, we would not support the use of social services for the purposes of immigration advice and wider support. Pressure on services is already extremely tight and the capacity is not available in the system to provide services other than to those who need it under the definitions set out in the Children Act 1989 and the Children (Scotland) Act 1995.

Review question 3: If a family chooses not to leave the country, with or without support from the UK Border Agency, what might an alternative family returns model look like? How should the UK Border Agency respond where a family refuses to comply with removal (recognising the need to strike an appropriate balance between our section 55 safeguarding duty and the enforcement of immigration rules)?

12. A greater understanding of why the reasons some Appeal Rights Exhausted (ARE) families refuse to comply is needed and should form the basis of developing ways in which these can be successfully addressed. It is believed that an 'end-to-end', multi-agency approach, as noted in point 7 above, which has clear options and possible outcomes for the families concerned outlined from the start would increase understanding and trust the process and thus ensure compliance.
13. Any change in policy/practice must include an assessment of how it likely it is to bring about compliance and how it will reduce the risk of families absconding. There was little evidence following the evaluation of the S9 pilot that removing support encourages returns - families preferred to 'disappear underground'. We still feel that it is unlikely, therefore, that any future proposals to reduce or remove support as a mechanism to encourage failed asylum seekers to leave will prove to be effective. In addition, if support is simply removed, local authorities will have to 'pick up the pieces' and provide support to those with no recourse to public funds.
14. The speed and quality of the initial decision making process is also key and the forthcoming review of asylum support should provide a good opportunity to improve this. The longer a family remains in the UK and the number of legal challenges that can be made on a decision will impact on the willingness of the family to engage with the returns process and possibly to abscond. The initial decision-making process also needs a realistic and ongoing assessment of whether or not an individual or a family can actually be returned. Many cases will not be able to be removed by UKBA as, for example, the situation in their country of origin is still too dangerous to facilitate returns; there may not be a safe route of return; they cannot obtain travel documents; or they may be too ill to travel etc.
15. We recognise that whilst voluntary return will always be the preferred option, enforced removal will continue to be a necessary part of implementing immigration law in the UK and will be required where all other avenues are exhausted. Where this is the only course of action, discussions should take place with key stakeholders, including local government, prior to action being taken so that consideration can be given to both how the removal should best occur and how to manage wider messages and any impact on the community etc. This could be under-taken via the mechanism of a formal, multi-agency partnership body. However this is ultimately constructed, how organisations work together before such action is required needs improvement, particularly with regards to information sharing around and to ensure that children's needs remain paramount.

16. While it is accepted that removal of families that do not wish to leave can be extremely difficult, it is suggested that UKBA must put more resource and effort into increasing the removal rate of failed asylum seekers. A more proactive removal and enforcement policy to address key issues in removing unsuccessful asylum seekers is needed to reinforce the message that not complying does have consequences.
17. The stability that is required before a family leaves the UK, either voluntarily or enforced, can be delivered without the need for detention as part of a coordinated and child-focused response. Whatever alternative model is chosen, the following are suggested as principles that should underpin the development of policy that aims to end the detention of children for immigration purposes:
- Any policy developed should pay due regard to the United Nations Convention on the Rights of the Child.
 - There should be recognition of the equality of legislation (immigration law and legislation governing children's rights) and as such the Children Act 2004 and the Children (Scotland) Act 1995 should be taken into account when any future policy is made to ensure compliance.
 - The physical and mental health and well being of the child should be of paramount importance, as well as the need to "safeguard and promote the welfare of the child".
 - Therefore, keeping families together should be a key concern – removing the child from the care of the family should only occur when the safety of the child is in doubt and should not be due to reasons relating to immigration law or policy.
 - Further clarity is also needed whether the new policy will be applied to age-disputed asylum seekers and visa-overstaying families, in addition to those who came to the UK to claim asylum.
17. There is a concern that families may still view having to move to a hostel type environment – if this is a possible alternative - as a form of detention and therefore undesirable, placing them in a position where they abscond, with the resulting concerns about the vulnerability and safeguarding of children. Local authorities may have to pick up cases where children go missing or are owed a duty of protection, particularly if families are moved from other areas into one in their jurisdiction. There are other possible effects upon families; for example where children will not be able to attend their usual school and the possible impact on parents if they are unable to meet their legal obligations to ensure their children attend school. As noted above, local government would be keen to work with UKBA, alongside other key stakeholders, to identify alternative ways of encouraging families to return to their country of origin and to exploring these specific issues further.

18. Policy divergence in Wales

- The policy context for issues affecting children and young people is different in some aspects in Wales and this must be taken into account in the development of changed policy. While immigration law is a non-devolved matter, many of the agencies that are responsible for the care and support for children and young people in Wales are devolved and work within a devolved policy context. One example of this is that the Assembly Government is currently pursuing legal powers to impose a duty upon Welsh Minister to have due regard to the rights and obligations of the UNCRC when making decisions of a strategic nature about how to exercise their functions. While we await the final wording of the Legislative Competence Order, this could mean the expectations for children could be different for those who reside in Wales. The lack of access to appropriate legal representation for asylum seekers is an issue in Wales and in some areas, such as Wrexham, the provision is non-existent.

19. Policy divergence in Scotland

- There are different policy and legal contexts to consider in Scotland and these often conflict with attempts to remove refused asylum seekers. Managing the system so that cases are dealt with quickly would ensure families are less likely to have integrated significantly into the host community by the time they are fully refused. When this does not happen it creates a significant barrier to return.
- The separate legal system in Scotland is an area which needs to be addressed if more refused asylum families are to be returned voluntarily. This is the most consistently significant factor that affects parent(s) ability to consider and plan for a voluntary return. Families will continue to put in legal challenges on the outcome of their decision on their asylum claim. When families submit either fresh representations or a fresh claim they cannot look at the possibility of return as their total focus and belief is placed in a positive legal outcome. Any work that has been done with the family about a planned return is immediately lost as the focus goes on to a legal outcome rather than a possible return to their country of origin.
- In Scotland the use of hostel type accommodation for families by local authorities happens only as a last resort and is time-limited to 14 days under the Unsuited Accommodation (Scotland) Order 2004.
- The government may wish to consider placing limits on the use of detaining children, while they develop alternatives. This could include limiting the use of detention to families who are immediately removable and for a short, limited period of time. Children should not, under any circumstances, be transported from Scotland to Yarl's Wood to be detained.
- It may be appropriate to make the decision to detain subject to external review.
- There are lessons that can and should be learned from the Glasgow Family Return Project. Whilst there have not been any families who have departed voluntarily thus far significant learning about the barriers to return and methods to protect the welfare of children and vulnerable adults at the end of the process has taken place. The project has been designed to evolve based on feedback from both staff and evaluators and so the model will be further refined over the next eighteen months. This feedback is available already from COSLA or Glasgow City Council staff.

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