

CHAPTER 3

How we treat people with additional vulnerabilities

Interim Finding: 3. The Commissioners expressed concern at the treatment of children in the asylum system

Finding 3.1 – That children continue to be detained

UKBA response:

Children are only ever detained in one of two limited circumstances: (a) as part of family groups whose detention is considered necessary, most often to effect removal and usually just for a few days and (b) where, very exceptionally, it is necessary to detain an unaccompanied minor whilst alternative care arrangements are made and normally then just overnight.

51%
of the public
think that
children should
not be detained.⁴

Although families with children may be detained under the same criteria as individuals – i.e. whilst their identity and basis of claim are established, because of the risk of absconding, as part of a fast-track asylum process or to effect removal – in practice most are detained for just a few days prior to their removal. In those circumstances where detention of families with children is prolonged it is usually as a consequence of the parents seeking to frustrate the removal process.

We recognise that detention of families with children is an emotive issue and there are mechanisms in place to ensure rigorous review of such detention, including Ministerial authorisation for those exceptional cases where detention lasts for 28 days or more.

We are currently piloting an alternative to detention for families with children who have reached the removal stage, based at an accommodation centre in Ashford, Kent (pilot due to last until October 2008).

Commissioners' assessment:

We remain concerned that decisions are not always taken with the best interests of the child in mind, and note the prominence given to this criterion in the EU directives, the force of which is accepted by UKBA. We believe that detention, other than for the briefest of periods to avoid absolute destitution, can never be in the best interests of the child. The public support this view, with 53% of people in our opinion poll saying that children should never be detained just because their parents are asylum seekers, and only 30% disagreeing.⁴

Finding 3.2 – That the UK reservation on Article 22 of the UN Convention on the Rights of the Child currently means that there is a lower level of protection for children seeking asylum

Finding 3.3 – That vital decisions on unaccompanied asylum seeking children are taken without the presence of someone who represents the rights of the child

Finding 3.4 – At the lack of access to legal representation for unaccompanied asylum seeking children

⁴ efeedback Research conduct opinion research using an online panel of more than 190,000 UK residents. A sub-sample representative of the UK population is drawn from the panel for each poll. The results of this opinion poll are based on 1,024 completes gathered online from respondents based across the UK. Data was weighted to the profile of all UK residents, not just those with access to the internet, over the age of 17. Data was weighted by age, gender, occupation and region. Fieldwork began on 2/5/2008 and concluded on 12/5/2008.

UKBA response:

The United Kingdom Border Agency is fully committed to the safeguarding of children and we do not accept that the UK's reservation on Article 22 of the UN Convention on the Rights of the Child means there is a lower level of protection for children seeking asylum. There is a dedicated process for children seeking asylum which is designed to take into account the vulnerability of children. All key events, including the substantive interview, first reporting event and the decision serving event, are always conducted in the presence of a responsible adult and the child is never alone. Furthermore, the Legal Services Commission funds legal representatives to attend all substantive interviews with unaccompanied asylum seeking children. The Agency also funds the Refugee Council Children's Panel to provide a number of services to unaccompanied asylum seeking children, one of which is to make sure the young people are provided with a solicitor to represent them in their asylum claims if they do not have one already. All unaccompanied children are referred to the Panel within 24 hours of registering their asylum claim.

Commissioners' assessment:

Our comments are based on the stated intention of the Government to review its reservation on Article 22 of the UN Convention on the Rights of the Child; on the EU Council Directive laying down Minimum Standards for the Reception of Asylum Seekers, which prescribes that 'The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors' (MSR, Article 18); on the EU Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who otherwise need International Protection and the Content of the Protection Granted, which prescribes that 'The "best interests of the child" should be a primary consideration of Member States when implementing this Directive' (IP (12)) and on the EU Council Directive on Minimum Standards on Procedures in Member States for granting and withdrawing Refugee Status, which prescribes that 'The best interests of the child shall be a primary consideration when implementing this Article' (GWRS, Article 17, 6).

We believe that a corporate body such as the Refugee Council Children's Panel cannot perform the function of guardianship in the way that can and should be done by a named individual. Just as named individuals have the responsibility of safeguarding the best interests of a UK child who would otherwise be without such support, we believe the same should apply for unaccompanied asylum seeking minors.

Finding 3.5 – That support arrangements provided for unaccompanied children by local authorities are not fully reimbursed by central government

Finding 3.6 – At the culture of disbelief and related practice of age-disputing unaccompanied children who seek asylum



Finding 3.7 – That if there are reasonable grounds for suspecting a false statement of age, the dispute is not always promptly referred for independent assessment by suitably qualified experts using a humane and sensitive procedure

Finding 3.8 – That children and young people face exclusions from normal activities in which other children participate, such as travel or opportunities for tertiary education

UKBA response:

Unaccompanied asylum seeking children are supported by local authorities under the same legislative arrangements in place for UK resident children that are need of care. The services provided to the children depend on the authority's assessment of their needs. UKBA funds local authorities for the costs of this support on the basis of annually set cash rates. Authorities that are unable to maintain expenditure within these limits may submit "special circumstances" claims, which are considered on a case by case basis.

We do not accept that there is a "culture of disbelief" that affects the handling of age dispute cases. Such cases are referred to local authorities to be assessed by social workers with the appropriate experience and expertise in this field. Our policy is to accept the assessment of the local authority unless there are very strong reasons not to. We have taken steps to streamline these processes by providing special funding for social worker teams at our main ports and screening units. An Age Assessment Working Group has also been set up, with representatives from the voluntary sector and with the Children's Commissioner, to discuss what is the best way to ensure accurate assessments are made of a child's age.

When planning the timing of the detention and removal of a family, each family's personal circumstances are fully considered and removal would not normally be planned to take place in the three months prior to a child sitting examinations.

Commissioners' assessment:

The Commissioners welcome the setting up of an Age Assessment Working Group, with representatives from the voluntary sector and with the Children's Commissioner, to discuss the best way to ensure accurate assessments are made of a child's age. We believe this could provide a model of positive working between the statutory agencies and the voluntary sector for the common good. It is to be hoped that training and monitoring will form part of the package of measures that is eventually agreed and that the work will be approached with due urgency.

The Commissioners also welcome the affirmation that, when planning the timing of the detention and removal of a family, each family's personal circumstances are fully considered. If the avoidance of removal in the months leading up to a child's exams or at other crucial junctures is being achieved, we note this as a significant improvement in practice.

The Commissioners welcome the pilot scheme exploring an alternative to detention for families with children who have reached the removal stage, based at an accommodation centre in Ashford, Kent and look forward to its evaluation. We applaud the exploration and evaluation of measures intended to avoid detention of children and to achieve voluntary return of families whose asylum claim has, after due process, been refused. We hope the evaluation will consider fully the experiences of children in the pilot, compared with the experiences of children in detention, and that where the pilot has not resulted in increased voluntary return, the reasons for this are fully explored.

Finding 3.9 – That the threat to deny support to families of refused asylum seekers and to take their children into care remains part of Government policy

UKBA response:

Most families do get cash support until the children turn 18 or the family leave the UK. A more limited support regime endorses the message that the asylum seeker has exhausted his or her appeal rights and should take steps to leave the UK once the barrier to leaving has been resolved. The legislation does not allow cash to be provided under section 4 and it is not the Government's intention to change this.

Section 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 provides for the termination of support in cases where the assessment is that the family is not co-operating or placing themselves in a position where they can leave. We introduced the provision because it is not right that families who have had their asylum claims carefully considered — including by the independent appellate authorities — should expect to remain in the United Kingdom indefinitely, even after it has been decided that they are not in need of international protection. It is preferable for all concerned if families agree to make a voluntary return home. This is a more dignified approach and one which allows access to the reintegration assistance provided through the International Organisation for Migration. However the Border and Immigration Agency must be able to enforce return where a family refuses to make a voluntary return — including in cases where the co-operation of the family is required to obtain necessary passports or other travel documents.

Through the introduction of the New Asylum Model (NAM) for case owners, our approach to dealing with asylum applications has undergone a significant transformation. Specialist case owners are now responsible for managing the claimants and their cases through the whole system to either removal or integration as a refugee. Faster and higher quality processes are leading to a better deal for the well founded claimant. This is supported by a strong focus on ensuring that early steps are taken so that those whose claims are not successful leave the United Kingdom in a timely manner.

When one of your friends is deported and disappears it is very sad. But it also makes you think, will I be next?"

Young asylum seeker from Iran.

We therefore believe that section 9 provision should be available to case owners dealing with cases under NAM. While it will not be suitable on a blanket-basis, it is important that we retain an ability to withdraw support from families who are wilfully not co-operating in the process. Going forward it should be for case owners to take a view, based on an established relationship with the family and an intimate knowledge of the asylum claim which has not been successful, of which approach to encouraging departure is most likely to be effective.

Commissioners' assessment:

The Commissioners understand the purpose of the deterrent in the Government's general policy but they strongly emphasise that this policy should never be used against individuals or families in breach of their humanitarian commitments under the UN and European Conventions. We do not believe it is ever an acceptable consequence of public policy that children should become destitute.

Recommendations 3.10: The Commissioners therefore recommend:

Make the best interests of the child paramount

- 3.10.1 – That UKBA policy towards children should be based on the principle that the best interests of the child should be paramount. The government's reservation to the UN Convention on the Rights of the Child must be revoked.
- 3.10.2 – That Section 11 of the Children Act 2004 should apply in its entirety to the UKBA and its contractors.
- 3.10.3 – That the legislation and policy allowing for the threat to deny support to families of refused asylum seekers and to take their children into care should be repealed.

End detention of children

- 3.10.4 – That children and age-disputed young people should not be detained, and families should not be split by detention of one member.
- 3.10.5 – That families who are detained should have the right to an automatic bail hearing after 7 days.

Improve treatment of unaccompanied asylum seeking children

- 3.10.6 – That a review of the quality of decision making on children should be undertaken and should inform future policy and practice development in UKBA. UNHCR has begun such an audit and UKBA's Quality Audit Team should give special attention to the quality of children's claims and collaborate with UNHCR in this regard.

Recommendations 3.10: The Commissioners therefore recommend:

- 3.10.7 – That age assessments should be conducted using an appropriate model, such as that of independent regional age assessment centres as recommended by the Immigration Law Practitioners' Association's research report 'When is a child not a child?'. To ensure transparency, written reasons addressing how an age-dispute was resolved should be provided to the applicant, regardless of the outcome.
- 3.10.8 – That the number of young people put through the age assessment process should be reduced by giving the benefit of the doubt in borderline cases.
- 3.10.9 – That X-rays should not be used to determine age.
- 3.10.10 – That a form of guardianship for unaccompanied children who claim asylum should be seriously investigated and consideration given to its swift implementation.
- 3.10.11 – That there should be adequate legal representation for unaccompanied children who claim asylum and that these representatives should be adequately trained and accredited and have a thorough understanding of child welfare law, in addition to immigration law.
- 3.10.12 – That the Dublin Regulation should only be applied in children's cases where a removal would be in the child's best interests, as allowed by the regulation and practised by several EU member states.
- 3.10.13 – That where removal of a child is to take place under the Dublin Regulation contact between the departments responsible for care of the child within the member state should be mandatory and facilitated by the department responsible for implementing the regulation.
- 3.10.14 – That funding of local authorities should reflect the reality of the cost of the care provided for unaccompanied children, regardless of age.