

# COMPAS Breakfast Briefing Summary



Sian Herbert, COMPAS Photo Competition 2009

## What are the alternatives to child detention?

One of the first commitments made by the Coalition government on assuming power was an end to child detention. Why are children detained? What are the alternatives to child detention? What is the evidence on the efficacy of these alternatives? How much progress has been made towards achieving the goal of ending child detention?

### The reasons why children are detained

The impact of detention on children's health and well-being is well documented, with medical studies in the UK and elsewhere finding that detention is associated with post-traumatic stress disorder; major depression, suicidal ideation, self-harm, and developmental delay.<sup>1</sup> The UK Border Agency (UKBA) maintains that it is necessary to detain children for three main reasons:

- that some families will abscond if they are not detained
- that they are only detained to affect their imminent removal
- that most families who are at the end of the process are not prepared to leave the UK voluntarily. In the period January 2009 – June 2010 a total of 1,465 children were detained.<sup>2</sup>

The need to detain families with children in order to affect their removal is contested by a wide range of refugee and children's charities who maintain that families with children are unlikely to abscond because they are embedded into health and educational services.

Moreover decisions to detain are often made when there are significant barriers to removal including outstanding legal issues, health problems, or a lack of travel documents. This has resulted in children being detained unnecessarily or for prolonged periods of time.

Concerns about the quality of asylum decision making can undermine the 'voluntary' return of families for whom it is determined there are no protection needs.

Families who are considered 'appeal exhausted' may never in fact have had their cases fully and properly considered because of a lack of access to good quality legal advice and representation, including at the appeal stage. In addition it seems likely that there will be some families who do not have protection needs but who are nonetheless deeply anxious about the future for themselves and their children should they return to their country of origin.

### Alternatives to detention

There are a number of strategies for facilitating the return of families without resorting to detention. These alternatives are reasonably well-rehearsed.<sup>3</sup>

#### Electronic monitoring

Although new technologies offer a potentially appealing alternative to detention, evidence from existing schemes suggests that increased electronic monitoring is unlikely to contribute significantly to the end of child detention. Electronic monitoring only enables the authorities to know the whereabouts of the individuals concerned. It does not build up trust in decision making or improve the return process.

#### Reporting (including incentivised compliance)

Reporting is the most widely used alternative to detention and requires asylum seekers to attend a designated location on a regular basis. The purpose of reporting is to ensure that there is regular contact between those subject to immigration control and the authorities.

<sup>1</sup> Mares and Jureidini 2004; Steel et al 2004; Crawley and Lester 2005; Lorek et al 2009; Crawley, H. and Lester, T. (2005) No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards, Save the Children, London; Lorek, A., Ehntholt, K., Nesbitt, A., Wey, E., Githinji, C., Rossor, E. and Wickramasinghe, R. (2009) 'The mental and physical health difficulties of children held within a British immigration detention centre: a pilot study', *Child Abuse and Neglect* 33 (9), 573–585; Mares, S. and Jureidini, J. (2004) 'Psychiatric assessment of children and families in immigration detention – clinical, administrative and ethical issues', *Australian and New Zealand Journal of Public Health* 28 (6), 520–526; Steel, Z., Momartin, S., Bateman, C., Hafshejani, A., Silove, D.M., Everson, N., Roy, K., Dudley, M., Newman, L., Blick, B. and Mares, S. (2004) 'Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia' *Australian and New Zealand Journal of Public Health* 28, 527–536.

<sup>2</sup> Hansard 19 Nov 2010. :Column 997W, [www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101119/text/101119w0002.htm#10111965000102](http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101119/text/101119w0002.htm#10111965000102)

<sup>3</sup> See, for example Field, O. and Edwards, E. (2006) *Alternatives to the Detention of Asylum Seekers and Refugees*, Legal Protection Policy Research Series, Geneva: UNHCR, [www.unhcr.org/refworld/docid/4472e8b84.html](http://www.unhcr.org/refworld/docid/4472e8b84.html)

The Assisted Appearance Programme (AAP) in the United States is a two-way reporting process in which asylum seekers are given information about their case and the opportunity to raise concerns or difficulties. This two-way flow of information builds confidence in the asylum process and enables on-going discussions about options for the future.

### Supervised accommodation

Supervised accommodation can take different forms from large accommodation centres to 'clusters' of private flats or the requirement to live at a designated address. Supervised accommodation is already used by many states, particularly in Europe, to monitor asylum seekers whilst their asylum claim is processed. The extent to which supervised accommodation is an appropriate and less damaging alternative to the detention of children depends on both the form the accommodation takes and any associated restrictions. It also depends on the stage in the process at which it is made available.

### Case support and contact management

Various models of case support and contact management have been developed around the world, primarily in Sweden and Australia and most recently Belgium in an effort to improve contact between asylum seekers and decision makers and to increase confidence in the decision making process. There is a growing consensus that this approach offers the most effective mechanism for delivering an efficient immigration system without the use of widespread detention. A common feature of these models is the presence of a case manager, separate from the decision maker, who is a constant point of contact to guide an asylum seeker through the asylum processes. The case manager ensures that the asylum seeker understands these processes, has access to appropriate legal advice and can meet his or her welfare needs.

### Progress to date

The Conservative-Liberal Democrat Government Coalition Agreement (May 2010) included a commitment to end the detention of children for immigration purposes. A review process was established by the Home Office to identify how this commitment would be achieved, the findings of which were announced in December 2010. As a result of the review a new four-stage process is shortly to be introduced which focuses on engaging with families during the decision making process and giving families considered to be at the end of the process the opportunity to decide when and how they return.

### The key elements of the new process include:

- Improved decision making and pilots of new arrangements to provide access to early legal advice.

- Assisted return through a dedicated family conference to discuss future options and the specific option of assisted return.
- Required return giving families who do not choose to take up the offer of assisted return at least two weeks' notice of the need to leave the country.
- Ensured return of those who refuse to leave and the creation of an independent Family Returns Panel to consider child welfare issues in these cases.

A new form of secure pre-departure accommodation will be established and will remain an option for families who 'resolutely fail to co-operate'.

### Conclusion

Alternatives to detention are meaningful only if they exist within a broader system of decision-making that ensures ongoing and consistent contact is maintained, and where asylum seekers have information about their rights and are aware of their obligations. The case support and contact management system appears to offer the best possibility for ending the detention of children whilst increasing the confidence and trust in the system needed for families to return where their cases have been fully and properly considered. The new four-step process proposed by the Government acknowledges the importance of quality decision-making and legal advice but increases contact with families only at the end of the process. It is not yet clear that this will lead to an end to the detention of children.

A Centre for Migration Policy Research (CMPR) briefing paper entitled 'Ending the detention of children: developing an alternative approach to family returns' can be downloaded at [www.swansea.ac.uk/media/Alternatives\\_to\\_child\\_detention.pdf](http://www.swansea.ac.uk/media/Alternatives_to_child_detention.pdf)

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