

UK Border Agency Review into Ending the Detention of Children for Immigration Purposes

Response submitted by
Scottish Refugee Council

July 2010

Review into Ending the Detention of Children for Immigration Purposes

About the consultation

The review's aim is to consider how the detention of children for immigration purposes will be ended. It will make recommendations based on its findings.

About Scottish Refugee Council

Scottish Refugee Council is an independent charity dedicated to providing advice, information and assistance to asylum seekers and refugees in Scotland and to campaign on their behalf.

Introduction

Having long called for the end of child detention for immigration purposes, Scottish Refugee Council welcomes the UK Government's commitment to ending this inhumane practice. With regard to the review's terms of reference, we wholeheartedly endorse the principles set out by the Refugee Children's Consortium:

1. Detention of children must end now children and their families must be released immediately, as it is clear that detention harms children;
2. Children and their families should never be separated for immigration purposes;
3. Ending the detention of children is not dependent on establishing "alternatives to detention" projects, or new processes for families;
4. Discussion on policies and practice on returns are not required to end child detention; and
5. The provision of good quality legal advice is crucial during the whole asylum and immigration process.

Scottish Refugee Council is a member of both the Refugee Children's Consortium and also Immigration Legal Practitioners' Association and supports their respective submissions in response to the consultation. This submission seeks to provide a specific Scottish perspective to the review.

Our responses address each of the key components set out in the terms of reference and begins with describing the legislative architecture in Scotland. The submission goes on to look at the detention of families in Scotland and comment on the various relevant projects that the Agency, the Scottish Government and others have piloted or developed in Scotland. The submission concludes with a summary of the key points we wish the review panel to consider.

1. The Scottish Context

1.1 Legal framework and Scottish child protection systems relevant to detention

There has been tension between child-related Scots law and reserved immigration powers exercised by Westminster¹. As a result the Calman Commission Report² recommended that:

In dealing with the children of asylum seekers, the relevant UK authorities must recognise the statutory responsibilities of Scottish authorities for the well-being of children in Scotland.

This recommendation was consequently accepted by the UK Government in their response to the report.³

Scotland has devolved powers that are relevant to the incarceration of children for immigration purposes and has unique legal frameworks, structures, policies and procedures in relation to the welfare of children.

The current pivotal piece of legislation protecting all children in Scotland, including both asylum-seeking children in families and separated children, is the Children (Scotland) Act 1995⁴ in which references are made to the Children's Hearing System, Reporters and Children's Panel. The Children's Hearing system is entirely unique to Scotland emanating from the Kilbrandon Report findings⁵ where the welfare of the child is considered paramount. The Children's Panel is an independent specialist tribunal with independent Reporters and a panel of lay people. Independent safe guardians can also be consulted on the best interests of the child and their reports utilised for this purpose.

The Scottish Government's focus on multi-agency working and holistic practice is enshrined within 'Getting it Right for Every Child' (GIRFEC)⁶. This outlines that the child should remain at the centre of all decisions, systems and practice. In line with this, Independent Advocacy has become a central feature of this work. Recently, Scottish Refugee Council in partnership with Aberlour Childcare Trust, launched a pilot Guardianship Project which aims to provide independent advocacy to newly arrived

¹ See for example Scottish Refugee Council's response to the Commission on Scottish Devolution (Calman Commission) http://www.scottishrefugeecouncil.org.uk/pub/Scot_Devolution

² <http://www.commissiononscottishdevolution.org.uk/uploads/2009-06-12-csd-final-report-2009fbookmarked.pdf>

³ "The Government fully recognises the responsibilities of the authorities in Scotland for the well-being of children in Scotland and we are sensitive to this role when carrying out UK Border Agency functions in Scotland."

<http://www.scotlandoffice.gov.uk/scotlandoffice/files/Scotland's%20Future%20in%20the%20United%20Kingdom.pdf>

⁴ (http://www.opsi.gov.uk/acts/acts1995/ukpga_19950036_en_1)

⁵ <http://www.childrens-hearings.co.uk/pdf/krcy.pdf> The Kilbrandon Report was, and still remains, one of the most influential policy statements on how a society should deal with children in trouble". Though it is now over thirty years since it was first published, current debate about child care practices and policies in Scotland with a new Children (Scotland) Bill imminent, still resonates with principles and philosophies derived from the Kilbrandon Report itself. What is also remarkable is that the institutional framework for supporting children and families established on the basis of the key recommendations of the report has been largely unchanged since it was introduced in 1971.

⁶ <http://www.scotland.gov.uk/Topics/People/Young-People/childrenservices/girfec/programme-overview>

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separated children, many of whom are age disputed and therefore more vulnerable to detention. UKBA are participating on the project's Advisory Group.

In addition to child welfare, justice, policing, the provision of legal aid, health and education are all competences which are devolved to the Scottish Parliament and are all areas which interact with asylum-seeking families who are subject to removal.

We ask that any proposals developed by the review are compatible with these devolved competences and before any attempt to implement new policies and procedures discussions are held with the relevant institutions in Scotland. In addition, we welcome the fact that the review is considering the role of legal representation, but we would also ask the review to consider the importance of independent advocacy.

1.2 *The UNCRC in a Scottish context*

Refugee children must be treated first and foremost as children. Scottish Refugee Council recognises and welcomes the steps that the Scottish Government and previous Scottish Executive have taken to ensure this. We are pleased that Scottish administrations have endeavoured to utilise their devolved powers to support the principles of the United Nations Convention on the Rights of the Child (UNCRC) to refugee children:

Asylum seekers must be treated fairly and humanely, particularly when children are involved... The welfare and rights of all children in Scotland are paramount and must be treated as such. This is reflected in Scots law⁷; and

[The Scottish Parliament] affirms its support for the principles of the UN Convention on the Rights of the Child (UNCRC) which states that governments should protect children from all forms of physical or mental violence; recognizes that, while the Scottish Executive has no direct responsibility for the operation of the immigration and asylum system, it is

⁷ Scottish Government Cabinet Memo on Asylum, 3 August 2007: "Cabinet recently discussed the issue of asylum. The government identified the following issues for discussion with Westminster: Asylum seekers must be treated fairly and humanely, particularly when children are involved; the welfare and rights of all children in Scotland are paramount and must be treated as such. This is reflected in Scots law; the Scottish government is fundamentally opposed to dawn raids - to any kind of forcible removal of children - and to the detention of children at Dungavel; we will be pursuing these issues as a matter of urgency with Home Office Ministers; these methods are not used in many other countries - we want a commitment from them to actively explore and implement alternative options to enforcement activity and detention. In the interim, we want a clear commitment that the Home Office will take all reasonable steps to promote voluntary methods of return and to encourage all families to consider them. We expect that all other options will have been explored before any removals take place; we will also hold the Home Office to account for full implementation of all the measures in the March 2006 Agreement made with the previous administration; we expect the forthcoming "legacy review" to recognise that many families have been here a long time and are well integrated. Certainly, we would expect all families who arrived here prior to the March 2006, other than those involved in criminal or fraudulent activity, to be granted leave to remain; the Scottish government will explore the interaction between Scottish legislation that protects and supports children and UK immigration legislation. We will take all steps to protect and promote the best interests of all children in Scotland; and our discussions with the Home Office will also focus on reinstating the right to work for asylum seekers. It does not make sense that the ability to work is denied when many have skills and experience which are in short supply in Scotland. <http://www.scotland.gov.uk/News/News-Extras/asylum-issues>

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responsible for the welfare of children, for schools, and for working with the UK Government to report on compliance with the UNCRC⁸;

The Scottish Government has taken several key steps “... *to reflect the aims of the Convention in its policies and legislation wherever possible...*”⁹ and has considered how the UNCRC might be incorporated into Scottish law and policy. In ‘Do the Right Thing’¹⁰, a response to the UN Committee’s recommendations, the Scottish Government has formulated an Action Plan and commits itself to:

“Caring for all vulnerable children living in Scotland, regardless of their country of birth or the circumstances of their arrival, is fundamental to the creation of a strong, fair and inclusive national identity and improving of the life chances for children, young people and families at risk.” and furthermore reports:

*“that there was strong opposition to the detention of children at Dungavel and approval for our [The Scottish Government’s] moves to provide an alternative to detention.”*¹¹

Any new policies and procedures involving children must be fully consistent with the principles and articles of the UN Convention on the Rights of the Child.

1.3 **Detention in Scotland and the ramifications of ending detention in Dungavel**

It was in Dungavel, the only Scottish Immigration Removal Centre, that the Ay family - comprising mother and four children all under 15 - were detained from 2003-4. Their incarceration strengthened the Scottish based campaign to end what the former Scottish Commissioner for Children and Young People, Kathleen Marshall, described as the “*morally distressing*” practice of detaining children solely for immigration purposes. The case was in part responsible for large scale campaigning by civil society throughout 2004/5.

The campaign widely raised awareness of detention and removal issues and called for a complete end to early morning removals – “dawn raids” – and the detention of children across the UK.

In 2004 the former Immigration Minister Des Browne, announced that the detention of families in Dungavel would be limited to 72 hours. This was initially welcomed but concerns quickly grew that it simply meant that families were detained twice, in two different detention regimes and having a long distressing journey in between. Families struggled to organise belongings and consult legal representatives in just 72 hours, and suddenly found themselves in vans being taken to another Removal Centre.

Scottish Refugee Council alongside many others has always called for the end of detention across the UK and not just in Scotland as men, women and very young children in particular, would be sent on long, arduous, frightening journeys to England. We were

⁸ Scottish Executive amendment to Parliamentary debate on asylum-seeking children 22 September 2005

⁹ <http://www.scotland.gov.uk/Topics/People/Young-People/Childrens-Rights#a1>

¹⁰ <http://www.scotland.gov.uk/Publications/2009/08/27133115/0>

¹¹ <http://www.scotland.gov.uk/Publications/2009/08/27111754/21>

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appalled when exactly this scenario took place following the subsequent announcement that Dungavel Immigration Removal Centre would no longer accommodate children overnight when a woman and very young child were transported directly to Yarl's Wood. There are very obvious child welfare concerns when children are taken on often uncomfortably long journeys¹² only to find themselves immediately in a bewildering detention regime when the journey finally ends. The family is divorced from their legal representatives, support and social networks. This is therefore of enormous concern. The journey itself has long lasting impacts, as seen in the following case study:

A single mum and her 8-month old daughter were referred to the Medical Foundation for the Care of Victims of Torture by a health visitor in 2008. Following an assessment, the family have attended regular therapeutic sessions. Mum and daughter have been detained on several occasions. The last time, in 2008, they were detained for 13 days: 2 days in Dungavel and 9 days in Yarl's Wood. Her daughter was not even two years old.

Following the detention, the child could not bear the door to the therapy room being closed. She would start to cry and attempt to open the door. If she wasn't able to open it, she would scream and have trouble breathing. Mum also reported that her daughter had difficulties falling and staying asleep and would often wake up screaming. She was no longer able to sleep in her own bed and insisted on sleeping with mum. It is believed that being unable to tolerate closed doors stems from being restricted within the confines of the transport between Dungavel and Yarl's Wood. During the journey, her daughter wanted the guards to open the door to the cage and became inconsolable when they didn't do so.

Once in England families have to source, consult and create a new relationship with a new legal representative, entering a completely different jurisdiction. In addition, they must apply for public funding for their case, if this is possible, under a very different method.

Whilst the review takes place and alternative, more dignified and humane mechanisms are found to deal with families at the end of the asylum process, we call on the UK Government to immediately halt the detention of children and families.

1.4 *Scottish-based initiatives*

There have been several projects in Scotland which have sought to ensure the welfare of children in the removal and detention processes, namely the Lead Professional Pilot, Clan Alba and the Glasgow Family Returns project.

In autumn 2005, vast public, media and political concern in Scotland surrounded the processes used by the Home Office to forcibly remove failed asylum seekers – in particular the treatment of families with children. The family removal process, particularly the practice

¹² Detainees under Escort at Dungavel House IRC, report on an announced escort inspection, 4-8 December 2006, HM Chief Inspector of Prisons:
http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect_reports/escortinspections/Dungavel_escort_report1.pdf?view=Binary

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of early morning removals, (“dawn raids”) were alarming and deemed by many as inhumane and brutal. Many communities expressed concerns about children and families being uprooted from a society they had lived in for many years and integrated into while waiting for their claims to be resolved.

This led the then Scottish Executive to enter into discussions with the Home Office which subsequently led to the development of a package of measures, announced in March 2006.

Lead Professional Pilot Project

One aspect of this was a National Review of Family Removal Processes. Our response to this review is available on our website.¹³ Another element was the Lead Professional Pilot Project¹⁴ which was established in Glasgow. This involved Glasgow City Council social work staff meeting families who were subject to imminent removal. Over several meetings they undertook comprehensive assessments to ensure UKBA was aware of all of the family circumstances, particularly with regard to children’s health and well-being. The specific aims of the project were to:

- *Ensure that the Home Office had relevant information about the health, welfare and education of asylum seekers to inform its decisions about family removals in cases covered by the legacy review, including matters concerned with their timing and handling ; and*
- *Demonstrate that the needs and rights of children and families inform decisions about planned removals.*

There is to our knowledge no publically available evaluation¹⁵ however; we would urge the review panel to gather any learning derived from the project particularly in relation to the different experiences of family members facing removal, and the impact on local UKBA processes.

Clan Alba

The aim of the UKBA-led ‘Clan Alba’ project was to look at how families whose cases were being decided in the legacy review should be informed about the decision. Preparations for how this would be done involved a number of Scottish stakeholders. Key elements of the project were to engage stakeholders in the process and to ensure the welfare of children throughout. However, the speed with which family legacy cases in Scotland were dealt with resulted in the short life span of the project

Glasgow Family Removals Pilot Project

The Glasgow Family Removals Pilot Project, established in 2009 has attracted a great deal of interest; initial findings are yet to be disseminated (see further comments in 2.4).

¹³ http://www.scottishrefugeecouncil.org.uk/pub/Family_Removal

¹⁴ www.glasgow.gov.uk/.../channel_home_a.aspx?...Support%2FAsylumSeekers%2FLeadProfessionalTeam%2F

¹⁵ We understand the social work staff who were attached to the project moved to the Family Returns Pilot when it started.

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The pilots have achieved some success in that they have enhanced engagement with stakeholders in UKBA processes and have had a laudable focus on the welfare of children facing removal. We urge UKBA to consider these experiences in its review in relation to the better treatment of children, focussing on their best interests and needs.

However, these projects have all been fundamentally flawed in that they have not properly ensured the role of quality legal representation and only concentrated on the end of the process.

We call for a comprehensive review of the entire asylum system. Emphasis should be placed on the early stages of an asylum case rather than continued focus on returns and removal. UKBA should continue to work in partnership with UNCHR on the quality of case owners' decisions and implement fully all recommendations of previous Quality Initiative reports. The decision making process should draw from the Solihull Pilot Project with respect to early legal advice and case conference style casework management.

2. Responses to the various components of the review

2.1 UKBA's current approach to dealing with asylum applications from families, including the contact arrangements with those families and their access to legal representation

Newly arrived asylum-seeking families and those deemed especially vulnerable who arrive in Scotland¹⁶ may have their cases screened and processed in Scotland. Single people, who are not deemed vulnerable, are expected to undertake a long journey in order to claim asylum at the Asylum Screening Unit in Croydon. This proves particularly difficult for age disputed young people and family members that have been separated in transit.

It is clear that the New Asylum Model has created a swifter process. Scottish Refugee Council recognised the advantages to the envisaged consistent end-to-end contact management approach and regional decision making however, would agree with the findings of many reports, (see National Coalition paper 2005, Home Office Affairs Select Committee 2008, UNCHR report on quality in decision making 2008¹⁷) that there continues to be little confidence in the current asylum decision making process and over emphasis on targets and the end of the process - return and removal. Apart from the above cited reports, the indisputable fact that over 50% of families with children who are detained are consequently released back into the community, and the well publicised cases where compensation has been paid to detained asylum applicants sends a clear signal to asylum seeking families and professionals working within the asylum field that the current asylum system is a very flawed process.

¹⁶ In-country applicants

¹⁷ International Detention Coalition, 'Case Management as an alternative to immigration detention', <http://idcoalition.org/wp-content/uploads/2009/06/casemanagementinaustralia.pdf> and www.unhcr.org/what.../quality-initiative-and-integration.html and HC 970-i (QU 25) 16 September 2009

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We ask that the review panel fully considers the findings of the Solihull Pilot Project.¹⁸ Though not in any way an alternative to detention project, the pilot has key facets which would be vital in the development of any new model to deal with families. In the project legal practitioners had early intervention with asylum applicants and there was evidentially more consistent practice and front-loading of the asylum case which benefitted both UKBA, the legal practitioners and ultimately the applicants who felt they had more opportunity to relay their story, understand the process and had had a fairer hearing with more input from decision makers. In many cases case-conference style interventions were made which meant there was open dialogue and negotiation, for example discussion on evidence gathering and submission; less of an adversarial situation which may be intimidating for clients and less misinformation. Close working between all parties produced more effective case management and the applicant's level of understanding and indeed cooperation could be more closely monitored by all interested parties.

Through the higher degree of intervention at the beginning of the process applicants gain more understanding of the system, are more likely to have understood the decision making process and may be more likely to accept refusal and the resultant removal process. Of key importance is the fact that applicants feel that the system is fair, just, and transparent and that they have been heard. We call for the pilot to be rolled out further across the UK and into Scotland where many of the partnership working practices have already been successful tested in the previously mentioned pilots.

Through our direct advice work Scottish Refugee Council is concerned that specialist legal representation available to families in Scotland can be variable in terms of both quality and quantity. In particular, there is relatively few occasions where people claiming asylum receive any substantive legal representation prior to their substantive interview. Moreover, we can unfortunately cite a number of cases where poor legal practice has jeopardised the family's asylum claim and has left them vulnerable to detention.

There is no specific accreditation system for legal advisors wishing to work in the asylum and immigration field in Scotland. Any solicitor practicing in Scotland may undertake asylum and immigration related work and may not be as cognisant of the practice procedures and protocols e.g. voluntary return procedures.

In Scotland the availability and quality of specialist legal representation afforded to asylum seekers (single, family and separated child applicants) is currently under scrutiny and there are two ongoing research projects. The Scottish Legal Aid Board (SLAB), with the support of Scottish Refugee Council, is currently conducting research into the initial access to justice that asylum seekers currently have, with a specific focus on the timing of legal representatives' interventions and the impact that the speed of the process has on access to justice.

Scottish Refugee Council is conducting research into the availability and perceptions of quality of legal representation available to separated children arriving in Scotland. This was commissioned following concerns raised by young asylum-seeking people with regards to

¹⁸ <http://www.parliament.uk/deposits/depositedpapers/2009/DEP2009-1107.pdf>

their lack of knowledge about the asylum process and previous proposals to disperse unaccompanied asylum-seeking children to different local authorities around the UK, including Glasgow. Whilst the report is not complete, an initial finding that quickly emerged in consultation with a large cross section of young people was that they felt that the asylum system had simply ‘happened’ to them. Many stated that they wished to have an ‘asylum teacher’ to explain to them what exactly was happening to them. Responses included the insightful remarks such as *“I didn’t understand my papers”*; *“No one explained that I could be returned”*; *“I didn’t know what was happening, who was telling the truth”*; *“We just need to be believed”*; *“I had little to do with my asylum claim”*; *“My lawyers wrote everything... I said very little”*; *“I think I have a visa”*; *“I have **indefinite** leave to remain until I am 17 and a half”*. Furthermore, they had not felt that they had a fair hearing and knew very little about the possibility of being returned or options available to them, for example, the Voluntary Assisted Returns and Removals Programme (VARRP) if facing return.

Scottish Refugee Council is hopeful that the development and launch of its guardianship pilot project will resolve some of these issues for young people. We believe that independent advocacy and support is also an essential requirement to ensure that single adults and families are also supported and informed throughout the asylum process.

When the results of the two studies are complete, we ask that the UK Government work closely with the Scottish Government, the Scottish Legal Aid Board and other stakeholders to ensure that that people claiming asylum in Scotland can have early access to legal representation.

Age disputed children

Though the review focuses on families, we wish to take this opportunity to expose the particular difficulties young age disputed applicants face in Scotland and how they are often left especially vulnerable and ultimately more exposed to detention. Through there being no ASU in Scotland, young people who have been age disputed by UKBA or by social work, are reliant on charitable sources for overnight travel to Croydon in order to lodge their asylum claim. Their details are not officially recorded, and their journey is not monitored, leaving these vulnerable young people open to possible exploitation. This can result in young people going ‘missing’. Should they fail to claim asylum within what is considered by UKBA to be a ‘reasonable time’; this can subsequently impact on their claim. In Scotland, a thorough and urgent review is required of age assessment practice as there is an evident lack of expertise in this area. Furthermore, no ‘Scottish-specific’ training, guidance nor relevant case law is available from which to draw upon.

2.2 Current circumstances in which children are detained

Children may be detained with their families or because they are believed to be over eighteen. Two particularly high profile Scottish cases have exposed many of the flaws in the current system. One case involved a mother and her ten-year old daughter, who endured two periods of detention only to be released after a costly, stressful high court case. Due to their removal to English detention centres High Court cases were lodged initially in the Court of Session and subsequently in the Supreme Court. This resulted in

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considerable cost (for detention and processing of the family's case in court) to Scottish and English taxpayers.¹⁹

2.3 **Numbers of children detained in Scotland and problems with statistical data**

Between October 2008 and September 2009, 103 children were detained at Dungavel in Scotland.²⁰ Though improved recently in their layout and dissemination, the fact that the UKBA statistics have previously not been disaggregated has led to inconsistency and confusion. The policy of families remaining in Dungavel for just 72 hours appeared to cause some variation in detention statistics, as when detained for a second time or moved to England, this was reflected in statistics as just one continuous period of detention. The previous Inspector of Prisons, Dame Anne Owners, alluded to this when visiting Yarl's Wood in 2008. She concluded:

“Data collected on the total number of days children had been in detention did not include cumulative detention The monthly data recorded the average number of days [between 12 and 27] children were held [at Yarl's Wood- where several previously Scottish cases were held]”

The Scottish Government has collated statistics related to children in detention and Scottish Local Authorities, responsible for protecting families in detention in Scotland, have not consistently recorded the numbers of families, children and age disputed young people passing through Dungavel. When questioned on the numbers of detained children, the Scottish Government defer to centralised statistics collated in England which, due to the above reasons, may be heavily distorted. On 27 May 2010 Johann Lamont MSP asked the Scottish Government if it had sought information on how many children of asylum seekers had been detained in Dungavel IRC in each month of 2009 and received the reply that:

“The [UK Border Agency](#) does not provide statistical information on a month by month basis. However, it has published quarterly reports for 2009 which are available on the UKBA website.... The reports detail the numbers of people who entered detention for immigration purposes – these include a breakdown by age and place of detention. However, they do not specify if the children were those of asylum seeking families..... These figures are not subject to detailed checks. Some detainees may be recorded more than once, for example, the person has been detained on more than one separate occasion in the time period shown, such as a person who has left detention, but has subsequently been re-detained”²¹.

Whilst collation of specific data related to children in detention should not now be needed, as children should no longer be detained, we call for greater consistency and transparency in the collation and dissemination of statistical information, particularly in age disputed cases. This would reflect the true situation and emerging trends in the various devolved

¹⁹ Asylum detainees win record pay out. The Independent 13.2.09, www.independent.co.uk/news/uk/home-news/asylum-detainees-win-record-payout-1608207.html

²⁰ UKBA Quarterly Statistics Q3 2009 Detention Users Group

²¹ <http://www.theyworkforyou.com/spwrans/?id=2010-05-27.S3W-33598.h&s=numbers+of+children+in+dungavel#gS3W-33598.r0>

regions in order that practice and policy may be improved to provide further safeguarding of families and for cost effectiveness.

2.4 The UK Border Agency's initiatives on implementing alternatives to the detention of children, including the current Glasgow pilot

The Family Returns Pilot Project

Scottish Refugee Council welcomed the inception of the Alternatives to Detention Pilot Project known also as the Family Returns Project, and participates in the project's steering group. We are aware that concerns have been raised with regard to its experiential nature and lack of robustness²² and despite our ongoing concerns that it is flawed by focussing solely on the end of the process, believe it is a unique opportunity to gain first-hand and considerable insight and learning into the complex experiences, perceptions of return and treatment of families facing removal - particularly from a child's perspective. It is vital to consider these aspects to support development of future policy.

Unfortunately the commencement of the evaluation of the project was delayed. There is little publically available data on the project and the project remains in its infancy. There is however some elements we are able to comment on, having sat on the steering group of the project:

Evaluation

There are two evaluations taking place: an overall evaluation of the project and a separate piece of work being undertaken specifically with children in the project. This will hopefully lead to a much greater understanding of the needs of families at the end of the asylum and removal process through the eyes of parents and children. Equally as important, it will give greater insight into where the initial stages of the process are lacking and flawed. The pilot again focuses solely on the last stages of the asylum process - the end process - and it has already emerged on an anecdotal basis that families do not believe they can, or will be, removed because of a number of issues. These include failings in the initial stages of process, lack of consistent legal representation, lack of consistent information and also late introduction of organisations such as IOM. These findings are echoed in the findings of the Kent-based Millbank Project, carried out by Bail Immigration for Detainees and the Children's Society. This highlights failures on several levels: a key recurrent theme being the lack of relationship between case owners and families and a subsequent lack of trust families had in the asylum process.²³

Accommodation

In the project, families are moved from their initial dispersal accommodation – often the family homes which they have stayed in for a number of years - to the pilot project accommodation. The reasons given initially were that the families were given a clear indication that they were in a new, final stage of the process of moving on and away.

²² House of Commons Home Affairs Select Committee Detention of children in the Immigration System Session 2009/23010, 29 November 2009 Para 8

²³ Report on the Millbank Alternative to Detention Pilot at <http://www.biduk.org/library/A2D%20Report.pdf>

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Scottish Refugee Council had objected to this practice from the outset, believing that moving the family simply added unnecessary stress and strain on the family. The focus for the family shifting to what to take to the new accommodation, adapting to new accommodation and community and the actual move rather than concentrating on what was being said to them about entering the removal stage and process, gaining legal advice and mentally preparing for returning to their country of origin.

Interagency working

The interagency and partnership approach within the pilot is seen by Scottish Refugee Council to be beneficial. Qualified children and family specialist social workers work with families alongside UKBA and IOM. This is advantageous in terms of child protection, communication, learning and most importantly holistic working around the family and children. However, the lack of consistent legal support or any form of legal support being attached to the project is very concerning. Whilst it is preferable for people to be able to choose their legal representatives, legal representatives have been seen not to engage with the project and have, in anecdotal evidence, advised applicants not to enter the project. One solution might be that legal representatives need, in some way, to be attached to any project or model to ensure consistent access to high quality legal advice.

2.5 Models of good practice from other jurisdictions and relevant and current research

In addition to previous comments, Scottish Refugee Council is aware of Swedish and Australian models and whilst not knowledgeable on the intricacies or evaluation of these systems notes that the International coalition paper submitted in 2005:

“The Swedish case management role introduced in both community and detention contexts were premised on a rights and welfare-based framework. The caseworker is responsible for informing detainees of their legal rights and ensuring these rights are upheld, including access to legal counsel and the right to seek asylum.”²⁴

2.6 How the current voluntary return process may be improved to increase the take up from families who have no legal right to remain in the UK

Scottish Refugee Council would not be in a position to comment on the viability practice or procedure in terms of improving the take up from families on voluntary return. However in respect to any voluntary return process or model would call for:

- A thorough review of the entire asylum process;
- Front loading of the asylum process including: Early and greater access to high quality, specialist and accredited legal representation which is supported by publically-funded legal aid. The recent closure of Refugee Migrant Justice has brought to the fore many of the issues relating to the funding of highly complex asylum; an assessment of

²⁴ International Detention Coalition, ‘Case Management as an alternative to immigration detention’, <http://idcoalition.org/wp-content/uploads/2009/06/casemanagementinaustralia.pdf> and www.unhcr.org/what.../quality-initiative-and-integration.html and HC 970-i (QU 25) 16 September 2009

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vulnerability by UKBA at the beginning of the asylum claim and independent advocacy throughout the asylum process for particularly vulnerable individuals and families;²⁵

- Ensuring applicants involvement and monitoring their understanding of processes;
- Dual planning from first arrival; early introduction to IOM; and honesty and transparency in the asylum system; and
- A shift in focus on assessing applicants' protection needs rather than on return and removal.

2.7 How a new family removals model can be established which protects the welfare of children and ensures the return of those who have no right to be in the UK, outlining the key process changes rule or legislative changes that would be required to implement the new model

Scottish Refugee Council would wish to see the Section 55 duty UKBA placed itself under from November 2009²⁶ to be fully reviewed and understood internally. There appears to be misunderstanding and mistrust of the duty amongst UKBA staff. In tandem with this UKBA should consider the UNCRC at all times and superimpose the UNCRC into relevant facets of the immigration rules, procedures, policy and practices.

Scottish Refugee Council is not in a position to suggest a family removals model but would suggest that learning and key insights may be gained from the Solihull Pilot, Swedish and Australian system where applicants are reported to perceive that their legal rights are upheld, they have ready access to justice and that the potential for removal is introduced and discussed from outset. Crucially applicants must believe that removal is safe and thoroughly planned, that it is dignified and humane and that in family cases the child's needs remain pivotal to all decisions in all cases and are a primary concern in all UKBA decisions as laid out in the Every Child Matters, Change for Children November 2009 guidance.²⁷

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²⁵ See Justice at risk, <http://refugee-migrant-justice.org.uk/downloads/Justice%20at%20Risk.pdf>

²⁶ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/bci-act1/change-for-children.pdf?view=Binary>

²⁷ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/bci-act1/change-for-children.pdf?view=Binary>