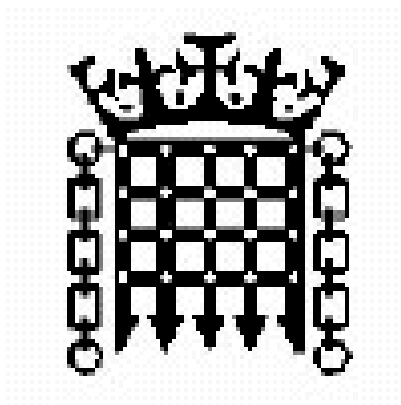




**No Place for
a Child Campaign**

www.noplaceforachild.org.uk

Alternatives to immigration detention of families and children



A discussion paper by John Bercow MP, Lord Dubs
and Evan Harris MP

Executive Summary

Supported by the No Place for a Child Coalition

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Executive summary

The UK Government is in contravention of a series of national and international legal guidelines and is failing to protect children who are being detained in the UK as part of the immigration process. Detention of children for immigration purposes was rare prior to the ministerial decision in 2001 to detain families for longer periods. Since then the number of children being detained with their families for the purposes of immigration control has grown dramatically, with around 2,000 children in families detained last year.¹

At no point has the Government been able to demonstrate that the ministerial decision was based on evidence that families were at high risk of absconding. In the experience of organisations working with families, they are very unlikely to abscond as they choose to remain in contact with services for their children, including health and education. These are some of the UK's most vulnerable children yet their health, education, and emotional needs cannot be met in detention centres and the negative impact of detention can be long lasting.

Since the increase in the use of detention for families, there has been extensive discussion about alternatives between non-governmental organisations (NGOs) and the Home Office.² Research reports published by Save the Children in 2005 and the United Nations High Commissioner for Refugees (UNHCR) in 2006 consider in detail possible alternatives and explore models employed by other states.³ This report takes stock of the current situation and makes recommendations to introduce viable, welfare-based alternatives to detention of children in the UK.

Growing consensus for change

There is a growing consensus that alternatives to detention of children must be found.

- More than 13,500 members of the public recently backed the *No Place for a Child* campaign by writing to the Home Secretary and lobbying their MPs and MSPs for the end to the detention of children for immigration purposes.
- 137 MPs from across the party spectrum signed an Early Day Motion calling for an end to the detention of children and 19 Members of the Scottish Parliament have signed a parliamentary motion.
- Her Majesty's Inspectorate of Prisons has issued several reports outlining serious concerns about the welfare of children in detention.⁴
- The UK Children's Commissioners have also spoken out against the policy and conditions of detention.
- The parliamentary Public Accounts Committee (PAC), Home Affairs Committee and the National Audit Office have all scrutinised the detention and removal of families as part of recent inquiries.
- International and national NGOs and community groups have all spoken out against the policy and conditions of detention.

This call for change comes at an opportune time, as the Government revises its approach to asylum support through the development of the New Asylum Model, elements of which fit well with the welfare alternative to detention recommended in this report.

The impact of detention on children

Detention in immigration removal centres is an intensely stressful and confusing environment for children and the detrimental effect on the development and emotional and physical well-being of children has been well documented in recent research.⁵ Children often suffer from depression and changes in behaviour. The mental health of children is also directly affected by the distress and depression of adult family members. In addition, research has found that children often refuse to eat, lose weight and cannot sleep in detention. Persistent respiratory conditions and skin complaints are also common problems.

Non-compliance with International and UK law

The detention of children for the purposes of immigration control runs contrary to international standards for the treatment of children set by the United Nations Convention on the Rights of the Child (UNCRC), UNHCR⁶ and the UN Rules on Juveniles Deprived of their Liberty (UN JDL Rules).⁷

The Government's highly controversial reservation to the UNCRC in relation to immigration means that children subject to immigration control are excluded from its protection. The UK Government has consistently refused to withdraw the reservation arguing that UK law and practice as regards children subject to immigration control complies with the convention in practice. Yet the use of immigration detention for children undermines and prevents children from accessing the support and treatment they are entitled to under UK law, including the Children Acts 1989 and 2004, and the government's flagship children's policy, 'Every Child Matters'. Instructions to immigration officers regarding the decision to detain a family include no requirement to consider the Children Act 1989 or the principles of the UNCRC before making decisions to detain. The Government states that detention is a last resort and that detained families are held for a few days at most, immediately prior to removal. However, research has found that detention is not always used as a measure of last resort and there are many cases of children detained for long periods of time, including when departure is not imminent because of outstanding appeals.⁸

The UK Government also maintains that family detention is compliant with the European Convention on Human Rights because families are free at any time to challenge their detention by way of judicial review, or to make an application for release on bail.⁹ However, many detainees have no, or very poor, legal representation and many experience great difficulty in accessing an independent review of their detention by way of a bail application.

The removals process

Immigration detention of families takes place mainly for the purpose of removal and the Immigration and Nationality Directorate (IND) has made clear that discussion of alternatives must deal with how families will be removed without the use of detention. The UK Government has invested in helping people return voluntarily under various 'assisted voluntary return' programmes. The support provided under these programmes could become a key component of a welfare alternative to detention and provides a real opportunity to increase the number of families who return voluntarily without resorting to the costly use of detention.

In their response to a recent review of family removal processes by the IND, organisations raised concerns about how families are removed including: families being taken from their homes early in the morning or children being taken from their classrooms during school hours, and being given no warning of removal; there being unnecessary and intimidating police presence; and absence of interpreting facilities.¹⁰ Finding appropriate alternatives to detention would ensure that such incidents did not take place and children and their families were involved, informed and treated with dignity at the end of the asylum process.

One of the key problems regarding the current removals process is the poor quality asylum decisions due to factors including: lack of access to high quality legal representation¹¹ and legislative changes designed to speed up asylum decisions. This results in families becoming 'failed asylum seekers' even where significant protection concerns are outstanding. It is inevitable that some families whose protection needs have not been met will seek to remain in the UK. Solutions to these problems are incorporated into the welfare alternative to detention including providing good quality independent legal advice and granting leave to remain to families who cannot be returned for safety or welfare reasons.

The alternatives

There is a growing international body of research available on alternatives to detention.¹² The alternative approaches can simply be classified as those that involve restrictive control measures such as reporting and electronic monitoring, which are already being used in the UK, and a welfare approach to immigration compliance, which has not yet been tried in the UK.

The underlying principle of the welfare approach, such as that used at the Asylum Seeker Project, Hotham Mission, Melbourne, is that families are more likely to cooperate with the asylum process when they can trust that the asylum system protects those who need it. Asylum-seekers have an allocated caseworker with the emphasis of their work being on meeting the protection and welfare needs of the client, ensuring that they fully understand and can contribute to shaping their situation. This includes:

- making sure their housing, support and welfare needs are fully met
- planning for return where relevant, including, family tracing, support to wind up affairs in the UK and planning for housing, employment, school places and rebuilding community links in the country of origin
- access to good quality independent legal advice to ensure that families with outstanding refugee or humanitarian protection needs are identified
- emotional support .

In return the asylum-seeker is asked to regularly attend meetings with their caseworker.

The relationship of trust built between the client and the caseworker is seen as central to the positive outcomes achieved by the welfare programme approach. An evaluation of one welfare programme found that of all the cases examined not one person absconded and all those that were refused asylum left the country.¹³

Conclusions and recommendations

There is overwhelming evidence to show that detaining children is harmful, unnecessary and expensive. The Government should change its policy of detaining children in families and introduce an alternative approach to working with families at the end of the process based on the following recommendations:

1. An independent caseworker model should be developed, as detailed in this report, drawing on lessons from the successful Hotham Mission project in Australia.
2. Families who cannot be returned for safety or welfare reasons should be given indefinite or temporary leave as appropriate.

In the meantime, while the policy of detaining children is maintained, the Government must implement a range of safeguards including: a strong presumption in favour of not detaining families with objective risk assessments and independent welfare assessments carried out prior to detention; and access to high quality legal advice and automatic independent judicial scrutiny of the decision to detain.

¹ Estimate contained in Crawley, H (2005) *No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards*, Save the Children, London

² See, for example, Save the Children's advocacy on the basis of No Place for a Child, or work done by the Interagency Partnership (Migrant Helpline, Refugee Action, Refugee Arrivals Project, Refugee Council, Scottish Refugee Council and Welsh Refugee Council) as part of the evaluation of the Section 9 pilot.

³ Crawley, H (2005) *No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards*, Save the Children, London; Ophelia Field (2006), *Alternatives to Detention of Asylum Seekers and Refugees*, UNHCR

⁴ http://inspectrates.homeoffice.gov.uk/hmiprisons/inspect_reports/irc-inspections.html/

⁵ See for example:

- Fazel, M and Silove, D (2006), *Detention of refugees*, British Medical Journal 332, pp. 251-52
- Amnesty International (2005), *Seeking asylum is not a crime: detention of people who have sought asylum*
- Cutler, S (2005), *Fit to be detained? Challenging the detention of asylum seekers and migrants with health needs*, Bail for Immigration Detainees, London
- Crawley, H (2005) *No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards*, Save the Children, London

⁶ UN High Commissioner for Refugees (1999) Guidelines on the Detention of Asylum Seekers, revised 26 February 1999

⁷ Adopted by the General Assembly Resolution 45/113 of 14 December 1990. The Rules set a general standard to which states should aspire, but do not have the status of a treaty.

⁸ For example, of the 32 case studies in *No Place for a Child*, the length of detention ranged from 7 to 268 days. Half of these families were detained for more than 28 days.

⁹ "it is open to a family at any time to challenge their continued detention through the courts or to seek their release on bail" letter from Lord Bassam to Lord Avebury, 5 July 2004

¹⁰ See e.g. Refugee Council's Response to the IND National Review of Family Removals Process, May 2006.

¹¹ See *Justice Denied: Asylum and Immigration Legal Aid – A System in Crisis*, May 2005 and *Into the Labyrinth: Legal advice for asylum seekers in London*, Greater London Authority, March 2005

¹² Field, Ophelia (2006), *Alternatives to Detention of Asylum Seekers and Refugees*, UNHCR; Crawley, H (February 2006), *Child First, Migrant Second: Ensuring Every Child Matters*, ILPA

¹³ *Welfare Issues and Immigration Outcomes of Asylum Seekers on Bridging Visa E*, Hotham Mission, ASP 2003

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