Ending the detention of children: developing an alternative approach to family returns

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1. Briefing paper aims

The Conservative-Liberal Democrat Government Coalition Agreement of 10th May 2010 included a commitment to "end the detention of children for immigration purposes". On 25th May it was announced that a review of existing practice in the UK and elsewhere would be undertaken in order to identify how this commitment would be achieved. The terms of reference for the review were published on the UK Border Agency (UKBA) website on 11th June1 and debated in the House of Commons on 17th June. This paper on alternatives to detention has been produced to inform the review process. It draws upon an existing body of research in the UK and internationally to develop an alternative approach to family returns which does not rely upon detention to secure the forced removal of families but rather increases the willingness and ability of those whose claims have been unsuccessful to return to their countries of origin. This approach takes into account the rights and needs of children and their parents, whilst recognising that those who are not entitled to remain in the UK will be required to leave the country at the end of the asylum process. The paper focuses on alternatives to detention for children in asylum seeking families for whom there may be particular barriers to return.

Before considering the most appropriate strategy for ending the detention of children, it is important to acknowledge the wider context within which the detention of families occurs. The welfare of children in the asylum and immigration system is a complex and difficult area of public policy which requires a wide range of organisations to work constructively together to develop fair and humane solutions for the long term. The review rightly recognises that the development of alternative models for the return of families will be a complex and challenging process, requiring significant time and investment. There is no ‘quick fix’. This is because the decision to detain families in order to effect their return reflects, at least in part, a range of other issues associated with the asylum system. Most notable among these are the quality and culture of decision making and the extent to which asylum applicants consider that their claims for protection have been fairly and properly considered. 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.

2. The reasons why children are detained

The UK’s policy of detaining families with children in order to effect their removal from is an area of long-standing concern for many organisations that take an interest in asylum issues as well as those working specifically on behalf of children. Evidence about the impact of detention on the health and well-being of children provides the context within which the search for alternatives has been framed. The impact of detention on

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1 Available at www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/26-end-child-detention/terms-of-reference.pdf?view=Binary
children’s health and well-being has been particularly well documented over recent years, 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 in children (Mares and Jureidini 2004; Steel et al. 2004; Lorek et al. 2009).

Although the negative impacts of detention are, to some extent at least, acknowledged by UKBA, the detention of families has been justified on the basis that this is a measure of last resort which is used for the shortest possible length of time. Three main explanations have been provided as to why it is necessary to detain children: that some families will abscond if they are not detained and it will therefore be impossible to effect removal; that families are only detained to effect their imminent removal from the UK; and that most families who are at the end of the process are not prepared to leave the UK voluntarily (Crawley and Lester 2005). Whilst the reasons for detention are not the focus of this paper, an understanding of the evidence in relation to these justifications for the detention of children is necessary to understand, and make sense of, the discussion of alternatives that follows.

First, while the risk of absconding is generally viewed as the rationale behind detention, there is no evidence that families with children systematically disappear. It is widely recognised, including by the Centre for Social Justice (2008), that the vast majority of asylum seekers currently detained do not pose a threat to security and studies suggest there is little risk of them absconding. Indeed there is evidence to suggest that families with children are among those who are least likely to disappear because they are frequently embedded into health and educational services (Field and Edwards 2006).

Secondly, there is evidence of a gap between policy and practice in relation to the detention of children. Although families should only be detained when their removal is imminent, in reality a decision to detain is often made when there are significant barriers to removal including outstanding legal issues, health problems, or a lack of travel documents. Recent (as yet unpublished) research by Bail for Immigration Detainees (BID) has found that there are often outstanding legal issues for families in detention or where travel documents for return could not be obtained. On average, families in their study could not be removed as a result of outstanding legal applications for 50% of the time they spent in detention and had no removal directions in place for 64% of this time. A third of families were detained for more than a month while they had no removal directions in place. In total 78 families were detained for periods when they could not be removed, at an estimated cost to the taxpayer of £637,560. Nearly two thirds (61%) of families were eventually released, their detention having served no purpose.

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2 BID undertook detailed research into the cases of 82 families with 143 children who were detained during 2009.
Thirdly, the fact that relatively few families take up the option of returning voluntarily to their countries of origin is interpreted as signaling a resistance on the part of families to leaving the UK. This, in turn, triggers a decision to forcibly remove the family, most commonly following a period of detention. In reality it appears that many asylum seekers, including families with children, have very limited information about the immigration or asylum process, and in some cases are unclear about their legal rights and options. In this context, families may not be confident the application for asylum has been properly considered nor will they be in a position to fully consider their options in relation to return. Recent research by BID for example has found that information about voluntary return schemes is provided on an *ad hoc* basis. Perhaps more importantly asylum seekers may not understand the significance of the information that they are being given at different points in the asylum process or the relevance to their own situation as this is not explained to them.

These factors are reflected in broader concerns articulated by a wide range of organisations in relation to asylum system in general and the approach to returns in particular. The Centre for Social Justice (2008) argues that over the last ten years the asylum system has suffered from a catastrophic breakdown of trust from all sides in the aftermath of a sharp rise and then fall in the numbers of people applying for asylum in the UK. The Government has legislated aggressively over this period in order to reduce the numbers entering the UK to claim asylum. This has made it increasingly difficult for asylum seekers to make an application as well as have their case properly heard. Many asylum seekers have lost trust in the system’s ability to deliver a fair hearing, mainly because of inadequate legal support, a lack of accurate translation and poor quality decision-making. This evidence suggests that until families have confidence in the Home Office’s process for determining asylum claims, it is unlikely that large numbers will respect the final decision on removal and return to their countries of origin.

This is reflected in the current, very low, rates of return. As is noted by the Centre for Social Justice (2008), the proportion of all ‘return migrants’ (including refused asylum seekers) who return voluntarily from the UK is very small (6%) compared to other European countries. Both the Centre for Social Justice (2008) and Independent Asylum Commission (2008) suggest that this is symptomatic of a lack of meaningful engagement by the Home Office throughout the process and a failure to actively address the fears that many asylum seekers have about returning home. The current approach is one of confrontation which forces the two parties further apart and decreases the likelihood of any agreement or consensus on how to resolve issues. This creates a ‘limbo’ situation where thousands of asylum seekers remain in the UK for what can often be several years. The policy of making refused asylum seekers destitute through the removal of support is cited by the Centre for Social Justice (2008) as illustrative of this flawed approach.
3. Alternatives to detention

This section outlines the principal alternatives to detention and sets out the benefits and disadvantages of each alternative based on the available evidence from the UK and other countries. In each case the proposed alternative is considered in relation to its potential contribution to the Coalition Government’s stated objective of replacing the current system with something that ensures that families with no right to remain in the UK are able to return in a more dignified manner.

There are a number of strategies for facilitating the return of families without resorting to detention. These alternatives are reasonably well-rehearsed. A comparative study commissioned by UNHCR (Field and Edwards 2006) recognises as best practice legislation which establishes a sliding scale of measures from least to most restrictive, allowing for an analysis of proportionality and necessity for every measure. Describing the system in several Nordic States, Switzerland, New Zealand and Lithuania, the study concludes that where detention is one extreme end of a range of measures with unconditional release at another, states are more likely to ensure in practice the application of alternatives. In 2006, a coalition of NGOs published a lengthy report on alternatives to detention (Chmelikova (ed). 2006). The Jesuit Refugee Service subsequently published a paper on alternatives to detention which examines the legal basis for administrative detention in the EU, the legal basis for alternatives to detention and the different forms of alternatives that are used throughout Europe and in non-European countries (Jesuit Refugee Service 2008). Most recently the International Detention Coalition (IDC) published a paper on Australia’s experiences with alternatives to detention, in particular, the ‘case work and contact management’ model which is discussed subsequently (IDC 2009).

3.1 Electronic monitoring

Electronic monitoring covers a range of different forms of surveillance, which vary in intensity and the degree to which they limit an individual’s freedom of movement, liberty or privacy. For example, Global Positioning System (GPS) ‘electronic tracking’ allows continuous tracking of an individual. ‘Electronic tagging’ works only within a certain range, and requires the individual to wear a bracelet which emits a signal to a receiver at a fixed point, usually the individual’s home address. The individual could be required to be at home at a particular time or times of the week. ‘Voice verification’ or ‘voice tracking’ enables reporting and uses biometric voice recognition technology over a telephone, from a fixed landline and from a fixed address, at a notified time.

The use of electronic monitoring in its various forms to maintain better contact with those subject to immigration control has been the subject of debate in the UK for a number of years. Increased monitoring of asylum seekers was announced in a White Paper in 2002 and the introduction of Asylum Registration Cards, in conjunction with increasing use of reporting requirements, was consistent with this objective. Section 36
of the Asylum and Immigration (Treatment of Claimants, etc) Act (2004) created provision for the electronic monitoring of those over the age of 18 who are subject to immigration control. This includes both the use of voice recognition technology and other forms of electronic monitoring (tagging and tracking) as an alternative to detention “for those at the lower end of the risk spectrum, or for those who in the absence of suitable sureties would otherwise have remained in detention.”

A number of countries have used various forms of electronic monitoring in order to supervise asylum seekers who would otherwise be detained or who have been released from detention. In the United States for example two programmes are currently in use: the Electronic Monitoring Program (EMP) and the Intense Supervision Appearance Program (ISAP). The EMP was initially created and implemented with the goal of providing a cost effective alternative to detention and was piloted in seven field offices but has since expanded nationwide. The EMP currently utilizes telephonic reporting with voice verification, radio frequency with ankle bracelets and global position satellite. The ISAP is designed to supervise those released from detention by ensuring compliance with conditions of release, immigration hearings and immigration judge orders. The ISAP employs case specialists to closely supervise participating aliens utilizing a variety of tools such as curfews, electronic monitoring devices and community collaborations that support the participant.

Although new technologies offer a potentially appealing alternative to detention, the evidence from existing schemes such as the EMP and ISAP noted above suggests that increased electronic monitoring is unlikely to contribute significantly to improved procedures for returning families to countries of origin where their applications for asylum are unsuccessful. This is because electronic monitoring does nothing more than enable the authorities to know the whereabouts of the individuals concerned yet it is widely accepted that absconding is not the main problem in this context (Centre for Social Justice 2008). In other words electronic monitoring does not address the perceived need to detain families in order to facilitate their removal at the end of the asylum process. Moreover as with all electronic monitoring techniques – including those used in the criminal justice system – tagging is reliant upon the cooperation and compliance of the person who is being monitored. Without this cooperation the tag can simply be removed. This would appear to make the system superfluous: if asylum-seekers must co-operate with electronic monitoring in order for it to function, it is not clear why the system is needed at all since a willingness to comply with immigration controls has already been demonstrated (Crawley and Lester 2005).

All the available evidence suggests that there are better, more effective and less expensive alternatives to detention than electronic tagging and tracking. Indeed it is possible that the extension of electronic monitoring schemes would, in fact, result in the increased detention of, for example, if there are problems with the technology itself (a commonly occurring issue in relation to some voice recognition and tracking systems) or
if the family fails to comply with monitoring requirements (for example, where a curfew
or residence requirement is inadvertently or unavoidably broken).

3.2 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. Reporting requirements are generally
imposed when individuals are granted Temporary Admission or after release on bail.
The purpose of reporting is to ensure that there is regular contact between those
subject to immigration control and the authorities. Because reporting is the simplest and
least intrusive of all alternatives to detention it is used in a significant number of
countries. In France for example, there is no official reporting system, but in effect this is
the main control mechanism. Asylum seekers and others subject to immigration control
need to renew their ‘authorisation de séjour’ papers every three months, and also need
to collect financial assistance every month, which requires a fixed address. In addition,
those who fall under Schengen agreements need to renew their Schengen stamp once
a fortnight (ECRE 1997). This means applicants must effectively report to the authorities
between once every ten days to once every three weeks or so.

The use of reporting as a mechanism for maintaining contact is not without its problems.
Current reporting mechanisms in the UK are not considered user-friendly particularly for
families with children. Factors that can affect their effectiveness are primarily related to
the frequency of required reporting and the distance from where the person lives.
Requirements may be as demanding as having to report several times a week or even
daily, at a particular time of day, perhaps some distance from home. This increases the
risk that applicants will miss their slot and be deemed to have failed to report (Crawley
and Lester 2005). The frequency of reporting requirements also needs to be considered
in conjunction with the fact that asylum seekers have very limited income, and those
deemed to have reached the end of the process possibly have no recourse to funds at
all.

There are more sophisticated form of reporting, often described as ‘incentivised
compliance’ which negate some of these difficulties (Crawley and Lester 2005). One of
the most widely cited examples is the Appearance Assistance Program (AAP) that was
piloted in the United States by the Vera Institute on behalf of the immigration authorities.
The AAP represents an attempt to move away from rather crude one-way contact
management system to create a two-way system that provides information to asylum
seekers whilst monitoring their whereabouts. This programme, which operated in New
York for three years until 2000, could be categorised as a reporting system but has
elements of the case work and contact management model (see section 3.4) that set it
aside from crude reporting schemes. These elements include one-to-one caseworker
relationships with an emphasis on mutual trust, assistance with accessing services –
particularly legal advice and representation – and the provision of general and specific
information on the asylum process and the progress of participants’ cases. When the AAP ended in March 2000 it had supervised more than 500 individuals with an appearance rate of 93% and average costs of supervision which were 55% lower than those associated with detention (Crawley and Lester 2005).

In order to assess whether incentivised compliance programmes similar to the AAP could be an alternative to the detention of children in the UK context, it is important to understand the factors behind the programme’s success. The project’s evaluation shows that information provided by the AAP contributed to participants’ evolving awareness of laws, options, and consequences of non-compliance. In addition, the sense of belonging to a programme served to ease feelings of alienation and motivated them to comply. The AAP evaluation concluded that the more non-citizens feel they are a visible, legitimate part of their adopted country and have a sense of belonging the more they are willing and motivated to respond with co-operation and compliance. This feeling of legitimacy stems from feeling ‘within the system’ and documented, as opposed to invisible or underground. The provision of information and support to asylum seekers can make the asylum process more credible and sustainable and can enable families to make more informed choices about their future, including returning to their countries of origin where this is appropriate. This approach is holistic and works precisely because it is in place from the beginning of the process and not simply at the end when relationships of trust have not been developed or have broken down. What is not clear from this pilot however is whether such a reporting scheme can contribute not only to contact management but to increased confidence in the decision making process and a willingness to return if the final decision is a negative one.

Given what is known about the use of reporting schemes such as the AAP, one possible alternative available to the Government would be to develop the reporting system which already exists in the UK context into a more meaningful, positive and ideally two-way process. This would enable the reporting process to be directly linked with casework contact and would ensure that families could get information about their case, explanation of delays and that they would have the opportunity to raise any concerns or difficulties they experience. If such an approach were to be pursued reporting mechanisms would need to be made more user-friendly and flexible to the needs of families with children. In addition the Home Office would need to cover the cost of all reporting requirements.

3.3 Supervised accommodation

One mechanism for improving contact between asylum seekers and the authorities is to accommodate asylum seekers while their application for asylum is being determined and to ensure that meaningful contact and information, including legal advice and representation, is available in situ. Maintaining contact through supervised accommodation can take different forms. These range from large accommodation
centres in isolated areas that do not differ significantly from reception or removal
centres, to ‘clusters’ of private flats, through to a simple and verifiable 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 nature of the
centres and the restrictions placed on freedom of movement vary greatly. In some
countries, movement is restricted in practice as asylum seekers have to report to or stay
in their accommodation centers at certain times. In other countries asylum seekers are
not allowed to choose their place of residence, but may do so under certain conditions
or at a certain stage of the asylum procedure. In some countries, asylum seekers are
free to leave their place of residence without any authorisation or by submitting a formal
request which is routinely accepted. Others have a more stringent system of limited
days of absence, reporting obligations or virtually no possibility of leaving apart from in
exceptional circumstances.

The extent to which supervised accommodation is an appropriate and less damaging
alternative to the detention of children is dependent upon the form that this
accommodation takes and the restrictions that it entails. In Germany, Switzerland and
the Netherlands, residence in a collective centre is compulsory for part or all of the
asylum procedure. NGOs, social workers and medical practitioners have reported
problems with compulsory collective accommodation, including depression and a loss of
independence. The Swedish model by contrast involves a period of initial
accommodation in the Carlslun reception centre where the health and support needs of
families are assessed followed by release to a regional refugee centre made up of
groups of flats in small communities close to the central office reception. A caseworker
is assigned to each asylum seeker on arrival. This caseworker explains the refugee
determination process and an asylum seeker’s rights during the time they are awaiting a
decision. The caseworker also ensures that asylum applications are processed correctly
and that legal representation and interpreters are provided if necessary. Residents are
required to visit the reception office caseworkers at least once a month, to receive their
allowance, news on their application, and a monthly need and risk assessment. Referrals to counselling and medical care are also provided by caseworkers. During
their time at the reception centre, all residents are free to move around with minimal
supervision. Living in the group flats is not a requirement, though registering and staying
in touch with the reception office is. This level of combined monitoring and support has
proved beneficial to both asylum seekers and the authorities. Applicants have been
more willing to comply with asylum decisions, even when these end with a deportation
order (ECRE 1997).

A model of supervised accommodation has also been introduced in Belgium although
this takes a rather different form to that seen in Sweden and engages with asylum
seekers at the end rather than the beginning of the asylum process. In October 2008
the Belgian Government announced that families with children pending removal would no longer be detained in closed detention centres and instead has piloted an alternative arrangement in which families live independently (in ‘maisons de retour’) and receive support from a ‘coach’. There are parallels between this initiative and the ‘Family Returns Project’ and ‘Alternatives to Detention’ pilot established in Glasgow and Millbank (Kent) respectively. To date the pilot projects developed in the UK do not appear to have been effective in delivering their stated objectives of promoting voluntary return and preventing children from going into detention. In common with the supervised accommodation established in the Belgian context, such initiatives are targeted specifically at those who are already considered by UKBA to have reached the end of the asylum process. As such there are arguably limited opportunities for building trust and confidence in the asylum process and for reassuring families that their applications for asylum have been properly considered. If only those who are considered as being at risk of absconding are placed in supervised accommodation centres then such centres do not provide an alternative to detention but rather increase restrictions for people who would not otherwise be detained. The impacts on children who are held there will therefore not be significantly different from those associated with the detention process. Moreover, the ‘added value’ of supervised accommodation lies in the caseworker approach. This can arguably be provided at lower costs and with less disruption to families in their existing accommodation without the need for new or alternative accommodation to be provided.

3.4 Case support and contact management

It has been suggested throughout this paper that concerns about the quality of asylum decision making can undermine the return of families for whom it is determined there are no protection needs. A lack of access to high quality legal representation combined with legislative changes designed to speed up asylum decisions have resulted in some families becoming ‘failed asylum seekers’ even where significant protection concerns are outstanding. 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. Families who consider that their protection needs have not been met will seek to remain in the UK. The fact that a significant proportion of Removal Directions often cannot be enforced even when children are detained because there are legal issues which have not been properly considered is a reflection of this situation. 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.

Various models of case support and contact management have been developed around the world, primarily in Sweden and Australia and most recently Belgium (see above) in an effort to improve contact between asylum seekers and decision makers and to
increase confidence in the decision making process. The models introduced in these countries reflect an emerging view within the literature on alternatives to detention that a ‘case management’ approach, tailored to the level of ‘risk’ that each individual presents, offers a viable way of achieving an effective and efficient immigration system whilst avoiding widespread immigration detention and other problems associated with more restrictive measures. In the cases of Sweden and Australia, applying case management principles has been part of wider efforts to reform the processes and cultures within their immigration systems and introduce an alternative way of handling cases from the outset, rather than simply an alternative way of enforcing a refusal decision. 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. By reducing the stress placed on asylum seekers in this way, it is possible to initiate a dialogue which encourages them to consider all of the possible outcomes as they pass through the process. Information and support on assisted return is provided as part of this process.

One widely cited example of the case support and contact management approach is the Hotham Mission in Melbourne, which has shown how community or church-based agencies are able to provide comprehensive support to asylum-seekers while also optimising compliance (Justice for Asylum Seekers Alliance 2002). Mission workers have taken on caseworker roles in empowering clients to make the few decisions they can and advocating for them between service providers and the Australian Department of Immigration and Multicultural Affairs (ADIMA). Their experience indicates that the provision of adequate legal representation to asylum-seekers, combined with an awareness of the immigration process, means they are more likely to feel they have had a fair hearing. In addition, the provision of further support, such as following-up on return or organising for the Red Cross to meet them, greatly assists an asylum-seeker whose application is refused to make the difficult journey home, and allows for third country options to be explored on a final negative decision. More recently the Australian Reception Transition and Processing (RTP) System which has been established as an alternative to mandatory detention includes the creation of a case worker system in which an independent service provider (for example, the Australian Red Cross) provides information, referral and welfare support to services to people claiming asylum, from the time of their arrival to the point of repatriation or settlement in the community. The main starting point for the RTP System is that families are not detained but instead are allowed to live in the community and are appointed a case manager, who is a contracted service provider responsible for the asylum seekers’ wellbeing in regard to management of relations with DIMIA the Australian immigration authority), security providers, compliance and various support services. The case manager will assign case workers to work with all asylum seekers. A suggested ratio is (1:30). The case workers
will promptly handle inquiries and complaints and provide advice and information to the asylum seekers. Every asylum seeker has a case worker, whose role it is to oversee the asylum seeker from arrival to outcome, settlement or return, inform the asylum seeker of their rights and of the processes for determining asylum applications, undertake a needs assessment, make appropriate referrals and prepare the applicant for all possible immigration decisions.

There are parallels between the RTP system and the ‘Voluntary Sector Key Worker Pilot’ which has been established in Liverpool. The most important aspect of this approach is that the case worker plays a pivotal role in bridging the gap in individual case management between the needs of the immigration authorities and the need to respect the rights and best interests of asylum seekers, including families with children. From the outset, the provision of information by the case worker to the asylum seeker about the claim process, and an individual’s progress and likely outcomes, will allow individuals a degree of control in making decisions about their future and over their lives. A case work and contact management model would also open up the possibility of introducing an element of independent scrutiny at the end of the asylum process to ensure that there are no barriers to remove and that all aspects of the family’s situation have been fully and properly taken into account. This is likely to deliver a more effective and humane process for family returns.

4. Understanding and assisting the process of return

In the UK, as elsewhere, there has been an increasing emphasis over the past decade on providing financial support and, in some case, reintegration assistance for those who decide to return to their countries of origin on a ‘voluntary’ basis. The objective of these programmes is to support the individual or family during return, and in some cases subsequently, in order that this return is durable. The Government recognises that voluntary return is the more sustainable and preferable approach to forced returns but is concerned that, to date, the uptake of this assistance has been low, particularly among families with children. It has been suggested by, among others, the National Audit Office (NAO 2005) that more should be done by the UK Border Agency to encourage voluntary returns by improving the information provided to asylum seekers about the support available to those who return through its staff, literature and website. It has been suggested that enforcement staff should be encouraged to promote the voluntary return option amongst those due for removal and that more extensive and effective contacts should be established with community groups outside London and the South East who may be in contact with refused asylum seekers. The Immigration Minister similarly reflected on the need for improved marketing of existing return packages in the recent parliamentary debate on alternatives to detention.

There is some evidence from other countries that improved marketing of assisted return options to asylum seekers at the end of the process can increase rates of return. The
Greater Toronto Enforcement Centre started the Failed Refugee Project in January 2000 to speed the removal of unsuccessful refugee claimants from Canada. Shortly after the Immigration and Refugee Board rejects a claim, immigration officers meet with claimants who are able to leave the country and encourage them to do so. The number of refused asylum seekers returning through this programme totalled 725 for 2000-01 and 1,354 for 2001-02. About 60% of the claimants returned after the personal interview. A timely follow-up investigation resulted in a further 20% leaving. An audit found that 80% of failed applicants were persuaded to return voluntarily (Office of the Auditor General of Canada 2003).

It is important to note however that there are particular issues relating to both families and the UK asylum system which may significantly undermine the success of efforts to persuade families that they should return. These issues cannot be resolved simply through more effective marketing of assisted voluntary return schemes. As was noted earlier in this paper, many asylum seekers have lost trust in the system’s ability to deliver a fair decision, mainly because of inadequate legal support during the asylum process and concerns about the quality of decision making which is considered by many refugees and asylum seekers as being arbitrary and inconsistent. Asylum seekers who have reached the end of the legal process may have concerns that issues relating to their situation and the safety of their return have not been fully addressed. Moreover removing access to legal advice and forcing individuals and families into destitution by removing support at the end of the process in order to encourage them to return ‘voluntarily’ to their countries of origin seems likely to have undermined the integrity of the assisted voluntary returns programme. According to the Centre for Social Justice (2008) it may even have made forcible removals more difficult. There is a growing body of evidence that more families return to their country of origin of their own accord when they can trust that the system protects those who need protection and where more support and information is available to families planning return. The experience of the Swedish model, the Canadian Failed Refugee Project and, particularly, the Hotham Mission in Australia demonstrates that supporting families to make sure their protection needs are met and helping them to plan for return works. These models could be applied in the UK.

These concerns about the voluntariness or otherwise of options for return at the end of the asylum process reinforce the overall theme of this paper that information provision needs to be built into the alternatives that are made available to asylum seekers from the very beginning of the application and throughout the determination process. The more that this information can be provided in partnership and through a wide range of different sources – including individualised caseworkers and legal representatives – the more likely will be the prospects of success in identifying and establishing genuine alternatives to the detention of children that focus less on control and more on facilitating and increasing contact and co-operation.
In addition there is a strong argument for removing the word ‘voluntary’ when talking about the assistance provided to asylum seekers who decide to return to their countries of origin. It is clear that many families do not want to go home but may eventually decide to do so in the face of limited options should they continue living in the UK. The use of the word ‘voluntary’ in this context implies a degree of choice and autonomy that many asylum seekers simply do not consider is available to them. What is important is not whether or not asylum seekers have decided voluntarily to return home but whether, in the context of the choices available to them, they are able to do so safely whilst exercising some control, albeit limited, on the circumstances and timing of their departure. The return to the home country could be timed, for example, to coincide with children’s schooling, to allow for goodbyes to be said, for arrangements to be made for the return of possessions, and for housing and schooling possibilities to be identified.

This is a significantly different approach because it recognises that return migration is not always a process of simply ‘going home’ and that asylum seekers need to be reassured not only of their safety upon return but of the possibilities of re-embedding themselves in the home country. Ruben et al (2009) explore the return migration experiences of 178 refused asylum seekers and migrants who did not obtain residence permits to six different countries: Afghanistan, Armenia, Bosnia and Herzegovina, Sierra Leone, Togo and Vietnam. The authors argue that returnees face severe obstacles particularly when the decision to go home is not fully voluntary and suggest that return can only become sustainable when returnees are provided with possibilities to become re-embedded in terms of economic, social network, and psychosocial dimensions. There are several key factors that influence prospects for embeddedness, such as individual and family characteristics, position in the migration cycle, and the role of pre- and post-return assistance. It was also found that the possibilities for successful return were highly dependent on the living circumstances provided in the host country. Returnees who were enabled to engage in work, had access to independent housing and freedom to develop social contacts proved to be better able to exercise agency and maintain self-esteem.

The circumstances of return and the type and timing of assistance provided to refused asylum seekers can therefore substantially contribute to both their willingness to return and their ability to become re-embedded in the country of origin. To date most efforts to promote return have focused almost exclusively on the economic aspects of return, with varying degrees of success. Ruben et al (2009) suggest that current return assistance programmes only partly address the challenges of building sustainable livelihoods, leaving aside other – equally important – dimensions of embeddedness related to social networks, creating a feeling belonging, and reinforcing people’s identities. Psychosocial assistance for reinforcing identity and feeling of safety is virtually absent. They argue that a more integrated approach is required which addresses both material and human needs and focuses on their re-incorporation into social as well as economic structures. Local voluntary organizations funded by European NGOs have a clear advantage.
compared to the highly static, fragmented, and host government – driven programmes of specialized return migration institutions, given their flexibility in tailor-made support options and their close relationships with the migrant communities. Return assistance cannot consist of merely incidental support after return, but needs to monitor the integral demands of returnees over a considerable time period. It should therefore be well-planned, demand-driven, and consistent in order to create prospects for embeddedness and sustainable return. Such an approach to return is only possible in the context of the broader changes to the asylum system which were outlined in the previous section.

5. Enforced removal options

This paper has presented a number of alternatives to detention and an approach to assisted return which would significantly reduce the need for enforcement action to remove families who have no right to remain in the UK. There will nonetheless be a number of families, albeit a much reduced number, who will not have any rights to remain in the UK and who will simply refuse or fail to take up the assistance made available to them to return independently. This raises important questions about what might be done to enforce removal in these cases without resorting to detention. The options are limited but include separating parents and children and detaining one or more parents, same-day removals and self check-in.

The separation of children from their parents is a difficult and controversial issue and one that is never far beneath the surface in discussions about the detention of children in the immigration context. As a matter of policy, UKBA aims to keep the family as a single unit except in those cases where it is appropriate to separate a child from his or her parents if there is evidence that separation is in the best interests of the child (for example, if there is evidence that the child is suffering neglect or abuse at the hands of the parent(s) and needs to be taken into care in order to be protected).

A number of countries, most notably Sweden, sometimes separate children from one of their parents where a family’s identity cannot be ascertained or there is a question of threat to national security. There is access to regular visitation and telephone contact and these cases are given first priority so as to ensure that the family is reunited as quickly as possible (Mitchell 2001). In cases where there is only one parent and a child, and a decision is taken to detain the parent, the child will normally be released into a group home for unaccompanied children with regular access to the parent (Field and Edwards 2006). This approach can only be understood in the context of a very different system of support for asylum seekers which is associated with rates of detention which are significant lower than in the UK and which are subject to statutory time limits (maximum three days). It also assumes that children are living in two-parent families and that either parent in capable of providing appropriate care should the other be detained. In reality this is often not the case.
Although evidence on the impact on separating children from parents in the immigration context is limited, there is broad consensus that such an approach is excessively penalising and traumatic for children and parents. It represents a violation of Article 8 (‘right to family life’) rights and, as such could, and most likely, would, be challenged in the courts. In addition this policy would not achieve the Government’s stated aims of replacing the current system with an approach which ensures that families with no right to be in the UK are able to return in a more dignified manner. Indeed it seems likely that any attempt to separate parents from children would undermine the process of return by generating expensive and potentially long winded legal disputes over the best interests of children, particularly in devolved areas of the UK which are developing more explicit approaches for embedding the UN Convention on the Rights of the Child into domestic legislation, policy and practice.

Finally, it is important to acknowledge that the separation of children from parents would add significantly to the costs of the asylum system and create additional difficulties for local authorities who are already struggle to support separated asylum seeking children. The costs of separating children from parents and placing them in foster care are likely to be considerable particularly if, as seems likely given the shortage of local authority placements, these placements are provided by Independent Fostering Agencies (IFA). Local Authority minimum weekly allowance rates for foster care payments are between £125.09 (age 0-4) and £177.38 (age 11-15) outside London and even higher in the capital. In addition to the fostering allowance other payments (£50 - £200 per child) may be made to foster carers, depending on their experience and qualifications. On average, IFAs pay a basic weekly fostering allowance and fee of £400 per week for all ages of children but the fee charged to the client for the placement is usually double this amount (i.e. around £800 per week). Some IFAs also pay foster carer enhanced payments of up to double their standard rate, dependent on the needs of the child. Separating a child from his or her parent or parents is therefore likely to cost a minimum of £2,500 per month and potentially considerably more than this. These costs would need to be multiplied for additional children and/or longer placements. The financial implications of separating parents from children in order to effect their removal are therefore considerable. This is not to mention the emotional and psychological costs of separation or the difficulties that would remain in enforcing removal in these circumstances.

A second potential option for removing families without the use of detention would be through the re-introduction of same-day removals. There are significant practical barriers to same-day removals given the complexity and circumstances of family cases. Just as importantly Ministers made a public commitment following the tragic death of Joy Gardner, that other than in the exceptional circumstances, people will not be removed on the same day. This is reflected in UKBA’s family removals policy. To replace the detention of children with the re-introduction of a policy associated with this tragedy and to target families for same-day removals would be widely regarded as
politically unacceptable and would not meet the Coalition Government’s commitment to a humane and dignified approach to returns for families with children.

Where a family’s application has been fully and fairly considered and all aspects of a family’s circumstances considered by a legal representative at the end of the process, the family should be asked to comply with Removal Directions through self check-in. Self check-in allows for Removal Directions to be set, and for a family to make their own way independently to the airport. Although self check-in is in use, there is no evidence available on the extent to which self-check-in functions effectively or on factors that make self-check in more or less likely to take place. It seems unlikely that self check-in will be effective where a family is simply given a date to arrive at the airport. Rather families should be supported to return on an agreed date with the appropriate assistance and support. The time made available for families to self check-in once Removal Directions are set should not be arbitrary but rather should be based on the needs and best interests of children. A period of four weeks would seem to be the minimum amount of time needed by families to put their affairs in order. The date of the check-in should also be sensitive to the particularities of a family’s circumstances. It would be inappropriate, for example, to remove children during an examination period or on their birthday in order to meet a pre-designated date or timeframe.

Only when the family has failed to comply with self check-in should enforcement action be taken. Where detention is considered necessary to effect removal in these circumstances there should be a statutory time limit on detention of no more than three days. If all aspects of the case have been fully considered prior to removal this is the maximum period required to organise flights and travel documents. If children are detained under any other circumstances or for longer periods then the Coalition Government will rightly be accused of failing to deliver on its promise to end the detention of children.

Any changes that are made at the ‘hard end’ of enforcement policy are necessarily contingent on the availability and use of alternative methods for securing the return of families where appropriate, as outlined in section 4 of this paper. There must be meaningful engagement with the family throughout the asylum process, the options for assisted return must be made known throughout the process and take account of the need for families to be able to become re-embedded social and psychologically as well as economically into countries of origin, and there should be an independent legal review of the case prior to enforcement action being undertaken. The family should be given every possible opportunity to comply with any Removal Directions that are set. And policy makers should be alert to the dangers of any potential gaps in policy and practice which might undermine the commitment to end the detention of children and to deliver a human returns policy for families at the end of the asylum process.
6. An alternative approach to family returns

The alternatives to detention discussed in this paper focus on developing mechanisms for improving contact by providing support and information to asylum seekers from the beginning of the process and on enhancing the quality and credibility of the asylum determination process overall. These mechanisms include reporting, electronic monitoring, supervised accommodation, incentivised compliance and the introduction of a case work support and management system. The mechanisms vary significantly in the extent to which contact between the applicant and the decision-maker is a two-way process that also provides support and information to families. Although there is some overlap between the alternatives to detention that have been presented, most notably between some extended forms of reporting and the case work support and management system, it is the latter of these approaches which 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. Existing evidence from Sweden and in particular Australia suggest that those approaches which provide the most support and information are more likely to open up genuine alternatives to the detention of children and to have beneficial impacts on the asylum determination process more generally.

In the UK context there have been several pilot schemes providing alternatives to detention for families with children. Two of these schemes, the ‘Family Returns Project’ and ‘Alternatives to Detention’ pilot established in Glasgow and Millbank (Kent) respectively provided alternative accommodation for families considered by UKBA as being at the end of the asylum process and able to return to their countries of origin. Although there are elements of both schemes which might usefully be replicated (for example, allowing families time to make practical preparations for their departure which, in turn, enables teachers to provide appropriate support to children and their classmates), neither of these pilot schemes delivers the benefits of the case support and contact management model because information and support is provided to families only at the end of the process. This is reflected in the fact that the focus is primarily on return outcomes.

By contrast the ‘Voluntary Sector Key Worker Pilot’ which has been established in Liverpool more closely replicates the approaches seen in Sweden and Australia. The overall purpose of this pilot is to ensure that its clients support needs are effectively identified and met and that they fully understand the status of their asylum application, the determination processes involved, outcome implications and realistic options at each stage. Through working closely with assigned key workers in a ‘dual planning’ approach it is hoped that on final confirmation of asylum outcomes both successful and refused asylum applicants clients will be ready and able to implement realistic and well thought through plans that result in enhanced prospects for successful and fast integration for successful asylum seekers and increased prospects for return and...
reintegration for those whose applications for asylum are unsuccessful. The experience of non-governmental organisations working in other countries who have achieved both high compliance rates and improved welfare outcomes, suggests that the principles of building trust, maintaining dignity, information provision and community connection, have been key components. This approach differs considerably from pilot schemes in Glasgow and Kent because it offers a holistic approach, exploring all possible immigration outcomes and developing a level of trust between client and case manager throughout the duration of the asylum process.

Integral to the alternative approach outlined above is the provision of high quality legal advice and representation throughout the claim. This includes the period after status has been refused. The evidence presented in this paper suggests that alternatives to detention are meaningful only if they exist within a broader system of decision-making which ensures ongoing and consistent contact is maintained, and where asylum-seekers have information about their rights and are aware of their obligations. Quality legal advice and representation can provide an important mechanism for ensuring compliance by establishing confidence in the decision making process generally and by making applicants aware of their rights and obligations, acting as a conduit for flows of information between the applicant and the Home Office and for ensuring that families are aware of all the choices and options available to them, including the support available for return and reintegration. The Solihull pilot which provided early legal representation provides a framework for improving the quality and consistency of initial asylum decision-making by frontloading of the system and achieving ‘cultural change’ in the asylum determination process (Aspen 2008).

In relation to assisted return, the existing evidence suggests that in order to achieve the Government’s stated objective of establishing a procedure which allows for the humane and dignified return of families with no right to remain in the UK, the current approach to ‘voluntary returns’ will need to be reconceptualised. Existing programmes for voluntary return are under-utilised and undervalued not simply because of a lack of information or awareness of such schemes but because of the way in which the process of return for families is understood. There is a strong argument for removing the word ‘voluntary’ when talking about the assistance provided to asylum seekers who are at the end of the process. This is not semantic but rather acknowledges that many families do not want to go home but may eventually decide to do so in the face of limited options should they continue living in the UK. Removing the word ‘voluntary’ reflects the fact that this is not necessarily the family’s preferred option or ‘choice’ and that appropriate structures will need to be put in place to support the family upon return. At the same time it is important that return migration is understood as complex and multi-layered with social and psychological as well as economic challenges. Return migration is not just about the practicalities (for example arranging and paying for flights and immediate reintegration assistance) but also about establishing mechanisms for longer term social and psychosocial re-embeddedness. This is necessary to ensure that families are able
to return with dignity and a sense of purpose. It will require meaningful dialogue with families about the fears and anxieties that they may have about returning to the country of origin. This will only be possible to achieve if there is confidence in the asylum system and trust that the information will not be used against the family, for example, to argue that the family’s motivations for seeking asylum are not legitimate.

Finally, this paper has considered what steps might be taken to enforce removals at the end of the process for those families whose claims have been fully considered and subject to a legal review at the end of the process, and who decline appropriate assistance to return to the country of origin. A number of options are available to UKBA including separating children from parents, same-day removals and self check-in. It is clear that there are significant financial and safeguarding barriers associated with separating parents and children and that same-day removals would potentially put children at risk. Both separation and same-day removals would fail to meet the Coalition Government’s stated aim of returning families in a humane and dignified manner. In this context the family should be asked to comply through self check-in once Removal Directions are issued. A minimum period of four weeks should be given to families to put their affairs in order. Only when the family has failed to comply with self check-in should enforcement action be taken. Where detention is considered necessary to effect removal in these circumstances there should be a statutory time limit on detention of no more than three days. If all aspects of the case have been fully considered prior to removal this is the maximum period required to organise flights and travel documents. If children are detained under any other circumstances or for longer periods then the Coalition Government will rightly be accused of failing to deliver on its promise to end the detention of children.
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