

LIBERTY

PROTECTING CIVIL LIBERTIES
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**Liberty's submission to the Review into
Ending the Detention of Children for
Immigration Purposes**

July 2010

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

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Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

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1. Liberty is extremely pleased that the new Coalition Government has pledged to end the detention of children for immigration purposes.¹ Government should always strive to act in the best interests of the child – and detention on immigration grounds can never be said to be in the best interests of the child. The medical and psychological evidence is that detention has a profoundly negative effect on children. We therefore welcome the opportunity to submit our views to the Review into Ending the Detention of Children for Immigration Purposes undertaken by the UK Border Agency. We urge the Government to go further and end immigration detention on the grounds of administrative convenience for all – adults and children alike. We believe that the detention of adults and children for administrative convenience violates Article 5 of the *Human Rights Act 1998* (the right to liberty) and is unjustifiable.

Powers of detention

2. The *Immigration Act 1971* first provided the power to detain a person for immigration purposes,² which has been built on by subsequent legislation.³ The law provides that a person (who doesn't have the right to enter the UK) may be detained while a decision is being made whether or not to admit the person (generally of relevance to people seeking asylum)⁴ and when a decision is to be, or has been, made to remove the person.⁵ There is no time limit on how long a person can be detained, and it is left to the Immigration Rules and Home Office Guidance as to when people are likely to be detained. Home Office guidance provides that detention must be used sparingly, and there is a presumption in favour of temporary admission or release (although the rationale given for this is that it is not an 'effective use of detention space' to detain people long-term, rather than a focus on the right to liberty).⁶ We understand that notwithstanding this written guidance, in practice the

¹ See The Coalition: our Programme for Government, section 17.

² See section 4 and Schedule 2 of the *Immigration Act 1971*.

³ See, in particular, section 62 of the *Nationality, Immigration and Asylum Act 2002* and section 10 of the *Immigration and Asylum Act 1999*.

⁴ See paragraphs 2 and 16(1) of the *Immigration Act 1971*.

⁵ See paragraphs 8-10A and 12-14 and 16(2) of the *Immigration Act 1971*. There are also powers to detain a person who is subject to deportation. A person can be deported if the Secretary of State considers it would be conducive to the public good or the person has been convicted of specific offences: see section 3 of the *Immigration Act 1971* and sections 32 and 36 of the *UK Borders Act 2007*. Deportation is separate from removal and we do not consider it in the context of these submissions.

⁶ See UK Border Agency, Enforcement Instructions and Guidance, Chapter 55, paras 55.1.3 and 55.3, available at:

UK Border Agency (UKBA) is routinely breaching its own guidelines and policies and detaining people when it is not necessary to do so. Liberty is currently intervening in a case before the High Court brought by the mothers of three children under the age of 12 who were detained unnecessarily (and who have since been released back into the community) in breach of UKBA's own policy to use detention sparingly. In addition, the guidance itself provides a number of exceptions allowing for detention, including:

- when the 'detained fast track procedure' is adopted. Under this process people seeking asylum are detained for a week or more (and their claim for asylum determined) if a decision has been made that their case can be decided quickly and is suitable for 'fast-tracking'.
- when a claim for asylum is dealt with as a 'detained non-suspensive appeal' case. Under this scheme a person will be detained for between 10 and 14 days while their asylum claim is determined, and at the end of this process the person has no right of appeal in the UK to an independent court or tribunal. People from certain listed countries (including countries such as Ghana, Nigeria, Liberia, Sierra Leone etc) will be automatically routed into this procedure, unless it can be shown (on arrival) that their claim is not clearly unfounded.⁷
- when removal from the UK is considered 'imminent'. However, under the name of 'imminent removal' many people are detained for weeks, if not months, before removal. In fact, Home Office guidance provides that even if an appeal or other proceedings are ongoing a person may still be detained pending the outcome of such an appeal if the legal proceedings "*are likely to be resolved reasonably quickly*" (a phrase left undefined).⁸
- when a person is considered likely to abscond.
- when there is not enough information to decide whether or not to allow a person to be admitted or released.
- when release is not considered to be 'conducive to the public good'.

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/>

⁷ See section 94 of the *Nationality, Immigration and Asylum Act 2002*, and Home Office Guidance, 'DFT & DNSA – Intake Selection (AIU Instruction)', available at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/dftanddnsaintakeselection?view=Binary>

⁸ See UK Border Agency, Enforcement Instructions and Guidance, Chapter 55, para 55.14.

- while waiting for alternative arrangements to be made for the person's care.

3. It is clear then that for the majority of people seeking asylum in the UK, for those whose claims for asylum have failed, or for those who have breached a condition or overstayed their visa, detention is a standard part of the process. Every year thousands of people are locked up in immigration detention centres. Many are detained for some months and some are locked up for over a year. The vast majority of applicants for asylum will go through the detained fast track or detained non-suspensive appeals process meaning many will be detained throughout the entire immigration process.⁹ Home Office guidance¹⁰ states that the following people will not generally be considered suitable for detention and the detained fast-track procedure (although this doesn't exclude detention in exceptional circumstances):

- unaccompanied children – however, the UK Border Agency can dispute the stated age of a person (see below), and unaccompanied children who are to be returned home can be detained on the day of removal.¹¹ Note this provision applies to children without parents or other guardians – children who are part of a family group can be detained on the same basis as other people liable to detention;¹²
- the elderly, especially where supervision is required;
- women who are more than 24 weeks pregnant – unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this;
- those suffering from serious medical conditions or the mentally ill;
- those where there is independent evidence that they have been tortured (note that a person would need to have 'independent evidence' of torture, yet torture victims who have fled persecution are very often unlikely to have any documentary evidence to prove their torture – and expert evidence of torture

⁹ See Home Office Guidance that states that it is “*UK Border Agency policy that any asylum claim, whatever the nationality or country of origin of the claimant, may be considered suitable for DFT/DNSA processes where it appears, after screening (and absent of suitability exclusion factors), to be one where a quick decision may be made.*” And that there is “*a general presumption that the majority of asylum applications are ones on which a quick decision may be made*”, Home Office Guidance, ‘DFT & DNSA – Intake Selection (AIU Instruction)’, paras 2.2 and 2.2.2.

¹⁰ See UK Border Agency, *Enforcement Instructions and Guidance*, Chapter 55, para 55.10.

¹¹ *Ibid*, para 55.5.3.

¹² *Ibid*, para 55.9.4: “*Families, including those with children, can be detained on the same footing as all other persons liable to detention*”.

is difficult to produce in a day for those subjected to the detained fast track and non-appeal process);

- people with serious disabilities; and
- people identified as victims of trafficking.

The right to liberty

4. The right not to be arbitrarily deprived of one's liberty has long formed part of UK law – from the common law to the *Habeas Corpus Act* of 1679 to various statutes, including the *Human Rights Act 1998*, it is clear that liberty is an essential part of the rule of law and the British legal system. Article 5 of the *Human Rights Act 1998*¹³ provides that everyone has the right to liberty and security of person and no one can be deprived of their liberty except in certain defined circumstances and in accordance with law. Any deprivation of liberty must also be necessary and proportionate. Detention for the purposes of immigration can only be lawful if there are proceedings in place for removal or deportation of a person, detention is reasonable in the circumstances and the Government is acting quickly and diligently in acting to remove the person.¹⁴ Liberty does not believe that detention on the grounds of administrative convenience – which is used in the detained fast-track and non-appeals cases – can ever be justified and we believe it breaches the fundamental right to liberty.

Children in detention

5. Under human rights law, children are given additional rights protection. In particular, the right to liberty has to be read in light of rights contained in the Convention on the Rights of the Child.¹⁵ The Convention provides that in all actions concerning children, the best interests of the child should be the primary consideration, and no child is to be deprived of liberty unlawfully and arbitrarily with detention “*used only as a measure of last resort and for the shortest appropriate period of time*”.¹⁶ Originally the UK Government, on ratifying this Convention, entered a reservation to it relating to immigration law and the detention of children.

¹³ Article 5 of the European Convention on Human Rights as incorporated by the *Human Rights Act 1998*.

¹⁴ See *R v Governor of Durham Prison, ex parte Hardial Singh* [1984] 1 WLR 704 per Woolf J and *R (WL) v Home Secretary* [2010] EWCA Civ 111 at [11].

¹⁵ See *R (S) v Home Secretary* [2007] EWHC 1654 (Admin) at [41] and *R (Nukajam) v Home Secretary* [2010] EWHC 20 (Admin) at [71]-[72].

¹⁶ See Articles 3 and 37 of the *UN Convention on the Rights of the Child*.

After concerted lobbying by a number of organisations,¹⁷ the previous Government thankfully withdrew its reservation to the Convention on 18 November 2008. In addition, since 2 November 2009, section 55 of the *Borders, Citizenship and Immigration Act 2009* has placed a statutory duty on the Home Secretary to make arrangements to ensure that the UK Border Agency (UKBA) functions, and services carried out by third parties on UKBA's behalf, "are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom".

6. Under Home Office Guidance, there is a general presumption that children should not be detained for immigration purposes. However, Home Office policy does allow children in a family group to be detained according to the same criteria as adults. Home Office Guidance states:

*Families, including those with children, can be detained on the same footing as all other persons liable to detention.*¹⁸

We understand that prior to October 2001 Home Office policy was that families would only be detained to effect imminent removal – which in practice meant that very few families were detained and if they were it was for extremely short periods of time prior to removal. In October 2001 the Home Office, without any consultation or parliamentary or public debate, changed this policy to allow families – and their children – to be detained on the same basis as all adults. As far as we are aware this was not based on any research or evidence demonstrating that this change was even necessary (i.e. because of a higher rate of families absconding or not complying with conditions). We believe that this policy, which fails to give appropriate weight to the best interests of the child breaches the UK's human rights' obligations.

Number of children in detention

7. It is clear that immigration detention is rarely, if ever, in the best interests of a child. Yet each year well over one thousand children are detained for administrative

¹⁷ See for example *Liberty's response to the Home Office Consultation: "Code of Practice to Keep Children Safe from Harm Whilst in the United Kingdom"* available at: <http://www.liberty-human-rights.org.uk/publications/pdfs/liberty-consultation-response-keeping-children-safe-from-harm.pdf>

¹⁸ See UK Border Agency, *Enforcement Instructions and Guidance*, Chapter 55, para 55.9.4.

purposes for immigration control,¹⁹ the majority being held in Yarl's Wood Immigration Removal Centre in Bedfordshire. In June 2010 the UK Border Agency, in response to a freedom of information (FOI) request from Liberty, stated that in 2009, 1065 children and young people were held in immigration detention, with the average length of time in detention being 15.03 days.²⁰ Many children are detained for much longer periods than this, and as the former Children's Commissioner for England, Sir Al Aynsley-Green, has said:

It must be noted that the average length of detention masks extreme lengths of detention experienced by some individual children. The Joint Chief Inspectors' report highlighted that greater numbers of children were being detained beyond 28 days.²¹

In fact, in the information released to Liberty by the UKBA pursuant to our FOI request, the longest period of time a child was detained in 2009 was for a shocking 158 days. Further, no information can be given as to how many of those detained children were actually removed from the country following detention, as the Home Office advises that information as to the number of removals for those originally detained is not collected centrally and is therefore unavailable.

8. An inspection by HM Chief Inspector of Prisons of Yarl's Wood detention centre²² in November 2009 found:

decisions to detain, and to maintain detention of, children and families did not appear to be fully informed by considerations of the welfare of children, nor could their detention be said to be either exceptional or necessary. Over the past six months, 420 children had been detained, of whom half had been released back into the community, calling into question the need for their detention and the disruption and distress this caused. Some children and babies had been detained for considerable periods – 68 for over a month and

¹⁹See Home Office Statistics, Table of Persons Entering Detention Held Solely Under Immigration Act Powers, 2009.

²⁰ UKBA letter to Liberty, 18 June 2010. See also Her Majesty's Inspectorate of Prisons, *Report on an unannounced full follow-up inspection of Yarl's Wood Immigration Removal Centre*, (9-13 November 2009), HE.16 (average time 16 days), available at: http://www.justice.gov.uk/inspectors/hmiprison/docs/Yarls_Wood_2009_rps.pdf

²¹ 11 million report, 'The arrest and detention of children subject to immigration control: A report following the Children's Commissioner for England's visit to Yarl's Wood Immigration Removal Centre', April 2009, page 44.

²² Yarl's Wood is the only immigration removal centre that holds only women, children and families.

*one, a baby, for 100 days – in some cases even after social workers had indicated concerns about their and their family’s welfare.*²³

Effect of detention on children

9. A number of medical and other reports have demonstrated a clear link between immigration detention of children and extreme adverse effects on mental and physical health..²⁴ The Children’s Commissioner for England has stated, after visiting one detention centre, that it was “*not possible to ensure that children detained in Yarl’s Wood stay healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being*”.²⁵ In a study published earlier this year, Matthew Hodes from the Academic Unit of Child and Adolescent Psychiatry at Imperial College London found that medical evidence shows that the detention of children and adolescents: “*suggests this practices is associated with high levels of psychological distress, anxiety, affective and posttraumatic stress disorder, and deliberate self-harm*”.²⁶ In a recent joint statement on children in immigration detention, the Royal College of Paediatrics and Child Health, the Royal College of General Practitioners, the Royal College of Psychiatrists and the Faculty of Public Health stated:

*Almost all detained children suffer injury to their mental and physical health as a result of their detention, sometimes seriously. Many children experience the actual process of being detained as a new traumatising experience. Psychiatrists, paediatricians and GPs, as well as social workers and psychologists, frequently find evidence of harm, especially to psychological wellbeing as a result of the processes and conditions of detention. Reported child mental health difficulties include emotional and psychological regression, post traumatic stress disorder (PTSD), clinical depression and suicidal behaviour.*²⁷

²³ Her Majesty’s Inspectorate of Prisons, *Report on an unannounced full follow-up inspection of Yarl’s Wood Immigration Removal Centre*, (9-13 November 2009), page 5.

²⁴ A report published by the Children’s Rights Alliance for England and the National Children’s Bureau in 2007 highlighted the link between immigration detention and fear, distress, depression and physical sickness on the part of children subjected to it: *Meeting the obligations of the Convention on the Rights of the Child in England: Children and young people’s messages to Government*, April 2007, p44-45, 70.

²⁵ Cited at e.g. Bail for Immigration Detainees, *Obstacles to Accountability: Challenging the Immigration Detention of Families*, June 2007, p15.

²⁶ Matthew Hodes, *The mental health of detained asylum seeking children*, (2010) 19(7) *European Child Adolescent Psychiatry*, 621-623, published online 30 January 2010.

²⁷ See *Intercollegiate Briefing Paper: Significant harm – the effects of administrative detention on the health of children, young people and their families*, 10 December 2009, available at:

10. In addition, the UN Committee on the Convention on the Rights of the Child lent international support for a review of current policy in September 2008 stating:

*The Committee is concerned that as also acknowledged recently by the Human Rights Committee, asylum-seeking children continue to be detained, including those undergoing an age assessment, who may be kept in detention for weeks until the assessment is completed.*²⁸

11. Liberty has consistently pressed for reform of the law in this area. We are therefore extremely pleased that the Coalition *Programme for Government* announced its intention to “*end the detention of children for immigration purposes*”. This is an extremely important first step to making the immigration system more humane. However, it is also extremely important to ensure that such a commitment does not have unintended consequences (for example, the splitting up of families etc). We consider the alternatives to detention and our more detailed concerns below.

Reform of the system of immigration detention for children

12. The *Review into ending the detention of children for immigration purposes* was published on the Home Office website on 11th June. While the terms of reference state that the review is intended to run for six weeks (findings being reported to the Government by mid July) the period for public consultation spans less than three weeks. We assume that the shortened consultation period is motivated by efforts to move swiftly in this very important area. However, so far, the commitment to end the detention of children for immigration purposes does not extend to ending detention immediately – indeed the consultation paper makes no reference to the timeframe for ending detention. The Minister for Immigration, Damian Green MP, stated in Parliament that “*Until the review is completed, current policies will remain in place... before we close Yarl’s Wood for the detention of families we need to find effective alternatives*”.²⁹ While we understand and support the need for proper policy formation we urge the Government to end detention of children and their families

<http://www.rcpsych.ac.uk/pdf/Significant%20Harm%20intercollegiate%20statement%20Dec09.pdf>

²⁸ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

²⁹ See *Commons Hansard*, Thursday 17 June 2010, Col 211WH.

within a tightly defined timeframe, building on the momentum created by the initial welcome announcement. Continuing to detain children for many months will mean that this shameful policy continues to punish some of the most vulnerable in our society. There has already been several pilots to find alternatives to detention, numerous reports and case-studies and consistent pressure from campaigning groups over many years. The time has come to learn from the many projects, pilots and studies and draw the results together, rather than to experiment with new disparate alternatives and policy ideas which will delay the end goal of eradicating immigration detention for children altogether.

Assisted Voluntary Returns

13. Improving the process of Assisted Voluntary Returns (AVR) for families who have reached the end of the legal process is, we believe, an important part in reducing the number of families that are forcibly removed. The AVR process supports those who voluntarily agree to return to their country of origin. The assistance ranges from arranging international flights or helping families and individuals to obtain appropriate travel documents, to the final stages of reintegration into a country of return (including providing assistance with establishing a business, education, finding a job placement or obtaining vocational training etc).³⁰ We believe that there should be greater emphasis on AVR, but only once systemic obstacles to its effective operation have been addressed. To date, the AVR process has been flawed, with reports indicating that written information on AVR is only provided at the moment at which an asylum application is refused. There are also currently limited opportunities for face-to-face discussions about the options for AVR. Indeed, a report by the Children's Commissioner for England, Professor Sir Al Aynsley-Green, found that some families reported "*being arrested at the same time as being served with the notice from the court that their appeal had been dismissed. This clearly does not provide the window for reflection on AVR.*"³¹

14. There have been a number of pilots focusing on families and the AVR process. These pilot studies indicate that a change to the very final stages of a long and complicated process to facilitate AVR will not on its own minimise the number of

³⁰ See UKBA website:

<http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/workingwithasylum/>

³¹ 11 million report, 'The Children's Commissioner for England's follow up report to: The arrest and detention of children subject to immigration control', February 2010, page 21, available at: http://www.childrenscommissioner.gov.uk/content/publications/content_393

forced removals and associated detention. The UKBA review of the ‘alternative to detention’ project in Kent, for example, concluded that one of the reasons for the project’s lack of success³² was the absence of early engagement with families who, consequently, did not fully understand that non-compliance with AVR could result in forced removal.³³ Similarly an independent evaluation conducted by The Children’s Society and Bail for Immigration Detainees in 2009 reported:

*Listening to the stories of families in the pilot, it was clear they had felt unsupported during their time in the UK and were confused about this latest initiative. An alternatives pilot cannot work in isolation from wider system change because by the time those families had reached the end of the process they were not able to trust or engage with the process effectively.*³⁴

Better case management and access to legal representation

15. Families will inevitably resist removal if they feel they have not had a fair hearing or if they consider there might be a further option or avenue for review of the decision. A family seeking asylum that comes to the UK after an often long, dangerous and arduous journey will obviously want to be sure that their case is properly considered. Consistent and guaranteed legal representation to assist an understanding of the process, better quality decision-making and a proper appeals process will all go some way to providing this assurance. Liberty urges the Government to support well resourced case management for refugee claimants, and the provision of sensitive and effective support for families from the very beginning of their arrival through to the determination of their claim. Such models have been developed in other jurisdictions with some success, including Australia and Sweden (although the model in Australia only applies to those on the mainland and not the thousands detained indefinitely on Christmas Island).³⁵ Access to legal aid and

³² Assessed by the low number of families who took up the offer of assisted voluntary return.

³³ Para 2.1.8 of the *Review of the alternative to detention (A2D) project, May 2009*, cited in House of Commons Library, Home Affairs Section, Research Note, *ibid*, at page 5.

³⁴ The Children’s Society, *An evaluative report on the Milbank Alternative to Detention Pilot*, May 2009, cited in House of Commons Library, Home Affairs Section, Research Note, *ibid* at page 6.

³⁵ We urge caution when cherry-picking from the approaches of other states, which have been developed in country-specific situations. Australian refugee policy, for example, routinely breaches the right to liberty and puts Australia in breach of its obligations under the Refugee Convention. In order to be useful therefore, any reliance on the Australian case management system as an example of how to approach alternatives for the UK ought to be placed in the context of the country’s broader hostile approach to refugee claimants. In particular the fact that the majority of refugee claimants are held in detention on Christmas Island – where the

casework support for asylum seekers is essential to ensure claimants properly understand the legal process which will determine their futures. Given the high costs of detention³⁶ and forced removals, maintaining appropriate legal aid provision and ensuring the continuity of caseworkers on each individual or family application is not only fair and humane, it may also benefit the public purse.

Forced removals

16. The 2009 Report of the Children's Commissioner also highlighted a number of systemic problems associated with voluntary removal programs which lead to increased forced removals and pre-removal arrest and detention instead of the preferred voluntary departure. The Commissioner found these forced removals inevitably lead to considerable distress for the family and in particular for children.³⁷ The Commissioner also found that there is a bureaucratic culture within the UKBA which focuses on enforcement and so blindly misses opportunities to engage with families.³⁸ Once there has been a final legal decision in relation to an individual's or family's application for asylum, a defined timeframe ought to be allowed in which families receive assistance and advice from the UKBA as well as independent sources so that they understand the decision which has been made and what steps they must now take. The Children's Commissioner, for example, noted that many arrested families expressed confusion and distress upon their sudden arrest, given prior to that they had been complying with all requests made of them, such as signing in regularly at an enforcement office and living at a specified address.³⁹ In the time between final refusal and departure there needs to be a measured, rational and respectful approach which allows families to facilitate a transition back to their country of origin. Changing the approaches to people seeking asylum from the outset will minimise the need for any detention whatsoever.

17. We do accept however that there will inevitably be individuals and families seeking asylum who will not accept the refusal of their claim and who will attempt to unlawfully remain in the UK. Nevertheless detention should only be used in exceptional circumstances and only once a family has been given time and support

normal migration laws do not apply. Case management schemes are not used on Christmas Island and therefore the scheme applies only to a proportion of all incoming claimants.

³⁶ It has been estimated that it costs £120 per person per day to detain someone. See footnote 49.

³⁷ Children's Commissioner's Report, *ibid*, at page 15.

³⁸ *Ibid*, at page 14.

³⁹ *Ibid*, at page 15.

to consider AVR, as well as the opportunity to comply with any obligations imposed on them. Further, any detention must be tightly circumscribed – that is, for a short period of time before departure, preferably without an overnight stay. If you have a family otherwise complying with their obligations there is no reason they should not be able to remain in their accommodation pending removal.

Splitting up of families

18. Further, we do not consider it acceptable nor necessary to split families for the purposes of being able to detain parents but not children. We note in a recent debate in the House of Commons the Minister for Immigration stated, in the context of families refused leave to stay, that:

*enforced removals are likely to continue. That approach could involve separating different members of a family and reuniting them before departure, so that some family members stay in the accommodation they are used to.*⁴⁰

We do not consider the separation of children from their parents even for a short period to be an acceptable alternative to detention. The trauma for some children in being removed from their families may well be greater than the trauma of a very short period of detention. As we set out below, we do not believe that anyone should be detained in immigration detention – child or adult – any longer than is strictly necessary, and never for administrative convenience. It is clear that at present both children and adults are being detained for the purposes of removal weeks and sometimes months before their actual departure. In fact, as referred to above, HM Chief Inspector of Prisons reported in relation to Yarl's Wood Immigration Facility that "420 children had been detained, of whom half had been released back into the community, calling into question the need for their detention and the disruption and distress this caused". This type of unnecessary detention must stop, for children and adults alike. If families strictly need to be detained for a few hours or a day prior to removal, in most circumstances it might be less traumatic for children to remain with their families than be separated under this new non-detention policy. At all stages, the best interests of the individual child must be paramount in any decision taken.

⁴⁰ The Minister goes on to recognise this "approach would be hugely contentious". *Hansard*, Thursday 17 June 2010, Col 213WH.

Age assessments

19. We are concerned that any reform to the system of children in immigration detention does not lead to an increase in disputes over a child's age. Under UK law, an unaccompanied child asylum seeker is entitled to be looked after by the local authority as a child, rather than dispersed around the country with adult asylum seekers. Section 20 of the *Children Act 1989* provides that local authorities must provide accommodation to unaccompanied children under the age of 18.

Unaccompanied children will not be detained and should not be subject to the detained fast track and non-appeals process. All of these laws and policies are, however, dependant on the person being considered to be under the age of 18. In practice, when a young person arrives in the country or makes a claim for asylum and claims to be under 18, immigration officials make a preliminary determination on age based on physical appearance and demeanour. In a borderline case, the policy is to give the person the benefit of the doubt and treat him or her as a child. But the case will be later sent for assessment by the local social services authority to make that assessment.⁴¹ If a person's physical appearance and/or demeanour very strongly indicates that they are significantly over 18 years of age and no other credible evidence exists to the contrary the person will be treated as an adult.

20. In practice the system of age determinations has led to a number of vulnerable children being incorrectly assessed as adults – leading them to be detained, provided with inadequate support and forcibly removed. Just a few months ago the Liverpool Local Government Ombudsman found that a 15 year old sex abuse victim was denied vital care as a result of a wrong age determination decision.⁴² There have also been cases of 14 year olds being refused treatment as children and ending up living on the streets.⁴³ In November 2009, the Supreme Court held that the courts had to be the final arbiters of any age determination dispute.⁴⁴ This case (in which Liberty intervened at earlier stages) was brought before the Supreme Court

⁴¹ See UK Border Agency, *Enforcement Instructions and Guidance*, Chapter 55, para 55.9.3.1 and Lady Hale in *R (on the application of A) (FC) v London Borough of Croydon; R (on the application of M) (FC) v London Borough of Lambeth* [2009] UKSC 8 at [6].

⁴² See 'Ombudsman finds failed age-assessment denied 15-year-old asylum-seeker appropriate care', *Children & Young People Now*, 1 April 2010, available at: <http://www.cypnow.co.uk/news/ByDiscipline/Social-Care/994198/Ombudsman-finds-failed-age-assessment-denied-15-year-old-asylum-seeker-appropriate-care/>

⁴³ See 'Practice Panel: young asylum seeker on the streets after dispute over age between Home Office and local authority', *Community Care*, 18 September 2009, available at: <http://www.communitycare.co.uk/Articles/2009/09/18/112638/age-assessment-dispute-leaves-young-afghan-asylum-seeker-destitute.htm>

⁴⁴ *R (on the application of A) (FC) v London Borough of Croydon; R (on the application of M) (FC) v London Borough of Lambeth* [2009] UKSC 8.

after two young asylum seekers brought a joint appeal against Croydon Borough Council and Lambeth Borough Council. 'A' fled Afghanistan after his father was killed and he was forced to leave his home. Although a doctor calculated that he was 15 years old, Croydon Social Services claimed he was over 18 and refused to provide him with children's support. He became homeless. 'M' fled Libya in fear of political persecution and although the Asylum and Immigration Tribunal assessed him as under 18, Lambeth Borough Council denied him proper support after deciding he was an adult.

21. The process of age determination must be overhauled if the commitment to ending the detention of children is to be effective. We urge the Government to provide assurances that in an effort to end children in detention resort will not be had to greater disputes over the age of person's seeking asylum.

Unaccompanied child asylum seekers - Afghanistan

22. It has recently been reported that there are plans for the UK to tender and fund a reintegration centre in Afghanistan to better enable the UKBA to forcibly return failed Afghani asylum seekers, including unaccompanied children.⁴⁵ The Government has confirmed that unaccompanied 16 and 17 year olds could be forcibly returned, with the reintegration centre being used to help these young people "*get back to a normal life*".⁴⁶ The Minister for Immigration has described this as "*a constructive and creative response to the problem of unaccompanied asylum-seeking children*".⁴⁷ Concerns have been raised that the return of unaccompanied children is one part of the pledge to end immigration detention for children – because if children are returned, they won't be detained. We accept that it is not Home Office policy to detain unaccompanied minors.⁴⁸ However, we are concerned that any push to end detention of children does not result in greater and potentially more harmful removals of children (or the splitting up of families). While unaccompanied child asylum seekers are not, as a matter of policy, detained and are entitled to be looked after by the local authority, as detailed above, there are often disputes over whether the person is a child. Home Office policy requires that if a local authority deems the

⁴⁵ See 'UK to deport child asylum seekers to Afghanistan', *Guardian*, 7 June 2010.

⁴⁶ See *Lords Hansard*, 10 June 2010, column 744-5, answer by The Minister of State, Home Office (Baroness Neville-Jones) to a question asked by Lord Roberts of Llandudno.

⁴⁷ See *Commons Hansard Debates*, 17 June 2010, column 214WH, Westminster Hall debate on Alternatives to Child Detention, Minister for Immigration (Damian Green).

⁴⁸ See UK Border Agency, *Enforcement Instructions and Guidance*, Chapter 55, para 55.10.

individual to be an adult, the immigration authorities will allow that person to be detained as an adult and possibly removed to a 'safe' third country. We are very concerned that the proposed 'reintegration centre' is not used as a way to avoid our obligations to vulnerable children.

23. Liberty does not believe that it can currently be said to be in the best interests of any unaccompanied child to be forcibly returned to Afghanistan – which effectively remains a war zone. Section 55 of the *Borders, Citizenship and Immigration Act 2009* requires all immigration officers to discharge their functions having regard to the “*need to safeguard and promote the welfare of children who are in the United Kingdom*”. Sending a child alone to Afghanistan, many of whom have had family members killed or seriously injured and so have little, if any, support, can not be said to be ‘promoting the welfare’ of the child. The vast majority of unaccompanied minors from Afghanistan in the UK are boys – most of whom fled Afghanistan to avoid forced conscription to fight with the Taliban. Sending these boys to Kabul (where the centre is located – not, necessarily where their family members, if they have any, might be) with a limited period of support is likely to leave them extremely vulnerable once the support ceases – including vulnerable to conscription or recruitment by the Taliban and other militants. We strongly urge the Government to urgently review this proposal and give assurances that unaccompanied minors will not be forcibly returned to countries that remain unstable and dangerous.

Adults in immigration detention

24. While ending the detention of children for immigration purposes must be an important and pressing priority, we are also concerned about the prolonged and unnecessary detention of vulnerable women and men. HM Chief Inspector of Prisons reported earlier this year that more than 10% of women detained at Yarl's Wood had been held for over six months (many with no imminent prospect of removal) and the average length of stay was 34 days (and more than 50% were held for over one month).⁴⁹ For men detained in Harmondsworth, an inspection in January 2010 found that 52% of men were detained between 1 and 4 months and more than 10% of men had been detained for more than six months (with five men being detained for over two years and eight for over one year). The longest detention

⁴⁹ Her Majesty's Inspectorate of Prisons, *Report on an unannounced full follow-up inspection of Yarl's Wood Immigration Removal Centre*, (9-13 November 2009), HE.22 and see Appendix II.

had been for three years and three months (because of a failure to obtain travel documents).⁵⁰ In addition, the recent report on Yarl's Wood found that an improved and new focus on improving the environment and activities for children had led to a lack of attention to the needs of the majority population of women:

*Provision of activities for them was among the poorest seen in any removal centre. It had been inadequate at the last inspection, and had declined even further. The absence of activity added to the depression and anxiety of women, many of whom were spending lengthy periods at Yarl's Wood.*⁵¹

25. While detention may be necessary in very time limited circumstances in order to effect removal, the fact that half of all women and almost 70% of all men are detained for more than one month demonstrates that detention is not only being used when strictly necessary. Liberty believes that in addition to improving the Assisted Voluntary Return programme for families (as set out above) and the immigration process to help ensure children are not detained, the Government must improve the system generally to heavily restrict immigration detention to no more than a few days at most (and only if demonstrated to be strictly necessary). In addition, the majority of asylum applications are now routed through the detained fast track and detained non-appeals process, requiring people to be locked up simply so they may be readily available for interviews. The right to liberty should not be abrogated on the basis of administrative convenience. We urge the Government to go further and apply the principle behind the decision to end detention for children to all people. Not only will this respect the vital right to liberty and ensure humanity is at the heart of the immigration process, it will save the taxpayer an enormous amount of money. It currently costs, on average, around £120 a day to detain just one person.⁵² Given around 30,000 people are detained in immigration detention every year,⁵³ many of whom are detained for over a month, reliance on immigration detention has not only an enormous human cost, but also a major financial cost. Ending the immigration

⁵⁰ See Her Majesty's Inspectorate of Prisons, *Report on an announced inspection of Harmondsworth Immigration Removal Centre* (11-15 January 2010), paragraphs 3.20 and 3.24.

⁵¹ Her Majesty's Inspectorate of Prisons, *Report on an unannounced full follow-up inspection of Yarl's Wood Immigration Removal Centre*, (9-13 November 2009), page 5.

⁵² See *Lords Hansard*, 4 February 2010, Column WA 67, answer by Lord West of Spithead to question asked by Baroness Warsi "The current average cost per bed at night in the UK Border Agency's detention estate is £120". Available at:

<http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100204w0002.htm>

⁵³ See, in 2009, Home Office Statistics, Table of Persons Entering Detention Held Solely Under Immigration Act Powers, 2009.

detention of children is an important first step which we hope is only the beginning. It is time for the system of immigration detention to be completely reviewed and revised.

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Sophie Farthing