MADE REAL – Making Alternatives to Detention in Europe a Reality by Exchanges, Advocacy and Learning

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UK

Sarah Campbell

MADE-REAL: Practices Questionnaire

Member State	**United Kingdom**
Name of researcher & organisation	**Sarah Campbell, Bail for Immigration Detainees (BID)**
Email address	**sarahc[at]biduk.org**

The information in this questionnaire was accurate at the time when it was written, in February 2014, to the best of BID's knowledge. In some cases, the web addresses which are referred to were accessed shortly before February 2014.

The aim of this questionnaire is to collect data on practices in the UK context with regards to alternatives to detention. The references in the questions to the Reception Conditions Directive concern the version of 2003 (Directive 2003/9/EC).

Definitions[1]:

'Applicant' (term used by the directive) or **asylum seeker (A/S)** (term employed by us but which we understand as synonymous): means a third-country national or a stateless **person who has made an application for international protection in respect of which a final decision has not yet been taken**;

'**Detention**': means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

'**Final decision**' means a decision on whether the third- country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive 2011/95/EU and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;
Please note: Directive 2011/95/EU does not apply in the UK context;

'**Minor**': means a third-country national or stateless person below the age of 18 years;

[1] The definitions used are taken by the recast reception conditions directive (Directive 2013/33/EU) and the returns directive (Directive 2008/115/EC). The first is not yet in force and both of these instruments not applicable in all Member States examined in the MADE REAL project.

'**Third-country national'** means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code;

'**Unaccompanied minor' (UAM)**: means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

'Returnee': Third country national subject to a return decision

- Concerning alternatives to detention, regardless of the definition that we will adopt later, this research should cover all schemes that are understood by governments as 'alternatives to detention', even if through our analysis we might conclude that some of them in fact do not satisfy our understanding of what can be considered an 'alternative to detention'.

Please note: the term 'returnee' is kept in inverted commas throughout this questionnaire, to reflect the fact that individuals who the UK government plans to forcibly remove from the country may subsequently successfully appeal this decision and be granted leave to remain in the UK.

A. GENERAL

ASYLUM SEEKERS

1. **Are A/S detained in practice in your country? YES**

2. **Is detention foreseen for A/S in specific situations? YES**
If so, please specify:

SITUATIONS	Comment
In border procedure	Asylum seekers can be detained at the border. The Home Office's instructions on this are contained in Chapter 31 of the *Immigration Directorate Instructions*, 'Detention and Detention Policy in Port Cases' http://bit.ly/1bdzPuQ
Subject to a Dublin transfer	Asylum seekers who are subject to a Dublin transfer can be held in immigration detention. The Home Office's instructions on this are contained in the document 'THIRD COUNTRY CASES: Referring and Handling' within the *Asylum Process Guidance* which can be downloaded here: http://bit.ly/18efHsr The arrangements for third country cases which are not detained, in terms of accommodation and reporting, are set out from section 6 (page 14).
Subject to an accelerated procedure	Asylum seekers can be detained in the 'Detained Fast Track' process if a Home Office official decides that their asylum claim can be determined quickly. The Home Office's procedures are outlined in the instruction 'Detained Fast Track Processes', within the *Asylum Process Guidance* which can be accessed here: http://www.ukba.homeoffice.gov.uk/sitecontent/document/policyandlaw/asylumprocessguidance/detention/
Other (please specify)	Asylum seekers can also be detained in other circumstances. For example, BID has dealt with cases where individuals have claimed asylum while in detention and their claim has been processed (sometimes over several months) by the Local Immigration Team which was responsible for them before their detention.

3. Are specific categories of A/S[2] generally exempt from detention?

Please see response to Question 10 below.

4. Based on which grounds could an asylum seeker be detained during the asylum procedure? Please comment where necessary.

Question	Answer (yes/no)	Comment
Identity verification, in particular if the persons have no or false documents	Yes	
Protection of public order or national security	Yes	
Public health	Yes	
Risk of absconding	Yes	
Other (please specify)	The Home Office's instructions also list the following grounds for detention: I am satisfied that your application may be decided quickly using the fast track asylum procedures. There is insufficient reliable information to decide on whether to grant you temporary admission or release. Your removal from the UK is imminent. You need to be detained whilst alternative arrangements are made for your care.	

[2] In particular, please specify whether there are exemptions for particular vulnerable groups: unaccompanied or separated children, families with children, persons with disabilities, persons with (mental) health issues, victims of torture or trauma, victims of human trafficking, other.

All the above grounds are set out in Chapter 55.6.3 of the Home Office's *Enforcement Instructions and Guidance* (http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary)

5. **How are these grounds assessed in practice? What screening /assessment method is used?**

See question 12 below for details of how grounds for detention are assessed in practice for applicants and 'returnees.'[3]

In addition, a specific process applies for the Detained Fast Track. Information about the applicant is gathered at a screening interview, and a referral is made to the National Asylum Intake Unit for consideration.[4] If a decision to detain is made, the normal process of filling in an 'IS91R' form is followed (see Question 12 below). If evidence comes to light of specific reasons why an individual should not be in the Detained Fast Track, for example evidence that they are a torture survivor, they may be taken out of the detained fast track process and released.

Very serious problems with the Detained Fast Track procedures have been evidenced by research including Human Rights Watch's 2010 report *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK* and UNHCR's August 2010 report *Quality Integration Project: Key Observations and Recommendations*.

6. **Does the responsible authority conduct a risk assessment or use certain indictors in the assessment? If so please describe indicators and tools used.**

See question 13 below for details of how grounds for detention are assessed in practice for applicants and 'returnees.'

In relation to the Detained Fast Track, the criteria for referral are outlined in the Home Office instruction 'Detained Fast Track Processes.'[5] We do not include discussion of these criteria and their application here because where cases are deemed suitable for the Detained Fast Track, alternatives to detention are not considered.

[3] The term 'returnee' is kept in inverted commas throughout this questionnaire, to reflect the fact that individuals who the UK government plans to forcibly remove from the country may subsequently successfully appeal this decision and be granted leave to remain in the UK.

[4] Home Office *Asylum Process Guidance* 'Detained Fast Track Processes' Section 3.1.1 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/

[5] Home Office *Asylum Process Guidance* 'Detained Fast Track Processes' http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/

7. **Is there a mechanism in place to identify vulnerable applicants? If so, it is used in the decision to place an applicant in detention or in an alternative to detention?**

See question 14 below for details of mechanisms to identify vulnerable applicants and 'returnees.'

As is detailed in Question 5 above, in the context of the Detained Fast Track information about the applicant is gathered at a screening interview, and a referral is made to the National Asylum Intake Unit.[6] The mechanisms described at Question 14 including Rule 35 also apply. Where cases are deemed suitable for the Detained Fast Track, alternatives to detention are not considered.

8. **Do the authorities examine alternatives to detention in each individual case before resorting to detention measures?** Specify if necessary.
   ☐Systematically
   ☐In most cases
   ☐Rarely
   ☐Never

Where cases are deemed suitable for the Detained Fast Track, alternatives to detention are not considered.

It is Home Office policy that alternatives to detention should be considered in Dublin III and Port Cases.[7] However, it is BID's understanding that people subject to Dublin III procedures and port cases are routinely detained.[8] There are instances where these individuals may be released from detention, for example where they have legally challenged a decision to remove them under Dublin III by initiating judicial review proceedings, or – more rarely -where they have extreme vulnerabilities which mean that detention is deemed unsuitable by the Home Office.

Since February 2010, unaccompanied children have not been forcibly removed under the Dublin regulation.[9] Prior to this, there were occasions where the Home Office removed unaccompanied children without giving them notice – they would be picked up on the day of removal and detained in transit, but not held in an immigration removal centre.[10]

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[6] Home Office *Asylum Process Guidance* 'Detained Fast Track Processes' Section 3.1.1 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/

[7] Home Office *Enforcement Instructions and Guidance,* Chapter 55; Home Office *Immigration Directorate Instructions*, Chapter 31 'Detention and Detention Policy in Port Cases'

[8] Interview with Judith Dennis, Refugee Council 30/1/14

[9] *T, MA and A v SSHD* [2010] EWHC 3572 (Admin); age-disputed young people may be detained and removed under the Dublin III procedure.

[10] Interview with Judith Dennis, Refugee Council 30/1/14

As is noted in Question 2, BID has dealt with cases where individuals have claimed asylum while in detention and their claim has been processed (sometimes over several months) by the Local Immigration Team which was responsible for them before their detention. The question of to what extent alternatives to detention are considered is dealt with in more detail in Question 15.

'RETURNEES'

9. **Are people in a return procedure detained in practice in your country?**

   YES

10. **Are specific categories of 'returnees'[11] generally exempt from detention?**

Chapter 55 of the Home Office's Enforcement Instructions and Guidance sets out groups of people who should not normally be detained:

'The following are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated immigration detention accommodation or prisons:

- Unaccompanied children and young persons under the age of 18 (see 55.9.3 above).
- The elderly, especially where significant or constant supervision is required which cannot be satisfactorily managed within detention.
- Pregnant women, unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this (but see 55.4 above for the detention of women in the early stages of pregnancy at Yarl's Wood).
- Those suffering from serious medical conditions which cannot be satisfactorily managed within detention.
- Those suffering from serious mental illness which cannot be satisfactorily managed within detention (in criminal casework cases, please contact the specialist mentally disordered offender team). In exceptional cases it may be necessary for detention at a removal centre or prison to continue while individuals are being or waiting to be assessed, or are awaiting transfer under the Mental Health Act.
- Those where there is independent evidence that they have been tortured.

[11] In particular, please specify whether there are exemptions for particular vulnerable groups: unaccompanied or separated children, families with children, persons with disabilities, persons with (mental) health issues, victims of torture or trauma, victims of human trafficking, other.

- People with serious disabilities which cannot be satisfactorily managed within detention.
- Persons identified by the competent authorities as victims of trafficking (as set out in Chapter 9, which contains very specific criteria concerning detention of such persons).'[12]

However, NGO research, media reports and litigation provide evidence of cases in which people from many of these groups have been detained.

Unaccompanied children

In 2012, the Refugee Council worked with 24 unaccompanied children who were wrongly detained as adults.[13] In 2013, they secured the release of 36 young people found in detention who had been wrongly assessed to be adults. They reported that, during 2013, a further six young people were released from detention into local authority care pending a new age assessment.[14] Further very serious problems with age assessments of unaccompanied children have been evidenced by the 2013 Coram Children's Legal Centre report *Happy Birthday? Disputing the age of children in the immigration system*.

Pregnant women

A report by the Independent Monitoring Board for Yarl's Wood Immigration Removal Centre found that 93 pregnant women were detained there during 2011.[15] A 2013 report by the charity Medical Justice raised grave concerns about the health of pregnant women in detention.[16]

People suffering from serious mental illness

The High Court has recently found breaches of Article 3 of the European Convention on Human Rights (prohibition of inhuman and degrading treatment) arising out of the treatment of mentally ill men held in immigration detention in five separate cases.[17]

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[12] Home Office *Enforcement Instructions and Guidance* Chapter 55.10, pp42-3 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary

[13] Refugee Council (2012) *Not a minor offence: unaccompanied children locked up as part of the asylum system* http://www.refugeecouncil.org.uk/assets/0002/5945/Not_a_minor_offence_2012.pdf

[14] Refugee Council (10/01/2014) *Unlawful child detention must end* http://www.refugeecouncil.org.uk/latest/news/3905_unlawful_child_detention_must_end

[15] Yarl's Wood Independent Monitoring Board (2012) *Annual Report 2011*, p12

[16] Medical Justice (2013) *Expecting Change: the case for ending the immigration detention of pregnant women*

[17] *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120; *R (BA) v Secretary of State for the Home Department* [2011] EWHC 2748; *R (D) v Secretary of State for the Home Department* [2012] EWHC 2501; *R (HA (Nigeria)) v Secretary of State for the Home Department* [2012] EWHC 979; and *S by his litigation friend The Official Solicitor v Secretary of State for the Home Department* [2014] EWHC 50 (Admin)

Torture survivors

The charity Medical Justice presented evidence of the detention of torture survivors in their 2012 report *The Second Torture: The Immigration Detention of Torture Survivors*.

Victims of trafficking

In BID's view, the Home Office's instructions in this area are problematic as they only prevent the detention of people who have been recognised as victims of trafficking. Ongoing problems with failures to identify victims of trafficking and poor National Referral Mechanism decisions have been evidenced in reports by The Centre for Social Justice and the Anti-Trafficking Monitoring Group.[18] Such failings mean that trafficked people are detained. A parliamentary question in January 2012 revealed that the government was aware of 67 women who were held in immigration detention between 1 April 2009 and 26 October 2011 and who were later identified as victims of trafficking.[19] Furthermore, BID is aware of instances where trafficked people have been detained after the Home Office has recognised that there are reasonable grounds to believe that they are victims of trafficking.[20]

11. Based on which grounds could a person be detained during the return procedure? Please comment where necessary.

Question	Answer (yes/no)	Comment
Identity verification, in particular if the persons have no or false documents	Yes	
Protection of public order or national security	Yes	
Public health	Yes	
Risk of absconding	Yes	
Other (please specify)	The Home Office's instructions also list the following grounds for detention: There is insufficient reliable information to decide on whether to grant you temporary	

[18] Anti-Trafficking Monitoring Group (June 2010) *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons;* Centre for Social Justice (2013) *It happens here: equipping the United Kingdom to fight modern slavery.*

[19] *Hansard* HL Deb, 10 January 2012, c67W

[20] See Centre for Social Justice (2013) *It happens here: equipping the United Kingdom to fight modern slavery*, p98 for a case study on this which was provided to the authors by BID.

	admission or release. Your removal from the UK is imminent. You need to be detained whilst alternative arrangements are made for your care.	

All the above grounds are set out in Chapter 55.6.3 of the Home Office's *Enforcement Instructions and Guidance.*

12. **How are these grounds assessed in practice? What screening /assessment method is used?**

In practice, these grounds are assessed using a tick box 'IS91R' form. The initial decision to detain has to be authorised by a chief immigration officer (higher executive officer in the civil service grading structure) or above. The policy is to presume in favour of release. Alternatives to detention should be considered and each case should be considered on its individual merits.[21] Please see question 15 below for information about how decisions to detain are made in practice.

13. **Does the responsible authority conduct a risk assessment or use certain indictors in the assessment? If so please describe indicators and tools used.**

When assessing risk of absconding, Immigration Officers are instructed to consider whether the following factors apply in an individual case, and if so to tick them on the 'IS91R' form:

- 'You do not have enough close ties (for example, family or friends) to make it likely that you will stay in one place.
- You have previously failed to comply with conditions of your stay, temporary admission or release.
- You have previously absconded or escaped.
- You have used or attempted to use deception in a way that leads us to consider that you may continue to deceive.
- You have failed to give satisfactory or reliable answers to an immigration officer's enquiries.
- You have previously failed, or refused to leave the UK when required to do so.'[22]

[21] Home Office *Enforcement Instructions and Guidance* Chapter 55.3 (http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary)

[22] Home Office *Enforcement Instructions and Guidance* Chapter 55.6.3

In cases where foreign nationals have been convicted of criminal offences, Immigration Officers also consider the risk of reoffending and harm to the public. Home Office instructions state that:

'Risk of harm to the public will be assessed by the National Offender Management Service (NOMS) unless there is no Offender Assessment System (OASYS) or pre-sentence report available. There will be no licence and OASYS report where the sentence is less than 12 months. NOMS will only be able to carry out a meaningful risk assessment in these cases where a pre-sentence report exists (details of which can be obtained from the prison) or where the subject has a previous conviction resulting in a community order. Cases owners should telephone the Offender Manager for an update in cases where the risk assessment has been obtained less than six months before (for example in a bail application).'[23]

They go on to set out that:

'Where NOMS are unable to produce a risk assessment and the offender manager advises that this is the case, case owners will need to make a judgement on the risk of harm based on the information available to them.'[24]

Please see question 15 below for further discussion of how risk is assessed by the Home Office in practice.

14. Is there a mechanism in place to identify vulnerable people? If so, it is used in the decision to place an applicant in an alternative to detention?

Mechanisms to identify vulnerable people are set out below. These processes may or may not lead to the person's release from detention. If the detainee is released, they would not normally be placed in any specific alternative to detention scheme. Rather, they would be released into the community, albeit they may be required to live at a designated residence, report to the Home Office and possibly be electronically tagged (as other asylum seekers in the community may be).

The main mechanism to identify seriously ill people and survivors of torture in detention is Rule 35 of the Detention Centre Rules 2001, which stipulates that:

'1.) The medical practitioner shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention;
2.) The medical practitioner shall report to the manager on the case of any detained person he suspects of having suicidal intentions, and the detained person shall be placed under special observation for so long as those suspicions

[23] Home Office *Enforcement Instructions and Guidance* Chapter 55.3.2.6
[24] Home Office *Enforcement Instructions and Guidance* Chapter 55.3.2.8

remain, and a record of his treatment and condition shall be kept throughout that time in a manner to be determined by the Secretary of State;
3.) The medical practitioner shall report to the manager on the case of any detained person who he is concerned may have been the victim of torture.'

Chapter 55.8A of the Home Office's *Enforcement Instructions and Guidance* states the Rule's purpose:

'The purpose of Rule 35 is to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. The information contained in the report needs to be considered in deciding whether continued detention is appropriate in each case.'

The document 'Detention Rule 35 Process' in the Home Office's *Asylum Process Guidance* further explains the procedure to be followed.[25] Detention Service Order 17/2012 sets out the actions required of contractors and Home Office staff in Immigration Removal Centres.[26]

Very serious problems with the Rule 35 process have been identified. A report by the UK Parliament's Home Affairs Select Committee found that only 6% (n=13) of the Rule 35 reports made in the third quarter of 2012 resulted in a detainee being released.[27] In May 2013 the High Court found that four torture survivors were unlawfully detained by the Home Office in the case of *R (on the application of EO, RA, CE, OE and RAN) v. SSHD* [2013] EWHC 1236 (Admin).

Where there are concerns that someone may have been trafficked they should be referred to the National Referral Mechanism, or go through the asylum determination procedure. However, as is explained at Question 10 above, there are serious problems with failures to identify victims and the quality of National Referral Mechanism decision-making; these can lead to trafficked people being held in detention.

Children under 18, the elderly and pregnant women would normally self-identify, for example by informing an immigration officer of their age. Further details of how these cases are dealt with by the Home Office are set out at Question 10 above. Where it is known that, for example, a woman is pregnant, this should be taken into account when a decision on whether to detain her is made, and in any subsequent reviews of her detention.

[25] The Home Office instruction 'Detention Rule 35 Process' can be accessed here: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/

[26] Home Office *Detention Service Order 17/2012* http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/detention-services-orders/dentention-rule35?view=Binary

[27] Home Affairs Select Committee (2013) *The work of the UK Border Agency (July – September 2012) Fourteenth Report of Session 2012-13*

15. **Do the authorities examine alternatives to detention in each individual case before resorting to detention measures?** Specify if necessary.
☐Systematically
☐In most cases
☐Rarely
☐Never

There is not sufficient data publicly available to confirm how frequently the authorities examine alternatives to detention before detaining.

In the year April 2012 – March 2013, the First-tier Tribunal (Immigration & Asylum Chamber) received 11976 applications for release on bail. Of these 4302 (35.9%) were withdrawn before or during the hearing meaning no decision on the application was taken. In 5010 of the cases heard release on bail was refused, while in 2591 cases heard release on bail was granted.[28] The fact that significant numbers of people were detained and subsequently released on bail raises serious questions about why these people were detained in the first place, and whether all alternatives were considered when the decision to detain was made, and as detention progressed.

Mr Justice Hodge, former President of the Asylum and Immigration Tribunal, has expressed concerns regarding inadequate reasons for detention being put forward by Home Office presenting officers at bail hearings. In evidence to Parliament, he said that:

'The Home Office come along [to a bail hearing] and say, "We do not think they will turn up. We think there is a danger of them absconding. They are disruptive," and produce those kinds of problems. Quite often, we worryingly think they are not as evidence-based as they should be…'[29]

Court judgments and reports by academics, NGOs and regulators provide evidence of cases where the Home Office has failed to consider alternatives to detention. However, most of these reports do not only consider asylum seekers or refused asylum seekers – they also consider other migrants. We also note that we refer below to studies on the detention of families with children which were carried out before the new Family Returns Process was introduced in 2010-11. The information which is available about the current situation in relation to families and children is set out at Questions 18 and 19 below.

Academic and NGO reports

A number of reports have found that decisions by immigration officers to detain asylum seekers and migrants can be arbitrary, subjective, and based on

[28] HM Courts & Tribunals Service Presidents' Stakeholder Group (2013) *Bail management information Period April 2012 to March 2013*

[29] Joint Committee on Human Rights (2007) *Tenth report of session 2006-07: Oral and written evidence, Monday 5 February 2007* Q456

insufficient information. Weber and Gelsthorpe found that decisions to detain were, in some cases, based on an official's personal prejudices, broad policy objectives or the availability of bedspace, rather than consistent criteria or a reasoned assessment of the evidence in an individual case.[30] They also found that reviews of detention were compromised by their lack of independence, and the fact that the process rarely involved a fresh look at the grounds for detention. Similarly, Latif and Martynowicz found that the immigration officers in their study did not use, and could not articulate, any objective or consistent criteria for making decisions to detain particular individuals.[31] Instead, decisions were based on subjective factors, including the resource implications of the detention and the immigration officers' perceptions, feelings or suspicions about a person and their risk of absconding.

In 2002, London South Bank University published *Maintaining contact: What happens after detained asylum seekers get bail?* This study used BID's records to trace 98 asylum detainees who were bailed between July 2000 and October 2001 through to the winter of 2001/2. The authors found that:

'These [98] asylum seekers had been in detention for an average of 16 weeks, about 2 weeks longer than the average for all UK asylum detainees. The Immigration Service would therefore appear to view these detainees as at above-average risk of absconding. Nevertheless over 90 per cent were found to have kept to their bail conditions; of these 7 per cent were granted leave to remain or full refugee status by the time they were traced in this study.'[32]

These findings raised serious concerns about the quality of Home Office decision-making on detention. The report also found that:

'The cases of those bailed by BID reveal a number of inconsistencies in decisions to detain and to oppose bail. There was indeed one case in which two separate AIS91/RF forms were issued on consecutive days by different immigration officers stating wildly different reasons for detention, the one stating that deception on entry (entering as a visitor) made him he was an 'unacceptable character' and the other that the reason for detention was that he lacked ties with the UK.'[33]

A 2005 report by Amnesty International found that:

'Amnesty International believes that one of the main reasons why the detention of many people who at some stage sought asylum is arbitrary is because it is premised on the availability of beds (ie the detention capacity in terms of bed

[30] Weber, L. and Gelsthorpe, L. (2000) *Deciding to Detain: How decisions to detain asylum seekers are made at ports of entry*, Institute of Criminology, University of Cambridge

[31] Latif, N. and Martynowicz, A. (2009) *Our Hidden Borders: The UK Border Agency's powers of detention*, Northern Ireland Human Rights Commission

[32] Bruegel, I. and Natamba, E. (2002) *Maintaining contact: What happens after detained asylum seekers get bail?* London South Bank University

[33] Bruegel, I. and Natamba, E. (2002) *Maintaining Contact: What happens after detained asylum seekers get bail?* London South Bank University p10

numbers) within the immigration detention estate, rather than on considerations of necessity, proportionality and appropriateness, and therefore, lawfulness… The organization is concerned that the UK authorities are targeting those individuals who fully comply with reporting requirements.'[34]

Crawley and Lester's 2005 report on detention of children found that the Home Office's processes for ensuring that all barriers to removal were identified prior to a decision to detain were not always effective.[35] The authors concluded that this increased the risk of children being detained when their removal was not imminent. Previous studies have shown that, in practice, asylum seekers and migrants have, in some cases, been detained despite barriers to their removal.[36]

A 2014 pan-European study on the detention of unreturnable migrants, which included interviews with five migrants who had been detained in the UK, found that:

'As is the case with most rejected asylum-seekers and other irregular migrants, none of the people interviewed had valid passports on which to travel. Five of the UK interviewees could not return because of this.'[37]

'Unreturnable migrants, including three of the interviewees, have been detained in the UK for long periods waiting for deportation to Somalia, despite the risks involved in returns to Mogadishu, and the legal barriers to such returns taking place.'[38]

These findings raise serious concerns about the decisions to detain these individuals.

In the last three years, BID has published two reports which look in detail at decisions to detain in family cases. BID and The Children's Society's 2011 report, *Last resort or first resort?* examined the cases of 82 families with 143 children who were detained during 2009. We found that in a considerable number of cases, families were detained when there was little risk of them absconding, their removal was not imminent, and they had not been given a meaningful

[34] Amnesty International United Kingdom (2005) *Seeking asylum is not a crime: detention of people who have sought asylum* pp48-49

[35] Crawley, H. and Lester, T. (2005) *No Place for a Child: Children in immigration detention in the UK – impacts, alternatives and safeguards* Save the Children UK

[36] Bruegel, I. and Natamba, E. (2002) *Maintaining Contact: What happens after detained asylum seekers get bail?* London South Bank University; Manchester Refugee Support Network (2009) *Experiences of the detention process in Greater Manchester*; Refugee and Migrants Forum (2007) *Report on the Refugee and Migrant Forum Consultation into People's Experiences of the UK Immigration Service at Dallas Court Reporting Centre and Short Term Holding Facility, October 2006-January 2007*

[37] Vanderbruggen, M., Phelps, J., Sebtaoui, N., Kovats, A. and Pollet, K. (2014) *Point of no return: the futile detention of unreturnable migrants* p17. See also London Detainee Support Group (2009) *Detained lives: the real cost of indefinite immigration detention*

[38] Vanderbruggen, M., Phelps, J., Sebtaoui, N., Kovats, A. and Pollet, K. (2014) *Point of no return: the futile detention of unreturnable migrants* p36

opportunity to return voluntarily to their countries of origin. Indeed, in a large proportion of cases, there were barriers to families returning to their countries of origin during the time they were detained, which meant it was not possible, lawful or in the children's best interests for the Home Office to forcibly remove them.

BID and The Children's Society's *Last resort or first resort?* study found that 78 families were detained for periods when they could not be removed, and on average, families had no removal directions in place for 64% of the time they spent in detention. Only eight of the 82 families who participated in this research had any history of absconding before they were detained. Five of these eight families got back in contact with the Home Office voluntarily. Thirty families, release between January and August 2009, were tracked for six months following their release from detention. All 29 families for whom we were able to obtain this data reported regularly to the Home Office for the entire research period.

The report outlines how the Home Office assessed the risk of absconding for the 10 families for whom we were able to obtain full Home Office files. In a number of cases, families' risk of absconding was assessed on the basis of inadequate or inaccurate information, and flawed criteria and reasoning. Procedures for assessing risk were not consistently followed.

We found that insufficient effort was made to ensure the families in our sample had a meaningful opportunity to engage with the voluntary returns process before a decision was made to detain them. Of the families for whom we had this data, 63% (n=34) did not know that their most recent legal applications had been refused until the day they were detained. These families therefore had no meaningful opportunity to seek voluntary return before being detained.

During the period when this research was conducted, Home Office policy stated that in cases where families were detained, the reasons why detention was considered the only option to effect removal should be fully documented in a 'family welfare form.' Our analysis of 10 Home Office files found that a copy of the family welfare form was only in the file in 3 out of the 10 cases. The 2009 version of the family welfare form had a section which asked whether a discussion about voluntary return had been held, and what the applicant's response was. This section asked:

'Has the case owner advised the main applicant that if they do not take up the opportunity for AVR [assisted voluntary return], they will be removed if their application is unsuccessful? Note time, date and response.'

In two of the three cases where family welfare forms were on the file, this section of the form only states 'no' or 'N/A'. No explanation is offered for why a discussion about voluntary return was not held. In the third case, this section is ticked, but no information is given about the applicant's reaction or why detention was considered essential. At the point in their case when they were interviewed for this research, most families had a basic understanding of the

International Organisation for Migration's voluntary return schemes. However, several families said they did not have a good understanding of voluntary return until they were detained, and it was only while they were in detention that they learned more.

In 2013, BID published *Fractured Childhoods,* a report examining the cases of 111 parents who were separated from 200 children by immigration detention between 2009 and 2012. Most, but not all the parents in the study were held in immigration detention after completing criminal sentences. In 92 out of 111 cases parents were eventually released, raising serious questions about why they were detained in the first place.

Parents in this study were detained for long periods for the purpose of being deported or forcibly removed from the UK. However, data from the small quantitative sample of 27 parents shows that, in most cases, these parents were detained despite barriers which meant that it was not possible, lawful or in their children's best interests for the parent to be removed. In 18 out of 27 cases, directions were never set for the removal of parents during their detention.

The cases surveyed in this research also revealed very serious problems with the methods used by the Home Office to assess parents' risk of absconding or reoffending. Post-detention data were collected for the 15 parents in the small quantitative sample of 27 families who had been released for more than six months at the end of the data collection period. All 15 parents complied with the terms of their release and maintained contact with the Home Office. This was confirmed by their legal representatives in the 14 cases where parents were represented. The BID files of the 12 parents in the qualitative sample showed that the Home Office routinely failed to take into account factors which indicated that parents posed a low risk of absconding, such as long histories of reporting regularly.

In 14 out of 27 cases in the small quantitative sample, information was obtained about how the National Offender Management Service had assessed parents' risk of reoffending or risk of harm to the public on release. In 10 cases, parents were assessed by the National Offender Management Service as posing a low risk of reoffending or harm on release, and four parents were assessed as posing a medium risk. However, the Home Office repeatedly argued that these parents needed to be detained as they posed a 'significant' and 'unacceptable' risk.

In addition to our two reports on family cases, in 2012 BID published *The Liberty Deficit: long-term detention and bail decision making. A study of immigration bail hearings in the First-tier Tribunal*. Immigration detainees who have been in the UK for more than seven days can apply to the First-tier Tribunal's Immigration and Asylum Chamber for their release on bail.[39] For this study, in total eighty immigration bail hearings were observed and reported on.

[39] para. 22(1B) of Sch. 2 to the Immigration Act 1971

One element of the study examined the balance of oral arguments run by the Secretary of State[40] in opposing release before the Tribunal, and the criteria considered by the Tribunal at the bail hearing when deciding on release. BID found that the great majority of argument and discussion on the part of Home Office Presenting Officers and the Tribunal relates to assertions of the likelihood of re-offending or absconding on release, assertions that were found to be made without supporting evidence from the National Offender Management Service (NOMS) in almost every case.

Consideration of the length of time spent in detention to date, or likely future duration of detention, only featured in around half of the hearings. Detail of any consideration by the Secretary of State of the use of alternatives to detention was offered by the Home Office Presenting Officer to the Tribunal in only 6% of the hearings.

The bail guidance for judges at paragraph 4 notes that:

'In essence, a First-tier Tribunal Judge will grant bail where there is no sufficiently good reason to detain a person and lesser measures can provide adequate alternative means of control. A First-tier Tribunal Judge will focus in particular on the following five criteria (which are in no particular order) when deciding whether to grant immigration bail.

a. The reason or reasons why the person has been detained.

b. The length of the detention to date and its likely future duration.

c. The available alternatives to detention including any circumstances relevant to the person that makes specific alternatives suitable or unsuitable.

d. The effect of detention upon the person and his/her family (see para 20 below).

e. The likelihood of the person complying with conditions of bail.

In practice it is often not possible to separate one issue from the others and First-tier Tribunal Judges will need to look at all the information in the round.'[41]

The relevance of the length of detention to date was considered in 48% of hearings overall, though in a lower proportion where applicants were unrepresented (40%, n=17) than in cases where counsel was instructed (55%, n=21). The likely future duration of detention was considered in 50% of cases overall, though more often in unrepresented cases (57%, n=24) than in represented cases (425, n=16). We would expect that the question of length of detention would feature in Tribunal responses in more than around 50% of cases.

[40] The Home Secretary, currently Rt Hon Theresa May MP.

[41] Tribunals Judiciary (2012) *Bail guidance for judges presiding over immigration and asylum hearings* http://bit.ly/wuwnV5

In fourteen of the hearings where the Home Office Presenting Officer argued that removal was imminent (meaning continued detention was proportionate) they also argued that the applicant was not cooperating with the re-documentation process (with the implication that the applicant would not cooperate with bail conditions). In other words in 18% of all bail hearings in this study the Secretary of State simultaneously argued that removal was both imminent and not possible in the absence of a travel document[42].

Factors considered by the Tribunal during the hearing

	Relevance of length of detention to date YES	Likely future duration of detention YES	Likelihood of compliance with bail conditions YES	Impact of detention on applicant, children, family members[43] YES
Represented cases N=38	N=21	N=16	N=32	N=7
	55%	42%	84%	18%
Unrepresented cases N=42	N=17	N=24	N=28	N=7
	40%	57%	67%	17%
All cases Total=80	N=38	N=40	N=60	N=14
	48%	50%	75%	18%

It may be that once arguments have been heard from the Secretary of State about presumed risk of re-offending or risk of absconding, and efforts have been made to paint a picture of an applicant who is or has the potential to obstruct ongoing investigations in relation to removal, that the need for ongoing detention appears to the Tribunal to be proportionate as noted in the bail guidance at paragraph 20:

'These factors may help explain why in many cases immigration detention remains connected to the issues of investigation and removal, but a First-tier Tribunal Judge must continue to consider what alternatives there are to detention,

[42] Home Office Presenting Officers and tribunal judges both appear to be using the term 'imminent removal' in a different sense, and implying both looser and longer timescales than those stated in the Home Office's *Enforcement Instructions and Guidance*, which notes at Chapter 55.3.2.4: 'Removal could be said to be imminent where a travel document exists, removal directions are set, there are no outstanding legal barriers and removal is likely to take place in the next four weeks.'

[43] The revised version of the President's *Bail guidance for judges* (2011) no longer contained the requirement in the previous version (2003) to consider the impact of continuing detention on the applicant, on children, and on family members. However, we decided to continue to monitor this as part of the research, and made a recommendation that the requirement be reinserted into the guidance. The current version of the bail guidance (July 2012) has this requirement at paragraph 4 (d).

that will not interfere unreasonably with the functions of the immigration authorities, in order to reach a proportionate decision regarding bail.'[44]

It was not possible for BID's *Liberty Deficit* study to identify the point at which the Tribunal considered alternatives to detention in each case. Often this issue is related to the availability and suitability of sureties, and amount of recognizance. There is no obvious linear pathway in bail decision making along which it could be said that specific factors will be considered in a particular order and given a particular weight.[45]

Reports by regulators

In December 2012, HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration published *The effectiveness and impact of immigration detention casework.* The report considered the cases of 81 detainees, and found that:

'In most cases in our sample, we considered that the decision to detain was reasoned and defensible. However, in a small number (n=9) there was doubt about the robustness of the decision to detain as not all factors that appeared relevant seem to have been considered by the detaining officer.'[46]

The report goes on to give examples including: a recognised victim of trafficking who had been in detention for 15 months when the research was conducted, and a 19 year old man with strong ties to his former foster parents who was recorded as having 'no close ties to the UK' in a decision to detain checklist. In relation to the latter, the report found that:

'This case relates a failure to take into account key information that would probably have resulted in this young man not being detained at all.'[47]

The report goes on to set out concerns about Home Office assessments of risk of reoffending, in cases involving foreign national ex-offenders. Examples are given of problems with risk assessment and decisions to detain, including the following:

[44] Tribunals Judiciary (2012) *Bail guidance for judges presiding over immigration and asylum hearings* http://bit.ly/wuwnV5

[45] Dhami makes this point for decision making in criminal bail in the UK: 'There is no guidance as to how factors should be weighted, the direction in which they should be used, and how they should be integrated to form a bail risk judgment. There is also no guidance as to how risk judgments should be converted into decisions. Importantly, such discretion is not structured by the training provided to judges.' Dhami, M. K. (2005) 'From discretion to disagreement: Explaining disparities in judges' pre-trial decisions' *Behavioural Sciences and the Law*, 23: 367-386

[46] HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration (2012) *The effectiveness and impact of immigration detention casework* p17

[47] HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration (2012) *The effectiveness and impact of immigration detention casework* p18

'Mr D had been convicted of a drugs supply offence and his pre-sentence report stated "I am unable to offer the court any community-based alternatives to custody because [Mr D's] risk of reoffending is too low to meet the … evidence-based targeting criteria." This man had been in the UK for almost 40 years and had been detained for over a year post-sentence. It was unclear why, given that the risk of reoffending was assessed as being low, UKBA [UK Border Agency] detained him and continued to use this as a reason for his continued detention.'[48]

Previously, in 2011, the Independent Chief Inspector of Borders and Immigration criticised the Home Office for not releasing people from detention when the Home Office's own guidance suggests it should be doing so under certain circumstances, for example at the point at which it becomes apparent that removal within a reasonable time will not be possible.[49] His report notes:

'There was also a disparity between the number of people released from detention by the [UK Border] Agency and the number released on bail by the courts. Between February 2010 and January 2011, the Agency released 109 foreign national prisoners from detention compared with 1,102 released on bail by the courts.' [50]

As is noted above, one alternative to detention is an assisted voluntary return, to the applicant or 'returnees' country of origin. In 2010, the Independent Chief Inspector of Borders and Immigration published *Family Removals: A thematic inspection*. He found that:

'There was a lack of clear guidance as to what constituted an AVR [assisted voluntary return] offer, lack of consideration as to which staff were best placed to engage the family in discussing their options, how the options should best be promoted, and training on how to do this effectively. This meant there was not consistent approach across the UK Border Agency.'

Court judgments

Further examples of failures by the Home Office to consider alternatives to detention can be found in court judgments. For example, in the case of *R (on the application of) Reetha Suppiah and others v SSHD and Interveners* [2011] EWHC 2 (Admin), Justice Wyn Williams found that the Home Office had failed to properly consider alternatives when detaining two families with children. Paragraph 171 of the judgment states:

[48] HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration (2012) *The effectiveness and impact of immigration detention casework* p20

[49] Home Office *Enforcement Instructions and Guidance* Chapter 55 'Detention and Temporary Release' 55.3.2.4 *http://bit.ly/L6Lhwm*

[50] Independent Chief Inspector of the UK Border Agency (2011) *A thematic inspection of how the UK Border Agency manages foreign national prisoners, February – May 2011* http://bit.ly/rT6UuL

'The authorisation of detention of the First Claimant and her children was in direct conflict with the Defendant's published policy. The policy demanded that the decision-maker should have regard to section 55 of the 2009 Act; consider all reasonable alternatives to detention and resort to detention only as a measure of last resort and in exceptional circumstances. The decision-maker failed to act in accordance with that policy. Had the policy been applied detention would not have authorised.'

Paragraph 201 of the judgment goes on to state that:

'As in the case of the Suppiah family, the detention of the Fourth and Fifth Claimant was unlawful for reasons which included a failure to have regard to the duty under section 55. However, it was unlawful for more wide-ranging reasons; it was not a measure of last resort since alternatives had not been explored adequately or at all and the risk of absconding, although present, did not justify detention when measured against factors which militated against it.'

As is noted above, there have been a number of changes to the Home Office's policies and practices on family removal since this case was heard, and further details of the new Family Returns Process are given at Question 18 below.

16. Which alternatives to detention are currently used for 'returnees' in your country?

Types of alternative scheme applied	**YES/NO**	**Applied to a particular group?**
Obligation to surrender passport and documents	It is BID's understanding that it is standard practice for asylum seekers and 'returnees' to be required to surrender any passport or documents to the Home Office.[51]	No
Regular reporting to the authorities	It is BID's understanding that it is common practice for asylum seekers and 'returnees' to be required to report to the Home Office, more or less frequently.[52]	No
Deposit of adequate financial guarantee	As part of the bail procedure, the applicant and/or a 'surety' for them may offer a financial guarantee – please see details in Question 18.	

[51] Interview with Judith Dennis, Refugee Council, 30/1/14

[52] Interview with Judith Dennis, Refugee Council, 30/1/14

Community release/supervision	Not clear what is meant by 'community release/supervision' – all the options BID is aware of which are used in the UK are outlined in the other sections of this table.	
Designated residence	It is BID's understanding that it is standard practice for asylum seekers and 'returnees' to be required to live at a designated residence (unless they are destitute).	No
Electronic tagging	Yes	Yes – cases where asylum seekers or 'returnees' have criminal convictions, or where the Home Office perceives that tagging is justified based on a risk assessment – see details at Question 18 below.
Electronic monitoring by telephone using voice recognition technology	Yes	Yes – cases where the Home Office perceives the risk of non-compliance to be lower, and there are barriers to individuals reporting - for example because of distance from the reporting centre, ill health and pregnancy.
Other (please specify)		
Self check-in	'Self check-in' is a procedure whereby the Home Office makes arrangements for an individual's departure from the UK, but does not forcibly remove them. The Home Office arranges a flight and notifies the person of the time and date when they are required to arrive at the airport; in some cases the Home Office may arrange transport to the airport.	The process may be applied to single adults, but is also a formal part of the Family Returns Process – see details in Question 18 below.

Voluntary return	Yes	No
Separation of families	Yes – see Question 18 below	Families – the Home Office's policy on separation is set out in Chapter 55 of the *Enforcement Instructions and Guidance*
Removals without full notice	Yes	No. This can be used for single adults in cases where a recent removal attempt has failed. A specific 'Limited Notice Removal' process is used in the Family Returns Process – see Question 18 below for details.

As is set out in the table above, it is BID's understanding that it is standard practice that all asylum seekers and 'returnees' are required to surrender any passports and documents to the Home Office, and to live at a designated residence (unless they are destitute). These options are therefore not explored in any detail below. It is also common practice for asylum seekers and 'returnees' to be required to report, but the frequency of reporting will vary in different cases, as is explained in Question 18 below.

For the benefit of the MADE REAL project, information is set out below on how the immigration bail process operates in the UK's First-tier Tribunal. However, we note that this process is not an alternative to detention scheme which is operated by the UK government. Applicants seek to be released on bail by the Tribunal, but the Home Office opposes these applications and provides a Presenting Officer to argue against release in all bail hearings, even where the applicant is unrepresented. Furthermore, bail does not provide an alternative to initial detention – an individual has to be detained before they are able to apply for their release on bail. In addition, detainees are required to take steps to make an application for release on bail, and may face multiple practical barriers to doing so which may delay bail applications and possible release for many months - some of these are outlined at Question 18 below. While waiting to be able to apply for release on bail, an individual's detention may have become unlawful. Moreover, the question of legality of detention is not considered in a bail hearing, and an applicant may be refused bail even where they are being detained unlawfully.

BID is aware of very little publicly available information on the use of self check-in or removals without full notice for single adults, so we concentrate below on the information which is available for family cases.

We also note that, in cases where asylum seekers and 'returnees' have been convicted of criminal offences, an alternative to detention is to release these individuals after they have served their criminal sentences. On release, and depending on the length of their custodial sentence, these individuals would be subject to the same offender management procedures which are used for British citizens who are released from prison. In the UK, the agency responsible for these procedures is the National Offender Management Service (NOMS).

17. For each alternative scheme, please specify whether it is applied in practice to certain situations or only to a specific group:

Group	**YES/NO**	**Please specify if it is applied only to a** particular vulnerable group: unaccompanied or separated children, families with children, persons with disabilities, persons with (mental) health issues, victims of torture or trauma, victims of human trafficking, other.
Subject to a border procedure	Please see Question 8 above – BID's understanding is that people who are subject to a border procedure are routinely detained. If they are released, they may well be subject to some of the measures described in Question 16 above, such as reporting.	
Subject to a Dublin transfer	Please see Question 8 above – BID's understanding is that people who are subject to a Dublin transfer are routinely detained. If they are released, they may well be subject to some of	

	the measures described in Question 16 above, such as reporting.	
Subject to an accelerated procedure	No – please see Question 7 above	
Other (please specify)	Please see the right hand column of Question 16 above for details of which alternatives are applied to specific groups.	

B. Functioning of the alternatives to detention

18. For each alternative to detention, please provide a description of the basic characteristics/nature of the scheme. Please specify what obligations they have to comply to.

i) The Family Returns Process

In May 2010, the coalition government committed to ending the immigration detention of children. Following this, a review of child detention was carried out by the Home Office, who undertook a consultation process and piloted aspects of a new process for dealing with family cases. In December 2010, the Home Office published the outcomes of the child detention review,[53] and in 2011 a new Family Returns Process was rolled out across the UK. In December 2013, the Home Office published the report *Evaluation of the new family returns process*. This report summarises the key aspects of the process as follows:

'• A more robust decision-making process informed by up-to-date training and guidance.....
• Family Return Conferences (FRCs) are held with all families who have reached the Appeal Rights Exhausted (ARE) stage.
• The Conferences are used to discuss barriers to return, family welfare and medical issues and the option of taking Assisted Voluntary Return.
• A Family Departure Meeting (FDM) takes place two weeks after the FRC to discuss the family's thoughts regarding their options.
• Families receive a two-week notice of return and must fully prepare themselves and their children for return.

[53] Home Office (2010) *Review into ending the detention of children for immigration purposes* http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/26-end-child-detention/child-detention-conclusions.pdf?view=Binary

• Most families have the option of taking self check-in and managing their own returns.
• A new Independent Family Returns Panel must review all individual return plans for families reaching the ensured return stage.
• The Panel advises upon the most suitable method of ensured return based upon child safeguarding and welfare.' (p73)

The process is set out in more detail in Chapter 45 of the Home Office's *Enforcement Instructions and Guidance.* Essentially, if families do not return voluntarily or via self check-in following the earlier stages of the process, they may be forcibly removed from the UK. The report goes on to set out the 'ensured return' processes which may be used if the family do not return to their country of origin voluntarily or via self-check-in:

'**Notice periods:** Either the family receives limited notice of their departure, informing them that they could be returned at any point within the next 21 days; or they get 72 hours notice that they will be returned straight from their accommodation; or they are escorted to return with no further notice (following the notice they received relating to their self check-in).
Family separation: Consideration of the detention of one parent, leaving the family to remain in the community.
Accommodation: This includes open accommodation that involves full-board residential accommodation with free movement; or pre-departure accommodation whereby families are entered into a dedicated full-board residence that is securely monitored and in proximity to the departing airport.
Increased restrictions: These might include electronic tagging or enhanced reporting requirements that stipulate that certain families must attend reporting events more frequently.' (p79)

The 'pre-departure accommodation' referred to above is a Short Term Holding Facility where families are held in immigration detention under Immigration Act powers – it is therefore not an alternative to detention.

The 'open accommodation' option referred to above is explained in more detail in Section 4.7 of Chapter 45 of the Home Office's *Enforcement Instructions and Guidance:*

'Open accommodation is residential accommodation housing families on full board and without cash support. It seeks to encourage compliance by moving families away from community ties, signalling that departure from the UK is imminent. There are no restrictions on families' ability to come and go.'

If a family was moved to open accommodation, their cash support would be withdrawn. They should be given one week's notice of the move and could be required to stay in open accommodation for up to 28 days. If they were not removed in these 28 days they would be returned to standard accommodation for housing families who have been refused asylum.

The Home Office commissioned evaluation of the Family Returns Process sets out at p15 that, as at 12 October 2012, 377 of the 1,072 cases in the family returns process had been concluded. In 187 cases, a family return was not in the end pursued. A further 48 families returned using the Assisted Voluntary Return scheme and 40 families returned voluntarily by making their own travel arrangements. 20 families took the option of self check-in, and 82 families were forcibly removed from the UK.

Of the 82 families who were forcibly removed:

- 28 families were detained in 'pre-departure accommodation' prior to their removal.
- 13 families were returned via a 'limited notice' removal. Before their removal, these families were informed that they could be returned at any point within the next 21 days.
- 39 families were forcibly returned via 'no further notice' removals. These families were picked up from their accommodation in the community and forcibly removed. They were not given any notice, beyond the notice they had received previously that the Home Office wanted them to return via self check-in at an earlier date.[54]
- 1 family was forcibly removed from their accommodation in their community, and was given full notice of the date when they would be removed.[55]

The evaluation explains at p37 that 'Open accommodation' was not used in any of the cases considered in the report. BID is not aware of any cases where this option has been used.

It is BID's understanding from discussions with officials and members of the Family Returns Panel that there have been cases where the option of family separation has been used. However, unfortunately the evaluation published by the Home Office does not provide any details of the number of cases where families have been separated. BID has written to the Home Office requesting this information but they have informed us that a breakdown by return option was not looked at as part of the cohort based evaluation. We also have not been able to find any information in the evaluation about the use of electronic tagging or reporting as an alternative to detention in family cases.

[54] For Home Office policy on notice of removal, see Home Office *Enforcement Instructions and Guidance* Chapter 60, Sections 2 and 3. Section 3.2 states: 'Where a removal fails or is deferred and the person was given standard notice of removal, it may not be necessary to give a further period of standard notice when rearranging removal for within 10 days of the failed or deferred removal.'

[55] Home Office (2013) *Tables for 'Evaluation of the new family returns process'*, Tab DT17 'Ensured Rtn Option (macro)' https://www.gov.uk/government/publications/evaluation-of-the-new-family-returns-process

ii) Reporting and Electronic Monitoring

As an alternative to detention, the Home Office has the option of electronically monitoring current and refused asylum seekers. In addition, asylum seekers are commonly required to report regularly either to Home Office reporting centres or police stations (depending on their geographic location). Where the Home Office perceives the risk of non-compliance to be high, they may require asylum seekers or 'returnees' to report more frequently, and BID has dealt with cases where individuals have been required to report daily.

Electronic monitoring

On 23rd February 2009, the Home Office wrote to BID in response to a Freedom of Information Act request (Ref 11132). We quote this letter at length here, as it sets out in detail the Home Office's practices in relation to electronic monitoring at this time:

'Section 36 of the Immigration and Asylum (treatment of claimants etc) Act 2004 allows for the electronic monitoring (EM) of those of at least 18 years of age, who are liable to be detained under the Immigration Act. This includes asylum seekers, illegal entrants, those found working in breach of their conditions of stay, overstayers, people subject to further examination at a port of entry, and those refused leave to enter.

Electronic monitoring is currently used in two forms: telephone reporting using voice recognition technology and tagging.

A pilot of the use of EM in an immigration context ran between October 2004 and February 2005. The trial focused on the practicalities of applying electronic monitoring in an immigration context and was limited to selected business areas where it was felt the greatest impact would be realised, and the equipment tested to the full...

Since the end of the pilot, UKBA [UK Border Agency] has been developing the use electronic monitoring, as part of a developing contact management strategy and as an alternative to detention where detention is not possible.

In July 2005, Ministers agreed a change in policy to allow the Immigration Service (as was) to impose electronic monitoring as part of contact management plans without first seeking the consent of the individual. Consent was not a statutory requirement but had been introduced during the pilot as a matter of policy in recognition of the novel use of electronic monitoring in the immigration context. However, asking for the subject's consent was inconsistent with any other area of contact management. It hampered our ability to manage contact with people flexibly because we had little recourse if a person failed to give it or if they subsequently failed to comply.

We have targeted the use of telephone reporting on managing our contact with those where the risk of non-compliance is lower and have applied it in conjunction with physical reporting at reporting centres. We are thereby able to: manage better the throughput at our reporting centres; avoid unnecessary travel

by those required to report; maintain contact with those who live beyond a reporting centre catchment area and maintain contact with those who find it difficult to travel to a reporting centre, for example, those who are ill or pregnant women immediately before and after the birth of their child.

The use of tagging is directed at higher risk cases. Among the key applications are cases where we have not detained, but where we wish to maintain a high level of contact and control because the circumstances of the case suggest that the individual may not comply, for example to avoid removal. The categories which meet those criteria include: asylum seekers who have previously claimed in a 3rd country; cases where appeal rights are exhausted or where the right of appeal is non-suspensive; those who make late and opportunistic claims to asylum; those who are not documented or who express a reluctance to comply with the documentation process and those cases where deportation action has begun...

During the original project, in line with the requirement for consent, monitoring periods were generally set in a way which did not impact on an individual's movements, for example, monitoring periods of two hours early in the day, twice a week. By imposing more frequent monitoring periods and at different times of the day, we intend to demonstrate to those who are not detained that we intend to exercise a high level of control pending their removal...

From 1 February 2005 (pilot end) until 31 January 2009, 2052 people have been successfully inducted onto a tag regime with 326 currently being monitored. In the same time period, 880 have been successfully inducted onto a voice recognition regime with 79 currently being monitored.

The evaluation of the original trial on EM found that the overall compliance rate in terms of tagging and tracking was 68%. The compliance rate for both tagging and telephone reporting is currently around 90%.'

The Home Office attached a summary of their evaluation of their electronic monitoring pilot to this letter. BID was concerned to see that the findings of the evaluation suggest that the Home Office may have used tagging unnecessarily in a number of cases. Between October 2004 and February 2005, the Home Office piloted electronic monitoring with 111 applicants who were selected on the basis that they were perceived to have a low risk of absconding. Of these 111 applicants, 92% maintained contact and did not abscond. Following this, electronic tagging was used in cases where the Home Office assessed the individual as having a high risk of absconding. However, the compliance rate of this group was the same as that of 'low-risk' applicants, at 'around 90%'. In addition, the Home Office's evaluation found that it would not have been possible for the department to predict that the applicants who absconded were at risk of doing so:

'Having reviewed the details of each case, there are no factors which would have indicated in advance that [the eight participants who absconded] were more likely to abscond than any of the other cases released.'

On 13th March 2006, the then Immigration Minister, Tony McNulty, made a statement to parliament on electronic monitoring. He noted that:

'Among the key applications for tagging are cases where we have not detained, but where we wish to maintain a high level of contact and control because the circumstances of the case suggest that the individual may not comply, for example to avoid removal. The categories which meet those criteria include:

- asylum seekers who have previously claimed in a third country;
- cases where appeal rights are exhausted or where the right of appeal is non-suspensive;
- those who make late and opportunistic claims to asylum; and
- those who are not documented or who express a reluctance to comply with the documentation process.'

He went on to explain that:

'In December 2005 the Immigration Service carried out an exercise at the Asylum Screening Units (ASUs) in Liverpool and Croydon to tag adult asylum applicants at the point of claim. By making clear the intention to tag the applicant our aim was to discourage unfounded applications for asylum. Eleven applicants—all of whom were liable to detention—were tagged during the week-long exercise, and the ASU have continued to refer claimants for tagging who are not detained. A total of 60 claimants at the ASUs had been tagged by the end of February 2006. For the purpose of the exercise we sought to tag only those claimants with settled addresses in view of the cost and logistical difficulties of inducting and re-inducting those moving between different properties run by emergency accommodation providers. However, as our aim is to send a clear message to unfounded claimants, we are working towards tagging all adult claimants at our ASUs who are not detained, including those who seek asylum support.'[56]

However, it appears that the then government's ambitions to tag all adult asylum claimants could not be realised because of cost implications. BID's understanding from meetings with Home Office officials is that the use of electronic tagging is limited by its high initial costs. A receiver has to be fitted in the individual's home as well as the tag being attached to their person. A Home Office policy on electronic monitoring, dated 21/9/10, was disclosed as part of litigation. The policy states that:

'The application of a tagging regime can be considered for cases that...
are CCD [Criminal Casework Directorate] cases or
IG FNPs [Foreign National Prisoners] (non-criteria cases) or
when the case owner can present an evidence-based justification for EM based on risk and benefit, and the prospect of active management of the EM aspect as the case progresses.'[57]

[56] *Hansard* HC Deb, 13 March 2006, c88WS

[57] Home Office (21/09/10) *Electronic Monitoring Policy: Criminality and Detention Group v 2.8,* p4

The policy goes on to state that:

'To ensure compliance with Article 8 of the European Convention on Human Rights the monitoring frequency applied to an EM regime should be a reasonable and proportionate measure against the risk of offending behaviour or an individual absconding... Monitoring frequencies should be determined on a case by case basis in line with regional contact management strategies. Electronic monitoring regimes should be tailored to suit the individual case, allowing flexibility of the frequency and duration of monitoring periods as appropriate.'[58]

We also note that, in cases where detainees are released on bail and electronically monitored, the Home Office's instructions to caseowners specify that if certain exceptions do not apply, they must request consideration of removing electronic monitoring conditions at a bail renewal hearing:

'Where the offender is on electronic monitoring conditions, but is not:
- a recovered absconder
- regarded as a high harm offender or
- a multi-agency public protection arrangements (MAPPA) case

you must request that the removal of the electronic monitoring condition is considered.'[59]

All the above information relates to tagging where a receiver is fitted in the individual's home and information is gathered about whether they are in their home at specific times. However, it is also possible to electronically monitor a person using 'satellite tracking' whereby all their movements are monitored. In his statement to parliament in 2006, which is quoted above, the then Immigration Minister, Tony McNulty, made the following comments on satellite tracking:

'We have made less use of satellite tracking. This is partly because of the geographical limits on the availability of the technology to Greater Manchester, Hampshire and the West Midlands as part of a wider pilot sponsored by the National Offender Management Service which was only running in these areas. We will do further work to establish clearly whether this more intrusive method of contact management will deliver business benefits and provide value for money.'[60]

At the time of writing, we are seeking clarification from the Home Office about whether they are currently making any use of satellite tracking.

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[58] Home Office (21/09/10) *Electronic Monitoring Policy: Criminality and Detention Group v 2.8,* p5

[59] Home Office (18/9/13) *Criminal Casework: Bail applications – action after a bail hearing or decision*
http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/criminality-and-detention/39-bail-appli?view=Binary

[60] *Hansard* HC Deb, 13 March 2006, c88WS

Reporting Requirements

Current and refused asylum seekers can be required to report. The Home Office sets out their criteria for imposing frequent reporting requirements in their instruction *Reporting – Standards of Operational Practice:*

'High reporting frequencies are normally weekly but may vary based on the individual's profile. Those individuals or groups currently under this regime are:

• Individuals who have been sentenced to 12 months or more in prison who are still subject to Licence, managed by Probation Trusts. Of these, those who pose a high risk of serious harm to society will be subject to MAPPA (multi agency public protection arrangements) which only apply in the community. The MAPPA category and the MAPPA level of management are recorded on CID special conditions. Some may also be subject to Police Notification Procedures (registered sexual offenders), who again are recorded on CID special conditions.
• Non Suspensive Appeal (NSA) cases with a valid travel document or where a travel document is obtainable within four months of a negative decision
• third country unit (TCU) cases
• appeal rights exhausted (ARE) cases where removal is likely within four months
• cases where:
    o a negative initial decision has been made,
    o there are no significant outstanding barriers to removal aside from the appeal process, and
    o the applicant has a valid travel document or where a travel document is obtainable within four months of a negative decision
• cases with no fixed address & where:
    o reporting is the only means of contact with the applicant, and
    o the applicant has a valid travel document or where a travel document is obtainable within four months of a negative decision
• nationalities who can return on a charter flight.'[61]

The policy goes on to set out that individuals will be suitable for 'medium frequency' reporting where they have no fixed address; are appeals rights exhausted; or are a non-suspensive appeals case, but there are barriers to removal which are unlikely to be resolved for several months. The instruction also states that medium frequency reporting is appropriate for:

'applicants who have been compliant under an increased frequency regime for the last 6 months, and where removal is unlikely within the next 4 months.'[62]

Vulnerable individuals would normally be subject to low frequency reporting, as outlined at question 19 below. However, the instruction goes on to state that:

[61] Home Office (2012) *Reporting – Standards of Operational Practice,* p9-10 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/contactmanagement/
[62] Home Office (2012) *Reporting – Standards of Operational Practice,* p11

'the reporting centre will have discretion to continue a high or medium frequency, or to vary the timing between two reporting events on an ad hoc basis if this will benefit case management.'[63]

iii) Bail and sureties

Immigration detainees can apply to the First-tier Tribunal's Immigration and Asylum Chamber for release on bail. Detainees can also be released by the Home Office on temporary admission. It is possible for legal representatives to make applications to the Home Office for release on temporary admission. If the Home Office temporarily admits a detainee, either on application or without an application from the detainee, no reasons for release are given to the detainee.

In addition to temporary admission and applications for release on bail to the independent Tribunal, detainees may apply for release on bail to a chief immigration officer or to the Secretary of State. Non-Tribunal applications made within the first eight days of detention are made to chief immigration officers and after the first eight days they are made to the Secretary of State. Unlike Tribunal bail there is no specific form for bail applications made to the chief immigration officer or Secretary of State, but the content of any application should be similar, setting out the reasons why bail should be granted. Chief immigration officers and staff acting on behalf of the Secretary of State have the authority to attach conditions to bail under paragraphs 22 and 29 of schedule 2 of the Immigration Act 1971 and section 9A of the Asylum and Immigration Appeals Act 1993. They may wish to consider sureties, take financial recognisances, and must take into account any conditions attached to a release licence where the bail applicant is an ex-offender still on licence. BID is not aware of any publicly available information on the grant rate of applications for release on bail to a chief immigration officer or the Secretary of State, but note that such applications are made to the detaining power or her representative while applications for release made to the Tribunal are to an independent decision maker.

Tribunal bail

Detainees can and do prepare and submit bail applications to the First-tier Tribunal, and appear at the bail hearing without legal representation if they have no other option. However, BID's research consistently shows that there is a "representation premium" in immigration bail hearings as in other forms of court hearing. There is a clear advantage to having a bail application prepared by an accredited legal advisor and being represented at a bail hearing.

BID is a small UK charity which provides free information, legal advice and representation to detainees to assist them with obtaining their release on bail. In 2012/3, we made 216 bail applications. 148 of these applications were heard in court, and in 64 cases detainees were granted bail. We provided one-off advice, telephone advice, workshop advice and representation to a total of 3,367 people during the year.[64] Because of our limited resources, Bail for Immigration

[63] Home Office (2012) *Reporting – Standards of Operational Practice,* p13

[64] Bail for Immigration Detainees (2014) *Annual Report 2013*

Detainees is only able to represent a small proportion of the detainees who contact us.

In the most recent BID research on bail decision-making, 31% of those applicants whose bail case was prepared by BID and who were then were represented by a pro bono barrister were granted bail, while only 11% of unrepresented applicants secured their own release.

*Table **: outcomes of bail hearings in this study*

Heard 2011-2012	Number of bail hearings	Withdrawn during hearing	Completed hearings	Granted (after completed hearings)	Refused (after completed hearings)
Represented applicants	N=38	N=6	N=32	N=10	N=22
		16%		31%	69%
Unrepresented applicants	N=42	N=4	N=38	N=4	N=34
		9%		11%	89%
All applicants	N=80	N=10	N=70	N=14	N=56
		12.5%		20%	80%

Legal aid is available for bail applications, subject to the statutory means and merits tests, but in practice there are a number of barriers to detainees accessing competent legal advice.[65] Long-term detainees may not be able to obtain or maintain publicly funded legal representation throughout their detention, often because they are considered to fail the merits test for bail.[66] The Legal Aid Agency has indicated to BID that legal aid funding would normally be justifiable for two bail applications, but may be harder to obtain for further applications if release is not granted. Failure to achieve release on First-tier Tribunal bail at an earlier point in a detention trajectory may influence the application of the merits test when considering legal aid for bail applications later on during a detention episode.

The criteria which should be considered by judges when considering bail applications are set out in the Tribunal's *Bail guidance for judges:*

'a. The reason or reasons why the person has been detained.
b. The length of the detention to date and its likely future duration.
c. The available alternatives to detention including any circumstances relevant to the person that makes specific alternatives suitable or unsuitable.
d. The effect of detention upon the person and his/her family (see para 20 below).
e. The likelihood of the person complying with conditions of bail.' [67]

[65] Bail for Immigration Detainees (2013) *Summary findings of survey of levels of legal representation for immigration detainees across the UK detention estate (Surveys 1 - 6)*

[66] Bail for Immigration Detainees (2012) *The Liberty Deficit: long-term detention and bail decision making. A study of immigration bail hearings in the First-tier Tribunal*

[67] Tribunals Judiciary (2012) *Bail guidance for judges presiding over immigration and asylum hearings*, paragraph 4

BID has longstanding concerns about the variable quality of Tribunal decision-making on immigration bail, particularly in relation to longer -term detainees, which are set out in our 2012 report *The Liberty Deficit* and an earlier BID report *'A nice judge on a good day: immigration bail and the right to liberty" (2010).*

Financial guarantees

When a detainee is applying for release on bail, they may wish to ask one or more of their friends, family members or other contacts (such as a detention visitor) to act as a surety for them. An applicant can be released on bail without a surety, but if they have a surety who the judge considers suitable this may strengthen their application. A surety agrees to be bound by a sum of money which will be forfeited in part or in its entirety if the detainee fails to report at the designated place and time at any point after release (if they are considered to have absconded). The surety chooses the amount which they wish to be bound by. It should be an amount of money which is demonstrably significant to them, relative to their means, and which would cause them hardship if they were to forfeit it.[68]

The surety will also need to demonstrate to the Tribunal that they would be able to pay this financial forfeit if required. The Tribunal has the power to determine that the surety is bound in full or only in part to forfeit the amount of recognizance they have offered if the ex-detainee fails to report at a particular place and time. This decision will be influenced by the level of responsibility the surety is considered to have for the bailee's failure to report, and the steps taken by the surety to ensure compliance and report non-compliance.[69]

In addition to the surety system, the bail application form allows the detained applicant to agree to be bound by a sum of money for their own recognisance. In practice, many detainees have very limited or no means whatsoever, and may only be able to offer the Tribunal small sums such as £5. In BID's experience it is the amount of recognisance that sureties can offer the First-tier Tribunal which receives the most attention during bail decision-making.

Where detention has gone on for very long periods (say two years or more) it is BID's experience that both the ability to offer sureties, and in turn the ability of

[68] See Bail for Immigration Detainees (2013) *How to get out of detention: a free guide for detainees.* In BID's view the amount of any financial guarantee offered by a surety should not be viewed in absolute terms but rather in relation to the means of the surety. Guidance for judges states only that 'confidence in a surety may be increased by the amount of the recognisance offered that should remind the surety of the principal duty' - Tribunals Judiciary (2012) *Bail guidance for judges presiding over immigration and asylum hearings*, Paragraph 41

[69] Bail for Immigration Detainees (2013) *How to get out of detention: a free guide for detainees*

sureties to be bound by significant sums as recognisance, carry less weight in bail decision making as the length of detention without removal takes on more weight.

The *Bail guidance for judges* explains at paragraph 39 that:

'The purpose of requiring a surety in an appropriate case is to reduce the risk of a breach of bail conditions and increase confidence that the applicant will comply with all the conditions of bail. If there are no reasonable grounds for concluding that the applicant will abscond, a surety may well be unnecessary.'

It goes on to state at paragraph 42:

'A surety who has no immigration status, regular address, means of subsistence or knowledge of the applicant may well be unsuitable to act as such, as will a surety who has criminal convictions that are not spent. Details of sureties offered should be supplied in advance to the respondent who may well make background checks.'[70]

Home Office policy requires staff to carry out checks on sureties, and this process set out in the instruction 'Criminal casework directorate: Bail applications – action before and during a bail hearing or decision.'

The table below is taken from Bail for Immigration Detainee's 2012 report, *The Liberty Deficit,* and sets out the situation in relation to sureties for the cases surveyed:

Rate of offering sureties, number of sureties offered, and rate of examination of sureties

	Sureties were offered	Sureties were examined	1 surety offered	2 sureties offered	3 sureties offered
Represented cases (N=38)	N=16	N=10	N=8	N=7	N=1
	42%	63%	50%	44%	6%
Unrepresented cases (N=42)	N=15	N=7	N=8	N=7	N=0
	36%	47%	53%	47%	0%

A 2002 study by London South Bank University found that:

'Detainees represented by BID were not always required to find sureties; where they were the median amount required in total was £250. Higher sums were associated with those whose appeals had been turned down, but there is no evidence that high sureties are required to assure compliance.'[71]

[70] Tribunals Judiciary (2012) *Bail guidance for judges presiding over immigration and asylum hearings*

[71] Bruegel, I. and Natamba, E. (2002) *Maintaining contact: What happens after detained asylum seekers get bail?* London South Bank University

Further data: BID's ongoing monitoring of bail applications

Since January 2013, BID has collected data on each bail application prepared by BID for those detainees to whom we provide full legal representation and on behalf of whom we instruct pro bono counsel to act at the bail hearing. This data is then subject to analysis for each full year, and the currently unpublished reports are used to inform the management of legal casework and our policy work with the Home Office and First-tier Tribunal. In this exercise we collect data for each slot on our rota for pro bono counsel on the outcome of each slot (slot cancelled, bail application withdrawn after lodging, bail granted, bail refused, bail in principle granted, or case adjourned); reasons for withdrawing a bail application, and whether withdrawn before or during the bail hearing; the type of accommodation offered to the Tribunal as a bail address (private accommodation, Home Office Section 4(1)(c) bail accommodation, or probation service supervised Approved Premises); the number of sureties offered by the detainee and the amount of their recognisance; and whether the detained bail applicant is still within the period of a criminal release licence as a result of criminal convictions meaning that certain conditions apply to their release in addition to any conditions imposed by the immigration tribunal in the event of their release.

For the year January to December 2013, the grant rate for bail applications that were prepared by BID and that were fully heard (i.e. not withdrawn) was 54%. 23% of cases that were prepared and already lodged with the hearing centre were withdrawn either before or during the bail hearing for reasons to do with developments in the client's case or transfers around the detention estate (Home Office actions), problems relating to sureties or bail accommodation, an issue relating to the hearing centre or judge, or counsel being unavailable at short notice. About twice as many applications were withdrawn prior to a bail hearing than were withdrawn during the hearing. Applications may be withdrawn during the hearing on the advice of counsel. A decision on withdrawal would be made by the client in consultation with BID and counsel.

Sureties were offered in 41% of the prepared cases. Of these, one surety was offered in 26% of cases, and two sureties in 15% of cases prepared. 46% of BID's represented clients in 2013 who were bailed were released without a surety. The average (mean) amount of recognisance offered by sureties in BID's represented cases during 2013 was £817. The most common (modal) amount was £1000, followed by £500. 53% of BID's bail clients were housed by the Home Office Section 4(1)(c) accommodation on release, 46% were able to offer private accommodation, and 1% were required by the terms of their NOMS release licence to live in NOMS supervised Approved Premises.

Accommodation and release on bail

A significant barrier to release on bail for some detainees is the lack of a release address. Release from detention is always granted to a specified address. Some detainees may be able to offer a private address to the Tribunal, in which case the person offering the accommodation must also satisfy the Tribunal that they are in a position to accommodate the bailee. Where property is rented, landlord's approval, including local authority or housing association approval, may be required and must be provided to the Tribunal.

Where detainees have no access to private accommodation, for example because they know no one in the UK able to offer it, they can seek bail accommodation and support from the Home Office while still detained under Section 4(1)(c) of the Immigration and Asylum Act 1999. The grant of Section 4 (1)(c) support must be in place in order for a detainee to be able to lodge their application for release on bail. This Section 4 (1)(c) support comprises accommodation somewhere in the UK provided on a no-choice basis plus an 'Azure card' for financial support.

However, BID's legal casework and detailed research show that while detainees without a criminal conviction are generally granted Section 4 (1)(c) bail support within a couple of weeks, detainees with a criminal conviction may have to wait for 6-9 months for a grant of Section 4 (1)(c) bail address. The Home Office process, commercial contractors providing Section 4 accommodation, and in a minority of cases probation checks on proposed Section 4 addresses, all contribute to these significant delays. Thus, the bail cycle for detainees with a conviction – which may include those who are seeking or have sought asylum in the UK – is significantly longer than those without. If release on bail is refused by the Tribunal then an application for Section 4 bail support must be started all over again before a further application for release can be lodged.

19. Are the needs of particular vulnerable groups taken into account in the implementation of these measures?

i) The Family Returns Process

In BID's view, the Family Returns Process does not adequately take account of the needs of children and families.

There are still serious problems with the quality of Home Office decision-making in family asylum cases, and the UNHCR has recently published two reports on this issue.[72] There are also numerous barriers to asylum seeking families accessing competent legal advice, which have been exacerbated by the repeated cuts which

[72] UNHCR (2013) *Considering the Best Interests of a Child Within a Family Seeking Asylum* Quality Integration Project – Third Report to the Minister; UNHCR (2013) *Untold Stories: families in the asylum process* Quality Integration Project – Second Report to the Minister

have been made to legal aid funding in recent years.[73] These factors mean that families may end up in the returns process when this is entirely inappropriate. As is noted above, in 187 of the 377 family cases which were concluded during the Home Office commissioned evaluation of the Family Returns Process, a return was not in the end pursued.[74] This raises serious questions about why these families entered the returns process in the first place.

The Family Returns Process allows families who may have been in the UK for years a minimum of just two weeks to consider voluntary return. In BID's view this is inadequate, particularly given that children may have strong ties to the UK including having attended school here for years. Families may well not be able to get an appointment with a legal representative to discuss their options within a two week timeframe.

Family Return Conferences and Departure Meetings

Serious concerns have been raised about the way in which Family Return Conferences and Family Departure Meetings have been carried out. The Home Office commissioned evaluation of the Family Returns Process notes that in some cases parents became distressed during Family Return Conferences and that there were incidents of 'actual or threatened self-harm' in the course of the return process.[75] In December 2010, BID and The Children's Society noted in a policy paper that:

'BID and The Children's Society are concerned that in some cases children are attending the family return conferences at which issues such as forcible removal are discussed with parents. In many cases, parents will have little choice about children's attendance as, for example, the conference may be held in their home and they may not have any access to childcare. In some cases, parents have been required by the UKBA [UK Border Agency] to bring their children to family conferences. In others, families have been given no choice about whether the conference should take place in their home or at the UKBA reporting centre. The UKBA have acknowledged that the Immigration Officers who are carrying out the conferences are unlikely to have the necessary skills to communicate these very difficult matters to children, and that in any case they will be primarily focused on a discussion with the parents. The UKBA have also reported to us that in many cases parents have become very distressed during the course of family return removal conferences, in some cases expressing an intention to harm themselves or attempt suicide. We are concerned that there is considerable scope for children to become distressed during these conferences, and no support is being offered to them to help them to cope with these experiences. In addition,

[73] Trude, A. and Gibbs, J. (2010) *Review of quality issues in legal advice: measuring and costing quality in asylum work*; McClintock, J. (2008) *The LawWorks Immigration Report: Assessing the Need for Pro Bono Assistance*; Refugee Action (2008) *Long term impact of the 2004 Asylum Legal Aid Reforms on access to legal aid*; Smart, K. (2008) *Access to legal advice for dispersed asylum seekers*; London; Constitutional Affairs Select Committee (2007) *Implementation of the Carter Review of Legal Aid Third Report of Session 2006–07 Volumes I & II*

[74] Home Office (2013) *Evaluation of the new family returns process*

[75] Home Office (2013) *Evaluation of the new family returns process*

children's presence in family return conferences could prevent parents from disclosing sensitive matters, such as information about their health which the UKBA may need to know in order to make decisions about enforcement action which safeguard the family.

While we are concerned about children's participation in the family return conferences, the participation of children in the broader pilot process should not be overlooked, and needs to be properly planned and facilitated. There is currently a lack of clarity around which professionals will facilitate children's participation in the pilot process. It is important to consider the engagement with children in more detail to ensure that they are informed appropriately about decisions that will impact on them, and to seek their views and concerns in an age-appropriate manner, particularly around their safety and welfare. Detail needs to be provided around how participation is to be conducted, where, when and by whom. The family return conference may not be the most conducive situation in which to solicit meaningful input from a child but this could be something that an independent, trained specialist or support worker would address before the initial family return conference or in between the initial conference and the final family return conference, with parental consent.'[76]

In 2012, the charity Refugee Action published a briefing paper which set out concerns about some clients' experiences of the Family Return Conference and Depature Meeting, stating that:

'Many families reported to RA [Refugee Action] staff that at the FRC [Family Return Conference] they found their caseowner was grumpy or angry. One woman said the caseowner was "fuming" when she refused to sign up for AVR. Many of the caseowners did not behave in a way that suggested they had much experience of working with children and young people.'

The paper goes on to describe an instance in which a mother became very distressed and threatened to harm herself in front of her children during a Family Return Conference, and tried to harm herself during the Departure Meeting. It also states that:

'One family told their RA [Refugee Action] key worker that at the FDM [Family Departure Meeting] they were given their self check-in letter and informed by the IOs [Immigration Officers] that if they did not sign up for AVR, a team of 10 IOs [Immigration Officers] would come to their house to take them to the airport on the self check-in date.'[77]

[76] BID and The Children's Society (December 2010) *UKBA plans for pilots to remove families with limited notice and through open accommodation: Response of Bail for Immigration Detainees and The Children's Society* p10

[77] Refugee Action (2012) *Refugee Action's response to the GVA evaluation of UKBA's family returns process*

The Home Office commissioned evaluation of the process found that four of the six older children interviewed found the Family Return Conference 'distressing.. [and] felt they had not been listened to and that there were no opportunities to engage (making their presence tokenistic).'[78]

In relation to the Family Departure Meeting, the Home Office commissioned evaluation noted that:

'Families said that the presence of uniformed officers at FDMs [Family Departure Meetings] was particularly distressing. One family member commented: "When they do the second interview they wear special uniform.. and when kids are there they feel like they have done some sort of crime, they feel like a criminal."'[79]

The evaluation found that:

'Views from a range of interviews suggested that better engagement with families, to address welfare and safeguarding issues, was needed. Most NGOs and several strategic stakeholders (both UK Border Agency and independent) felt involving third party organisations could help.'[80]

Indeed, at p36 the evaluation found that one of the key reasons given for detaining families was 'for Barnardos [a third sector organisation] to provide preparatory support for children before the return.' Such support is not available to families in the returns process who are not detained.

Family Returns Panel

As is set out above, the Home Office has established an 'Independent Family Returns Panel' to provide advice to Home Office staff about which method of enforced return should be used in individual cases. BID's key concern is that there is no direct route for families or their legal representatives to provide evidence to the panel about factors which may make certain enforcement measures inappropriate. Furthermore, the panel does not routinely share information with families and their legal representatives regarding the specific reasons why enforcement measures such as limited notice of removal are being used in their cases, and the evidence on which this decision is based.

A 2012 briefing paper by Refugee Action, based on clients' experiences of the Family Returns Process, stated that:

'RA [Refugee Action] is concerned about the information given to the Panel and believes that it is insufficient for the Panel to make an independent decision about the possible options for a family at this stage of the asylum process.'[81]

[78] Home Office (2013) *Evaluation of the new family returns process* p31

[79] Home Office (2013) *Evaluation of the new family returns process* p28

[80] Home Office (2013) *Evaluation of the new family returns process* p33

[81] Refugee Action (2012) *Refugee Action's response to the GVA evaluation of UKBA's family returns process*

Limited Notice Removal
BID is concerned that the practice of removing families with limited notice may create barriers to families accessing legal advice and judicial oversight of the Home Office's decision to forcibly remove them. This is particularly concerning given the evidence of more general difficulties in accessing competent legal advice and problems with the quality of decision-making which is cited above.

In the case of 'limited notice' removals, BID is concerned that the fact that families do not know the date and time of their removal may create specific practical barriers to them accessing legal advice. Given that legal representatives are likely to have considerable caseloads to manage, it may be difficult for them to take on a case where there is no fixed removal date, as they will not be able to reliably assess what the impact of taking the case on will be for their ongoing casework. Furthermore, the uncertainty of not knowing what date or time they will be removed from the UK on is likely to cause considerable distress to families. This is particularly concerning given evidence that some family members in the returns process have self-harmed.[82] Unfortunately there has been no evaluation of the Family Returns Process other than the government-commissioned evaluation. Information is not available on whether families removed with limited notice have been able to access legal advice, and what effect the process had on them.

Separation of families
As is noted in our response to Question 18 above, there have been cases where families have been separated during the Family Returns Process as an alternative to detention, although the Home Office has neglected to publish figures on how many children have been separated from their parents, and whether these families were eventually reunited or not. The Home Office's guidance on separation of families in the returns process is set out in the *Enforcement Instructions and Guidance* at 45(b) Section 8.

In BID's experience, when families are separated for the purposes of immigration control this can cause extreme distress to children. In 2013, BID published *Fractured Childhoods,* a report examining the cases of 111 parents who were separated from 200 children by immigration detention. Most, but not all, of the parents in this study had served criminal sentences before being held in immigration detention. In many cases, the Home Office planned to remove or deport these parents without their children (although 92 of the 111 parents were eventually released on bail). Many of these cases did not, therefore, fall within the Family Returns Process. However, BID's findings about the effect of separation on children are relevant when considering the impact that may occur when families are separated as part of the returns process. Our report found that:

'Children who participated in this research described the extreme distress they experienced during their parent's detention. They reported losing weight, having

[82] See for example: BID and The Children's Society (December 2010) *UKBA plans for pilots to remove families with limited notice and through open accommodation: Response of Bail for Immigration Detainees and The Children's Society,* p7

nightmares, suffering from insomnia, crying frequently, and becoming deeply unhappy, socially isolated and withdrawn.'[83]

Open Accommodation

As is set out above, BID is not aware of any cases where Open Accommodation has been used in practice in the returns process. The Home Office's *Enforcement Instructions and Guidance* state at Chapter 45(b) Section 4.7.1:

'Families are not eligible for open accommodation if…

- There are specific medical needs i.e.
  - a move would be detrimental to ongoing treatment/recovery from an operation
  - continuity of care arrangements are needed
  - a person has an infectious/notifiable disease
  - a family member has a disability which renders open accommodation unsuitable
  - a family member has previously threatened to harm themselves or others.'

Given that, as far as BID is aware, Open Accommodation has not been used in practice, it is difficult to comment on the impact it might have on families. In 2010, the Home Office proposed that families would be made destitute if they refused to move to Open Accommodation. BID was strongly opposed to this, and reference to removing support from families who do not move to the accommodation has been removed from the Home Office's instructions. In 2010, BID raised a number of concerns about the effect that Open Accommodation might have on families. These reflected our understanding of the Home Office's proposals based on discussions we had with officials in 2010, and are not necessarily reflective of current policy:

'Families' freedom of movement will be limited once they are in the Croydon [Open Accommodation] Centre. They will not be given any cash support, and therefore in most cases will not be able to travel on public transport outside the immediate vicinity of the centre. They will have no means of buying food, and will therefore need to be at the centre for specific meal times. They will be subject to 24 hour monitoring by security staff, and have to register with reception when they move in or out of the building, as well as signing a daily register. The UKBA [UK Border Agency] have informed us that, in the future they may introduce more secure accommodation centres including features such as curfews, CCTV monitoring, and regulations which would mean that only some family members could leave the accommodation at any one time, or family members who did leave the accommodation would have to be accompanied by a staff member.

In addition to imposing limitations on their freedom of movement, the move to the unfamiliar environment of the Croydon pilot is likely to be experienced by

[83] Bail for Immigration Detainees (2013) *Fractured Childhoods: the separation of families by immigration detention*

children as very disruptive. In the move, parents and children will lose the networks of support which they will often have built up with friends, extended family, religious congregations and support organisations in the place where they were living. Parents will have limited access to legal representatives, and may be very distressed about their situation. They will also be living at close quarters with families who may be similarly distressed, sharing bathrooms and a dining room. Parents will lose the ability to care for their children as they would in everyday life as, for example, they will not be able to cook for them or exercise any control over the food they are given. Families will not be able to follow their normal routines of children attending school and parents engaging in activities such as voluntary work, or travelling to a place of worship if this requires using public transport. If children are to remain in the Croydon centre for up to 28 days, the disruption to their education will be significant, particularly if they are in the process of studying for GCSE or A Level exams.

The longer families are in the Croydon accommodation centre, the greater the distress which is likely to be caused to children. Furthermore, if families lose the accommodation which they were previously living in, they may be relocated to a new part of the country and their belongings lost or destroyed in the process.'[84]

ii) Reporting and Electronic Monitoring

The Home Office's 2010 instructions on Electronic Monitoring state that:

'However there will be some cases that although fall into the above criteria may not be suitable for tagging examples of this are. This list is not exhaustive and decisions should be made on a case by case basis:

> Pregnant women and women who have recently given birth
> The elderly
> Those with mental health problems (this will depend on the nature of the problem)
> Individuals who are supported by Agency recognised victims of torture charities (e.g. organisations such as the Medical Foundation or Helen Bamber Foundation).'[85]

Limited research has been carried out into the use of electronic tagging, and there is no publicly available information on how many individuals with specific vulnerabilities are subject to tagging.

In 2011, BID and The Children's Society published *Last Resort or First Resort,* a report which included findings on the use of tagging on parents with children for a qualitative sample of 23 families. Five parents from three families who participated in this research were electronically tagged, and were required not to leave their houses for several hours a day to comply with their tagging

[84] BID and The Children's Society (December 2010) *UKBA plans for pilots to remove families with limited notice and through open accommodation: Response of Bail for Immigration Detainees and The Children's Society*

[85] Home Office (21/09/10) *Electronic Monitoring Policy: Criminality and Detention Group v 2.8,* p4

restrictions. One parent had been tagged for 10 months at the time when they were interviewed. The report found that:

'Three parents who were electronically tagged reported that this had a detrimental effect on their children. These parents were not able to attend school sports games or birthday parties with their children, and could not take their children outside the vicinity of their home because of the requirement for them to be in the house at certain hours every day. In one case, a mother and father had to apply for their tagging restrictions to be varied as they could not take their children to school in the morning.

Christopher explained that his children's freedom of movement was limited by his tagging restrictions:

"I'd love to take my children a bit further afield to show them places, but I can't because obviously I've got this tag and I don't want to be in a situation where I can't return at the right time. So, I feel like we're imprisoned, in a way. We can't go out together. It's horrible."

Parents also reported that the stigma and restrictions of electronic tagging had contributed to their social isolation... that they suffered from stress and anxiety as a result of being tagged... Christopher... reported that he suffered from high blood pressure, which was exacerbated by the stress... Christopher also reported that he was very anxious because his wife was pregnant, and he was worried that if anything happened to her during the hours when he was required to stay in his house, he would not be able to do anything to help her.'[86]

The Jesuit Refugee Service's December 2011 report *From deprivation to liberty* quotes the following accounts of electronic tagging in the UK:

'When I was released, I had to wear a tag. I was supposed to be indoors from 6:00pm to 6:00am – twelve hours. The tag really hurt. You can see the black spot here [he shows the interviewer evidence of skin rash on his left ankle as a result of the tag]. That's from the tag. It wasn't tight, but if you're walking it causes friction. It rubs against the skin from the sweat. Most of the time I had to wear something to keep it up high on my ankle, but it still affected my blood circulation. It's just like you're in prison, with the tag. A prisoner.'

'The tag is very irritating. It wakes you up at night. I had to see my general practitioner for anti-depressants and sleeping tablets. It isn't comfortable when you are walking. You have to be at home at certain times. For me it was between 8:00pm and 12:00am. If I wanted to go out, or buy anything, I had to make sure that whatever I needed I bought before 8:00pm. If I went out, they would say I broke the rules, and they would put me back in detention. I don't understand the purpose of being tagged, while I was going to report every day. Why the four hours? They are punishing me and other refugees. The tag is discomforting while

[86] Bail for Immigration Detainees and The Children's Society (2011) *Last Resort or First Resort: Immigration detention of children in the UK,* p89-90

sleeping, and embarrassing as well. You don't want to show your legs. People think you're a criminal. I couldn't go swimming or go out because of the tag. It was really embarrassing.'

A 2007 report by Refugee & Migrant's Forum found that:

'Participants felt that giving people electronic tags meant treating them like animals or criminals.. People reported the shame and the psychological distress members of their communities had experienced and explained how people with tags are sometimes not welcome in other people's houses because of the stigma and fear attached to tagging.'[87]

Reporting Requirements

The Home Office's instructions set out that particular vulnerable groups may not be required to report:

'Low reporting frequencies. The groups or individuals or who may be considered under this regime are as follows:

• certified evidence of an appointment with Freedom from Torture (FFT) or the Helen Bamber Foundation.

• those who are pregnant - the reporting regime will be suspended for a period of six weeks prior to the birth date (refer to the certificate MAT B1) and six weeks post birth. A medical certificate must be produced or supplied to extend either way. Once reporting conditions are resumed, the original birth certificate must be produced and the details of the child should be recorded as a dependant of the said adult. Note: Telephone contact with the applicant to ensure wellbeing during this period is an option that can be considered.

• individuals over 65 years of age

• children should not normally be served an IS96 requiring them to report to a reporting centre, except in the following circumstances:

- Between their 17th and 18th birthdays in the case of Unaccompanied Asylum Seeking Children (UASC), where the RC manager may set up a one-off event, liaising with local social services, in order to introduce the child to the reporting process. The RC should consider inviting the child's care worker or guardian to attend as well
- When they have entered the family returns process, and where attempts to invite the parent(s) to include children at contact management meetings have failed. See Section 7.1 for more detail 7

• individuals whose medical problems mean they have difficulty in attending an RC to report. The use of Voice Recognition (VR) can also be considered for medical cases.

[87] Refugee & Migrant's Forum (2007) *Report on the Refugee & Migrant's Forum consultation into people's experiences of the UK Immigration Service at Dallas Court reporting centre and short-term holding facility October 2006 – January 2007*

This list is not exhaustive.'[88]

In an interview conducted on 30/1/14, Judith Dennis of the Refugee Council said that, according to anecdotal accounts from Refugee Council staff and clients, it is not always clear why some individuals are required to report more frequently than others. Requests to reduce the frequency of reporting may be refused, even where there are specific reasons why it is difficult for individuals to report. In some cases, unaccompanied children are able to report via their Social Worker – so the Home Office will contact the Social Worker to check that the child is living at their designated address and maintaining contact with their Social Worker. In other cases, unaccompanied children are required to report to the Home Office in person.

In 2010, the Refugee Council published the findings of a piece of small-scale research on reporting, which found that, of 46 clients surveyed, 12 did not have to report, 15 reported monthly, 6 reported fortnightly and 13 were required to report once a week. The research found that found that asylum seekers were not made sufficiently aware of their entitlement to claim expenses for travel to reporting centres.

Six of the 46 clients surveyed said they had to borrow money from friends to travel to the reporting centre. The lack of child care for reporting meant that women had the additional burden and cost of taking children with them. One client said:

'I have been certified by the doctor as having difficulty walking, swelling in my legs, arms, bruises, as well as a back problem and post-traumatic stress syndrome, having been tortured at home. I now have trouble walking and I am expected to walk all the way from Stratford to London Bridge, as I have no income support and no money to afford transportation. It is a big problem. I have finally got accommodation after two months but I do not know where I will have to report next or how I will get there from my new house. I am also not happy about the fact that I have to queue for hours outside in order to report, often in the cold with a lot of other people and with no shelter. I feel that it is humiliating and frustrating and unnecessary, and that it is against human dignity to do this.'[89]

BID and The Children's Society's report *Last Resort or First Resort* also set out findings on experiences of reporting for our qualitative sample of 23 families:

'Six parents said it was difficult for them to report as regularly as they were doing because of health conditions, including high blood pressure and diabetes. Some of these parents had been advised by their doctors that their health conditions were being exacerbated by the frequency with which they were reporting. Five parents said they had requested changes to their reporting requirements for

[88] Home Office (2012) *Reporting – Standards of Operational Practice,* p11-12

[89] Refugee Council (2010) *Refugee Council client experiences in the asylum process*

health reasons and presented medical evidence to support their requests, but in every case these requests had been refused...

Nine parents said they found going to report stressful or demeaning, and four of these said they felt that reporting was exacerbating their health conditions, including depression and high blood pressure. Primarily, parents said they found reporting stressful because they feared they would be re-detained when they went to report.'[90]

A 2007 report by Refugee & Migrant's Forum on reporting in Manchester found that 'some people who were reporting monthly felt reporting was just a part of the law and no problem.' However, the report also raised concerns about people having to report in spite of health problems, and found that:

'Many people recounted experiences of depression, anxiety and fear as a result of going to report at Dallas Court particularly because of the possibility of being detained… There was concern over the length of time people were asked to continue reporting without review. Several people mentioned reporting for three years or more, one person had been reporting for six years. People felt that they should be recognised as low risk if they report for long periods and should report less often or not at all.'[91]

iii) Bail and sureties

There is very little publicly available information on the extent to which the needs of vulnerable people are taken account of in the bail process. However, BID's 2012 report *The Liberty Deficit* provides some information in relation to mentally ill detainees and long-term detainees.

BID's legal caseworkers routinely work with clients who are distressed and anxious as a result of being detained, who self-harm, or who are severely mentally ill. Some BID clients are mentally ill yet have been segregated as a means of behaviour control, and segregation can complicate legal work to obtain release. BID caseworkers report that it is more difficult to advise and represent someone who is mentally ill. It can take more time to gain their trust, and their capacity to instruct a legal advisor may be difficult to determine. Communication can be more difficult, as can getting documents or taking instructions where a client has disordered thinking.

Where detainees' mental state deteriorates as a result of detention, or because their mental illness has not been identified or properly managed in detention, caseworkers report that it becomes harder for people to help themselves progress their case. Mental illness and mental distress can make it more difficult for detainees to give statements, for legal advisors to discuss a case with clients, and

[90] Bail for Immigration Detainees and The Children's Society (2011) *Last Resort or First Resort: Immigration detention of children in the UK,* p87-88

[91] Refugee & Migrant's Forum (2007) *Report on the Refugee & Migrant's Forum consultation into people's experiences of the UK Immigration Service at Dallas Court reporting centre and short-term holding facility October 2006 – January 2007*

make it more challenging for bail applicants to appear at bail hearings. Sometimes detainees who are mentally ill or have a history of drug use or self-harm have become estranged from family or friends who could otherwise stand surety at bail or offer accommodation; their illness or behaviour may have alienated those who are closest to them.[92]

Furthermore, BID's *Liberty Deficit* report sets out details of the following case:

'Mr P had been detained for over two years at the time of the bail application, and had a longstanding history of mental illness. He had attempted suicide while in detention and had made "an enormous number of cuts" on himself in one day according to an independent medical report. During the bail hearing the judge was taken to photographic evidence of self-harm while in detention including a scarring diagram, and an independent medical report detailing clinical evidence of multiple suicide attempts while in detention and the opinion that detention had caused deterioration in mental state rendering him unfit for detention. Mr P himself showed the judge the extensive scarring on his body via the videolink.

The judge noted that further evidence was required of both self-harm and suicide risk, and went on to note that Mr P had not been successful in any of his suicide attempts to date

"Well he has not actually done it though has he? Well he has not actually committed suicide; he has only tried to do it."

Once the application had been withdrawn, counsel's attendance note shows that the judge then said that in his experience

"suicide has the potential to be self-serving."'[93]

In relation to long-term detainees, BID's *Liberty Deficit* report found that:

'Practical hurdles related to bail sureties affect long-term detainees disproportionately. It is not unusual for male detainees to be transferred around the country from one removal centre to another, disrupting visitor relationships and relationships with their family and friends over the months or years they are detained. Over long periods of a person's detention, their sureties may have exhausted leave entitlements that they otherwise need for school holidays or caring responsibilities, or may not be able to afford the cost of peak rail travel from London to Birmingham or Newport for a hearing at 10 o'clock in the morning.[94] We were told by one barrister:

[92] McGinley, A. and Trude, A. (2012) *Positive duty of care? The mental health crisis in immigration detention. A briefing paper by the Mental Health in Immigration Detention Project*, Bail for Immigration Detainees and the Association of Visitors to Immigration Detainees

[93] Bail for Immigration Detainees 2012 *The Liberty Deficit: long-term detention and bail decision-making* p84

[94] This point was made in: ILPA & BID (2010) *Consultation on the 2011 Bail Guidance, Joint submission from the Immigration Law Practitioners' Association and Bail for Immigration Detainees* paragraph 41.

"I asked the judge to examine the surety since he had attended on several occasions and it was difficult for him to attend on every occasion because of work and that she could mark the file as to his suitability. IJ [The Immigration Judge] refused to do this but commented that no doubt the surety was suitable in terms of character but questions would need to be asked as to what influence he could have over the applicant."[95]

20. What happens in practice when a 'returnee' doesn't comply with the obligations they have in the framework of the alternative to detention? Please explain the procedure.

As is explained above, if families in the returns process do not return voluntarily or via self check-in, and are not granted status, they may be detained and forcibly removed.

If a 'returnee' does not comply with their electronic monitoring or reporting requirements, or the requirement to live at a specific address, they may be detained (or re-detained where these were a condition of bail) – please see Question 13 above. The instructions for caseowners on dealing with non-compliance are set out in Chapter 19 of the Home Office's *Enforcement Instructions and Guidance* [EIG]. In cases where individuals fail to report, staff are instructed to phone the person and seek an explanation. If they can't get through or a reasonable explanation is not given, they are to schedule a further reporting event a week later. If this is not complied with, staff are instructed to complete either a compliance or an arrest visit:

'Compliance visit
A compliance visit as defined in section 2.6 must be made in all non-removable, highest harm, vulnerable adult, victims of trafficking and family cases, or cases where there is a history of persistent non-compliance or absconding. A compliance visit should be considered in all other non-removable cases.
A dynamic risk assessment in accordance with EIG Chapter 31.7 must be completed prior to a compliance visit being made. More information on compliance visits can be viewed in Ch31 EIG.
Arrest Visit
When a person fails to attend a reporting event and there are no barriers to their removal, then a 'hot tasked arrest visit' must be made.'[96]

Furthermore, the Home Office's *Contact Management Policy* sets out for applicants and 'returnees' that:

[95] Bail for Immigration Detainees 2012 *The Liberty Deficit: long-term detention and bail decision-making* p32
[96] Home Office *Enforcement Instructions and Guidance* Chapter 19a 4.2 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectiond/chapter19a?view=Binary

'If we have told you to report, it is a condition we have applied as an alternative to detention. If you fail to report, we can take a number of steps, which include:

- removing your access to asylum support payments
- increasing your reporting frequency
- notifying the police who will look to arrest you.'[97]

21. For each alternative to detention, please specify whether they apply it only to a certain category of person. If so how is this justified by the authorities?

The Family Returns Process only applies to families with children aged under 18. To the best of BID's knowledge, the government has never specifically set out their reasons for applying this process to families and not other groups. However, the Home Office's child detention review document states that:

'The new process must take full account of the need to safeguard and promote the welfare of children in the UK in accordance with our statutory and international obligations.'[98]

The government has specific obligations to children under section 55 of the Borders, Citizenship and Immigration Act 2009 and the UN Convention on the Rights of the Child.

The Home Office's criteria for subjecting individuals to electronic monitoring, and more or less frequent reporting, are set out at questions 18 and 19 above.

An application for immigration bail can be made once seven days have passed since the person arrived in the United Kingdom.[99] The criteria for judges considering bail applications, and some of the barriers to detainees obtaining release on bail, are set out at Question 18 above.

22. Which is the institution in charge of deciding which individuals should be submitted to these alternatives?

The Home Office is in charge of decisions in relation to the Family Returns Process, electronic monitoring, reporting and other alternatives to detention – instructions for Home Office staff on decision-making are outlined above.

[97] Home Office *Contact Management Policy*, p5 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/contactmanagement/

[98] Home Office (2010) *Review into ending the detention of children for immigration purposes*, paragraph 1.8 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/26-end-child-detention/child-detention-conclusions.pdf?view=Binary

[99] para. 22(1B) of Sch. 2 to the Immigration Act 1971

In addition, when hearing an application for release from detention on bail, a First-tier tribunal judge will consider, on the basis of the evidence before him and arguments put by both the Home Office Presenting Officer (for the Secretary of State) and the bail applicant:

i) whether s/he is minded in principle to release the applicant from detention, and
ii) if so, which conditions are to be imposed on the release, including reporting frequency and use of electronic monitoring.

The availability or not of sureties will be a factor in the decision in principle to release, meaning that if no sureties are offered, or sureties are offered who the judge considers unsuitable, the judge may not feel able to release, despite the option of using electronic monitoring and reporting. If sureties are offered and are considered acceptable, then it becomes a matter of setting additional conditions of release such as reporting frequency and electronic monitoring.

23. Which organization/entity/actor is responsible for implementing/ running this scheme?

The Home Office is responsible for implementing most aspects of the non-detained Family Returns Process, other than provision of 'Open Accommodation' and transport of family members, both of which are sub-contracted to private sector companies. However, we note that the Home Office is now deploying sub-contracted 'Administrative Officers' provided by the private service company Capita. Limited information is available publicly on the extent of the work carried out by Capita staff.

Reporting requirements are implemented by the Home Office, although as is explained above in some cases individuals report to police stations.

The operational aspects of electronic monitoring are sub-contracted to private companies. The Home Office's evaluation of their first electronic monitoring pilot explains that:

'The contractors' involvement would stop at reporting non/compliance to us. We would then take whatever action we would have taken had non-compliance come to our attention through the normal route.'[100]

The First-tier Tribunal is responsible for hearing bail applications. In relation to sureties, details of individuals willing to act as sureties are offered to the First-tier Tribunal by the bail applicant. These details are passed to the Home Office who carry out checks prior to the bail hearing, and may wish to make representations to the First-tier Tribunal that any particular individual offering to stand as surety

[100] Home Office *Electronic Monitoring in IND: Evaluation of pilot October 2004-February 2005 – Summary* Provided to BID on 23/2/2009 in response to Freedom of Information Act request (Ref 11132)

is, in the Home Office's view, unsuitable. Sureties assume their responsibilities at the request of the First-tier judge if and when bail is granted, and until such point that bail conditions are varied or bail ceases, either as a result of removal from the UK or re-detention.

24. If different, which organisations/institutions are in charge of supervising the implementation of these mechanisms?

The Home Office is responsible for supervising the implementation of all aspects of the Family Returns Process, reporting and electronic monitoring. The Home Office is required to monitor and take responsibility for the work of sub-contractors.

In relation to bail and sureties, where a third party proposes to act as a surety for an individual released from detention on bail, the First-Tier Tribunal (Immigration & Asylum Chamber) is in overall charge of determining whether or not to release on bail and if so to appoint that person as a surety.

If at any point following release the individual (the bailee) does not answer bail as directed (i.e. if they do not continue to meet the conditions of their bail, typically if they fail to report and are considered to have absconded), then forfeiture proceedings may commence against the surety or sureties in the Tribunal.

For the period April 2012 to March 2013 there were 65 bail forfeiture hearings before the First-Tier Tribunal in England and Wales and 28 in Scotland.[101]

Either the First-Tier Tribunal or the Home Office (if Tribunal bail is later signed over to the Home Office by the Tribunal) are responsible for agreeing variations in bail conditions which would include replacing one surety with another, or allowing a surety to withdraw. Responsibility for considering such variation lies: (a) with the Tribunal while an immigration appeal is pending; (b) with an Immigration Officer in all other circumstances. The *Bail guidance for judges* notes at paragraph 59 that:

'Where the variation request involves a proposed change of surety, the Tribunal should arrange a bail variation hearing. This is so a First-tier Tribunal Judge can consider the new surety, and release the previous surety from the previous obligations.'[102]

25. If it is a government actor, they work in collaboration with other actors? If so who (civil society, local authorities, institutions etc) and how?

Please see question 23 above.

[101] HM Courts & Tribunals Service Presidents' Stakeholder Group (2013) 'Bail management information Period April 2012 to March 2013'

[102] Tribunals Judiciary (2012) *Bail guidance for judges presiding over immigration and asylum hearings*

26. Are NGOs/private companies in charge of implementing some of these alternatives? If so, how is that implemented in practice?

Please see question 23 above.

C. ACCESS TO RIGHTS

27. Do 'returnees' who are subject to an alternative to detention have access to the full range of rights and namely:

a) to healthcare;

There are limitations on refused asylum seekers' access to healthcare, but these are not specific to people who are subject to alternatives to detention. Individuals who are in the Family Returns Process, electronically monitored, reporting or who have been released on bail by the courts would have the same access to healthcare as other refused asylum seekers.

b) to education;

Involvement in an alternative to detention would not itself debar 'returnees' from accessing education, if they had an entitlement to access education. However, individuals with reporting or electronic monitoring restrictions are in effect prevented from attending classes during the period when they are required to be at home or attend a Home Office reporting centre.[103]

Furthermore, in 2010, the government did propose that children in 'Open Accommodation' would not have proper access to education. Their plans stated that children would be provided with 'age related work packs' rather than access to a school. The plans also envisaged that 'local authority referrals are made in terms of the temporary placement of children at local schools where their stay in non detained accommodation looks like it will be longer.'[104] It was unclear at what stage a local authority referral would be made, and whether local schools would have capacity to take children in at short notice. However, as is explained at Question 18 above, we are not aware of any cases where Open Accommodation has been used. BID is also not aware of any formal policy which has been developed on this matter.

[103] See: Hasselberg, I. (2013) *An ethnography of deportation from Britain* Doctoral thesis, University of Sussex

[104] UK Border Agency (November 2010) *Open Accommodation: Accommodating families outside of detention*, Paragraph 29

c) access to the labor market;

Refused asylum seekers do not have the right to work in the UK.

d) to accommodation and in general assistance provided in kind or to financial assistance

Involvement in the Family Returns Process, electronic monitoring or reporting, or release on bail should not prevent people from accessing financial assistance where they are entitled to it.

As is explained at Questions 18 and 19 above, families referred to Open Accommodation would have their financial assistance removed, and would just be given 'bed and board'.

As is explained at Question 20 above, if an individual does not report, this may mean that they cannot access financial support. In practice, this can happen in cases where there are good reasons for the failure to report, such as ill-health.

Furthermore, in practice, people may not be able to access support as a result of Home Office actions. For example, BID dealt with a case where a family were separated as part of the returns process, and the father who was detained had the card with him which the family used to access support. The mother and children were therefore without financial support for some days.

In addition, access to accommodation and support (either in kind or financial) on release from detention depends to some extent on the mechanism of release from detention.[105] Support is is available for detainees seeking to apply for bail whether they are currently seeking asylum in the UK, have been refused asylum and are appeal rights exhausted, or have never sought asylum but are otherwise in detention under any provision in the Immigration Acts.

However, people who are released from detention by the Home Office on temporary admission may not be provided with accommodation. In April 2013 the Home Office issued a policy which states that support for those on temporary admission is not to be used for refused asylum seekers, except in specific circumstances, for example where a family with children are being released. Detainees released on temporary admission will generally need to prove destitution in order to receive support.[106]

[105] There are differences in eligibility for EEA nationals and non-EEA nationals. EEA nationals may be eligible for access to mainstream benefits (though rules may be subject to change at the time of writing). The comments provided here refer to non-EEA nationals only.

[106] Home Office (12/04/13) *Asylum Process Guidance:* 'Section 4 Support' Version 23.0 Available at:

28. a. Do 'returnees' subject to an alternative to detention have access to social and psychological assistance?
b. Is it provided systematically and is it adequate?

'Returnees' who are subject to the non-detained Family Returns Process, electronic monitoring, reporting or who are released on bail do not have access to any social or psychological assistance, above or beyond what they may (or may not) be able to access through the National Health Service, Social Services or charities, if they have a particular need.

29. a. Do these 'returnees' have access to information about the procedure with regards to the alternatives to detention they are subject to? In particular, are they informed about the reason why they were submitted to these alternatives in the first place?
b. If so, do you consider it adequate and sufficient?
c. At what stage is it provided?

Family Returns Process
Home Office staff should inform families about the returns process and the reasons they are subject to it, either in correspondence or contact preceding the Family Returns Conference, or at the conference itself. Concerns about the conference process are set out at Question 19 above. The Home Office commissioned evaluation of the Family Returns Process found that Home Office staff felt that families were better informed in the new returns process:

'..all staff who expressed a view, felt that the FRC [Family Return Conference] helped families to understand their specific options for return.'[107]

However, the evaluation also recorded concerns that families were not always informed about the process in advance:

'Concern that families were not fully briefed on the coverage of the FRC [Family Return Conference]. This was raised by a minority of NGOs and several families agreed. For example, two families said that, at their regular reporting event, they were told to attend an FRC [Family Return Conference] there and then.'[108]

Reporting and electronic monitoring

The Home Office document *Contact Management Policy* sets out for applicants and 'returnees' the reasons why they have to report.[109] The document does include useful information. However, it is not clear how consistently this information is

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/section-4-support-inst.pdf?view=Binary

[107] Home Office (2013) *Evaluation of the new Family Returns Process* p38

[108] Home Office (2013) *Evaluation of the new Family Returns Process* p29

[109] Home Office *Contact Management Policy*
http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/contactmanagement/

provided, and at what stage. At the time of writing, we are awaiting clarification from the Home Office on this point.

The most recent publicly disclosed version of the Home Office's policy on electronic monitoring makes no mention of informing applicants or 'returnees' of the reasons why they are being monitored.[110]

BID and The Children's Society's 2011 report *Last Resort or First Resort* included troubling findings on the communication of reasons for electronic tagging and reporting:

'Members of 11 of the 23 families interviewed for this research reported that they did not have a clear understanding of the reasons for the specific reporting or electronic tagging requirements imposed on them...

Peter and his wife were electronically tagged and were required to stay in their house from 10am–12 noon and 6–8pm. When interviewed for this research, Peter said he did not understand the reasons why they were being tagged, particularly as the family had an ongoing legal case and were reporting every week. He reported that he had written to the Home Office twice asking to be informed of the reasons why he was tagged, but had received no reply.'[111]

Peter was later re-detained with his family, and when he was released from detention on bail he was no longer electronically tagged. Peter said that at his bail hearing, the judge had asked the Home Office presenting officer why Peter had been tagged, and the officer replied that he did not know. The judge concluded that tagging was not necessary and removed this condition.

D. REMEDIES

30. **In practice, what is the maximum period in which a 'returnee' can be submitted to these measures?**

There is no time limit on the use of electronic monitoring or reporting. Nor is there a limit on the length of time for which families can be involved in the Family Returns Process.

As far as BID is aware, there is no maximum period for a grant of bail. The *Bail guidance for judges* states at paragraphs 60 to 63:

'60. Immigration bail can end in one of three ways:

- the person is no longer subject to immigration detention (having been granted a period of leave to enter or remain or having left the United Kingdom); or

[110] Home Office (21/09/10) *Electronic Monitoring Policy: Criminality and Detention Group v 2.8*

[111] Bail for Immigration Detainees and The Children's Society (2011) *Last Resort or First Resort: Immigration detention of children in the UK,* p86-88

- the person has been taken back into immigration detention; or
- the period of immigration bail granted by a First-tier Tribunal Judge or an appropriate Immigration Officer has come to an end.

61. The first situation needs no commentary. If the second situation arises, then the person who was previously on bail may make a fresh bail application if they are not brought back before the Tribunal (cf para. 24 and para. 33(3)(b) of sch. 2 to the Immigration Act 1971). If there is no material change in their circumstances, it is likely a First-tier Tribunal Judge will grant bail on the same conditions as before.

62. In the third situation, if an immigration appeal is pending and the usual primary condition was made (see para. 25 above), then the failure of a person on bail to appear in their appeal hearing will bring their bail to an end. Forfeiture proceedings may be commenced and show cause letters issued.

63. If bail was granted by an Immigration Officer, then it will be for an appropriate Immigration Officer to consider the person's circumstances at the surrender date and to decide whether to detain the person, grant temporary admission or temporary release or to grant immigration bail. Any conditions imposed will be the responsibility of the Immigration Officer.'[112]

The guidance explains at paragraph 33:

'Where no immigration appeal is pending, a First-tier Tribunal Judge should grant bail with a condition that the applicant surrenders to an Immigration Officer at a time and place to be specified either in the bail decision itself or in any subsequent variation.'

It goes on to state at paragraph 35:

'Once the applicant has answered to an Immigration Officer in accordance with that primary condition, the duration of any further grant of bail will be made by a Chief Immigration Officer rather than the Tribunal.'

b. Does it correspond to the maximum period of detention?

In the UK, there is no time limit on the use of immigration detention, although detention may in some cases be unlawful from the point of arrest, or become unlawful after a certain period, depending on the particular circumstances of the case.

[112] Tribunals Judiciary (2012) *Bail guidance for judges presiding over immigration and asylum hearings*

c. Please clarify if the initial period can be extended and if so what are the grounds for extension

See above.

31. Is there, in practice, a right to appeal the decision to apply an alternative to detention? If so, how does it function in practice? More particularly, is it accessible?

Decisions to subject people to electronic monitoring, reporting, Open Accommodation, family separation and service of removal directions could all in theory be challenged by means of a Judicial Review application challenging the legality of a decision or course of action being pursued by the authorities.

In relation to limited notice removal directions, see comments at Question 19 above.

Applications for Judicial Review are currently eligible for legal aid, subject to the statutory means and merits tests. However, as is outlined at Question 19 above, the availability of competent publicly funded legal services is increasingly limited. This may mean that in practice some 'returnees' are not able to make Judicial Review applications. Furthermore, the government is currently proposing that a residence test be imposed, whereby people who are not lawfully resident in the UK, or have not been lawfully resident for one year, would not be able to access legal aid for many types of civil claims.[113] The government is also proposing to bring in a number of measures which would restrict applicants' access to Judicial Review.[114]

In cases where restrictions such as electronic tagging have been imposed as a condition of release on bail, and for example, the bailed person has a pending immigration appeal, they may apply to the Tribunal to vary these conditions. The *Bail guidance for judges* states that 'the terms of bail may be varied at any time during their currency by application or at the Tribunal's own motion.'[115]

Certain alternatives to detention require the Home Office to set or re-set 'removal directions' – these alternatives include self check-in, removals without full notice and family separation where the Home Office sets removal directions for one family member or more. Where the Home Office is seeking to remove somebody, the individual may be able to challenge this removal in various ways. Certain persons who have lodged appeals cannot be removed from the UK.[116] A person

[113] Ministry of Justice (3/10/13) *Transforming Legal Aid: Next Steps* https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps

[114] Ministry of Justice (6/9/13) *Judicial Review: Proposals for further reform* https://consult.justice.gov.uk/digital-communications/judicial-review

[115] Tribunals Judiciary (2012) *Bail guidance for judges presiding over immigration and asylum hearings*, paragraph 36 iii

[116] See Nationality, Immigration and Asylum Act 2002 Section 77 'No Removal While claim for Asylum Pending' and Section 78 'No Removal While Appeal Pending.' However, this only applies if

with a pending asylum or human rights application cannot be removed from the UK. Where an individual has made further submissions (or a second application) on asylum or human rights grounds, the Home Office is required to consider the submissions, and to decide whether or not they amount to a 'fresh claim.'[117] Where the Home Office accepts that the submissions amount to a 'fresh claim' to remain, but they refuse the application, the person is granted an in-country right of appeal. Where the Home Office decide that the submissions do not amount to a fresh claim and therefore that decision does not attract an in-country right of appeal, the only opportunity to challenge this decision is by making an application for permission to apply for judicial review. The person cannot be removed from the UK pending a decision on that application.

In addition, in cases where the Home Office is seeking to remove somebody via a 'no further notice' removal (see Question 18 above), their instructions specify that:

'Standard notice must continue to be given in cases where there has been.. a significant change in circumstances, such as:

- We are re-setting removal directions to a different country;
- Further submissions have been received and refused since the earlier removal direction failed'[118]

32. Do they have access to legal counselling?

b. Is it free of charge or at his/her own expense?

c. Is free legal assistance provided in most cases?

d. Is it provided ex officio or should they apply for it?

Please see questions 31 and 19 above.

Where 'returnees' are able to access a legal aid representative, this representative makes a decision about whether to apply to the government's Legal Aid Agency for funding.

Legal aid is provided subject to tests regarding the applicant's means, and the merits of their case. Following the Legal Aid, Sentencing and Punishment of Offenders Act 2012, legal aid can be accessed for asylum claims, but the vast majority of general immigration matters are out of scope for legal aid.

The cuts to immigration legal aid made as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force in April 2013. Every six months, BID carries out a survey of levels of legal representation for immigration detainees. The percentage of interviewees with a legal representative at the time of the survey dropped from 79% in November 2012 to 43% in May 3013. In the

the individual also comes under Nationality, Immigration and Asylum Act 2002 Section 92 'Appeal From Within United Kingdom: General'

[117] Home Office *Immigration Rules* Paragraph 353

[118] Home Office *Enforcement Instructions and Guidance* Chapter 60, Section 3.2

same period, the number of interviewees who had never had a legal representative while in detention rose from 21% to 57%.[119]

If 'returnees' are not able to access legal aid, and they have the means to pay for a private solicitor, they may do so, provided that they are able to secure representation in the timescales imposed by the returns process.

E. COST EFFECTIVENESS AND EVALUATION MECHANISMS

33. How many 'returnees' are subjected to these alternatives to detention in a year or quarter (please specify if you are giving number of people OR number of cases – which counts a family as a unit)?

All the available data which BID is aware of on this point are set out in response to questions 18 and 15 above.

34. What is the proportion of 'returnees' being subjected to these alternatives in relation to the number of 'returnees' detained?

30,387 people entered immigration detention in the UK in the year ending September 2013.[120]

Family Returns Process

As is set out at Question 18, the Home Office commissioned evaluation of the Family Returns Process states at p15 that, as at 12 October 2012, 377 of the 1,072 cases in the Family Returns Process had been concluded. The evaluation considered all the cases which entered the new Family Returns Process between 17 June 2010 and 12 October 2012.[121]

In 187 of the 377 concluded cases, a family return was not in the end pursued. In addition, 48 families returned using the Assisted Voluntary Return scheme and 40 families returned voluntarily by making their own travel arrangements. 20 families took the option of self check-in, and 82 families were forcibly removed

[119] Bail for Immigration Detainees (2013) *Summary findings of survey of levels of legal representation for immigration detainees across the UK detention estate (Surveys 1 - 6)*

[120] Home Office (2013) *Immigration statistics, July to September 2013* https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2013/immigration-statistics-july-to-september-2013#detention-1. These statistics do not include people detained under Immigration Act powers in prisons.

[121] A total of 1,142 cases entered the new Family Returns Process between 17 June 2010 and 12 October 2012– in 57 cases the outcome of the case was unknown, or the evaluators were not able to access data on it; in 13 cases the Home Office subsequently realised the 'returnees' were not families with children. The Family Returns Process was not rolled out nationally until 1 March 2011, but a pilot of the process began in June 2010, and the pilot cases were also included in the evaluation.

from the UK. Of these 82, 28 families were detained in 'pre-departure accommodation' prior to their removal.[122]

Therefore, in 28 out of 377, or 7.4%, of the concluded cases families were held in immigration detention. Unfortunately, the evaluation does not provide an annual or quarterly breakdown for these figures.

The evaluation does not cover 'port cases' where families are detained on arrival in the UK while arrangements are made for their departure, or cases where children are detained as the result of an incorrect age assessment. The overall numbers of children detained annually are far higher than those quoted in the evaluation, and 242 children were detained during 2012.[123]

Electronic monitoring

As is noted in Question 18, on 23rd February 2009, the Home Office provided the following information to BID in response to a Freedom of Information Act request (Ref 11132):

'From 1 February 2005 (pilot end) until 31 January 2009, 2052 people have been successfully inducted onto a tag regime with 326 currently being monitored. In the same time period, 880 have been successfully inducted onto a voice recognition regime with 79 currently being monitored.'

These figures suggest that between 2005 and 2009, roughly 500 people were inducted into electronic tagging, and 200 people were inducted into a voice recognition regime every year. As is noted above 30,387 people entered immigration detention in the year ending September 2013.[124]

Release on bail

In the year April 2012 – March 2013, the First-tier Tribunal (Immigration & Asylum Chamber) received 11976 applications for release on bail. Of these 4302 (35.9%) were withdrawn before or during the hearing, meaning no decision on the application was taken. In 5010 cases heard release on bail was refused, while in 2591 cases heard release on bail was granted.[125]

[122] See the excel spreadsheet *Tables for 'Evaluation of the new family returns process'* tab DT17 Ensured Rtn Option (macro) https://www.gov.uk/government/publications/evaluation-of-the-new-family-returns-process

[123] Home Office (2013) *Immigration Statistics, April to June 2013* https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2013/immigration-statistics-april-to-june-2013#detention-2

[124] Home Office (2013) *Immigration statistics, July to September 2013* https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2013/immigration-statistics-july-to-september-2013#detention-1. These statistics do not include people detained under Immigration Act powers in prisons.

[125] HM Courts & Tribunals Service Presidents' Stakeholder Group (2013) *Bail management information Period April 2012 to March 2013*

35. If different alternative mechanisms are applied, which alternatives are used more commonly and why?

Please note: the table below sets out BID's understanding of the reasons why different options are used, and not BID's view on whether and in what circumstances these options should be used.

Types of alternative scheme applied	**Specify if this alternative is frequently/rarely/never applied** *Please provide figures if possible*	**Comment**
Obligation to surrender passport and documents	As is outlined at Question 16 above, BID's understanding is that it is standard practice that asylum seekers and 'returnees' are required to surrender any passports and documents.	
Regular reporting to the authorities	Unfortunately, BID is not aware of any publicly available figures on the numbers of asylum seekers and 'returnees' who are required to report, although our understanding is that reporting requirements are common. Questions 18 and 19 above outline the Home Office's policy on which groups are required to report more or less frequently, and some small-scale research by the Refugee Council on reporting.	The Home Office's instruction to staff *Reporting – Standards of Operational Practice* speaks at length about the resource implications of reporting for the Home Office, and the consequent need to prioritise certain groups for frequent reporting. Our response to Question 19 above also sets out Home Office policy that fewer reporting requirements are placed on certain vulnerable groups.
Deposit of adequate financial guarantee	Please see Question 18 above for figures from BID's research on the numbers of bail applicants who have sureties. Please see comments under this table re: reasons for frequency of bail applications.	In the UK context, financial guarantees are normally only used in a bail application, so this option will only apply to individuals who have been detained and are released on bail. Some detainees will not be able to provide any financial bond themselves or secure sureties, for example where they do not have any money or friends or family in the UK.
Community release/supervision	Not clear what is meant by 'community release/supervision' – all the	

	options BID is aware of which are used in the UK are outlined in the other sections of this table.	
Designated residence	As is outlined at Question 16 above, BID's understanding is that it is standard practice that current and refused asylum seekers are required to live at a designated residence.	
Electronic monitoring	Please see figures in Question 34 above. As outlined at Question 18 above, the Home Office's policy is to use this option in cases where applicants and 'returnees' have a criminal conviction, or there are other perceived risk factors.	As noted at Question 18 above, BID's understanding from meetings with Home Office officials is that the use of electronic tagging is limited by its high initial costs.
Electronic monitoring by telephone using voice recognition technology	Please see figures in Question 34 above.	
Other (please specify)		
Self check-in	BID is not aware any publicly available figures on the numbers of single adults who depart from the UK via self check-in. As is outlined at Question 18 above, in 20 of the 377 concluded cases surveyed in the Home Office commissioned *Evaluation of the new Family Returns Process*, the family departed via self check-in.	This is a relatively inexpensive option for the Home Office if the person departs. In some cases, there may be a risk of the 'returnee' not complying with self check-in. This will incur a cost where the Home Office have arranged a flight. However, BID is not aware of any figures on non-compliance for single adults, or of what risk assessment methods the Home Office base their decision-making on.
Voluntary return	In the year ending September 2013, 30,184 people departed from the UK voluntarily.[126]	Voluntary return is cheaper for the Home Office than enforced return.

[126] Home Office (2013) *Immigration statistics, July to September 2013*

Separation of families	As is noted in Question 18 above, BID's understanding is that this option has been used in the Family Returns Process, but BID is not aware of any publicly available information on how many cases this has been used in.	
Removals without full notice	Figures on the number of family cases where this method is used are set out at Question 18 above. BID is not aware of any publicly available information on the numbers of adults who are removed without full notice.	This is a straightforward and relatively inexpensive option for the Home Office.
'Open Accommodation'	As is set out at Question 18 above, the Home Office commissioned evaluation of the Family Returns Process records that none of the families they surveyed had been moved to Open Accommodation, and BID is not aware of any cases where this has been used.	

BID believes that the number of applications to the First-tier Tribunal for release from detention on bail would be higher if public funding was available for regular bail applications, if grants of Home Office Section 4 bail accommodation were not in some cases subject to delays of several months, if more detainees were able to access competent legal advice throughout the period of their detention regardless of length of detention, and if detainees had access to interpreters and translated materials to assist in preparation of bail applications, especially if they must prepare and lodge an application without legal advice. Please see question 18 above for further details on some of these points.

As is set out at Question 18 above, BID has longstanding concerns about the variable quality of Tribunal decision-making on immigration bail, particularly in relation to longer -term detainees, which are set out in our 2012 report *The Liberty Deficit.*

In addition, inability to read, write, understand and speak English to the degree needed to prepare and present a bail application without legal advice mean that it is impossible for a proportion of immigration detainees to apply for bail themselves.

Detainees who have not had the benefit of legal advice or representation are clearly lodging bail applications and appearing at bail hearings, although the proportion of such applications is unknown. However, in BID's experience, most bail applicants, especially those with complex immigration histories, would be unable to prepare average to strong bail applications that address only those issues the decision-maker is required to consider, and to marshal suitable sureties to appear in court with the correct documentation. Our research on bail decision-making shows that where judges advise withdrawal of an application during a bail hearing it is generally to unrepresented applicants who have submitted poorly prepared applications and failed to instruct their sureties to appear in person.

36. What is the rate of disappearance among people submitted to one of these alternative measures? Please specify if you have figures per alternatives.

Please see the findings on absconding rates from the following studies, which are set out at Question 15 above:

Bruegel, I. and Natamba, E. (2002) *Maintaining Contact: What happens after detained asylum seekers get bail?* London South Bank University

Bail for Immigration Detainees and The Children's Society (2011) *Last Resort or First Resort? Immigration detention of children in the UK*

Bail for Immigration Detainees (2013) *Fractured Childhoods: the separation of families by immigration detention*

We also note that the Home Office recently provided the following information on absconding in response to a parliamentary question:

'The number of people listed as an immigration or asylum absconder in each of the last six years can be found in the following table.

Breach year	Total
2008	11,567
2009	11,430
2010	9,783
2011	9,585
2012	5,240
2013	3,192
Grand total	50,797

Notes: 1. The data relates to the number of people whom absconded by calendar year. 2. Many of these people have subsequently been encountered and are no longer absconders. 3. People may have absconded more than once. 4. An asylum/non-asylum breakdown is not possible within this time frame. 5. The figures provided are sourced from a Home Office management information system which is not quality assured under National Statistics protocols and is

subject to change due to internal data quality checking. Figures provided from this source do not constitute part of National Statistics and should be treated as provisional.'[127]

However, BID has serious concerns about the quality of this information. BID and The Children's Society's 2011 report *Last Resort or First Resort* found that in the cases of 4 of the 10 families for whom we had access to Home Office files, families were wrongly recorded as having broken their reporting or residence restrictions.[128]

We also note that an individual can be considered to have absconded if they miss a reporting event,[129] and the Home Office note on the data above states that 'many of these people have subsequently been encountered and are no longer absconders.' This raises questions about whether all of these people actually absconded in the first place. In addition, without knowing how many thousands of foreign nationals are required by the Home Office to report over the course of each year, it is not possible to estimate the rate of absconding, and how this articulates with, for example, the number of new asylum claims each year.

Family Returns Process

The Home Office commissioned *Evaluation of the new Family Returns Process* explains that only 7 out of 155 families in the evaluation's small quantitative sample had absconded. All 155 families were in the new Family Returns Process. The evaluation also found that the same proportion of families absconded in a sample of 145 families whose cases were dealt with in 2008, before the new process was introduced.

At pages 24-26, the evaluation also looks at compliance at different stages of the process for a separate cohort of 996 families who were in the Family Return Process. The report found that 4 families were non-compliant before entering the process, 20 were non-compliant at the assisted return stage, 39 at the required return stage, and 37 at the ensured (or forcible) return stage. Therefore, 100 out of 996 families were non-compliant at some point. However, not all of these families absconded – some, for example, were not at home when the Home Office sought to visit them for a meeting to discuss their options.

For 14 of the 37 families who were non-compliant at the forced return stage, this non-compliance occurred during their detention – not while they were subject to an alternative to detention. A further 22 of these 37 families were non-compliant before or during an attempt to forcibly remove them with limited notice or no further notice.

[127] *Hansard* HC Deb, 6 January 2014, c30W

[128] Bail for Immigration Detainees and The Children's Society (2011) *Last Resort or First Resort? Immigration detention of children in the UK* p37

[129] Home Office *Enforcement Instructions and Guidance* Chapter 19

Electronic monitoring

As is noted in Question 18, on 23rd February 2009, the Home Office provided the following information to BID in response to a Freedom of Information Act request (Ref 11132):

'The compliance rate for both tagging and telephone reporting is currently around 90%.'

We are not aware of any other publicly available information on compliance rates with electronic monitoring.

Bail

BID is not aware of any data on absconding rates for bailees, other than that which is set out above, but at the time of writing we are seeking confirmation from the Home Office on this point.

37. Have any other alternatives been operationalised in the past and have since been abandoned? If so please briefly describe the type of schemes operated and the reasons why they were discontinued.

An electronic monitoring pilot was run by the Home Office between 2004 and 2005 – details of this are provided in Question 18 above. A number of projects piloting alternatives to detaining children have been run by the UK government in the past – these are outlined below.

We also note that in 2013, the Home Office ran a campaign which was purportedly designed to encourage migrants and refused asylum seekers to return voluntarily to their countries of origin. As part of this, vans with a large image of handcuffs bearing the wording 'In the UK illegally? Go home or face arrest' toured six London boroughs. Shortly after this, a poster campaign was launched in reporting centres in Hounslow and Glasgow advising immigrants to 'ask about going home.' One poster, showing a person sleeping rough on the streets, read 'Is life here hard? Going home is simple.' These initiatives were widely criticised.[130] We do not provide detailed information about them here, as voluntary return is not the focus of the MADE REAL project.

2004-5: The Section 9 Implementation Pilot

In January 2006, Refugee Council and Refugee Action produced a report on the government's Section 9 pilot, which explained that:

'Under Section 9 of the Asylum and Immigration Act 2004, families who have reached the end of the asylum process and exhausted all their appeal rights can

[130] See for example The Guardian (12/8/13) *Home Office backs down over 'go home' vans after legal complaint* and The Guardian (30/8/13) *New 'going home' immigration posters shameful, say Scottish politicians*

have their financial support and accommodation removed if they 'fail to take reasonable steps' to leave the UK. In the event that families are made destitute, they can face having their children removed and taken into the care of social services. During the passage of the bill, the government said their aim was not to make victimise families with children but to encourage them to take up voluntary return packages.'[131]

In parliament, Beverley Hughes, the Minister of State said:

'The proposals . . . are intended both as a deterrent but also as an incentive . . . I want to try to persuade as many families as possible, when they come to the end of the road, to go back in a dignified way, with support, on a voluntary basis.'[132]

Refugee Council and Refugee Action's report goes on to state that:

'In December 2004, the Home Office started piloting Section 9. 116 families were selected to take part in the pilot in Leeds, London and Manchester….

- Section 9 has caused immense distress and panic among families who face destitution, homelessness and having their children taken into care
- Section 9 is completely incompatible with human rights standards
- Section 9 has comprehensively failed to achieve the government's stated objective of encouraging families to return voluntarily to their home countries..

- Only one family has left the UK as a result of Section 9.
- At the most, 3 families have signed up for voluntary return and only another 12 have taken steps to obtain travel documents.
- At least 32 families, almost a third of the total, have gone underground without support, housing or access to health and welfare services.
- Nine families were removed from the pilot after having their cases reviewed, highlighting the poor quality of decision making on asylum cases.
- Many of the families we have worked with have serious health and mental health problems which have been made worse by Section 9.'[133]

The Section 9 Implementation pilot was subsequently abandoned by the Home Office.

2007 – Clannebor Pilot

The Clannebor Project, which began in June 2007, involved 60 families in Yorkshire and Humberside. Only families who had come to the end of their

[131] Refugee Council and Refugee Action (2006) *Inhumane and Ineffective - Section 9 in Practice,* p2; for further information see Home Office (2007) *Family Asylum Policy: The Section 9 Implementation Project*

[132] Home Affairs Select Committee (2003) *First Report of Session, 2003-2004,* p17

[133] Refugee Council and Refugee Action (2006) *Inhumane and Ineffective - Section 9 in Practice,* p2-3

asylum appeals were supposed to be referred to the pilot. Parents and children were required, under threat of prosecution, to report for three Home Office interviews in which officials updated their information on the family, confirmed that the family understood they had come to the end of the asylum process and informed the family of the options available to them for their return, including the possibility that they would be detained if they did not voluntarily leave the UK. Some families reported 'aggressive and sometimes threatening questioning' in these interviews.[134] A Home Office review of the Clannebor pilot found that none of the families involved opted to return voluntarily.[135]

2007/8 – Millbank Pilot

From November 2007 to August 2008 the Home Office ran the Millbank pilot, which involved families moving to a supervised accommodation centre in Kent. Families selected for the pilot had their support withdrawn if they did not move to Millbank. Once there, they were provided with information on voluntary return. Only one of the families involved in this pilot returned voluntarily to their country of origin, and the project was widely acknowledged to have been poorly conceived. Damian Green MP made the following comments on the Millbank pilot:

'I rise as a constituency Member, because the alternative-to-detention project that the government started took place in my constituency and was pursued, at best, halfheartedly. It did not clearly engage any particularly serious part of the government's thinking—if, indeed, it was a serious alternative to detention. I suspect that Members from all parts of the House want desirable alternatives to detention, but they have never been properly set out or tried. The experiment in my constituency was nothing like long enough, well resourced enough or serious enough to answer the question about whether we can have a proper alternative.'[136]

BID and The Children's Society's evaluative report found that families in the Millbank pilot reported feeling 'coerced and frightened' and that there was a 'climate of fear' in the centre. The report concluded that:

'Establishing the pilot in a separate accommodation centre was unhelpful - thought must be given to the appropriateness of trying to explore return options for families in a designated centre rather than in the community. The housing of families who had been refused asylum in one place did not create a calm environment. A future pilot should seriously consider whether upheaval is a helpful way to build trust with families considering return. Allowing families to remain in the community with their normal routines intact seems a much more

[134] Refugee Council (2007) *Briefing: Operation 'Clannebor'*; Guardian (18/02/2008) 'Charities attack 'distressing' asylum scheme' http://www.guardian.co.uk/uk/2008/feb/18/immigration

[135] BIA (2008) *Clannebor Project – The Way Forward*

[136] *Hansard*, HC 2 Jun 2009: Column 217

helpful way of building a trusting relationship, and enabling families to think through the options available to them in a calm way.'[137]

The evaluation sets out concerns about the referral criteria for the pilot, noting that:

'Reports were also provided to us about families who had been referred to Millbank despite outstanding protection needs which had not been resolved.. We also received reports of families referred to the pilot with medical problems which meant the accommodation was unsuitable.'[138]

2009-11 - Glasgow 'Family Returns' pilot

Initially, all the families in this pilot were required to move to specific accommodation. They were offered information regarding voluntary return, as well as being regularly reminded that if they did not co-operate with voluntary return the Home Office would attempt to forcibly remove them from the UK. Social workers provided support to families on the pilot, which was designed as an alternative to detention. As the pilot progressed, some families were supported on an outreach basis, and were not required to move to the pilot accommodation. The Home Office commissioned an independent evaluation of the pilot, which was published in May 2011, and found that:

'Twenty-five families entered the Project… Three families were removed from the Project because of medical concerns; four families absconded; six families were withdrawn because they refused to engage with FRP staff (other families also refused to engage, but were removed for other reasons); and seven families were removed because of ongoing legal appeals. As of February 2011, five families were working with the FRP. One is located in the FRP accommodation and four are being supported through outreach work. To date three of the families involved in the Project have agreed to voluntary return – but these agreements were not authorised by the Home Office in Croydon. One further family had agreed to voluntary return, but had not yet returned...

Some children were, according to their teachers, visibly stressed when they had either been told directly of their situation, or where they had picked up on the stresses of family members at home. Teachers stated that there were children from the FRP who did not display signs of stress – particularly those who were not aware of their situation.'[139]

[137] BID and The Children's Society (2009) *An evaluative report on the Millbank Alternative to Detention Pilot;* for further information see the Home Office commissioned evaluation: Cranfield, A. (2009) *Review of the Alternative to Detention (A2D) Project*

[138] BID and The Children's Society (2009) *An evaluative report on the Millbank Alternative to Detention Pilot* p3

[139] ODS Consulting (2011) *Evaluation of the Family Return Project - Glasgow City Council, UKBA and the Scottish Government: Final Report*

The Scottish Refugee Council published a response to the evaluation which stated that:

'The family return pilot's principle of working with families and understanding their fears and concerns of returning to their countries of origin was the right one. However, only working with families at the end of the process and moving those families to another location were deep flaws. The project didn't engage with legal representatives or local communities and the UK Border Agency wrongly referred families who had been in Scotland for years into the project.'[140]

The Solihull pilot

In 2006 the UK Border Agency and the Legal Services Commission developed the Solihull pilot, to trial an 'early advice' method which aimed to improve the quality of asylum decisions. These agencies later commissioned an evaluation of the pilot, which explained that:

'The proposal was to allow claimants access to quality information and advice from legal advisors from the earliest stages of the asylum process. Parts of the proposal to be tested included a more interactive role for the legal representatives before, during and after the substantive asylum interview, prior to the decision. Simultaneously relevant evidence gathering was to be funded prior to the decision. One of the main aims of the pilot was to ensure that all material facts and all relevant evidence were in front of the decision maker at the time they made the decision.'[141]

Unlike the pilots summarised above, this pilot was not specific to families. While this was not an 'alternative to detention' pilot, one of the aims of the pilot was 'closer case management resulting in fewer absconders.' The government commissioned evaluation of the pilot found that only 0.4% of the 242 pilot cases absconded, compared to 6.8% of non-pilot cases in the same region, and 4.2% non-pilot cases in a different region. The evaluation states that:

'The numbers involved are too small to draw a conclusion based solely on the statistics but again the statistical information that is available is supported by the anecdotal evidence below.. Caseowners reported that they felt the overall close contact with the applicant and the legal representative helped in the respect of effecting a removal if the application was ultimately refused.'[142]

[140] Scottish Refugee Council (14/06/11) *We respond to evaluation of Glasgow Family Returns Pilot* http://www.scottishrefugeecouncil.org.uk/news_and_events/latest_news/1192_we_respond_to_evaluation_of_glasgow_family_returns_pilot

[141] Aspden, J. (2008) *Evaluation of the Solihull Pilot for the UK Border Agency and the Legal Services Commission*

[142] Aspden, J. (2008) *Evaluation of the Solihull Pilot for the UK Border Agency and the Legal Services Commission* pp15-17

38. **What are the main difficulties/obstacles observed in the implementation of these alternatives (e.g. costs, administrative burden, non-compliance)? Please describe.**

Details of levels of compliance with alternatives are given at Question 36 and 37 above.[143]

Electronic monitoring and reporting

As is noted at Question 18, BID's understanding from meetings with Home Office officials is that the use of electronic tagging is limited by its high initial costs.

As is noted at Question 35 above, the Home Office's instruction to staff *Reporting – Standards of Operational Practice* speaks at length about the resource implications of reporting for the Home Office, and the consequent need to prioritise certain groups for frequent reporting – although no information on the actual costs is detailed in this document.

The Family Returns Process

The Home Office commissioned evaluation of the Family Returns Process found that the new process is more time-consuming, and that Home Office staff felt it was more resource intensive. The report states that, before the new Family Returns Process was introduced, 42% of families (n=19) left the UK in the six months after they became 'appeal rights exhausted.' The evaluation found that, by contrast, only 21% of families (n=7) in the Family Returns Process left the UK in the six months after they became 'appeal rights exhausted.' We note that this analysis is based on very small numbers of families, and it may be that it does not demonstrate wider trends. Indeed, the report found that of the entire 188 families who returned under the new Family Returns Process, 135 left within six months of their entry into the process – albeit that they may have become appeal rights exhausted before this point.

39. **Please provide available data or an objectively based evaluation on how much does the implementation of such a scheme cost? If possible please give figures regarding the cost of these alternatives per individual (comparing it to the cost of detention if information on this point is available)**
40. **Please provide any quantitative data available regarding the resources put into each of these schemes (Human Resources, Logistics, Financial).**

BID is not aware of any publicly available information on these questions for reporting regimes or the bail process.

[143] We do not include data on absconding for the Millbank pilot, as there was evidence that the Home Office incorrectly recorded families in the pilot as having absconded, so clear data is not available on this issue: BID and The Children's Society (2009) *An evaluative report on the Millbank Alternative to Detention Pilot*

A 2006 report by UNHCR states that:

'The Home Office calculates that an average 45-day curfew under the electronic monitoring scheme for remand prisoners costs approximately £1,300.'[144]

The only data BID is aware of on the costs of the family return process was published in a Home Office evaluation of an early pilot of the process:

'The North West team attempted to estimate the costs of two elements of the pilot process. The conferences at Reliance House, conducted by one or two Higher Executive Officers (HEOs), have an estimated cost of between £135 and £161, suggesting a cost between £7,695 and £9,177 (for 57 conferences). This includes average admin costs in setting the interview up, travel tickets for the family, interpreter costs for an hour long interview etc. A Family Return Conference conducted by Immigration Officers (IOs) costs about £250, suggesting a cost of £11,500 (for 46 visits). This is based on average travel times and costs from Reliance House to the family's address and average conference times. The total cost of these elements may be in the region of £18k to £20k in the North West.'[145]

The 2007-8 Millbank Pilot, which is outlined at Question 37 above, was widely reported in the press as having cost £1 Million.[146] As is noted above, only one family returned voluntarily to their country of origin as a result of the pilot.

An evaluation of the Glasgow Family Returns Pilot found that:

'The costs of the Project have mainly related to Social Work support. Accommodation is paid for by UKBA [UK Border Agency]. They have, in essence, transferred the cost of accommodation which they would have had to meet from the existing flat in which the asylum seeker was housed to the accommodation in the Project. There is therefore no significant extra cost.

The annual cost of staff and running costs for the Social Work team are met by the Scottish Government. The full annual cost is just over £120,000, but the Project has often been operating with lower staff levels than initially planned - either through vacancies or staff turnover.

There are significant costs involved in the asylum process. For example, the Home Affairs Committee noted that the cost of keeping a person in detention was £130 a day; therefore, keeping a family of four in detention for between four and eight weeks costs more than £20,000....

[144] Edwards, A. and Field, O. (2006) *Alternatives to detention of asylum seekers and refugees – UNHCR* p216

[145] UK Border Agency (May 2011) *Child detention review: Interim assessment of family return pilots*

[146] See for example: The Telegraph (25/06/09) *£1m asylum seeker project helped only one family leave Britain* http://www.telegraph.co.uk/news/uknews/5623255/1m-asylum-seeker-project-helped-only-one-family-leave-Britain.html

Had the families involved in the Project required to be detained, the total costs (using the Home Office figures) would have been over £160,000 per year. In addition, the children would not have been able to attend school and the families would have been living in detention, rather than a flat with support provided.'[147]

41. a. Are these schemes evaluated regularly?
b. Who conducts these evaluations?
c. Is this information public? If so please provide source of information.
d. Please highlight some of the main conclusions of any publically available evaluations.

BID is not aware of any independent evaluations which have been produced on electronic monitoring, or the new family returns process.[148] The Home Office commissioned an evaluation of the Family Returns Process, and this is quoted at length above.[149]

The Chief Inspector of Borders and Immigration has carried out small pieces of inspection work on reporting centres.[150] A recent inspection of a reporting centre found that there was a need to improve translating facilities, the complaints process and the procedure for allocating travel expenses.[151]

In relation to bail, very little published material is available other than the reports by BID which are cited above. We note in addition that the Bail Observation

[147] ODS Consulting (2011) *Evaluation of the Family Return Project - Glasgow City Council, UKBA and the Scottish Government: Final Report.* We note that a recent report states that in 2011/12, the average cost of detention was £164 per night – see Independent Chief Inspector of Borders and Immigration (2014) *An Inspection of the Emergency Travel Document Process May-September 2013*, footnote 4 on p4.

[148] Some observations on the pilot Family Returns Process are contained in this paper: BID and The Children's Society (December 2010) *UKBA plans for pilots to remove families with limited notice and through open accommodation: Response of Bail for Immigration Detainees and The Children's Society* - key points from this are outlined in Question 19 above. Some concerns which BID and others have about the process are noted in: Children's Rights Alliance for England (2013) *State of Children's Rights in the UK* and Refugee Action (2012) *Refugee Action's response to the GVA evaluation of UKBA's family returns process* - the latter is quoted at Question 19 above. The Independent Family Returns Panel also produced an *Annual Report* in 2012, which reported that the family returns process had positive outcomes in terms of child safeguarding. Regrettably, the report contained very little data, and is therefore of limited use in assessing how well the process is operating.

[149] Home Office (2013) *Evaluation of the new family returns process*

[150] See for example Independent Chief Inspector of Borders and Immigration (August 2013) *Spot Check Visits January – May 2013;* Independent Chief Inspector of Borders and Immigration (2012) *An inspection of the Hampshire and Isle of Wight Local Immigration Team September 2011 – January 2012*

[151] Chief Inspector of Borders and Immigration (August 2013) *Spot Check Visits January – May 2013* p14-17

Project has published two reports, *Immigration Bail Hearings: A Travesty of Justice?* (2011) *and Still a Travesty: Justice in Immigration Bail Hearings* (2013).

E. OTHER

42. What are your recommendations for a better application of these schemes – with regards to:
- Effectiveness:
- Fairness:
- Transparency:
- Adequacy (link between objectives of policy and results):

BID has two broad concerns in this area. The first is that individuals are detained unnecessarily and in some cases unlawfully, as a result of poor decision-making by the Home Office. Examples are given at Question 15 above of cases in which alternatives to detention, including the straightforward alternative of liberty, were not properly considered by the Home Office. Secondly, at Questions 18 and 19, we set out concerning examples of cases where people have been submitted to alternatives to detention where it appears this was inappropriate – for example families who entered the Family Returns Process but whose return was subsequently not pursued.

Family Returns Process

See Question 19 above for a full discussion of BID's concerns about the Family Returns Process. As is explained above, there is an urgent need for improvements to the quality of Home Office decision-making, and access to legal advice for families. As is noted above, in 187 of the 377 family cases which were concluded during the Home Office commissioned evaluation of the Family Returns Process, a return was not in the end pursued.[152] This raises serious questions about why these families entered the returns process in the first place.

The Family Returns Process allows families who may have been in the UK for years a minimum of just two weeks to consider voluntary return. In BID's view this is inadequate.

Serious concerns have been raised about the way in which Family Return Conferences and Family Departure Meetings have been carried out. In BID's view, there is a need for support to be provided to families by independent child and family welfare experts from an early stage in the process.

An 'Independent Family Returns Panel' provides advice to Home Office staff about which method of enforced return should be used in individual cases. BID's key concern is that there is no direct route for families or their legal representatives to provide evidence to the panel about factors which may make certain enforcement measures inappropriate. Furthermore, the panel does not routinely share information with families and their legal representatives

[152] Home Office (2013) *Evaluation of the new family returns process*

regarding the specific reasons why enforcement measures such as limited notice of removal are being used in their cases, and the evidence on which this decision is based.

There have been cases where families have been separated during the Family Returns Process as an alternative to detention. BID is opposed to the separation of families for the purposes of immigration control; this practice can cause extreme distress to children.

Removals without full notice

As is set out at Question 18 above, the Home Office is removing families without full notice as an alternative to detaining them. Single adults can also be removed via 'no further notice' removals,[153] although BID is not aware of any publicly available data on how many cases this happens in.

BID is concerned that the practice of removing individuals and families without full notice may create barriers to them accessing legal advice and judicial oversight of the Home Office's decision to forcibly remove them. This is particularly concerning given the evidence of more general difficulties in accessing competent legal advice and problems with the quality of decision-making which is cited above.

As is explained above, unfortunately there has been no evaluation of the Family Returns Process other than the government-commissioned evaluation. Information is not available on whether families who have been removed with limited notice were able to access legal advice, and what effect the process had on them.

Self check-in

The new Family Returns Process offers families a greater opportunity to consider returning via self check-in before enforcement action is taken against them by the Home Office. The Home Office commissioned evaluation notes that:

'Management information showed that 11 per cent of all returned FRP [Family Return Process] families had left via required return (see Chart 2). This was a higher proportion than was suggested by most LIT [Local Immigration Team] staff in focus groups, who felt that required returns were ineffective.'[154]

BID is not aware of any publicly available information on the numbers of single adults who return via self check-in. However, the fact that when families were given the opportunity, they took up self check-in in 11 per cent of cases, suggests

[153] Home Office *Enforcement Instructions and Guidance* Chapter 60 Section 3.2: 'Where a removal fails or is deferred and the person was given standard notice of removal, it may not be necessary to give a further period of standard notice when rearranging removal for within 10 days of the failed or deferred removal.'

[154] Home Office (2013) *Evaluation of the new family returns process* p20

that there may be scope for this option to be offered to more single adults as an alternative to detention.

In addition, we note that the Home Office has discretion about whether to offer assistance to families with travel to the airport. Where a family is interested in pursuing self check-in, they may have very limited resources and the support they are offered in practice may be decisive in whether they are able to take up self check-in or not.[155]

Electronic tagging and reporting

As is outlined at Question 15 above, BID has serious concerns about the quality of Home Office assessments of the risk of individuals absconding or re-offending (where they have criminal convictions). Risk assessment will be a key factor in decision-making about whether to electronically tag somebody, or require that they report frequently. There is therefore a need for the Home Office to improve their risk assessment processes.

As is noted at Question 41 above, the Chief Inspector of Borders and Immigration has recommended that individual reporting centres need to improve their translation facilities and complaints processes.

Furthermore, BID makes the following recommendations in relation to the use of tagging and reporting:

- A time limit should be introduced on the use of electronic tagging for the purposes of immigration control. In addition, limits should be set on the length of time which people are required to remain in their homes every day for electronic monitoring purposes.

- The Home Office should publicly consult on and publish clear guidelines on the use of electronic tagging. When setting and reviewing contact requirements, decision-makers should consider the impact of reporting and tagging on the welfare of adults and affected children.

- The Home Office should publish data on how many individuals are currently being electronically tagged or required to report weekly or more than once a week for the purposes of immigration control, and the length of time which these people have been subject to these contact requirements for.

- If individuals are electronically tagged or required to report, case owners or immigration officers should provide these individuals and their legal representatives with clear reasons and criteria for decisions about any contact requirements that they are subject to.

[155] Home Office *Enforcement Instructions and Guidance* Chapter 45 (b) 3 'Required Return'

- If individuals are electronically tagged or required to report, a clear process for them to request changes to their contact requirements should be introduced by the Home Office and communicated to them.

- The Home Office's processes for allocating contact requirements to individuals should be subject to independent oversight and regular independent audits.

- At the point of initial contact asylum seekers should be given information which explains their entitlement to assistance with travel costs for reporting.

- Flexibility should be exercised where local geography requires individuals to walk beyond the three mile threshold to report. It should also be used where the distance is less than three miles but individuals are pregnant or unwell.

- Childcare should routinely be provided in all regions for parents during key events such as reporting.

Bail

BID's 2012 report *The Liberty Deficit* makes numerous recommendations for improvements to the bail process; these are set out in full in the report. Some of the key recommendations are that:

- As a general principle the Home Office must fulfil its duty to assist the tribunal and must therefore disclose all evidence upon which it relies to oppose release on bail. The tribunal must use adjournments and directions to order disclosure where it is not forthcoming.

- The tribunal should use its existing powers to direct both parties to provide evidence and information, and its powers to grant bail in principle or to adjourn a hearing to allow for practical barriers to be dealt with. It can no longer be considered acceptable for the tribunal to avoid this responsibility by in effect 'returning' a person to detention where the option exists for the use of adjournment, directions to parties, and bail in principle.

- Written bail decisions should detail arguments presented by the Home Office and the applicant as well as the reasons for refusing bail, and should outline what further steps might need to be taken by either party in the case before a subsequent bail hearing or within a set time scale (for example, steps to be taken by either party in relation to a travel document application).

- The tribunal must facilitate complete, comprehensive interpretation of bail proceedings in their entirety, including evidence discussed and arguments, even - and especially - in those bail applications where

applicants have long detention histories, complex immigration cases, and where the volume of evidence and argument before the tribunal is likely to be highest.

- Judicial decision makers in the First Tier Tribunal's Immigration and Asylum Chamber should routinely receive training on the assessment and management of criminal risk from experts in the criminal justice system, to include advice on the weight to give to aspects of risk assessment and which order in which to consider them to ensure adequate risk management.

43. What are, in your view, the strengths of the system of alternatives to detention in your Member State?

Family returns process

The new Family Returns Process offers families a greater opportunity to consider voluntary return and self check-in before enforcement action is taken against them. In BID's view, this is a positive development, albeit that the two week minimum time period which families are given to consider voluntary return is insufficient.

Chapter 45 of the Home Office's *Enforcement Instructions and Guidance* provides fairly detailed instructions on how the new process should be applied. There are numerous aspects of this guidance which BID does not support, and concerns have been raised about whether this guidance is applied consistently in practice. That said, in our view it is helpful that the Home Office sets out what should be done by staff fairly clearly in a number of areas.

Reporting

Aspects of the Home Office's instructions on reporting, which are outlined at Question 19 above, are helpful.

Bail

Applications to the First-tier Tribunal's Immigration and Asylum Chamber for release on immigration bail can be made at no cost to the applicant.

44. What are, in your view, the weaknesses of the system of alternatives to detention in your Member State?

Please see Question 42 above.

In addition, we note that there are serious problems with the quality of Home Office decision-making and access to legal advice in cases involving single adults, as well as families (please see Question 19 above). If an incorrect decision is made about an individual's asylum claim, this may lead to their detention, to

enforcement action being taking against them or to alternatives to detention being imposed when this is entirely inappropriate.

Furthermore, aspects of the Family Returns Process are not currently applied to single adults. These include:

- a minimum time period to consider voluntary return and self check-in after the refusal of an asylum appeal and before enforcement action is taken;
- improved processes for Home Office staff to gather information about cases before taking enforcement action.

Single adults may be detained unnecessarily as a result.

More broadly, we have concerns that the existence of 'alternatives to detention' for single adults such as reporting requirements are not resulting in fewer people being detained – rather, the number of single adults held in detention is increasing. While limited data is available on the use of reporting, it appears likely that a proportion of those who are required to report would not be detained in any case. So, in some cases, rather than operating as an alternative to detention, measures such as reporting may simply increase the numbers of asylum seekers and 'returnees' who have restrictive requirements placed on them. However, we note that the situation in relation to families is different. The numbers of families in detention has decreased considerably since 2009/10, at the same time as the new Family Returns Process has been introduced.

45. Please present an example of good practice and explain why you consider it as such.

Please see Question 43 above.

46. Please present an example of bad practice and explain why you consider it as such.

Please see comments on separation of families in Question 42 above.

47. Do you think that these alternatives should/could be expanded to more 'returnees' - currently detained?

The straightforward alternative to detention is liberty. It is worth noting that the UK's High Court regularly finds that immigration detainees have been held in detention unlawfully. In some cases, it may be appropriate for a particular 'alternative to detention' measure to be applied to an individual. However, it cannot be assumed from the fact that an individual is in detention that they ought to be there, or that it would be appropriate for them to be subjected to an 'alternative to detention' scheme. For example, as is noted at Question 44 above, if an incorrect decision is made about individual's asylum claim, this may lead to their detention, to enforcement action being taking against them or to alternatives to detention being imposed when this is entirely inappropriate.

In BID's view, there is also clear potential for more detainees to be released with contact requirements such as regular reporting – indeed this occurs in numerous cases where detainees successfully apply for bail. The improvements which BID would like to see to Home Office decision making on the imposition of reporting requirements are set out at Question 42 above. In addition, please see comments on single adults and the Family Returns Process at Question 44 above.

In relation to bail, more 'returnees' could benefit from bail if the recommendations outlined in BID's 2012 report *The Liberty Deficit* were implemented (please see Question 42 above).

48. Why do you think alternatives to detention are not more widely applied by your government? Please provide any relevant feedback from government officials.

At the time of writing, we are awaiting feedback from government officials on this point. However, as is outlined at questions 11 and 13 above, reasons for detention include concerns that an individual will abscond or be otherwise non-compliant with the Home Office, and that where they have a criminal conviction they may re-offend. It is BID's understanding from discussions with officials that in addition to being concerned about absconding, the government is concerned that individuals outside detention may not comply with the removal process.

Public attitudes, media reports and the political debate on asylum and immigration are also a significant driver of government policy. For example, the Family Returns Process was introduced in 2010 and 2011 following campaigns against child detention by BID, The Children's Society, Save the Children, Refugee Council, London Citizens and many others.[156] A great deal more effort has been put into developing alternatives to detention for families and children than single adults, and it appears likely that this is due at least in part to the government's concerns about public criticism of child detention.

Historically, government Ministers have said that immigration detention is used in part because it deters undocumented migration. For example, the former Immigration Minister Phil Woolas argued in the press that 'the system need[s] to protect a nation from economic migrants' and has promoted the idea that a tough system which punishes rather than rewards unsuccessful applications will lead to

[156] See for example: Institute of Race Relations (4/5/06) *No place for a child: a campaign to free children in detention* http://www.irr.org.uk/news/no-place-for-a-child-a-campaign-to-free-children-in-detention/; CITIZENS UK (16/12/10) *CITIZENS UK response to Nick Clegg's announcement ending the detention of children for immigration purposes* http://www.citizensuk.org/2010/12/citizens-uk-response-to-nick-cleggs-announcement-ending-the-detention-of-children-for-immigration-purposes/ and The Children's Society (undated) *Why we should stop the immigration detention of children* http://www.childrenssociety.org.uk/what-you-can-do/campaign-join/outcry/why-we-should-stop-immigration-detention-children

less migration and less unfounded asylum applications.[157] In an interview with *The Sun* newspaper, Phil Woolas specifically linked this argument to detention and said that ending immigration detention would 'make [the UK] a bigger draw for those seeking a new home.'[158] BID is not aware of any statements by current government Ministers linking the use of detention to the aim of reducing undocumented migration, but we are awaiting feedback from government officials on whether this is part of the current government's rationale for using detention.

49. Why do you think these alternatives to detention are not applied to asylum seekers currently detained?

Please see Questions 48 and 35 above. In addition, as is explained at Question 6 above, where cases are deemed suitable for the Detained Fast Track, alternatives to detention are not considered.

50. Please add here any other interesting element about alternatives to detention in your Member State/commentary which you did not have the occasion to mention in your previous answers. N/A

51. Please quote recent scientific books, articles, reports, substantive online commentaries that have been published about alternatives to detention in your Member State (answer even if this literature is only available in your national language and provide the complete title in your language (without translating it) with all references; indicate author, title, in case name of periodical, year and place of publication as well as publisher).

Please see references provided in response to the questions above. In addition, the following articles may be of interest:

Matrix Evidence (2012) *An economic analysis of alternatives to long-term detention*

This report by Matrix Evidence recommended that the Home Office improve its processes for identifying individuals who cannot be deported within a reasonable and lawful period in detention. It estimates that this would result in cost savings of £377.4 million over a 5-year period.

Phelps, J. (2013) 'Alternatives to detention in the UK: form enforcement to engagement?' *Forced Migration Review* Issue 44 University of Oxford Refugee Studies Centre, Oxford

Singh Bhui, H. (2013) 'The changing approach to child detention and its implications for immigration detention in the UK' *Prison Service Journal* No. 205 Publisher: HM Prison Service of England and Wales, HMP Leyhill

[157] The Guardian (10/01/09) *Immigration minister calls for changes in 'outdated' Geneva convention* http://www.guardian.co.uk/politics/2009/jan/10/immigration-policy-change-woolas;
[158] The Sun (08/12/08) *Brit veto to bar asylum cash* http://www.thesun.co.uk/sol/homepage/news/article2014493.ece#OTC-RSS&ATTR=News

Bercow, J., Dubs, A. and Harris, E. (2006) *Alternatives to immigration detention for families and children* Publisher: All Party Parliamentary Group on Refugees, London

52. Please add here any other interesting element about alternatives to detention in your Member State/commentary which you did not have the occasion to mention in your previous answer. N/A

In case you have conducted interviews/consulted other experts/organisations in order to conclude this research please provide us with the following elements for each of them:

Name of the organisation/institution	Refugee Council
Name of individual contacted	Judith Dennis (Interview date 30/1/14)
Position/function of the individual	Advocacy and Influencing - Policy

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