

Submission to the Detention Inquiry

October 2014

About the Refugee Council:

The Refugee Council is a human rights charity, independent of government, working to ensure refugees are given the protection that they need, are treated with the respect and understanding that they are entitled to, and that they are assured the same rights, opportunities and responsibilities as other members of society.

In line with our vision for a fair and just asylum process, the Refugee Council is fundamentally opposed to the use of detention for the purpose of immigration control and administrative convenience. The decision to deprive a person of their liberty is one that will inevitably cause them distress and often harm; to inflict this experience on individuals who have sought the protection of our government is particularly inhumane.

The Refugee Council gives advice to refugees and asylum seekers, including unaccompanied children on a range of issues relating to their protection and care. We employ a specialist Adviser to help those whose age is disputed and who are, as a result, being treated as an adult by the Home Office.

In 2012 the Refugee Council wrote a report about this work and published statistics relating to the number of people with whom we have worked who, having been detained as an adult, were later found to be children. The report; *Not a minor offence*, is available from the Refugee Council and is submitted as an appendix to this submission.

Our submission to the Detention Inquiry focuses on this work, and updates the issues and concerns raised in the aforementioned report, including the latest available statistics. We also raise concerns about the Detained Fast Track and in particular, the rise in its use in 2013.

Summary of our interventions resulting in the release of children from detention.

Current policy and practice is not providing adequate protection for a number of young people in the asylum system. It is clear from our work that children are being held in immigration detention, after wrongly being judged to be adults. The Refugee Council's specialist Adviser works directly with young people, Immigration Removal Centres and other professionals to ensure that those who we believe may be children are released from detention.

The following figures relate to our work; the cases in which our Adviser intervened and acted to try and secure the release of these young people. We do not know what proportion of the overall number of age

disputed young people this is, and do not feel that our work acts as an adequate safeguard; if there is any doubt at all about the age of a young person they should not be detained.

In 2010 we assisted 36 young people held in detention, of which 26 were subsequently assessed as children.

In 2011 we assisted 38 young people held in detention, of which 22 subsequently assessed as children. In 2012 we assisted 31 young people held in detention, of which 22 were subsequently assessed as children.

In 2013 we assisted 40 young people held in detention, of which 36 were subsequently assessed as children.

In the first nine months of 2014 we have assisted 20 young people held in detention, of which 9 were subsequently assessed as children.

We rely on others working with detainees to alert us to the possibility that someone judged to be adult may be a child. There are three reasons why a child may be treated as an adult and be at risk of detention.

The categories are identified in Home Office policy and guidanceⁱ which states that an unaccompanied child may not be detained unless

- *“There is credible and clear documentary evidence that they are 18 years of age or over;*
- *A full and detailed local authority age assessment setting out the reasons for the conclusion that the applicant is 18 years of age or over has been seen, and the local authority has stated that the assessment was conducted in compliance with the guidelines in the Merton case. (Assessments completed by Social Services Emergency Duty Teams, typically issued when the applicant is first encountered are not by themselves sufficient to authorise detention.);*
- *Their physical appearance and/or general demeanour **very strongly** indicates that they are **significantly over** 18 years and no other credible evidence exists to the contrary”* (emphasis in the original).

Most young people we work with have been detained as a result of the application of the second or third categories. In *Not a minor offence* we made several recommendations in relation to these issues and continue to press the Home Office and local authority children’s services to improve policy and practice in relation to the part each plays in the process.

Since the publication of *Not a minor offence* the Home Office issued a Detention Services Orderⁱⁱ outlining the actions that staff should take if there is a doubt over whether or not a detainee is a child. This is very welcome progress and when the guidance is followed, has resulted in many cases in the young person being released from detention at an earlier stage in the process than prior to its publication. However, despite on-going constructive discussions with government officials, the other recommendations have not been acted upon.

Use of the Detained Fast Track in the asylum process.

The Refugee Council has raised concerns about the use of the Detained Fast Track (DFT) directly to Home Office officials and in our briefing paper which is also appended to this submission. Our main concern is that the use of detention in combination with an accelerated process places people at a considerable disadvantage compared with asylum seekers in the community. Whilst it remains part of the asylum process we do make recommendations to mitigate the effects of this unfair process on those most likely to be harmed and make recommendations to this effect.

The latest version of the briefing paper includes a short analysis of the numbers of asylum seekers processed in the DFT system; statistics taken directly from the government’s annual statistical bulletin which was published in August 2014ⁱⁱⁱ.

Of particular note is the number of asylum seekers who were placed into the DFT in 2013; a total of 4286 which equates to more than 18% of all asylum claims in 2013. This is by far the highest proportion in the last seven years and a steep rise over the previous year, when 2482 claims were dealt with in the DFT. The Refugee Council does not know why this was the case and invites the Detention Inquiry to explore the issue.

ⁱ Enforcement Instructions and Guidance, chapter 55 <https://www.gov.uk/government/publications/chapters-46-to-62-detention-and-removals>, also Detained Fast Track Instruction <https://www.gov.uk/government/publications/detained-fast-track-processes-instruction> and Assessing Age Instruction <https://www.gov.uk/government/publications/assessing-age-instruction>

ⁱⁱ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257718/age-dispute.pdf

ⁱⁱⁱ <https://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2014>