

The Children's Commissioner  
for England's follow up report to:

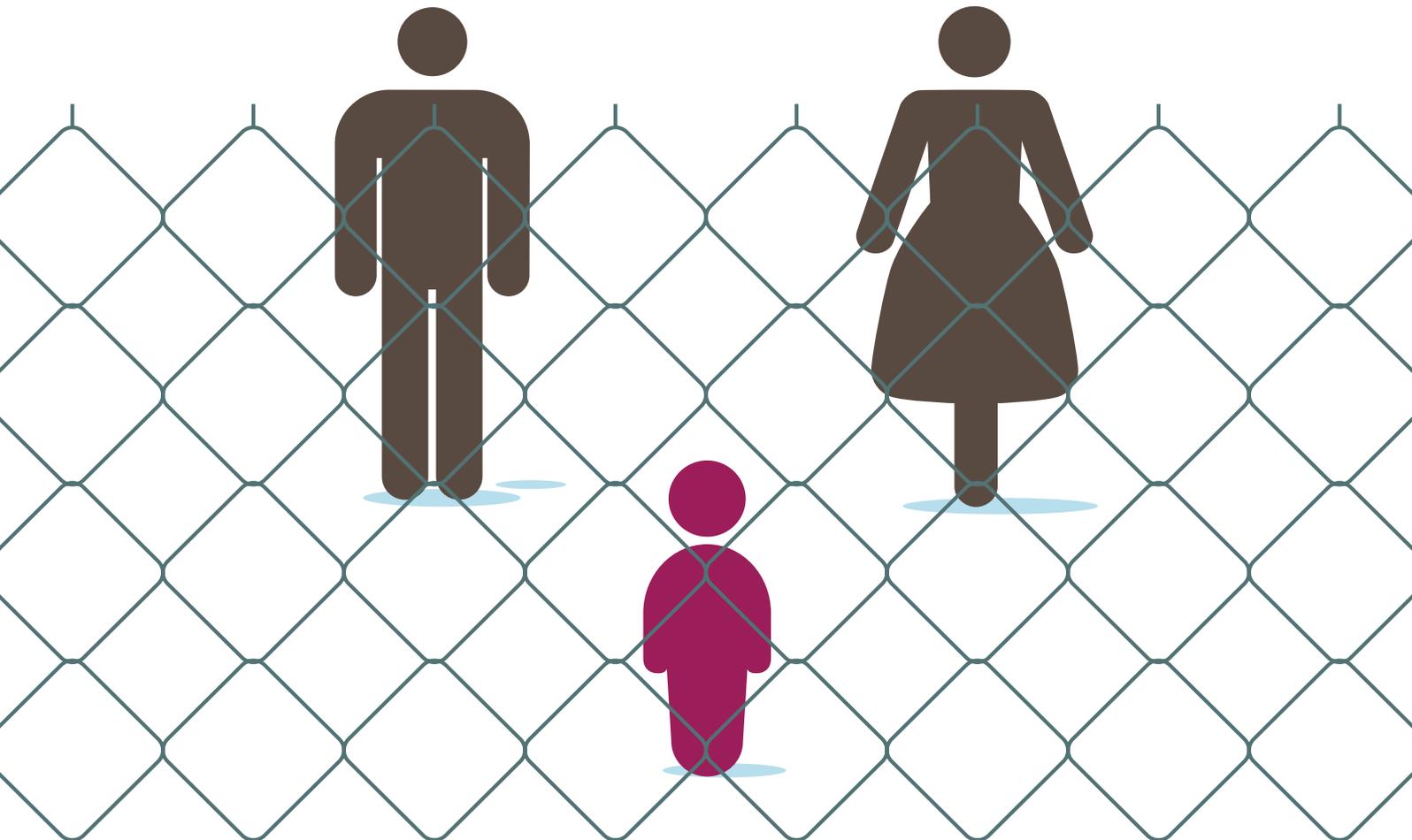
# The arrest and detention of children subject to immigration control

## Executive summary

February 2010



**MILLION**



## Foreword and Introduction



As Children's Commissioner I have a statutory duty to promote awareness of the views and interests of children, particularly regarding their physical and mental health and emotional wellbeing, their education, training and recreation and protecting them from harm and neglect.

Each year some two thousand children are detained for administrative purposes for immigration control, the majority being held in Yarl's Wood Immigration Removal Centre in Bedfordshire. I have visited this facility three times during the last four years because of my profound concern over the treatment and management of children in that location. My second visit in May 2008 led to a report, *The Arrest and Detention of Children Subject to Immigration Control*, published in May 2009. In my report I argued that the administrative detention of children for immigration control must end, but being pragmatic and recognising that the process was unlikely to end immediately, I called upon Government to ensure that detention genuinely occurs only as a last resort and for the shortest possible time following the application of a fair, transparent decision-making process.

The report contained detailed recommendations for the UK Border Agency (UKBA) - the authority responsible for enforcing the UK's immigration laws - relating to many highly unsatisfactory aspects of the process of arrest, detention and enforced removal of children and their families. UKBA formally responded to the report in August 2009.

I visited the Immigration Removal Centre again in October 2009, to examine the impact of my report in generating change in resources and practice, and this new report documents my findings and conclusions. It has been published after providing the UKBA and SERCO, the contractors at Yarl's Wood, with generous opportunity to examine and comment on the first draft. I am pleased to confirm that I have taken their comments seriously in preparing the final manuscript, and I thank UKBA for their ongoing co-operation and the thoughtful way in which they have responded to both this and the previous report.

My new report sets out the children's perspective of their experiences following any changes arising from my previous report. In particular, we have focussed on the recommendations from that report and considered whether the arrangements now in place have addressed our concerns.

I also make recommendations from the standpoint of promoting the United Nations Convention on the Rights of the Child (UNCRC). The Convention underpins the work of my office and stands as the international standard for how we should treat children and young people in our society today. I am, of course, very pleased that the UK Government decided to remove its reservation on the UNCRC in 2008, and from my contact with children subject to immigration control I am convinced that the application of the UNCRC's Articles is particularly important for these especially vulnerable children. This is an assertion that is supported by the Concluding Observations of the UN Committee after its formal Periodic Review of the UK Government's performance on the realisation of children's rights in 2008.

Overall, there is much to report that is positive. I acknowledge the positive and constructive relationship between me and my staff and UKBA and SERCO and appreciate the good intent on all sides that has resulted in the number of significant changes in policy and practice. I welcome all of these developments, many of which relate directly to the concerns raised in my previous report, and I draw particular attention to improvements in the physical environment and to the commitment to promoting the welfare of children as outlined in section 55 of the Borders, Citizenships and Immigration Act 2009 and subsequent guidance.

I also welcome UKBA's stated commitment to seeking alternatives to the detention of families, and I await with interest the outcomes of the pilot initiative in Glasgow on Assisted Voluntary Return and the community-based holding facility.

While I fully acknowledge the Government's right to determine who is allowed to stay in this country, my contention remains that detention is harmful to children and therefore never likely to be in their best interests. There is a growing body of evidence, not least from the medical Royal Colleges, that documents that detention has a profound and negative impact on children and young people. Therefore, while I welcome UKBA's commitment to implementing and realising many of the recommendations of my last report, I will continue to urge that the detention of all children should cease. Yarl's Wood Immigration Removal Centre is no place for a child.

I extend my thanks to SERCO and the staff at Yarl's Wood for their co-operation and honesty. I know that removal from the UK will always be a difficult and distressing time for families and children, and I acknowledge the human challenges that staff face in performing their public duties. I have

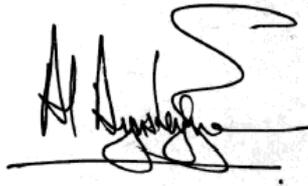
11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

February 2010

witnessed staff working in these challenging circumstances and respect that they do so with sensitivity and compassion. We are always made welcome when visiting Yarl's Wood and very much appreciate this. Further thanks are due to Bedford Borough Council for their willingness to engage with us.

Finally, and most importantly, I wish to thank the children and parents who spoke with us so openly and who were prepared to share their records and the personal details of their lives with us. This report is dedicated to them.

A handwritten signature in black ink, appearing to read 'Al Aynsley-Green', written over a horizontal line.

**Professor Sir Al Aynsley-Green**  
**Children's Commissioner for England**

11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

February 2010



## Who are we?

11 MILLION is a national organisation led by the Children's Commissioner for England, Professor Sir Al Aynsley-Green. The Children's Commissioner is a position created by the Children Act 2004.

### The Children Act 2004

The Children Act requires the Children's Commissioner for England to be concerned with the five aspects of well-being covered in *Every Child Matters* – the national Government initiative aimed at improving outcomes for all children. It also requires us to have regard to the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC underpins our work and informs which areas and issues our efforts are focused on.

### Our vision

Children and young people will actively be involved in shaping all decisions that affect their lives, are supported to achieve their full potential through the provision of appropriate services, and will live in homes and communities where their rights are respected and they are loved, safe and enjoy life.

### Our mission

We will use our powers and independence to ensure that the views of children and young people are routinely asked for, listened to and that outcomes for children improve over time. We will do this in partnership with others, by bringing children and young people into the heart of the decision-making process to increase understanding of their best interests.

### Our long-term goals

1. Children and young people see significant improvements in their wellbeing and can freely enjoy their rights under the United Nations Convention on the Rights of the Child (UNCRC).
2. Children and young people are more highly valued by adult society.

### Spotlight areas

Asylum and immigration is one 11 MILLION's policy 'spotlight' areas for 2010-2011. These are areas in which we will influence emerging policy and debate.

### For more information

Visit our website for everything you need to know about 11 MILLION:  
[www.11MILLION.org.uk](http://www.11MILLION.org.uk)

11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

February 2010

# 1 Executive summary

## Introduction



This report concerns the third visit of the Children's Commissioner to Yarl's Wood Immigration Removal Centre which took place in October 2009. It follows on from our visit in May 2008 and the subsequent report *The Arrest and Detention of Children Subject to Immigration Control* (2009).

The aim of this report is to examine the progress made in addressing the concerns raised regarding children's experience of the immigration removal process and detention. In doing so we are mindful of our statutory duty to promote awareness of the views and interests of children in England and to have awareness of the United Nations Convention on the Rights of the Child. The Children Act 2004 also requires the Commissioner to have particular regard to groups of children who do not have other adequate means by which they can make their views known.

While we fully acknowledge the Government's right to determine who is allowed to stay in this country, my contention remains that detention is harmful to children and therefore never likely to be in their best interests, and we continue to argue that the detention of children for immigration control should cease.

Following our first report, and through positive ongoing dialogue with UKBA and SERCO we are pleased to note progress in a number of areas. We acknowledge these encouraging developments, and summarise them in Appendix A. Where we believe further work needs to be carried out in addition to our original recommendations (set out in Appendix B) we have stated these at the end of each chapter, and summarised them in chapter 10.

## Methods

11 MILLION has been as thorough and rigorous as possible, and a detailed description of our methods is set out in **chapter two, Research methods**.

We visited Yarl's Wood Immigration Removal Centre twice. On the first visit we conducted face-to-face interviews with detained adult family members, and held participation sessions with school aged children. In the following visit we took health and social care professionals to study a sample of medical records and welfare files, in order first to examine in greater detail the issues raised by families, and second, to assess progress following our report in 2009. UKBA and SERCO helpfully supplied us with written evidence and material to inform our work and the subsequent writing of this

11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

February 2010

report. UKBA also made possible further meetings with staff and officials in order to discuss our initial findings, and we have incorporated their comments where possible.

### **The United Nations Convention on the Rights of the Child and the decision to detain**

The removal of the Government's reservation on the UN Convention on the Rights of the Child (UNCRC) is welcome. Article 37(b) of the UNCRC requires that detention is used only as a measure of last resort and for the shortest appropriate period of time. The application of this principle is considered in **chapter three, The decision to detain**. UKBA has placed on record how they consider the current system upholds this principle. Our evidence that some children are admitted to Yarl's Wood for prolonged periods, and sometimes repeatedly, challenges this intent. This report does not examine these differences in view in detail. Our purpose is to record the application of policy and families' experiences.

### **Preparation for removal**

We do not dispute the official figure that the average length of time in detention for children and young people is 14 days, with some children being held for much longer periods. This is unacceptable and further research and debate is needed to understand why the children we identified who had spent lengthy periods in detention, had been forced to do so. We were told that the reasons for this include, but are not restricted to, attempts by the family to avert removal through further legal challenges.

Since our visit we know that the role of the Family Detention Unit has been increased. We urge that greater rigour is applied to ensuring that all the necessary checks are made by local enforcement teams to minimise the time children spend in detention since we found evidence in files examined that some of the required checks were either not made or made insufficiently well before arrest, and this is unacceptable.

One way to minimise the period in detention is to work with families on their voluntary return. We are pleased to note UKBA's commitment to developing and promoting Assisted Voluntary Return (AVR), but remain concerned about the timing and method of delivery of information about voluntary departure.

### **The arrest process**

Children's experiences of the **arrest** process are outlined in **chapter four**. During our previous visit arrest had been the subject children complained about most consistently. To test whether children's experience of arrest had

11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

February 2010

improved since then, and to evaluate subsequent changes to the *Enforcement Instructions and Guidance* (EIG) issued by UKBA, children were given a series of statements concerning the arrest process and asked to say whether these were true or false. They were also given the opportunity to comment further on the issues these statements raised.

We asked children whether the people who had brought them to Yarl's Wood were 'friendly and helpful'. Six agreed they were, while 10 disagreed. This finding echoed concerns raised in Yarl's Wood's children's forums that are chaired by their teachers. Children commented on the loud or violent way in which homes were entered, rude behaviour or treatment by officers, and the shadowing of children using the bathroom and toilet. Children also complained about being physically escorted from their homes, thereby making them feel and look like criminals.

In subsequent questions only three children (and another three undecided) felt they had received an adequate explanation concerning what was happening on the day of arrest, and only three out of 14 children said that they knew what had happened to their property after their arrest. Children's comments are listed in full in the main report and clearly show that this process can have a significant impact and causes distress.

We were pleased to note that there were also positive comments in both the children's forums and participation sessions indicating that with the exercise of discretion the experience of arrest can be made less distressing for children. These findings must be used as a stimulus to provide further training for family enforcement teams.

The use of 'caged vans' to transport children has now stopped. This is to be welcomed. However, one perhaps unintended consequence of this policy is that there appears to have been a coincident increase in the use of separate vehicles to transport children and parents at the point of arrest. We argue that separating young children from their parents – even for a short time during transportation - is potentially extremely damaging and should only be used in the most extreme circumstances.

We examined the systems open to children and young people through which they could make complaints. UKBA have tried to ensure that in principle there is a formal process in place which can culminate in referrals to appropriate ombudsmen's offices. Furthermore, SERCO have redesigned children and young people's complaints forms in order to make them more age-appropriate.

However, our concern remains that the accessibility of the formal complaints appeals process and young people's perception of the system's independence are still inadequate.

#### 11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

## Children's concerns during detention

**Chapter five** describes **children's concerns during detention**. There have been important and valuable improvements to the environment in the family unit at Yarl's Wood since our previous visit. There are now pleasant, newly constructed classrooms, less prison-like uniforms being worn by custody officers and genuine attempts to make the unit brighter and less institutional. These changes are welcome.

We are also pleased that there are now fewer formal roll counts. There were a number of positive comments regarding the provision of play equipment and opportunities, although there were some complaints of either equipment not working or competition for scarce resources which had led to arguments.

Problems that remain since our last visit include children not being able to retrieve friends' contact details from confiscated mobile telephones, and a lack of information about what had happened to their pets after their arrest. We have been given assurances that SERCO will address these issues.

Many of these matters had been raised in the children's forums held at Yarl's Wood. These are a useful initiative acting as a channel for comment on facilities and services and providing valuable feedback to SERCO and UKBA. However, improvements could be made in how minutes of these meetings are recorded and identifying formal action points for audit. We also recommend that the forum's outcomes should be linked to the complaints system, so that the Local Safeguarding Children Board or other body could exercise independent scrutiny and quality assurance.

## Healthcare

In **chapter six** we review **the healthcare of children at Yarl's Wood** and in chapter seven look at safeguarding. Both chapters are based on examining healthcare and welfare records of 49 children from 27 families.

Our examination highlights a number of improvements in healthcare. The majority of nurse and GP consultations contained an acceptable history and appropriate examination. Diagnosis was made logically and a healthcare professional would be able to take over care of the child from the information documented. Vaccination status was generally well recorded.

Nonetheless, significant concerns in policy and practice remain. For example, while the initial nursing assessment was completed for all children in our sample the space for comment on 'emotional state' was inadequate for recording the general psychological state of the child, and often contained subjective and inadequate statements such as 'jolly' or 'happy'.

11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

Similarly, the pro-forma used for the GP's initial medical record examination is inadequate for a proper assessment of a child's physical and emotional needs.

Yarl's Wood medical staff have difficulty obtaining healthcare records from the child's previous GP. Files showed that records had been obtained for 24 of the 49 children; reasons for the shortfall included a lack of parental consent, refusal of a community GP to provide the record, and having no UK-based GP. Whatever the reason for the lack of medical records, this lack of continuity is unacceptable.

We are concerned that too many parents still arrive at Yarl's Wood without possessing the parent held health record (the Red Book).

Issues regarding vaccinations are detailed in particular gaps in the use of MMR and BCG vaccinations. We also call for children's weight to be recorded on a growth chart and to review the false distinction between children under five who were prescribed malarial chemoprophylaxis and those marginally older who were not. We are concerned that bed nets are still not being provided for those returning to regions with endemic malaria.

We highlight a number of individual cases in chapter seven that caused us concern with reference to the adequacy of welfare assessments. These may not necessarily reflect the general quality of care, but illustrate how lessons from these incidents need to be learnt. For example, four accidents were recorded as leading to referral to Bedford Hospital's Accident and Emergency department. In one case there was an unacceptably poor nurse consultation which compounded a delay of over 24 hours before the child, who had suffered a fracture of her arm, was taken to hospital. That this happened must be symptomatic of a failure to provide, as the UKBA claims it does, a standard of NHS care that any citizen child could expect.

## **Safeguarding children**

In **chapter seven** we look at arrangements for **safeguarding children** and we raise a number of concerns about compliance with the need for staff to work together. Some of these cases are cause for serious concern and we will continue to demand evidence that safeguarding arrangements and policies meet national standards.

We draw particular attention to the failure to recognise harm in specific cases whose records we examined, and the quality of intervention following referral to the local authority's Children's Social Care. There are specific cases that caused us concern. Their details are noted in the main report and the issues they raise have been brought to the attention of the appropriate authorities.

**11 MILLION**

**The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control***

**February 2010**

Access to mental health services is an issue that we consider in detail. There was evidence from our visit and audit of records that children in detention have emotional and psychological needs that are not always being met. New arrangements are being put in place to provide access to CAMHS, but these were not in place at the time of our visit, and our report suggest that access to appropriate care is an issue we will want to examine again during further visits to Yarl's Wood.

In chapter seven we also review the application of Rule 35 reports. These require the centre's medical practitioner to report to the centre manager where health is being injuriously affected by continued detention, and we consider their use as a 'safety valve' to ensure that those children whose health is detrimentally affected by detention are considered for release. We note some progress in the use of Rule 35 reports with the Medical Practitioner sometimes issuing Rule 35 reports in respect to children. We continue to draw attention to where this system can be improved.

### Reviewing detention

In **chapter eight** we examine the system of **reviewing detention** and look at the formal Welfare Assessment Reports (WARs) that are produced by Bedford Borough Council social workers on all children detained beyond 14 days. The WARs play a crucial role in the reviews of detention undertaken by UKBA's Family Detention Unit and in the information that goes to the Minister to authorise detention beyond 28 days. Our focus in this section was to assess whether sufficient weight was being given to the impact of detention on a child's welfare, and we are grateful for the access we have had to records and supporting information that has enabled us to complete this work.

The normal practice in planning children's services of assessments being informed by information from different statutory agencies (e.g. schools, nurseries, GPs, health visitors, Sure Start, etc) does not seem to be followed in WARs, and this is unacceptable. In cases we examined the only agency contacted was the local authority. In the view of the professionals who audited the records, greater clarity is required concerning the recommendations that detention 'be kept to a minimum' or 'an absolute minimum' and the actual length of detention granted. We are concerned that there were instances where children's needs were not properly addressed or where there was evidence that continued detention was detrimental to their welfare.

We call for parents to have the right to challenge the accuracy of the WAR prior, given their use as the basis of the submission to the Minister authorising further detention.

11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

February 2010

## **Arrangements for pregnant and nursing mothers and their babies and infants**

**Chapter nine** looks at the **arrangements for pregnant and nursing mothers and their babies and infants**. A considerable amount of information was provided before the visit concerning details of the health visitor service, staff training around breastfeeding management, as well as recent reviews and documents describing the arrangements for infant feeding at Yarl's Wood. We are pleased that significant thought had gone into reviewing the feeding arrangements since our previous visit, and positive changes had occurred including unlimited parental access to a range of formula milk preparations including sterilised UHT milk. Kettles were now provided in rooms where mothers were bottle feeding to allow fresh feeds to be made up as required.

An International Board Certified Lactation Consultant was part of the visiting team, and she talked to the staff responsible for infant feeding policy as well as listening to detainees who were feeding infants. The consultant's detailed comments are outlined in this chapter.

We are pleased to document that staff at Yarl's Wood are clearly committed to providing the best support possible. They see their role to be supporting mothers in whichever feeding choices they have made. However, we argue that this is a missed education opportunity to provide information that could increase the infant's chances of survival following removal to countries with lower standards of water supply and hygiene. We realise that most families will be in detention for short periods of time. Nevertheless, even this provides opportunities for staff to take a greater role in educating parents and ensuring that safe best practice is observed. This will include advice on breastfeeding, preparation of formula, and the cleaning and sterilising of bottles.

## **Concluding remarks**

UKBA and others have quite clearly made significant efforts to respond to the recommendations from the report of our visit to Yarl's Wood in 2009. We fully understand and acknowledge the substantial hard work that has been applied and this is to be welcomed. The significance and impact of these developments must not be underestimated.

Foremost amongst them is the new duty on the UK Border Agency to safeguard and promote children's welfare. Our concluding hope is that this commitment to children's welfare will be the basis upon which we can continue to work together to realise our shared aspirations.

11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

## **We stand by our contention that arrest and detention are inherently damaging to children, and that Yarl's Wood is no place for a child.**

While this does not mean that those with no entitlement should be allowed to stay, it does mean that attention must continue to be focused on the circumstances in which they are arrested and brought into detention, the process of detention itself and their removal and the conditions to which families return.

**We look forward to working with UKBA and others to reach a position where applications for asylum are processed with the utmost speed, and are fair and transparent; where families have early education on the reality of likely return coupled with encouragement to apply for Assisted Voluntary Return; where arrest and detention is used as a very last resort, and where every child is returned properly and comprehensively protected from risks to health. Finally, the UK Government must be held to account over its knowledge of what happens to families who are returned as a consequence of its immigration removals policy.**

### **Key recommendations**

The full list of recommendations from this report are summarised at the end of each chapter and are all listed together in chapter 10. The following reflect some of the key concerns we have highlighted.

#### **Decision to detain**

- We call on UKBA to commission an independent review of why some children remain detained for long periods.

#### **Arrest**

- Children should have readily available access to an independent advocate to assist them in making a complaint, and it should be clearly spelt out in the children's complaint literature that complaints are handled separately from case owners and that complaining will not affect their immigration case.

#### **Children's concerns during detention**

- Independent review of the children's forums followed by advice and training to those running them.

11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

February 2010

## The healthcare of children at Yarl's Wood

- There is an urgent requirement for the Yarl's Wood medical records to be computerized, and the advantages of this are spelt out in chapter six.
- A thorough review of clinical governance should be undertaken in order to ensure that a system is instituted that includes audits of care, significant event analysis, prescribing analysis, professional development plans and reviews of episodes of care.
- We recommend that UKBA supports a prospective research study to assess the mental health status of children at the time of detention, and to repeat the assessment at intervals thereafter.
- Children who do not arrive with a parent held health record should be issued with one. All health encounters while a child is detained should be recorded in the parent held record as well as in the notes, including a regular record of their weight, plotted on a growth chart.

## Safeguarding children

- Safeguarding children systems require urgent systemic review. This should be considered high risk.
- The Bedfordshire Local Safeguarding Children Board should establish a standing sub-committee to consider child protection and safeguarding issues at Yarl's Wood.
- The impact of detention on the welfare and safeguarding of children must be considered before arrest. Therefore a Welfare Assessment using the Common Assessment Framework (CAF) must be undertaken prior to any decision to detain being made.

## Reviewing detention

- The same standards of quality and thoroughness should prevail when assessing children in immigration removal centres (IRCs) as those which apply to all children in the public care, as regulated by The Children Act 1989, and associated Guidance and Regulations. (The Commissioner has previously recommended that the principles and practice of the Common Assessment Framework be adopted in IRCs.)

11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

February 2010

## Arrangements for pregnant and nursing mothers and their babies and infants

- We recommend that UKBA, DCSF and the Department of Health consider how to provide families with infants who are at risk of removal with early information regarding the feasibility of formula feeding / breastfeeding in their home countries.



*Drawing by a child detained at Yarl's Wood Immigration Removal Centre.*

11 MILLION

The Children's Commissioner for England's follow up report to  
*The Arrest and Detention of Children Subject to Immigration Control*

February 2010