

# Raising Children

## Safeguarding Children in Parental Deportation Decisions



**December 2025**

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# Acknowledgements

We are indebted to all of the families who generously consented to us accessing and examining their case files. We are also grateful to Nazia Yaqub for her help with the legal analysis and to Sarah Woodhouse for assisting with some of the case data analysis. Pierre Makhlouf and Carmen Kearney of Bail for Immigration Detainees, and Social Workers Without Borders offered invaluable support and advice throughout this study and facilitated participation of the families. We are grateful to those who have commented on drafts of the report and to the project funders: the Network for Social Change, the British Academy, and the University of Liverpool Policy Support Fund. Many thanks to Jane Bowyer for the design of this report.







# 20,000

At least 20,000 adults are liable to deportation



# 26 WEEKS

is the statutory time limit for child protection proceedings in the family courts



# 8,000

children in the UK have a parent facing deportation



# 5.2 YEARS

is the average time families spent in deportation proceedings

Life-changing decisions for children are being made on the basis of little or no information



The Home Office is not meeting its legal duty to safeguard children



There is no opportunity for children to be heard in deportation proceedings



A parent's deportation causes children significant & wide-ranging harm including:



POVERTY, DEPRESSION  
ANXIETY, STRESS  
DEVELOPMENTAL REGRESSION  
DIFFICULTIES AT SCHOOL  
HEALTH PROBLEMS  
GOING INTO CARE  
YOUNG CARERS  
RISK OF CHILD EXPLOITATION  
SEPARATING SIBLINGS  
LONGTERM HARM

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# About the Authors

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## Helen Stalford

Helen Stalford is a Professor of Law and co-director of the European Children's Rights Unit, School of Law and Social Justice University of Liverpool. She is also principal co-convenor of the AHRC-funded Centre for People's Justice. Helen has researched and published extensively on children's rights in a migration context for over 25 years and has particular expertise in children's access to and experiences of justice processes. All of her work adopts a participatory and trauma-informed approach and engages multi-sector partners with a view to empowering children and young people to engage directly in legal and policy evaluation and reform.



## Introduction

Foreign nationals are automatically served deportation orders if they are convicted of an imprisonable offence and sentenced to a period of imprisonment of at least 12 months<sup>1</sup>. There is no data available on how many deportation orders are issued, but we know that the UK is deporting growing numbers of people each year. The UK deported 5,000 people in 2024, a figure that is nearly double what it was in 2021<sup>2</sup>. Many more people live under the threat of deportation, with over 20,000 foreign nationals in the UK liable to deportation<sup>3</sup>. While there is no official data revealing how many of these people have children, we know that in the general population, 42% of families have one or more dependent children<sup>4</sup>. Approximately 8,000 children in the UK currently have **a parent facing deportation**. Proposed changes to the law, extending the scope and speed of deportation, could dramatically increase this number.

8,000

An estimated 8000 children in the UK have a parent facing deportation.

20,000

At least 20,000 adults are liable to deportation.

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Children are affected by deportation not only in the aftermath of their parent being forcibly removed, but also during deportation proceedings, often a lengthy process taking many years. Amongst our sample, we found many examples in which the financial and emotional stress caused by deportation proceedings affected children and hampered the health and capacity of the non-deportable parents.

Children regressed developmentally and educationally (e.g. one young child went from being able to write his name to not being able to hold a pen whilst his father was detained), developed mental health problems or worsening physical health, forfeited developmental opportunities (e.g. one child gave up a grammar school place due to the family's stress), and in some cases were taken into Care. Expert reports raised serious potential risks, such as children becoming carers, vulnerable to crime or drugs, losing relationships with siblings and grandparents, or entering the Care system.

Despite the seriousness of these issues and the legal obligation to uphold the welfare of children facing a parent's deportation, relatively little is known about how children are safeguarded in the course of deportation decision making. With this in mind, this study provides the first insights into the extent to which children's welfare is considered and protected in deportation proceedings.

The study was undertaken by researchers from the European Children's Rights Unit, University of Liverpool and from the University of Birmingham. Our access to participants' legal case files was facilitated by the UK charities, Bail for Immigration Detainees (BID) and Social Workers Without Borders (SWWB). BID offers high quality, specialised legal representation in deportation matters. SWWB specialises in providing expert social work reports in immigration cases in response to being contacted by lawyers representing those families.

Building on earlier research on the impacts of deportation on family members<sup>5</sup>, the study involved an in-depth analysis of 45 children and young people's treatment across 15 case files. Their files were drawn from the case work of BID and SWWB (handled during the period 2018-2021). The study examined the rigour, transparency and consistency of welfare assessments, and the extent to which they were brought to bear on parental deportation decisions.

The project was conducted during a period of dramatic legal changes to the conditions under which foreign nationals can lawfully enter and be removed from the UK. For example, the Nationality and Borders Act 2022 significantly increased the prison sentences attributable to immigration offences and created the new offence of knowingly 'arriving' in the UK (including UK waters) without valid entry clearance<sup>6</sup>. The effect is increased criminalisation of migrants and a greater number and range of people being brought within the scope of mandatory deportation (i.e. where criminal sentences are 12 months or more). During the writing of this report in 2025, the Labour government announced reforms to the deportation system to further increase removal rates, including a new family policy and measures to remove foreign nationals even if they do not receive a custodial sentence, or earlier in their prison sentence<sup>7</sup>.

Nonetheless, there are comprehensive legal and procedural obligations – at the international and domestic level – requiring state authorities to protect and promote children's welfare in the context of deportation. We take this framework as the starting point for our evaluation of whether such obligations were being fulfilled in the cases we examined.



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# Key Findings

Our findings and recommendations relate to four issues:

- Legal **Representation** in deportation proceedings
- **Rigour** of evidence-gathering in deportation proceedings
- The **Reliability** of evidence in deportation proceedings
- The **Reasoning** used in deportation decisions

## Representation

- It is extremely hard to navigate the system and provide family life and children's welfare evidence without good quality, specialist legal representation. Despite the potential severity of the impact of deportation, however, there is no clear entitlement to legal aid for advice and representation, *even for children facing long term or permanent separation from a parent*. While it is possible to apply for Exceptional Case Funding on human rights grounds, this is a highly complex process to navigate without legal help.
- Technically, children could independently appeal a parent's deportation on human rights grounds as Human Rights Act 'victims'. However, this rarely, if ever, happens as the decision under appeal pertains to the parent. The rights and interests of the parent are assumed (not always correctly) to be coterminous with those of the child, leaving children dependent upon the ability of their parents to launch appeals.
- Children facing a parent's deportation do not generally have access to their own legal representation. This contrasts markedly with public family care proceedings concerned with separating parents and children. In these cases, children have a separate court-appointed and funded social worker and legal representative.
- When families are not legally represented, decisions about children's future tend to be made on insufficient and partial information. Deportation decisions made on the basis of sparse welfare assessments are more likely to be appealed, increasing uncertainty, costs and delays, often for many years. In our sample the average length of deportation proceedings was 5.2 years. This harms children and families and places unnecessary strains and costs on the justice system.
- By contrast, in family court proceedings where a child may be separated from a parent, the collection and assessment of detailed evidence pertaining to the child is automatic, resourced and independent. Such proceedings have a statutory limit of 26 weeks.



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## Recommendations

1. **Legal aid:** Parents subject to deportation should be brought within the scope of legal aid, to pay for timely and appropriate legal advice and representation. There should be a presumption in favour of granting Exceptional Case Funding for deportation cases involving children.
2. **Representation of children:** Children should have access to legal aid to support their own, separate legal representation. Children should also have the independent expectation (or rebuttable presumption) of being entitled to launch their own challenge relating to deportation decisions which adversely affect their family life. This would bring the immigration tribunal in line with other judicial processes overseeing the separation of children from their parents, such as public family proceedings.
3. **‘Deport first, appeal later’ policy:** Given the serious safeguarding risks involved in separating children from their parents, in ‘deport first, appeal later’ cases, a full and independent expert assessment of each potentially affected child must be completed *before* deportation, as part of the Home Office’s screening of suitability for the scheme. See also Recommendation 8.

## Rigour

- A lack of sufficient evidence of the quality of family life and children’s best interests hampered the ability of decision makers to make good quality decisions. This led to legal appeals and further applications, greatly increasing the time, costs and harms involved to families and the public purse.
- Despite detailed legal guidance, a legal requirement to protect children’s welfare in deportation proceedings, and a broader duty on public authorities to take reasonable steps to gather all the relevant information to enable them to make a decision, Home Office evidence-gathering to inform deportation decisions is typically restricted to sending the deportable parent a short list of documents they could provide to prove they have a ‘genuine and subsisting’ relationship with a ‘qualifying’ child or partner. *We did not find any evidence of the Home Office proactively seeking out more substantial information to determine the potential impact of the deportation on children’s welfare.*
- Where there are gaps in evidence submitted by parents, the Home Office does not routinely seek further information or clarification relating to children. Rather, in our sample it drew adverse inferences and interpreted insufficient evidence as meaning that the claimed family life did not exist.
- Despite national and international recognition of the importance of enabling children to participate in decisions that may lead to them being separated from a parent, *we found no evidence of the Home Office seeking children’s participation or ascertaining their views or wishes regarding the potential impacts of deportation on their lives and wellbeing.*
- Little is known about the welfare and outcomes for the thousands of children affected by deportation every year, either by the ‘stay’

assumption where they are separated from their parent across borders, or the 'go' assumption where they are sent with their parent to a country that they may not know (or even be a national of). There are significant gaps in the collection, disaggregation and publication of official data regarding deportees' families. Notably, there is currently no available data on: how many parents with dependent children are deported; how many children are left behind, taken into the care of another family member, or into the care of the local authority; how many children are removed with their parents; or how many of those children are British citizens; . This inhibits proper understanding of the scale and specifics of children affected by parental deportation.

## Recommendations:

4. **Clarification of evidence requirements:** The Home Office should provide families with clearer and more accessible guidance in the 'One Stop Notice' as to the forms of evidence or submissions they could provide to identify and particularise quality of family life and children's needs, views and wishes. The purpose of this should be to support parents in providing evidence, and to ensure that the Home Office has sufficient information at the earliest possible point to inform their decision-making, in line with their statutory duties.
5. **Professional curiosity and accountability:** Where family life evidence is lacking, the Home Office should be required to discharge their duty to seek out additional or alternative evidence to inform its decision making. The Home Office should be also compelled to provide a detailed response to the specific information as it relates to each family member and how this has been brought to bear on deportation decisions. Fulfilment of this duty should be supervised and enforced by the Court if required.
6. **Data collection:** Official data should be collected, disaggregated and shared to reveal: the number of people subject to Deportation Orders each year; whether they have children in the UK; how many of those children are British citizens; how many deportees invoke family life rights and the outcomes of such claims; the number of children who leave the UK with a deported parent; and the number of children who remain in the UK without their deported parent, including the number subsequently taken into Care.
7. **Identification and safeguarding notification:** The Government has committed to taking a cross-departmental approach to identifying and supporting children with a parent in prison. There needs to be a similar and complementary duty to identify and support children with a parent facing deportation, such as informing schools when a pupil's parent faces deportation proceedings.

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## Reliability

- Our research found independent expert assessments to be the strongest forms of evidence of family life and children's best interests. They significantly aid assessment of the potential impacts of parental deportation on children. By facilitating good quality decision making, such reports can potentially help avoid unnecessary time, cost and harm of lengthy deportation proceedings.
- International and domestic guidance is clear that expert best interests assessments are required for decisions to deport a parent. However, even though deportation often has the potential to permanently separate UK children from their parents, domestic guidance is largely silent on *when* and *how* such assessments should take place in parental deportation. We found *no instance* of the Home Office, either at the decision-making or appeal stage, requesting, facilitating or commissioning expert evidence. The immigration tribunal - as an inquisitorial body - cannot request additional evidence relating to the welfare of the child (unlike the family courts), even when there is a paucity of welfare information.
- The onus is therefore on deportable parents to commission expert assessments of family life and the potential impact of deportation on children. They face multiple practical and financial barriers in this, especially without legal representation and access to legal aid funding. An independent expert welfare assessment costs around £1,500 - £2,000. It is reasonable to assume that despite the guidance, in many parental deportation cases such assessments are not carried out, meaning that life-changing decisions for UK-children are being made on the basis of little or no consideration of their welfare.
- Because it is up to the discretion and resources of families to commission assessment of their family life, expert reports are often only procured late in deportation proceedings, potentially after several years challenging a deportation order. This stands in stark contrast to family separation cases in family law, where an independent report into children is always proffered and from the outset of proceedings.
- Even if expert welfare assessments are procured to inform deportation decision-making, there is no specific procedural guidance on how experts should conduct them. Of the cases we analysed, welfare assessments conducted by independent social workers were the most detailed, objective and comprehensive forms of family life evidence and were the most likely to involve some direct engagement with the child. In the absence of any specific guidance for deportation-related welfare assessments, most assessors drew on the child welfare assessment standards applicable to family law proceedings such as the Children Act 1989 (s.1(3)) and the Common Assessment Framework 2000, but this is neither routine nor interpreted as formally required by law in relation to immigration decisions.

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## Recommendations:

8. **Independent welfare evidence:** Independent expert assessment of children and families is essential in ascertaining children's best interests and making good quality parental deportation decisions. Deportation decisions potentially affecting UK children should automatically trigger full and independent assessment of each child's welfare, wishes and feelings; at the earliest possible stage in proceedings (including before deportation in 'deport first, appeal later' cases). To retain their integrity, such assessments must be conducted by independent and qualified child experts. We recommend that this is overseen by a body independent of the Home Office. This will bring deportation proceedings affecting children in-line with other forms of family separation. Extending CAFCASS's existing role and expertise into deportation decisions may be the most straightforward and financially-efficient way of doing so.
9. **Extend tribunal powers:** The immigration tribunal (or if introduced, alternative judicial decision-making bodies) should be given more investigatory powers in cases of parental deportation to bring it in-line with the Family Court. If in a parental deportation appeal there is insufficient evidence of children's best-interests and their wishes and feelings, the Tribunal should be able to order the procurement of such evidence (such as a court-appointed independent social worker report) and, where necessary, through direct representation of the child.

## Reasoning

- The legal assumption that deportation is in the 'public interest' does not take into consideration the public interest of promoting healthy and happy families and ensuring that children have good starts to their lives. If deportation decisions do not sufficiently weigh up the impact on children's welfare and development, it can cause profound, additional risks that are incompatible with the public interest. This includes the short- and long-term impacts for society of children and families experiencing ongoing health and financial problems, including increased risks of children being taken into care, becoming carers themselves, or being subject to criminal and other forms of exploitation.
- We found significant differences between the two decision-makers in deportation cases (the Home Office and the Immigration and Asylum Chamber ('immigration tribunal')) in how they engaged with children's best interests and responded to expert evidence. In our sample, the Home Office routinely underplayed the impact of a parent's deportation on children and sometimes omitted any reference to children in correspondence and decisions. Where independent expert reports were provided, the Home Office routinely refuted or rejected them outright with little justification or engagement with the issues raised.
- We found little evidence that the Home Office engages with the requirement set out in law and the practice guidance to consider each family member separately as individual Human Right Act 'victims'. There was no evidence of the Home Office treating the child's best interests as a *primary consideration* before assessing them against other countervailing



factors as required by law. There was little evidence of the Home Office taking a *prospective* approach to best interests assessments, to consider not just the specific moment of the decision but also possible short and long term scenarios. There was, for example, little attempt by the Home Office to consider the possible impact of a parent's deportation on the remaining caregivers' physical and mental health, income or ability to parent, or on children's future vulnerabilities, life chances and relationships. Consideration of the future by the Home Office was largely limited to suggesting the deported parent could maintain contact using 'modern communication methods' like video calls.

- We found several instances of the Home Office not following the guidance. This included foregrounding a parent's offending when assessing children's best interests, and stating an intention to deport someone despite ongoing family court proceedings.
- The Home Office made numerous unfounded and unrealistic presumptions that public services – such as the NHS or social services – will automatically and swiftly step in to fill gaps in support for children and families in need following a parent's deportation. This takes no account of current resource constraints on public services and waiting times.
- For all these reasons, we find that the *Home Office is not meeting its duty to safeguard children under Section 55 of the Borders, Citizenship and Immigration Act 2009 and is putting children at risk of harm.*

## Recommendations:

10. **Following existing guidance:** Home Office decision makers should be better informed of and adhere to existing guidance. This includes the requirement to consider each family member separately; to treat the child's best interests as a *primary* consideration; to take a prospective approach to consider future impact; to ensure that parents' criminal history does not overshadow the assessment of the potential harm to children; and that deportation decisions await the outcome of Family Court proceedings.
11. **Independent inspection:** The Independent Chief Inspector of Borders and Immigration should schedule an urgent inspection of the Home Office's procedures around deportation decisions affecting children (including but not limited to 'deport first, appeal later' cases involving parents).
12. **'Public interest' and deportation:** Further analysis and debate is needed regarding the substance of 'the public interest'. We suggest it should include consideration of the societal and financial costs of separating families, and the short and long-term impacts of parental deportation on children's health, wellbeing, integration and education.

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1.0.

# Deportation and Children: What the Law Says

## 1.1. Deportation and Immigration Detention

Deportation orders are automatically served on foreign nationals who have been convicted of an imprisonable offence and received a custodial sentence of at least 12 months<sup>9</sup>. It is presumed in law that deportation of such individuals is in the public interest.

Deportation follows a two-step process:

- **Stage 1 ('One Stop Notice'):** The Secretary of State for the Home Department (SSHD) notifies an individual of the intention to deport (the 'One Stop Notice') and requests that the individual provide reasons why they should not be deported. The One Stop Notice details the basic information and documentation required to challenge a deportation (see Annex 1). The response of the individual is treated as a 'human rights' claim<sup>10</sup>.
- **Stage 2 (Decision to Deport):** In response, the SSHD makes a Stage 2 decision and either drops the case or issues a Deportation Order<sup>11</sup>. The decision should engage with the reasons and evidence provided by the individual in response to the One Stop Notice. There may be a right of appeal to the Immigration and Asylum Chamber against a refusal of a human rights claim.

An individual can be detained at any point of the process, even before a One Stop Notice has been issued. Immigration detention has been shown to cause families considerable harm, including causing non-detained children Adverse Childhood Experiences (BID 2020, Griffiths and Morgan-Glending 2024, Martinez-Aranda 2020). In a criminal justice context, the courts are required to consider the implications for children's care and welfare in deciding whether to give a parent a custodial sentence<sup>12</sup>. They also have the power to commission a pre-sentencing report which includes details of any children and family life. In contrast, there is little attempt to facilitate family life for families separated by immigration detention. Parents are not necessarily detained near their families or facilitated to maintain contact with their children in other ways. There is also no maximum time limit for being detained in the UK<sup>13</sup>, unlike in other parts of Europe, meaning that parents may be detained for very long periods. Parents may also be detained, released and re-detained several times before a final deportation decision is reached and enforced.

A Deportation Order also invalidates any leave to remain in the UK issued before the Order was made or while it is in force<sup>14</sup>. It requires the subject to leave the UK and bans them from returning for as long as the Order is in force<sup>15</sup>. In such cases, it is lawful to deport their family members – including any children<sup>16</sup>. Indeed, the Immigration Rules also require that anyone with a criminal sentence of over one year must be refused re-entry to the UK<sup>17</sup>.

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## 1.2. Challenging Deportation

Whilst the grounds for overturning a deportation decision are very limited, it is possible to challenge it on human rights grounds, notably on grounds of the right to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR). This is a qualified right, meaning that it must be balanced with other considerations, such as the State's imperative to control its territory in the interests of protecting national security, public safety or the rights and freedoms of others.

In compliance with Article 8, under the Immigration Rules an appeal against a rejection of a human rights-based claim against deportation will be considered where the person has *"a genuine and subsisting ...parental relationship with a qualifying child, and the effect of the offender's deportation on the...child would be unduly harsh"*. There are three conditions for triggering such protection, all of which must be satisfied:

- To "qualify" as an eligible child, the child must be a British citizen or have lived in the UK for seven years or more in the immediate period prior to the deportation decision; **and**
- It must be demonstrated that it would be "unduly harsh" for the child to leave the UK with the deported parent<sup>18</sup>; **and also**
- that it would be "unduly harsh" for the child to remain in the UK without their deported parent<sup>19</sup>.

Foreign nationals who have been sentenced to four or more years in custody must meet the even higher test of "very compelling circumstances". These conditions, particularly the level of harm needed to meet the "unduly harsh" and "very compelling circumstances" can be very difficult to meet in practice.

However, immigration decision makers are bound by a broad statutory obligation to have "regard to the need to safeguard and promote the welfare of children" as a primary consideration in all immigration decision-making in a manner consistent with the child's best interests<sup>20</sup>. The UN Convention on the Rights of the Child 1989, which was ratified by the UK in 1991 and is therefore legally binding<sup>21</sup>, requires such consideration of children's best interests to be conducted in a broad, positive and comprehensive manner<sup>22</sup> in a way that promotes children's participation and looks to the *prospective* - as well as current - needs of the child<sup>23</sup>. Recognising the importance of this obligation, the courts and the Home Office have developed guidance for decision-makers undertaking best interests assessments, particularly in the context of deportation<sup>24</sup>. The following section provides more detail on the nature and scope of these obligations.

## 1.3. Assessing Children's Best Interests: Domestic Legal and Procedural Obligations

There is a significant amount of case law and guidance relating to children's best interests in deportation proceedings. In *MK (section 55 – Tribunal options) Sierra Leone [2015] UKUT 00223 (IAC)*, [8] for example, it was noted that *'it is manifestly insufficient for a decision-maker to pay mere lip service'* to the welfare/best interests duty. The government (*Home Office Guidance on Criminality, 2024; Every Child Matters 2009*; and more recently, *Working Together to Safeguard Children 2023*) has set out a detailed list of factors that



the authorities need to take into account in determining whether a child's best interests could override grounds for deportation. This includes factors relating to:

- **the child's personal identity**, such as their age and nationality, whether they were born a British citizen, and whether they hold the nationality of the country to which their parent is to be deported;
- **the child's immigration history** such as how long they have lived in the UK, and whether they have lived in any other countries;
- **the child's care**, including who the child's primary carer is, whether it is in the child's best interests to remain in the care of the parent subject to deportation, or whether it might be more appropriate to remain in the care of the left-behind parent. If the other parent is in the UK, decision-makers must consider whether they are British or have leave to enter or remain in their own right, or whether the other parent could choose to go to the country of return with the child and the parent who is being deported.

The meaning and scope of the 'unduly harsh test has been the subject of extensive judicial scrutiny in recent years. The courts are now clear that **there has to be an informed assessment of the effects of deportation on the qualifying children based on the facts and circumstances of each case**<sup>25</sup>.

In terms of how much weight should be attached to best interests assessments in the context of deportation, the UK courts have been clear that, while the child's best interests can be outweighed by the cumulative effect of other considerations, they must be considered first and there must be very compelling other factors in the balance to outweigh them<sup>26</sup>. The guidance provided by Lord Kerr in *ZH Tanzania* ([2011] UKSC 4) remains authoritative:

*"[best interests]...is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed **unless countervailing reasons of considerable force displace them**. It is not necessary to express this in terms of a presumption **but the primacy of this consideration needs to be made clear in emphatic terms**. What is determined to be in a child's best interests should customarily dictate the outcome of cases...and it will require considerations of substantial moment to permit a different result."* [para 46]

Moreover, the courts have emphasised that best interests' assessments should be approached in **an orderly way** when reaching a decision. The guidance by Lord Hodge in *Zoumbas v SSHD* [2013] 1 W.L.R. 3690 [10] is particularly instructive:

*"The best interests of a child are an integral part of the proportionality assessment under Article 8 [of the European Convention on Human Rights]; (2) in making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the*

status of the paramount consideration; (3) although the best interests of a child can be outweighed by the cumulative effect of other considerations, **no other consideration can be treated as inherently more significant**; (4) while different judges might approach the question of the best interests of a child in different ways, **it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued** when other important considerations were in play; (5) **it is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations**; (6) **to that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment**; and (7) a child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent."

## 1.4 Assessing Children's Best Interests: International Legal and Procedural Obligations

The UK's domestic framework reflects established law and guidance at the international level. In broad terms, the UN Convention on the Rights of the Child 1989 (UNCRC)<sup>27</sup> provides that: In *all* actions concerning children, whether undertaken by public or private social welfare institutions, *courts of law, administrative authorities or legislative bodies*, the best interests of the child shall be a *primary consideration* (Article 3(1)).

While the UK's Supreme Court has confirmed in more recent cases that the UK Courts are not authorised to directly rule on whether an unincorporated international treaty such as the UNCRC has been breached, it has confirmed that the UNCRC can inform the interpretation of the UK's human rights obligations, including those by which it is bound under the ECHR<sup>28</sup>. Indeed, the UN Committee on the Rights of the Child has set out in detail the correct substantive and procedural requirements for assessing children's best interests in dedicated guidance relating to Article 3: General Comment No.14 (2013).

This General Comment has been acknowledged as 'authoritative' in numerous UK cases involving children's welfare<sup>29</sup>, defining best interests not only a substantive right and legal principle that should guide all decisions concerning the child, but also a *rule of procedure* **requiring procedural guarantees** to be *put in place to enable decisions around what is in the child's best interests actually to occur* **and be evidenced in practice**:

*In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it*

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*is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases<sup>30</sup>.*

General Comment 14 warns against the potential misuse of the best interests principle or tokenistic allegiance to its requirements<sup>31</sup>. Moreover, it states that best interests assessments should be future as well as present-facing, and take into consideration the prospective needs of the child as they mature and their needs change (paras 74 and 84).

Referring specifically to deportation proceedings, the UN Committee on the Rights of the Child – the body responsible for monitoring implementation of the UNCRC – has expressly stated that **authorities should give high priority to a best interests assessment to evaluate the potential impact of a proposed deportation on children's rights and development, including their mental health** (*CMW/C/GC/22, para. 32(e)*).

The European Court of Human Rights, for its part, has issued detailed directions on how best interests should be brought to bear on decisions relating to the expulsion of parents, drawing directly on Article 3 UNCRC. Notably in *Nunez v. Norway, Application 55597/09, 28.06.2011* the Court stated that in assessing whether it is proportionate to remove a parent, sufficient weight must be attached to the best interests of the children; and in *Üner v. The Netherlands, Application 46410/99, 18.10.2006 (para 9)*, it was confirmed that Article 8 ECHR challenges to removal must be construed in light of the best interests of the child. Similarly in *Jeunesse v Netherlands* [2015] 60 ECHR 17, para 109, the Court reiterated:

*"Where children are involved, their best interests must be taken into account... [29] On this particular point, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance.[30] Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight. Accordingly, national decision-making bodies should, in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it.*

This line of jurisprudence makes clear that the interests of children have gained increasing importance, and although they are not considered decisive, must at least be given significant weight.

## 1.5 Gaps in The Legal and Procedural Guidance

As the above has demonstrated, whilst the requirement to demonstrate that deportation of a parent would be 'unduly harsh' for their child/ren is a difficult test to satisfy, **it is clear from the law and guidance that the best interests of**

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**children need to be investigated and given primacy in decision-making by both the Home Office and the courts.**

That said, the current framework referred to above contains some fundamental omissions and limitations which, as our analysis of the cases highlight, impact significantly on the rigour, reliability and reasoning applied to best interests assessments in deportation cases:

- It does not specify that the best interests assessment should be ***independently undertaken***. Rather, it is presumed that the parent who is subject to the Deportation Order will initiate and tender evidence of the welfare assessment insofar as it supports his/her appeal to remain in the UK.
- It does not specify ***when*** these best interests assessments should be undertaken, and whether they should be updated to reflect changes in the child's or family circumstances, especially given the length of proceedings.
- It does not make any reference to the need to take into account the views of the children despite the fact that this is widely acknowledged in other justice contexts as crucial evidence pertaining to what is in the child's best interests and is a legal obligation under Article 12 UNCRC
- The law places significant premium on identifying the 'primary carer' and on whether there is a 'genuine and subsisting parental relationship with the child'. This appears to be based on outdated and empirically contested presumptions regarding parent-child relationships and is legally at odds with the way in which such relationships are assessed in a family justice context<sup>32</sup>.



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2.0.

# Insights from Deportation Cases Involving Children

A large, hand-drawn style pink checkmark is positioned to the right of the word 'Insights'. A pink underline is drawn beneath the word 'Children'.

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Given the absence of official quantitative data relating to the impacts of deportation on children, this project conducted qualitative research. We analysed 15 deportation case files involving a parent over a five-year period [2018-2023], relating to a total of 45 children. All participants have been given pseudonyms to protect their anonymity. The case studies illustrate the disparity between the international and statutory guidance presented above and what is happening in reality. From checks with lawyers and charities, we are confident that our case studies are broadly typical of how such cases are dealt with by the Home Office, but atypical in terms of support and resources. The cases we looked at were distinct in that they - eventually - received the benefit of advice and support from specialist lawyers and social workers. **This is not the case for the majority of families affected by deportation and so it is important to emphasise that our findings present the 'best case scenario' regarding how children's welfare informs deportation proceedings.**

In our analysis, we focused in particular on the ways in which children's welfare was assessed by the Home Office, immigration tribunal and other commissioned experts. We analysed a wide range of documents for each case, including Home Office decisions and correspondence, tribunal judgments, health and education-related evidence, probation, social work reports and rental agreements. These documents were analysed using an evaluation template which we developed to reflect the Home Office Guidance, domestic and ECHR case law and the UNCRC framework summarised in part two (see Annex 2).

Our sample of cases involved 45 children and young people impacted by parental deportation. 12 of the case files related to the deportation of a father and three to the deportation of a mother. The cases reflected a variety of family arrangements, including single-parent families (for whom wider friends and family networks, particularly grandparents, often played a significant role in the children's lives), and blended families (including cases involving step-parents, siblings sharing one parent, and where children reside in more than one home). As such, the children's lived experience of family life in our sample was much more nuanced and complex than the statutory emphasis on 'primary carers' and the 'nuclear family'.

Each case had lasted several years and just over half had only recently concluded, enabling us to take a longitudinal approach. We were able to follow the ways in which children's best interests were evidenced, interpreted and weighed at different points in the deportation process, and by different decision makers.

On average, the family was involved in deportation proceedings for 5.2 years. This average did not fully take into account cases where the outcome was yet to be decided and so the average length of a case was still increasing. The impact of the deportation process on a family was considered from the point at which the Home Office had issued a Stage 1 One Stop Notice of Intention to Deport. Typically, there was significant delay until the Stage 2 Decision when a Deportation Order was made, and there were further delays in cases of appeal and fresh legal claims.

In terms of the known outcomes of the cases reviewed, one of the 15 cases ended with a father being deported and separated from his child (who remains in the UK). Eight other cases concluded in the revocation of the Deportation Order. The remaining cases were still ongoing as well as one case in which the outcome was unclear from the file.

There is very little public data about the number of Deportation Orders issued each year, the outcome of these decisions, or the factors that influence the outcome. The high proportion of cases in our sample where the deportation decision was eventually revoked no doubt reflects the fact that they were supported by two organisations (BID and SWWB) in which specialist legal expertise and independent welfare assessments were likely to be much more accessible and of high quality. It is not possible to compare our case studies to families without the benefit of specialist support, but our research does indicate the significant difference that such expertise can make to the outcome of a case.

Notwithstanding the diversity and complexity of deportation cases, our analysis revealed some recurring issues and limitations in the way in which the legal obligations pertaining to children's welfare are discharged. We consider these under four main headings:

- **Representation:** Limitations around children and families' access to appropriate legal advice and representation.
- **Rigour:** A lack of rigour in the substance and scope of evidence-gathering around families and of assessment of children's best interests.
- **Reliability:** Obstacles to the procurement of independent expert assessments, which provided the most comprehensive and objective evidence of children's best interests.
- **Reasoning:** Inconsistent and sometimes inadequate consideration of children's best interests and expert evidence in deportation decisions in light of the legal obligations.

## Jesca, Emmanuel and Charles' story

Nine-year-old Jesca and her older brothers have lived with the risk of losing their mum, Miremba, most of their lives. Miremba received a Deportation Order after two short prison sentences when the boys were very young. When she was expelled from the UK they were separated from her, remaining in the UK with their father.

Unwilling to lose her children, Miremba returned to the UK illegally. She was arrested and detained for nine months, before being released on bail. She sought custody of the boys and to resolve her immigration status. But neither the immigration nor family court processes took the other into adequate consideration. The immigration system did not sufficiently consider the children's welfare, and the family courts under-appreciated the impact of Miremba's insecure status and prohibition against working on her ability to provide for her family.

Jesca was born during this time. Miremba sought to revoke the Deportation Order. A letter from Charles about the impacts of separation from his mum was included in the application, but this evidence was not considered by the Home Office or immigration judge. The application was refused. The Home Office argued that Miremba's "serious offending" meant she should be deported and that it would not be unduly harsh for Jesca to remain in the UK in the care of her father or "other suitable arrangements".

There is no indication that the Home Office actively considered potential care arrangements or conducted a safeguarding assessment of separating Jesca from her mother or placing her in the custody of her father. This is despite

Miremba claiming he was abusive, fleeing with Jesca to a hostel whilst she was a baby and Jesca only seeing him occasionally.

After the refusal, the family lived under extreme instability and hardship. Miremba was not eligible to work or access welfare support. The fear of immigration enforcement meant that she and Jesca repeatedly moved home across the UK.

After seven years, Miremba again sought to revoke the Deportation Order. Her solicitor commissioned an independent social worker assessment, which identified a risk of Jesca being taken into care if Miremba was deported (supported by a letter from the father stating he could not care for her and played a limited role in her life). The application noted the instability and deprivation Jesca experienced by having spent her whole life with a parent with irregular status.

*“Life under the shadow of the Deportation Order is leading to an increasingly untenable situation... The family is subsisting primarily on charity handouts... As a British child, Jesca is severely economically disadvantaged in comparison with her peers.”*

A year after the application, the Deportation Order was revoked and Miremba was granted limited leave to remain.

## 2.1. Representation

UN Committee on the Rights of the Child, General Comment 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paragraph 96

*The child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies.*

People with ‘qualifying’ children in the UK can challenge their deportation on grounds that it would breach their right to respect for private and family life, as protected under Article 8 of the European Convention on Human Rights. However, there are a number of barriers to benefiting from such protections. Navigating the UK’s complex and changeable immigration system is notoriously difficult. This is perhaps particularly so for those challenging deportation in that individuals need to know how and when to appeal Deportation Orders, how to anticipate and articulate the impacts of deportation, and how to evidence them in an appropriate and compelling way.

Access to legal representation had a demonstrable impact on the timeliness and detail of legal submissions relating to the welfare of children in the cases we reviewed. The majority of families did not benefit from legal representation until later in proceedings. This meant that initial deportation decisions were typically made on the basis of only partial information regarding the child’s welfare. Such cases only obtained appropriate legal representation and gathered further welfare evidence on appeal. Cases usually went through several applications and appeals before reaching a final decision, meaning the process commonly often took several years, with a significant impact on the wellbeing and finances of families, as well as cost to the public purse<sup>33</sup>.



# Jenny and Ben's Story

Jenny and Ben's father, Matthew, was issued with a Deportation Order before they were born. Matthew has lived in the UK since he was child and had indefinite leave to remain in the UK since he was 22 years old. However, a series of criminal convictions, mostly related to possession and supply of cannabis, led to Matthew being issued with a deportation order in his 30s. He has been contesting his deportation for over a decade, including through three different appeal applications. At the time of our study, Jenny and John were 10 and 7 years old and the case was still ongoing. The children had lived their entire lives under the shadow of their father's deportation proceedings.



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### 2.1.1. Access to Legal Advice and Representation

For several reasons, it has become very difficult to obtain legal representation in deportation cases. Lawyers are expensive: one study estimates that a single case can cost up to £50,000 per year in legal fees and associated costs (Families for Justice 2022: 27). Paying privately for lawyers is impossible for most UK families, especially those with a family member prohibited from working and denied access to public funds, as is often the case for deportable adults.

Previously, if families could not afford the costs they could access legal aid. However, in 2012 legislation was passed severely restricting legal aid for immigration matters. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) lists just four categories of immigration application as eligible for legal aid funding: asylum; domestic violence; human trafficking; and bail. Human Rights applications made under Article 8 of the ECHR, even for children facing long-term or permanent separation from a parent, are no longer automatically covered by legal aid.

Exceptional Case Funding (ECF) may be available for those whose cases fall outside the scope of legal aid if it may result in a breach of their human rights<sup>34</sup>. However, applying for ECF is technically complex and, for most people, difficult to navigate without legal help (BID, 2023)<sup>35</sup>.

Moreover, even if someone is entitled to legal aid, they still need to find a legal aid lawyer to take on their case. Since the withdrawal of legal aid funding for most non-protection immigration cases by LASPO 2012, lawyers are less inclined to specialise in immigration work resulting in a significant lack of sufficiently expert legal advice and representation for deportation cases (BID 2023; Burridge and Gill 2017; Wilding 2023).

Whilst our sample was atypical in that all cases ultimately obtained representation and support from specialist organisations with expertise in children's welfare and deportation advice, most had endured periods of being legally unrepresented at various points in their case. Two cases had received sub-standard legal representation which led to poorly drafted witness statements containing insufficient, incoherent evidence relating to the child. The one case where the application to challenge deportation had failed and the parent and child were separated involved poor legal representation. If such failings are apparent in our case studies, it is likely that such failings are much more acute and widespread in the (more typical) deportation cases that do not have specialist legal support.

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## Lara's Story

Baby Lara was just five weeks old when her father, Alex, was detained. Whilst attending one of his regular reporting appointments with the Home Office, he was detained and transferred to an Immigration Removal Centre (IRC). Although he had brought Lara's birth certificate to the appointment, the Home Office argued that this was not evidence of "meaningful positive involvement" or, indeed, of "any involvement whatsoever in Lara's life at any stage". They argued that Alex's detention was justified because there was no evidence suggesting a "genuine and subsisting relationship" with Lara.

Alex did not have legal representation at the time. The day after he was detained, he received a Home Office letter advising him that if he wished to challenge his deportation he should provide evidence of his family ties, such as statements from him and his partner confirming their relationship and his role as a father, details of his financial contributions to Lara, and evidence of living arrangements such as a Tenancy Agreement or bills in joint names.

Detained in an IRC without a lawyer, Alex was extremely limited in his ability to gather and submit such evidence. Lara's mother was left alone to look after Lara and was struggling to cope. Indeed, she struggled so much that just a few weeks later the Local Authority placed her and Lara in a Mother and Baby Unit and shortly after applied for a Care Order for Lara.

Alex was given just one week to submit the information to challenge his deportation. Despite the problems his partner and newborn faced, and despite the need to gather detailed evidence to challenge the deportation, Alex was denied immigration bail.



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## 2.1.2. Separate Representation for Children

UN Committee on the Rights of the Child, General Comment 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paragraph 96.

*... in cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision.*

There is a potential conflict of interest between the parties involved in disputing parental deportation cases. The Home Office is tasked with both ensuring automatic deportation of 'foreign national offenders', whilst also protecting the welfare of any children affected. International guidance recommends that in such cases children should have their own legal representative. However, in the UK children do not have their own legal claim against a parent's deportation, and they are rarely – if ever – separately represented in a parent's immigration case.

In all the cases we analysed, assessments of the potential impact of a parent's deportation on children were commissioned by the lawyers representing the deportable parent. This means that such assessments were commissioned with a view to supporting the parent's claim to remain in the UK, rather than foregrounding the children's or whole family's best interests. Without their own representation or legal claim against parental deportation, the needs of children and non-deportable parents are at risk of being incidental or ignored. This is in contrast with other areas of law and family separation, notably public law family proceedings, where children are routinely provided with their own legal representation.

In UK deportation cases, it is assumed that children's interests and those of their parents coincide, and that a parent will be able and willing to provide evidence in support of the children's welfare<sup>36</sup>. Whilst in most cases children's interests do align with those of their parents, they do not necessarily have the same weight (i.e. the impact on the child of being separated from their parent may well be far harsher than the impact on the parent) and in any event legally-speaking must be evaluated separately. Moreover, there are instances in which children's interests differ from those of their parents. This includes compelling reasons why restrictions should be placed on a parent's contact with and care for a child, particularly where a parent has served a sentence for a serious criminal offence and poses a risk to the child, or if the remaining parent has serious health problems. In some of the cases we analysed, the deportation arguments were presented only from the perspective of the adult, thereby obscuring the issues most relevant from children's perspectives. Only after listening to the child and understanding their needs more fully (e.g. through assessment by an independent expert) were the most pertinent matters illuminated. A child-centred approach to deportation decisions thus has the potential to alter understanding of the issues that need to be considered and balanced by the decision-maker.

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# Ali and Adam's Story

Ali and Adam were living with the possibility of losing both parents: their father, Jamal, through deportation; and their mother, Mary, from a life-threatening health condition. Jamal submitted evidence to the Home Office to challenge his deportation, including a GP letter that evidenced Mary's serious health problems. However, the true impact of her health on the children was not sufficiently clear from this letter or the rest of the legal bundle, and it was not recognised by the Home Office as a significant factor in the deportation decision. It was only when an independent social worker's report was commissioned and submitted in a subsequent appeal that the true impact of Mary's health on the children was revealed.

Through speaking with Ali and Adam, the independent social worker found that their mother's health was a "source of significant worry and distress" for them. She described them as being burdened "with providing practical care, and with the emotional distress of managing their mother's health needs", whilst at the same time coping with the prospect of their father's deportation. They were 9 and 11 years old at the time.

The welfare assessment included Ali's account of having to call an ambulance for their mother when she collapsed and passed out. Adam added: "we sleep in her bed... [so we can] keep an eye on her", with Ali confirming they do so "just in case she passes out in her sleep." He went on to describe checking her blood pressure every night, that "sometimes it's really high, up to 300. When it's really high we get [dad] to drive her to the hospital to get her checked or we get her to rest."

The social worker found that Ali and Adam carried such a burden of care for their mother, that they met the definition of young carers. Moreover, she found their father was a "mitigating factor" in their wellbeing, playing an essential role in their lives by providing emotional and practical support around caring for their mum, as well as the opportunity to stay with him for respite and breaks from "worry and responsibility", writing:

*"The experience of being parented by a parent who is not vulnerable or unwell will be highly beneficial for Ali and Adam because it provides them with the opportunity to be the recipients of care, and just be children unburdened of responsibilities beyond their years. In this circumstance, Jamal, is the safe adult who fulfils the role of 'protector', and his love and support for Ali and Adam is a source of resilience".*

The report concluded that Jamal's deportation would put the children at "significantly increased risk of emotional harm" in managing their mum's health needs and increased risk of being placed in care, noting that the risk for child carers is significantly raised for single-parent families.



The independent social worker's report was only commissioned much later in the proceedings, on appeal against the initial Home Office decision. This evidence had a decisive impact on the immigration tribunal judge:

*"They rely upon their father for respite from their role as young carers. They rely upon their father for emotional support. They rely upon him as a parental figure; I accept [the social worker's] evidence that that is not something that can be readily replaced. If their mother is ill again and requires time in hospital, they will rely upon their father to care for them and provide for their needs".*

As this case illustrates, a good quality and early welfare assessment, particularly when it centres on and listens to children's needs and views, can significantly alter understanding of the key issues involved and prevent the additional stress, uncertainty and costs of protracted proceedings and appeals.



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## 2.2. Rigour

UN Committee on the Rights of the Child, General Comment 14 (2013), paragraph 87

*States must put in place formal processes, with strict procedural safeguards, designed to assess and determine the child's best interests for decisions affecting the child, including mechanisms for evaluating the results. States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children.*

Working Together to Safeguard Children 2023, page 11

*10. Successful outcomes for children depend on strong partnership working between parents/carers and the practitioners working with them. Practitioners should take a child centred approach to meeting the needs of the whole family.*

*11. As set out in the Children's Social Care National Framework, the following principles apply here too:*

- children's welfare is paramount*
- children's wishes and feelings are sought, heard, and responded to*
- children's social care works in partnership with whole families*
- children are raised by their families, with their family networks or in family environments wherever possible*
- local authorities work with other agencies to effectively identify and meet the needs of children, young people, and families*
- local authorities consider the economic and social circumstances impacting children, young people, and families*

Our analysis considered the ways decision makers gathered evidence to support family life and children's welfare decisions, including any attempts to engage directly with children. International guidance requires States to develop transparent and objective decision-making processes for best interests determinations. Domestic guidance, referred to in Part One, details what factors should be taken into account. The courts have also confirmed that children's best-interests should be focused on ascertaining the impact of deportation on the *individual* child in question<sup>37</sup>.

**Despite the clarity and detail of the guidance, the only example we found of the Home Office proactively seeking out information (whether from the family directly or via their legal representatives) regarding children's welfare was through the 'One Stop Notice'.** This notice includes a cursory

and insubstantial list of possible forms of evidence, primarily focused on documentary proof of parental relationship and the identity, nationality and living arrangements of family members. For example, passports of family members; birth and marriage certificates; proof of address such as utility bills; and details of any social services involvement with the family (Appendix 1). For example, Saviz's mother, Samira, was in a young offender's institution when she received a One Stop Notice requesting documents to prove her relationship with her daughter. Despite these barriers, Samira sent what she could, but in response the Home Office concluded that the quality of the relationship was "unclear" and insufficient to reach the unduly harsh threshold. The Home Office made no request for further evidence, nor appear to take her limiting circumstances into consideration, but pressed ahead with her deportation.

Families will rarely have legal representation at the point of receiving a One Stop Notice and request for evidence of relationships. Moreover (and as was the case for several of the cases we examined), the deportable parent might be in prison or immigration detention at the time of the request, making it difficult to obtain such evidence before the specified deadline. In any case, the Home Office response to the submission of requested evidence was often that the evidence is not substantial, even though it was listed on the One Stop Notice

## Mudiwa and Rudo's Story

Mudiwa and Rudo's father, Aneni, was sentenced to a short custodial sentence of 12 weeks. After serving six weeks, he was transferred to immigration detention and given a Deportation Order. The Home Office informed Aneni that if he wished to challenge the deportation, he should submit documents proving his relationship with his children. In response, and in line with the list of suggested documents, Aneni submitted Mudiwa and Rudo's birth certificates and a handwritten letter stating that he had a partner and children in the UK. The Home Office described this as "a very limited amount of insufficient evidence" and wrote:

*"You have not provided any evidence to show that your children are currently in the UK, their domestic circumstances, the nature of your relationship with them or what is in their best interests. It is considered reasonable to expect that if you have a genuine and subsisting parental relationship with your claimed children, that such evidence would be available to you. You have not provided any reason why it is not reasonable to expect you to provide evidence in relation to your claimed children."*

English was not Aneni's first language and at the time of the request, he had no legal representation. Such factors present barriers for a lay person in understanding the terminology and the kind of evidence required to prove "domestic circumstances", the "nature of your relationship" or children's "best interests".

Rather than offering clearer directions on additional forms of information by which to make an informed assessment of Mudiwa and Rudo's best interests, the Home Office appears to have equated a paucity of documentary evidence with a lack of a genuine and subsisting relationship. They concluded that there was *"no evidence that you play an active role in Mudiwa and Rudo's lives or that you have a genuine and subsisting relationship with them"*.



### 2.2.1. Evidence Gathering When Legally Represented

Access to good quality legal representation makes a significant difference to the types and detail of evidence gathered. The families in our sample who eventually received legal representation were guided in gathering much more substantial information, such as:

- Witness statements or letters (from the person facing deportation, from their partner or children, and/or from family members or friends);
- Information from the family court or local authority social worker (e.g. if the child was subject to a care order);
- Educational evidence (such as school reports, letters from teachers);
- Medical evidence relating to parent or child (e.g. NHS appointment letter, health visitor document);
- Financial documents;
- Evidence of accommodation (e.g. tenancy agreement, utility bills);
- Criminal justice system documents (e.g. probation reports, trial judge sentencing remarks, risk of reoffending assessment, family visit records, evidence of courses taken in prison);
- Expert family assessment (e.g. by a social worker or psychologist).

It is noticeable that many of these forms of evidence are absent from the Home Office's One Stop Notice list of evidence. It was also apparent that these forms of evidence could be considerably more detailed and pertinent to the case than the basic documentary evidence typically secured by families without legal representation.



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# Ethan, Hannah and Jacob's Story

Ethan, Hannah and Jacob all have British citizenship. The youngest, Jacob, has high care needs arising from a severe developmental condition. Their father, Asher, was issued with a Deportation Order after a 16-month prison sentence. When he challenged it on the basis of his family ties, the Home Office argued that there was no “genuine and subsisting” parental relationship between Asher and his children and that it would be neither “unduly harsh” for the whole family to move overseas, nor for Asher to be moved from the rest of the family, as their mother, Beatrice, could care for the children alone.

Once the family obtained legal representation, they were able to present evidence to counter these claims, including confirming the parental relationships and the potential impact of Asher's deportation on the family. Both parents provided detailed witness statements relating to the children's needs and wishes regarding their father's presence and the role he played in their lives. This included how he helped them with homework, did the school pick-ups, took them to church and for walks, and managed the youngest child's emotional outbursts.

Ethan and Hannah also hand-wrote letters for the decision makers, describing their feelings towards their father, their reliance on him as a role model and close confidant, the impact of his prior imprisonment on their mental health and education, and their fears around his deportation for their wellbeing and upcoming school exams.

A family friend also wrote a witness statement outlining the impact of Asher's previous imprisonment on the family, describing how Hannah had become depressive and despondent and had felt forced to give up a grammar school place; how Ethan had become withdrawn and addicted to video games; and how Jacob had developed increasingly challenging behaviour. The family friend also described the impact on their mother, Beatrice, writing that she was so overwhelmed, particularly with responding to Jacob's care needs on her own during this time, that she was not able to properly care for the other two children.



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## 2.2.2. The Views and Voice of the Child

UN Committee on the Rights of the Child, General Comment 12 (2009) on the right of the child to be heard paragraph 74

*There is no tension between articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected.*

Every Child Matters: Statutory Guidance, UK Visas and Immigration's arrangements to safeguard and promote the welfare of children. UK Visas and Immigration, published 3 November 2009, paragraph 1.14

*Children and young people are listened to and what they have to say is taken seriously and acted on;*

*Where possible the wishes and feelings of the particular child are obtained and taken into account when deciding on action to be undertaken in relation to him or her. Communication is according to his or her preferred communication method or language;*

The UN Committee on the Rights of the Child makes it clear that determining children's best-interests requires the participation of the child, and that there can be no correct application of the best interests principle if the components of children's right to be heard are not respected. This is particularly the case if such decisions may lead to the child being separated from their parents<sup>38</sup>. Similar requirements to involve children and have regard to their wishes and feelings as a key component of welfare assessments are embedded in national guidance, including UK legislation<sup>39</sup>, statutory guidance<sup>40</sup> and jurisprudence<sup>41</sup>. This is particularly important given that the children of those subject to deportation are not provided with their own legal representation or a guardian to represent their views

We scrutinised how children's wishes and feelings were elicited and evidenced in the context of deportation decision-making. Despite the extensive guidance regarding children's participation and voice, **we found no evidence of the Home Office facilitating children's involvement in the welfare assessment process or seeking out their views and wishes regarding their family life.**

In some of the case files, a letter from the affected child was included in the evidence submitted, detailing the potential impact of their parent's deportation on their lives. Such letters could provide good insights into children's views and wishes, but were nonetheless given little weight by the Home Office. Of course, in some cases children are too young to write letters or cannot articulate the potential impact of their parent's deportation. However, our research found that even in such cases it may be possible to ascertain children's wishes and feelings.

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For example, in one case the independent social worker watched the deportable parent with his toddler and from observing their interactions, concluded that:

*"[The Child] relies on his dad for comfort and play opportunities and would experience the loss of his dad in a very profound way, even if he is too young to verbalise this."*

## 2.3. Reliability

### 2.3.1. Children's Best Interests Assessments: The Role of Social Workers

UN Committee on the Rights of the Child, General Comment 14 (2013), paragraph 94

*Children are a diverse group, with each having his or her own characteristics and needs that can only be adequately assessed by professionals who have expertise in matters related to child and adolescent development. This is why the formal assessment process should be carried out in a friendly and safe atmosphere by professionals trained in, inter alia, child psychology, child development and other relevant human and social development fields, who have experience working with children and who will consider the information received in an objective manner. As far as possible, a multidisciplinary team of professionals should be involved in assessing the child's best interests.*

Every Child Matters: Statutory Guidance, UK Visas and Immigration's arrangements to safeguard and promote the welfare of children. UK Visas and Immigration, published 3 November 2009, paragraph 1.17g

*Effective practice with children and families requires sound professional judgements which are underpinned by a rigorous evidence base, and draw on the practitioner's knowledge and experience.*

Our research found that the most detailed, objective and legally persuasive evidence of children's best interests in deportation decisions were reports written by an independent expert who had comprehensively and independently assessed the family. These specialist reports were the most likely form of evidence to provide reliable and robust insight into children's best interests and usually also provided the strongest indication of children's views, wishes and feelings.

Despite this clear finding, and despite the UN Committee's direction that professionals with experience working with children should conduct best interests assessments, in the UK there is no automatic mechanism for achieving this and many barriers against it. UK guidance is silent on who should conduct a best interests assessment in the context of deportation or when that assessment should take place. The 'Criminality: Article 8' guidance, which is aimed at Home Office caseworkers and 'decision makers' merely advises:

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*“You must carefully consider all of the information and evidence provided concerning the best interests of a relevant child... when assessing the private and family life exceptions to deportation and whether there are any very compelling circumstances.”*

It is up to the discretion and resources of the parent subject to deportation to instruct a lawyer and commission an expert assessment. This means that expert reports are usually only tendered at a late stage in deportation proceedings, when the importance of such an assessment becomes more apparent and if (good quality) legal representation has been obtained. **This stands in stark contrast to family law proceedings, where an independent expert report into the child is always procured from the outset of proceedings<sup>42</sup>.**

Our finding – that the best examples of rigorous welfare assessments were contained in the reports of independent social workers – is not surprising: social workers have specific professional training and experience of conducting such assessments in a sensitive and ethical way that enables children to express their views and feelings. This includes assessing a child’s capacity to be interviewed, knowing when to stop an interview, and ascertaining their views in alternative and creative ways when a verbal account is less appropriate (e.g. due to age, language or disability). Social workers are also bound by professional and ethical standards ascribed by their registering body<sup>43</sup>. Furthermore, they must adhere to the same practice directions and Statement of Truth that binds the Immigration and Asylum Chambers (*Practice Direction, 2024*). These requirements are conducive to an independent and impartial perspective on children’s rights, needs and views in accordance with the law.

**This stands in stark contrast to family law proceedings, where an independent expert report into the child is always proffered from the outset of proceedings.**

### 2.3.2. Examples of Good Practice in Best Interests Assessments

For those families who were able to commission a welfare assessment, the best examples involved independent social workers who undertook home visit(s) to observe behaviour and interactions between children, parents and wider family members. This was especially important in cases involving children who were younger or had special educational needs who were less able to express a view on their own behalf. For example, the social worker assessing Mudiwa and Rudo observed that the young ‘children’s faces lit up

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when they saw their father', that they were 'relaxed and affectionate' with him, and that the family appeared to be 'a secure and relaxed unit ... a close and loving family.'

The best examples of expert reports in our case files drew from observations of the family supplemented with interviews with the parents and with children (where they were deemed to have sufficient competence). In some cases, social workers also spoke with extended family or family friends or, in the spirit of multi-agency working, sought information from other professionals involved with the family, such as teachers, social services and health visitors. The experts triangulated this information with other contextual evidence relating to the child's social circumstances and with their specialist training and experience around child development. These informed their assessment of the strength of the parent-child relationship, the child's unique safety and welfare needs, the family relationships, and the potential impact of parental deportation on the children's current and future developmental needs.

Given the absence of any specific procedural guidance on how to conduct a best interests assessment in deportation cases, most social workers in our case files drew on the child welfare assessment standards applicable to family law proceedings<sup>44</sup>. This included drawing on the Welfare Checklist<sup>45</sup> to set out the children's emotional, social and educational needs, and their wishes and feelings. Whilst such guidance offered the most structured approach to assessing children's best interests, its application to immigration proceedings is neither routine nor formally deemed to be required by law, meaning that it relies on the approach taken by each individual expert and leaves scope for variability.

# Mudiwa and Rudo's Story

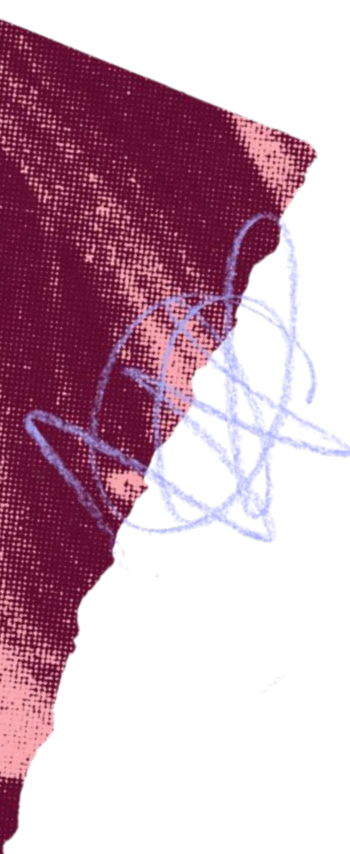
In the years spent challenging their father, Aneni's, Deportation Order, Mudiwa and Rudo's family commissioned two expert reports, three years apart. Both were completed by an independent Social Worker and followed guidance contained in the Welfare Checklist of the Children Act 1989 (section 1(3)).

The first report was informed by two visits to the family, an interview with Mudiwa and Rudo's maternal grandmother, and written correspondence with Social Services, who were involved with the family. The second report was compiled following a further two visits to the family, another interview with the grandmother and a meeting with the school's safeguarding teacher. In line with the Welfare Checklist, the assessor scrutinised Mudiwa and Rudo's emotional, social and educational needs, as well as their wishes and feelings. These were ascertained through conversations with Mudiwa and Rudo, observation of their interaction with their parents, and through conversations with their parents, grandmother, the school safeguarding teacher and Social Services.

For each report, the social worker drew on the combined evidence to provide an informed assessment of the likely effect of Aneni's deportation on his children's circumstances in the short and longer term. She concluded that separation from their father through his deportation would have "a devastating effect on their lives and future development", and that accompanying him to relocate overseas would "in all probability have a long-term effect on their health and future development."







The best examples of welfare assessments avoided conflating the needs and interests of all children in the family, instead identifying the risks specific to each individual child based on their unique experiences, perspectives and characteristics. They included assessment of potential future scenarios should deportation take place, including the possible impact on the remaining parent and their ability to support the child, as well as the potential emotional, developmental, educational and relational impacts on the children. In some cases, the social workers identified serious potential risks, such as the possibility of children becoming a carer to siblings or to the remaining parent, to being taken into care, or to being at risk of criminalisation or other forms of exploitation. For example, in one case the social worker noted that the mother's deportation would lead to some of the left-behind siblings moving to live with their respective fathers and the youngest being placed into care and potentially adopted. This, she concluded, would likely result in the separation of and potential loss of all contact between the sibling group.

## Michal, Pawel and Maria's Story

This family had multiple complex vulnerabilities. Michal and Pawel had complex learning difficulties and were registered as having Special Educational Needs. Their mother, Joy, had multiple chronic mental and physical health problems and relied heavily on their children's father, Marcin, for her wellbeing and for raising their children.

Marcin was issued with a Deportation Order following a conviction for a serious offence for which he received a six-year sentence. The length of his sentence meant the family needed to meet the higher threshold of harm before it could outweigh the strong 'public interest' of his deportation. In attempting to challenge Marcin's deportation, their lawyer submitted evidence of the children's best interests from a range of sources, including documents from the children's teachers, doctors and speech therapist. They also provided an independent social work report.

The independent social worker adopted an individualised approach, considering the potential impact of Marcin's deportation on each child in turn, as well as on Joy's ability to care for the family. The report drew on observations of the family together at home as well as interviews with the parents and children.

The social worker concluded that the impact of their father's deportation coupled with the long term loss of paternal influence would seriously impact the children's educational and emotional development and mental health. She raised concerns that it could place Maria at risk of becoming a carer (to her mother and/or siblings), and would potentially cause Pawel serious mental health and behavioural problems. The report noted that Michal was becoming increasingly distressed at the prospect of his father's deportation, which was compounded by the fact that he was transitioning to a new secondary school and had special educational needs. The social worker's report suggested that Michal was at high risk of criminal exploitation, drug use and violence, should Marcin be deported.

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The report also suggested that her husband's deportation might be the "final straw" for Joy, who was already struggling with the boys. It raised concerns that it might have such a negative impact on Joy's already poor mental health that the children might eventually be taken into Care and require "long term permanent homes".

Although the Home Office refused his application, Marcin successfully appealed the decision. At the time of the research, he had Limited Leave to Remain in the UK, providing him and his children with some - but not permanent - stability. He has previously been refused naturalisation, so may never have fully secure residence in the UK.

### 2.3.3. Obstacles to Procuring Expert Reports

**Despite the evidential reliability and rigour provided by independent expert reports, and the importance of obtaining them as early as possible in the decision making process, there are multiple practical and legal barriers to their procurement.** Unlike potential separations in the family court, such reports are not automatically commissioned or financed. Even though deportation often has the potential to *permanently* separate UK children from their parents, the Home Office does not request, facilitate or commission expert assessments<sup>46</sup> and the Immigration Tribunal *cannot* request the procurement of such evidence. Expert assessment of children's best interests must be commissioned by the deportable parent (or more commonly, by their lawyer).

Unlike the family courts, the immigration tribunal does not have investigatory powers; it is 'adversarial' rather than 'inquisitorial' in nature. Indeed, the Upper Tribunal has issued guidance emphasising that it is for the parties to decide what evidence to rely on rather than for a judge to direct what evidence should be tendered; immigration judges must limit themselves to determining only the principal controversial issues in dispute between the parties<sup>47</sup>. Discretionary powers previously available to immigration tribunal judges, such as more direct case management and the power to make directions to the parties (including the Home Office) to disclose evidence such as unredacted welfare reports, have been taken away from judges and delegated to legal officers<sup>48</sup>.

**Despite the evidential reliability and rigour provided by independent expert reports, and the importance of obtaining them as early as possible in the decision making process, there are multiple practical and legal barriers to their procurement.**

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It is up to the deportable parent, therefore, to obtain expert assessment and report of their family life and children's best interests. **But there are many barriers preventing families from obtaining independent expert evidence**, despite the clear benefit of such reports for informing deportation decisions. These assessments are not generally affordable to most people or available to those without legal representation (in our cases, the expert reports were *always* commissioned by the family's legal representative). Expert assessment and report-writing incur costs of around £1,500–£2,000. This is a skilled and time-intensive piece of work, requiring one or more visits to people's homes, sensitive interviews and observations, reading substantial amounts of case-related documentation, carrying-out additional investigations, writing a detailed report that complies with immigration tribunal formalities, and potentially being cross-examined at an appeal hearing.

The costs of expert assessment not only present major obstacles for families without legal aid representation. For those able to obtain legal aid and find legal representation, Exceptional Case Funding must be obtained for expert reports. Moreover, the Legal Aid Agency must generally specifically approve the costs of social work reports. The families in our case files were highly fortunate in having social work reports, often covered by charitable funds and pro bono volunteer time, rather than require Exceptional Case Funding. However, the demand for such resources far outstrips their availability and it is not available in the vast majority of cases.

Because expert reports are only commissioned by the parent subject to the deportation, and usually on the advice of a legal representative, they are rarely available when an initial deportation decision is made but only procured – if they are at all – late in the process, at the appeal stage. This is often several years into the deportation case and results in significant costs to the children, families, legal system and public purse. But given the obstacles families face in obtaining legal representation and commissioning expert assessments, it is reasonable to assume that **in spite of the extensive legal and policy guidance regarding welfare assessments, in the majority of cases such assessments are not carried out**. The result is that life-changing decisions for children are being made without much, or potentially even any consideration of children's best-interests.

**It is reasonable to assume that in spite of the extensive legal and policy guidance regarding welfare assessments, in the majority of cases such assessments are not carried out.**

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## 2.4. Reasoning

UN Committee on the Rights of the Child, General Comment 14 (2013), paragraph 71

*When assessing and determining the best interests of a child or children in general, the obligation of the State to ensure the child such protection and care as is necessary for his or her well-being (art. 3, para. 2) should be taken into consideration. The terms “protection and care” must also be read in a broad sense, since their objective is not stated in limited or negative terms (such as “to protect the child from harm”), but rather in relation to the comprehensive ideal of ensuring the child’s “well-being” and development. Children’s well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety*

Every Child Matters: Statutory Guidance, UK Visas and Immigration’s arrangements to safeguard and promote the welfare of children. UK Visas and Immigration, published 3 November 2009, paragraph 1.4

*Safeguarding and promoting the welfare of children is defined in the guidance to section 11 of the 2004 Act (section 28 in Wales) and in Working Together to Safeguard Children as: protecting children from maltreatment; preventing impairment of children’s health or development (where health means ‘physical or mental health’ and development means ‘physical, intellectual, emotional, social or behavioural development’); ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.*

There are two decision-makers in deportation cases: the Home Office and the Immigration and Asylum Chamber. Both engage with consideration of family life rights and the associated arguments and evidence regarding the best interests of affected children. The guidance is for them to do so in a ‘broad and positive’ sense, looking at children’s wellbeing in a comprehensive manner, across their material, physical, educational and emotional needs<sup>49</sup>. However, our research found significant differences between the two decision makers in their approach to ensuring children’s ‘protection and care’ and bringing best interests evidence to bear on their decisions.

Immigration tribunal decision makers varied but overall were usually rigorous in their consideration of welfare-related evidence. By contrast, our research found that, **in most cases, the Home Office’s engagement with factors and evidence relating to children’s best interests was insufficient.** Home Office decisions to deport tended to engage with Article 8 considerations in a cursory and often dismissive way. This was compounded by the fact that expert reports were generally only commissioned at the later stages of the proceedings, meaning that the Home Office made initial decisions without sufficient evidence.



Moreover, an initial dearth of detailed family life evidence was commonly used by the Home Office to support a finding that there was not a 'genuine and subsisting' relationship and/or that deportation would not be 'unduly harsh' for any children concerned, rather than that further evidence was required. Amongst our case files, such a finding was not accompanied by meaningful explanation or analysis from the Home Office, nor a request for further information to inform such a decision.

**This brings the Home Office position into conflict with the law: the duty on state authorities under Section 55 of the Borders, Citizenship and Immigration Act 2009 to uphold the welfare of children is squarely on the decision-maker. As noted by the Court of Appeal in the landmark case of HA (Iraq):**

*"A child will not usually be in a position to urge his or her point of view and the decision-maker cannot treat the child as if he or she had some burden of proof."*<sup>50</sup>

## Lara's Story

When Alex received a One Stop Notice, it listed various documents that could be submitted in evidencing his relationship with Lara. In line with this, he submitted Lara's birth certificate. However, the Home Office responded that the birth certificate was insufficient evidence of his 'meaningful positive involvement', of a 'significant degree of responsibility for the child's welfare', or that he 'had any involvement whatsoever in Lara's life at any stage.' Lara was only five weeks old when he was detained.

Even when presented with more detailed evidence of the impact of deportation on family life and the wellbeing of any children, there was little indication of the Home Office bringing it to bear on its decision in any considered way. Decision letters rarely engaged with evidence such as expert reports in any meaningful way.





### 2.4.1. Weight Attached to Parent's Criminal Offending

The UK Supreme Court has confirmed that the seriousness of a parent's offending is not relevant to assessments of whether the deportation would be unduly harsh for the child<sup>51</sup>. Despite this, our analysis found that Home Office decisions often focused principally on the parent's convictions and prison history and paid relatively little attention to children's distinct interests and needs when determining their best interests.

#### Mudiwa and Rudo's Story

The Home Office concluded that the deportation of Mudiwa and Rudo's father, Aneni, would pose no "risk of serious irreversible harm to your claimed children or your relationship with your claimed children". No reasoning was offered to support these conclusions, other than that the information initially provided by the family (birth certificates and handwritten letters) was deemed "insufficient". Generic and vague statements were included about the possibility of the family maintaining contact post-deportation using video calls. Considerably more attention was given to Aneni's criminal record than to his family life or the views or needs of Mudiwa or Rudo.

Once the family had legal representation, an independent expert assessment was commissioned. This report provided an individualised assessment of the welfare of each child and considered in detail the likely impact of Aneni's deportation on Mudiwa and Rudo, concluding:

*"It would affect them for the rest of their lives, both educationally, emotionally and psychologically... It could really delay their development both at home and in their life at school. It could really hold them back."*

Occasionally the Home Office suggested a child would be better off without their parent, or made speculative claims that strayed beyond their remit, such as regarding the quality of their parenting. This was particularly evident in cases involving the Family Court and highlighted a lack of insight into how the family courts assess such issues.

# Lara's Story

Lara's father, Alex's, deportation proceedings ran alongside a child arrangements dispute between the parents in the family court. In correspondence with Alex's legal representative, the Home Office wrote that the family court might conclude that, due to his criminal history, Alex was not fit to care for Lara and might even deny him any custody or contact with her. It also suggested that he might have pressured Lara's mother to write him a supporting statement, asserting that this would be harassment and a matter for the police. No evidence was provided for these assertions.

Alex was detained when Lara was just five weeks old. After a couple of months it was clear her mother was struggling to parent alone and they were moved to a Mother and Baby Unit. Nonetheless, Alex's immigration bail application was refused, with the Home Office arguing that Lara's mother could draw on "the support of her family, friends or other government departments such as social services". They also noted that the baby was born eight months after Alex was issued with a Deportation Order, so the parents should have been "fully aware" that he might "not be present to help care for the child in the UK." Alex's family ties were described as "the only barrier to removal" other than obtaining travel documents, and that "it is believed that the barriers to his removal can be concluded and that he can be removed from the UK within a reasonable timeframe."



The Home Office suggested that Alex might be denied custody of Lara, despite his offending not being of the nature that would normally lead to the family court recommending the removal of the child from a parent's care. In making baseless submissions involving speculation as to possible family court findings, the Home Office appears to go beyond its role as the institutional state party respondent in the appeal. Moreover, the Home Office's actions are in clear breach of guidance requiring immigration decision-makers to await the outcome of a family court decision if deportation might result in children being taken into care<sup>52</sup>. In this case, the Home Office shows little regard for the integrity of the family justice process or the welfare of the child (perhaps reflected in its referring to Lara as a 'barrier to removal').

## 2.4.2. Weight Attached to Independent Expert Reports

As discussed in the **Reliability** section (s.2.3) the families in our sample were eventually able to get specialist legal support, which often led to the commissioning of independent expert reports to provide much more detailed consideration of children's wellbeing, vulnerabilities and relationships, and the remaining parent's ability to maintain family life. Immigration tribunal judges usually engaged thoroughly with this form of evidence, carefully addressing the points, quoting its findings, and acknowledging the social worker's unique expertise in conducting such child assessments.

By contrast, the Home Office commonly dismissed or ignored expert report findings and recommendations with little explanation. The Home Office either did not appear to engage with expert reports, or did so only in an adversarial way. In three cases, rather than engage with the substance of the report, the Home Office questioned the impartiality, credentials, expertise, or authority of its author, often diverging significantly from the approach of the tribunal judge on appeal.

### Ali and Adam's Story

In challenging his deportation, Ali and Adam's father, Jamal, provided an independent expert report of the potential impact on his family. It was noticeable how differently this report was treated by Home Office and immigration tribunal decision makers. In their submission for the legal appeal, the Home Office argued that "evidence can be managed", noting that:

*"This report was arranged so it would be used in support of an immigration application. The [adult] participants would have known this and could have presented a particular narrative or behaviours."*

They disputed the social worker's expertise to make certain findings, stating: "[The assessor] is not expertly qualified to opine on the mental health or emotional wellbeing of any of the Appellant's children" and "Pages 36 – 38 reveal no obvious expertise". They concluded: "[The assessor] is not expertly qualified to opine on the mental health or emotional wellbeing of any of the Appellant's children" and "Pages 36 – 38 reveal no obvious expertise". They concluded:

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*"For the reasons above no particular significant weight is given to the report from [the social worker]. It is of some utility in corroborating that there is a relationship between the individuals interviewed but not of significant utility beyond that. It appears narrow in focus, is partial in parts and lacks real scrutiny."*

In sharp contrast, the immigration judge's response to the expert report was:

*"I find that she does have relevant expertise to comment upon the relationship between the Appellant and his children and relevant expertise in eliciting the needs and wishes of the children. She is a qualified social worker who has worked previously for X County Council. I was content that she fully understood her duties to the court. Whilst I have considered the concerns set out within the Respondent's review regarding the report, I am not persuaded by it. I found [the social worker] to be a balanced and fair witness. She understood her duties to the court and sets out clearly in her report factors which she cannot comment upon... I accept her evidence."*

The Home Office's treatment of expert reports contrasts markedly with the treatment of such evidence in family court proceedings. For example, in one case we reviewed, the Home Office rejected the expert report on the grounds that the social worker had only met the family once and, having been commissioned by the parents, was 'one-sided'. It failed to acknowledge that in deportation proceedings, expert reports are always commissioned by the appellant because of the lack of any other mechanism – and a resistance by the Home Office – to tender such evidence. Moreover, in family justice proceedings it is normal for expert welfare officers to compile a report on the basis of no more than a single meeting with children (e.g. Harwood, 2019). Importantly, in family cases, the independent welfare report is commissioned directly by the family court but is conducted independently of the decision-maker by Cafcass (the Children and Family Court Advisory and Support Service). This independent body represents children and young people in family court cases in England and provides the family courts with independent advice about children's best interests, needs and feelings. Cafcass has a duty to safeguard and promote the welfare of children going through the family justice system and supports over 140,000 children and young people every year.



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### 2.4.3. Future Risk: Predicting Children's Wellbeing

UN Committee on the Rights of the Child, General Comment 14, paragraph 74

*Applying a best-interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child's safety,*

UN Committee on the Rights of the Child, General Comment 14, paragraph 84

*In the best-interests assessment, one has to consider that the capacities of the child will evolve. Decision-makers should therefore consider measures that can be revised or adjusted accordingly, instead of making definitive and irreversible decisions. To do this, they should not only assess the physical, emotional, educational and other needs at the specific moment of the decision, but should also consider the possible scenarios of the child's development, and analyse them in the short and long term. In this context, decisions should assess continuity and stability of the child's present and future situation.*

UK court rulings have been consistent with the guidance of the UN Committee on the Rights of the Child in ruling that best interests assessments must take into account the longer-term impact of deportation on a child, and the permanence of the decision. Notably, Peter Jackson LJ in *HA (Iraq) v Secretary of State for the Home Department* noted that full consideration of the impact of separation from a parent must be considered across the whole span of the child's life, and not just the immediate pain of separation<sup>53</sup>. In the same vein, Home Office Guidance sets out similar future-looking factors for decision makers to consider around deporting a parent, including: the impact separation might have on the child's health, development and care; any problems the remaining parent would face caring for the child alone; and whether the child is likely to lose all contact with the deported parent<sup>54</sup>.

It was striking how differently families, expert assessors, the immigration tribunal and Home Office approached the prospective impacts of deportation on children and families. The expert assessors such as social workers took a broad approach when considering possible future outcomes, including risk of future harm. In addition to considering the relationship between parents and children after a parent's deportation, they often reflected on the possible impact on children's relationship with other family members (such as remaining in contact with extended family, or step- and half-siblings); the impact on the remaining parent and their health and parenting; and the burdens, risks and vulnerabilities that might affect the child as they grew into adults

Home Office consideration of future impacts, however, was often characterised by bland, unsupported or unrealistic stock statements that the deportable parent could 'remain in contact with your children by telephone, email or other modern methods of long-distance communication such as Skype', or that they could otherwise relocate overseas as a family. These claims were largely 'cut and paste' responses, with little evidence of the



Home Office engaging with the specifics of the particular family, child and countries in question. There was little individualised discussion of the limitations of these forms of contact, including the practical and financial implications (such as time zones, internet connection, costs) or the emotional and relational limitations of these 'virtual' forms of contact<sup>55</sup>. As the Covid-19 pandemic demonstrated, online-only contact is a poor substitute for family life, particularly for children separated from a parent.

Amongst our sample, the Home Office also often made unsubstantiated and overstated claims that the remaining parent or state services (such as schools, the NHS, or social services) would be able to provide sufficient care and support for the children after a parent's deportation. Indeed, there were several examples of the Home Office dismissing the evidence provided by schools and social work reports (e.g. as to the likely injurious impacts of deportation), only to then assert that the same public services would be readily able to meet the children's and remaining parent's needs after a parent's deportation.

## Jenny and Ben's Story

Jenny and Ben had high care needs. Jenny had delayed speech and language development and Ben had particularly severe special educational needs, with significant behavioural issues, requiring 2-on-1 support at a specialist school.

The case file contained considerable evidence testifying to Jenny and Ben's additional needs, including a Head Teacher's letter, Ben's Education Health and Care Plan, an NHS Community Paediatric Team diagnostic report, and GP letters. An independent social work report further outlined the children's needs, describing Ben as displaying aggressive, challenging behaviour, harming himself, and having limited awareness of risk. Ben was described as needing a high level of adult supervision both at school and at home. Later legal submissions provided additional evidence, including a letter from Ben's specialist school and from a local authority social worker asserting that:

*"removal of Matthew would be unspeakably traumatic for Ben and it is imperative that Matthew stay with Ben"*

In spite of such evidence, both the Home Office and Tribunal questioned Matthew's role in supporting his children and their mother, and the potential impact of his deportation on them. In this case, the tribunal judge upheld the deportation order, concluding that despite the many challenges, the children's mother could manage without Matthew by relying on help from state services, stating:

*"I accept [mother] understandably finds it difficult in caring for children who have medical, behavioural and educational problems because caring for them is challenging. Nevertheless she loves her children and is capable of looking after them with additional support provided by their schools and by social services... Furthermore, following the autism diagnosis of Ben, and the recognition that the children have*

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*special educational needs, Jenny and Ben are eligible for state benefits...and can access services provided by the Local Authority who are under a statutory duty to provide practical assistance to children in need."*

In considering possible post-deportation futures, legal representatives and decision makers often drew on past experiences of the child's separation from the parent, for example as a result of imprisonment or care arrangements. Again, there were striking differences between these accounts and analysis. In our sample, Home Office decision makers commonly interpreted past periods of separation as evidence that the child and remaining parent could cope with the impacts of deportation, failing to acknowledge negative impacts of these experiences or the different context of deportation and the possibility for separation to be permanent<sup>56</sup>.

## Michal, Pawel and Maria's Story

In deciding to pursue Marcin's deportation, the Home Office drew on his previous imprisonment as evidence that the family could manage without him present. They suggested that his earlier incarceration showed that the mother, Joy, had shown herself to be 'resourceful' in his absence, and that it demonstrated that she would be able to raise the children alone despite their complex needs.

In striking contrast, the same period of separation was described by the independent expert as seriously detrimental to the children's development, mental health and education, and to Joy's mental health and ability to parent. The report noted that during Marcin's imprisonment, the family hardly left the house, that the children's maternal grandmother had to sleep there at night because of Joy's previous trauma, and that the children had lost weight and their school attendance decreased. The social worker referred to school letters noting the impact on Michal's emotional and academic development (he went from being able to write his name to not being able to hold a pencil), and that the school had had to put in place additional support for him. The school had also observed an improvement in Michal's behaviour and developmental progress after Marcin's release from prison.

The Home Office and independent social worker also differed considerably in their prediction of the future impact of deportation. The social worker considered the potential futures of each family member individually and identified serious risks were Marcin to be deported. By contrast, the Home Office did not consider the children individually or in depth, and offered unevidenced future scenarios including that social services, the NHS and children's school would help Joy solo-parent, that the children would 'adjust' to their father's absence, could visit him overseas, or move there with him.

In coming to these different conclusions, it is noticeable that the independent expert had met with, observed and interviewed the family, and set out detailed reasoning for their findings. In contrast, the Home Office decision makers had not spoken with the family or heard from the children, and did not draw from the supplementary evidence provided by the children's teachers, hospital and speech therapist. Even their engagement with the expert reports was brief and dismissive. It took an appeal to the first-tier Tribunal before the evidence was appropriately considered.

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The judge attached significant weight to the social worker's forecasts and interpretations, quoting long sections in their decision. The judge also found that contact via Skype would not be sufficient parenting for the children given their additional needs, nor for the mother as it would not provide her with the support she needed. They granted the appeal.

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# Conclusions

Working Together to Safeguard Children 2023. A guide to multi-agency working to help, protect and promote the welfare of children. HM Government, December 2023, pg7

*Nothing is more important than children's welfare. Every child deserves to grow up in a safe, stable, and loving home. Children who need help and protection deserve high quality and effective support. This requires individuals, agencies, and organisations to be clear about their own and each other's roles and responsibilities, and how they work together.*

At a time when deportation is being amplified as a key immigration strategy, this report has provided the first empirical insights into the extent to which UK children's welfare is assessed and affected in deportation decision-making. The analysis highlights the stark disparity between the expectations and obligations set out in law and policy and the reality on the ground.

Of course, the case studies presented in this report represent only a snapshot of the many thousands of deportation cases affecting children every year. Insofar as they are drawn from the casework of leading experts in child welfare assessments and deportation, they are likely to offer the best case scenarios of what is happening in practice. And yet, even with the support of expert organisations, these cases reveal, at best, a routine ambivalence and, at worst, a clear disregard on the part of the Home Office for its safeguarding responsibilities towards children.

Evidence suggests that, in addition to breaching the law, the failure to meaningfully gather and assess information about children's welfare during deportation proceedings is, in and of itself, compounding the vulnerabilities of children and placing them at further risk of harm, with future implications for families, communities and the public purse. The cases we analysed suggest that appropriate, sufficiently detailed evidence is generally only gathered after an initial decision to deport has been issued and is being appealed. It is only ever commissioned at the instigation of families affected by the deportation who are fortunate enough to have access to sufficiently specialist legal advice, representation and funding.

Legal challenges often take many years, leaving children to spend significant proportions of their childhoods living in the shadow of separation from a parent, with long-term implications for their wellbeing. More timely, rigorous welfare assessments by an independent statutory authority at the earliest possible point, and a concerted effort to bring welfare evidence to bear meaningfully on deportation decisions, would not only reduce the delays, costs and damage associated with appeals; it would help mitigate the actual and potential harms caused to children as a result of ill-judged or delayed parental deportation decisions.

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# Recommendations

## Ministry of Justice

Our research has found considerable discrepancies in the management of separation of children from their parents in immigration contexts, the family courts, and the criminal justice system. The Ministry of Justice has a pivotal role in ensuring that all children are safeguarded and receive fair and equal consideration of their welfare needs, across different jurisdictions.

- **Independent welfare evidence:** Independent expert assessment of children and families is essential in ascertaining children's best interests and making good quality parental deportation decisions. Deportation decisions potentially affecting UK children should automatically trigger full and independent assessment of each child's welfare, wishes and feelings; at the earliest possible stage in proceedings (including before deportation in 'deport first, appeal later' cases). To retain their integrity, such assessments must be conducted by independent and qualified child experts. We recommend that this is overseen by a body independent of the Home Office. This will bring deportation proceedings affecting children in-line with other forms of family separation. Extending CAFCASS<sup>57</sup>'s existing role and expertise into deportation decisions may be the most straightforward and financially-efficient way of doing so.
- **Representation of children:** Children should have access to legal aid to support their own, separate legal representation. Children should also have the independent expectation (or rebuttable presumption) of being entitled to launch their own challenge relating to deportation decisions which adversely affect their family life. This would bring the immigration tribunal in line with other judicial processes overseeing the separation of children from their parents, such public family proceedings.
- **Extend tribunal powers:** The immigration tribunal (or if introduced, alternative judicial decision-making bodies) should be given more investigatory powers in cases of parental deportation to bring it in-line with the Family Court. If in a parental deportation appeal there is insufficient evidence of children's best-interests and their wishes and feelings, the Tribunal should be able to order the procurement of such evidence (such as a court-appointed independent social worker report) and, where necessary, through direct representation of the child.
- **Legal aid:** Parents subject to deportation should be brought within the scope of legal aid, to pay for timely and appropriate legal advice and representation. There should be a presumption in favour of granting Exceptional Case Funding for deportation cases involving children.
- **'Deport first, appeal later' policy:** Given the serious safeguarding risks involved in separating children from their parents, in 'deport first, appeal later' cases a full and independent expert assessment of each potentially affected child must be completed before deportation, as part of the HO's screening of suitability for the scheme.



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## Home Office

Our research found several serious failings and knowledge gaps regarding children affected by a parent's deportation. Our findings raise concerns that the Home Office is not meeting its duty to safeguard children and may be putting them at risk of harm. We make a number of urgent recommendations to the Home Office and call on Parliament and the Independent Chief Inspector of Borders and Immigration to provide oversight on improvements.

- **Following existing guidance:** Home Office decision makers should be better informed of and adhere to existing guidance. This includes the requirement to consider each family member separately; to treat the child's best interests as a primary consideration; to take a prospective approach to consider future impact; to ensure that parents' criminal history does not play a role in assessing the potential harm of parental deportation to children; and that deportation decision await the outcome of Family Court proceedings.
- **Clarification of evidence requirements:** The Home Office should provide families with clearer and more accessible guidance in the 'One Stop Notice' as to the forms of evidence or submissions they could provide to identify and particularise quality of family life and children's needs, views and wishes. The purpose of this should be to support parents in providing evidence, and to ensure that the Home Office has sufficient information at the earliest possible point to inform their decision-making, in line with their statutory duties.
- **Professional curiosity and accountability:** Where family life evidence is lacking, the Home Office should be required to discharge their duty<sup>58</sup> to seek out additional or alternative evidence to inform its decision making. The Home Office should be also compelled to provide a detailed response to the specific information as it relates to each family member and how this has been brought to bear on deportation decisions.
- **Data collection:** Official data should be collected, disaggregated and shared to reveal: the number of people subject to Deportation Orders each year; whether they have children in the UK; how many of those children are British citizens; how many deportees invoke family life rights and the outcomes of such claims; the number of children who leave the UK with a deported parent; and the number of children who remain in the UK without their deported parent, including the number subsequently taken into Care.
- **Identification and safeguarding notification:** The Government has committed to taking a cross-departmental approach to identifying and supporting children with a parent in prison. There needs to be a similar and complementary duty to identify and support children with a parent facing deportation, such as informing schools when a pupil's parent faces deportation proceedings.

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## Independent Chief Inspector of Borders And Immigration

Our research indicates serious safeguarding risks to children that require official scrutiny, access to data, and ongoing accountability to ensure adequate improvement.

- **Independent inspection:** We call on the ICIBI to schedule an urgent inspection of the Home Office's procedures around deportation decisions affecting children (including but not limited to 'deport first, appeal later' cases involving parents).

## Parliamentarians

In the ongoing debates and proposals for immigration and deportation reform, we urge Parliamentarians to highlight the potential impacts on children in the short, medium and longer term. In particular, debates should draw attention to the risks children face if their welfare is not fully assessed and brought to bear on decisions to remove their parents, and the knock-on impacts for communities and wider society.

- **'Public interest' and deportation:** Further analysis and debate is needed regarding the substance of 'the public interest'. We suggest it should include consideration of the societal and financial costs of separating families, and the short and long-term impacts of parental deportation on children's health, wellbeing, integration and education.

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# Annex 1: One-Stop Notice

## Deportation - One-Stop Notice

This is a notice served under section 120 of the Nationality, Immigration and Asylum Act 2002. You are liable to deportation for the reasons explained in the attached decision.

### What You Must Do Now

You must now tell us about any reason you have for wishing to remain in the United Kingdom, any grounds on which you should be permitted to remain in the United Kingdom or any grounds on which you should not be removed from or required to leave the United Kingdom.

You do not need to tell us about any reasons or grounds which you have already told us in a claim or application or in a previous response to a notice served under section 120.

If you do not tell us now about a reason or ground you currently have and you tell us later, if we refuse your claim you may not have a right of appeal against the refusal of the claim.

The Secretary of State may certify a human rights claim under section 94B of the Nationality, Immigration and Asylum Act 2002 so that any appeal can only be brought after the person has left the United Kingdom unless to do so would cause serious irreversible harm or otherwise breach human rights. In those cases, we will consider any reasons that you provide as to why you cannot be expected to appeal from outside the United Kingdom. For a person with EUSS leave, there is a right to appeal under regulation 6 of the Citizens' Rights Appeals Regulations 2020 which may be certified under those Regulations. If your reasons for staying in the United Kingdom are based on human rights, and you have any reasons why you should not be expected to appeal only after you have left the United Kingdom, you must inform us with your claim.

### What You Must Do in the Future

If your circumstances change so that you have new reasons for wishing to remain in the UK, or grounds on which you should be permitted to remain in the UK and grounds on which you should not be removed from or required to leave the UK, you must tell us about those reasons or grounds as soon as reasonably practicable.

You must continue to tell us about any new reasons or grounds as soon as reasonably practicable after they arise. You do not need to tell us about any reasons or grounds which you have already told us in your claim or application or in a previous response to a notice served under section 120.

## If You Think There Are Reasons Why You Should Not Be Deported

If you think you have a reason why you should not be deported, you must tell us, in writing, at the following address. Your reasons should reach us within 20 days of the date of service shown at the end of the attached decision.

**FNO Returns Command, Home Office, Lunar House,  
40 Wellesley Road, Croydon, CR9 2BY**

The Home Office will give more weight to claims substantiated by documentary evidence from official sources to support your reasons and therefore it is in your interest to provide any evidence you have or can obtain.

If you cannot provide such evidence you must explain why. This is so that we can consider the credibility of any claims you submit and make a decision about whether you are entitled to remain in the United Kingdom. Less weight will normally be given to claims which are not supported by documentary evidence. If you do not reply, the Home Office will make a deportation order against you. There will be no right of appeal against the deportation order, and you will be deported from the United Kingdom.

## Statement of Reasons

The table below gives examples of reasons why you might think you should not be deported from the United Kingdom and examples of evidence that you might want to submit to substantiate your claim(s). This is not an exhaustive list and you must tell us of any reasons you wish to be considered and send in any evidence which you think supports your case. If you raise issues that do not apply to you this may damage your credibility and significantly weaken your claim. You must ensure that you provide correct information about your identity, including but not limited to your full name, nationality and date of birth. Failure to provide correct and complete personal details without good reason may affect your claim to remain in the United Kingdom and any applications you make in the future.

Example reason why you should not be deported	Example of original documentary evidence which may assist in considering your claim
You are a British citizen.	<ul style="list-style-type: none"><li>• UK passport</li><li>• Birth certificate</li><li>• Parents' birth certificates</li></ul>
You have reasons to fear for your life or safety if you were to return to the country to which it is proposed to deport you.	<ul style="list-style-type: none"><li>• Detailed witness statement explaining why you cannot go to the country to which you are proposed to be deported.</li><li>• Any evidence that you and your family have which supports your claim that you cannot go to the country to which you are proposed to be deported.</li><li>• Evidence from a National Health Service consultant that you have been diagnosed with a serious medical condition, including the date of diagnosis, details of the medical care/treatment you are receiving and your prognosis.</li></ul>



<p>Do you think you should be allowed to remain because of your private life or family life in the United Kingdom, for example:</p> <ul style="list-style-type: none"> <li>• You have a genuine and subsisting parental relationship with one or more child under the age of 18 who unduly harsh.</li> <li>• You have a genuine and subsisting relationship with a partner who is a British citizen or who has indefinite leave to enter or remain in the United Kingdom and the effect of your deportation on your partner would be unduly harsh.</li> <li>• You have been lawfully resident in the United Kingdom for most of your life, you are socially and culturally integrated in the United Kingdom and there would be very significant obstacles preventing you from integrating into the country to which you are proposed to be deported.</li> <li>• There are very compelling circumstances such that you should not be deported.</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence of your family members' names, dates of birth, nationalities and immigration status in the UK e.g. passports.</li> <li>• Evidence of your relationship with family members e.g. birth/marriage certificates.</li> <li>• Evidence of your family members' addresses e.g. utility or council tax bills.</li> <li>• Documents from official sources to evidence your length of residence in the UK. You should provide at least one document for each 12 month period and your current/expired passports to show continuous residence.</li> <li>• Any evidence you have to show that you are socially and culturally integrated in the UK and that there would be very significant obstacles preventing you from integrating into the country to which you are to be deported.</li> <li>• Details of any social services involvement with your family.</li> </ul>
<p>If you make a protection and/or human rights claim and the Home Office decides to refuse that claim, there are certain circumstances in which the Home Office can certify the claim so that there is no right of appeal or so that you are deported before your appeal is heard.</p> <p>The Home Office will normally certify a human rights claim under section 94B of the Nationality, Immigration and Asylum Act 2002 unless there is a real risk of serious irreversible harm or other breach of human rights to you or any other person as a consequence of requiring your appeal to be brought from outside the United Kingdom. If there are any reasons why you should not be expected to bring or continue an appeal from outside the United Kingdom in the event that your claim is refused, you should tell us now.</p>	<ul style="list-style-type: none"> <li>• Any evidence that an out-ofcountry appeal would cause serious irreversible (i.e. permanent or very long-lasting) harm or other breach of human rights to you or any other person.</li> <li>• Any evidence that you would not be able to conduct an appeal from outside the UK</li> </ul>

It is your responsibility to set out fully everything that you want the Home Office to consider, even if it is not included in the above list. You will not be given a further opportunity to tell us why you should not be deported. The examples of evidence given above are not an exhaustive list and even if you do rely on one of the example reasons and provide the suggested evidence there is no guarantee that your claim will be successful.

# Appendix 2: Evaluation Template (Pro Forma for case file analysis)

## Checklist of Key Documents:

Source	Present (Yes/No)	Details / Comments
Social Worker		
GP / Healthcare		
School (e.g. reports, letter from teacher)		
Nursery		
Extracurricular		
Children's Services		
Child(ren)		
Parent(s)		
Friends / extended family		
Home Office		
Asylum & Immigration Tribunal		
Family Courts		
Criminal Courts / OASIS		
Police		
Other		
Financial documents		
Housing documents		

## Background Information

<b>File number</b>	
Nationality of deportee / proposed country of deportation?	
Gender of deportee	
Criminal offence / conviction	
Length of criminal sentence	
Number of children of deportee	
Number of stepchildren of deportee	
Age of the children	
Nationality of the children	
Nationality of other parent(s)	
Relationship status of parents (separated or together?)	
Living arrangements	
Any other relevant information about family composition	
Final outcome? (eg deportation, leave to remain, in-progress)	

# Questions For Analysing Case Files (repeat for each child)

Questions for case files	Where should we look in the legal bundle to answer this question?
<b>Children's views/voice   UNCRC Article 12: the right to be heard</b>	
<ul style="list-style-type: none"> <li>Is the child's view apparent? If so in which document/s</li> <li>Did the Home Office speak to the child? If so how was this recorded?</li> <li>Did the Home Office seek the child's views indirectly (for example through their teacher?)</li> <li>Did the solicitor seek to ensure the child's views were heard? If so, how did they do so? Did they take a statement from the child? If so how detailed is it? Did they ask parents or other adults to provide information about the views of the child? Did they call the child to give evidence in the hearing? Did they instruct an expert? Did they include drawings or other forms of communication?</li> <li>How did the social worker include the child's views?</li> <li>How were the child's view considered in legal proceedings at court/Tribunal? (eg judge's comments, witnesses, experts)</li> </ul>	
<b>Children's needs (over time)   UNCRC Article 6: the right to development</b>	
<ul style="list-style-type: none"> <li>Was any evidence put forward about the child's past experiences of adversity? If so, source of information and level of detail included?</li> <li>If the child had past experiences of adversity were these considered by the HO? If they were considered, was this individualised/detailed or in standard paragraphs?</li> <li>Did the Home Office consider the child's future outcomes?</li> <li>Did the Home Office consider the lived reality of separation/deportation? (e.g. communication, visits, lack of regular in person contact with a parent for a period of at least 10 years? Did this consideration take account of the age of the child and any personal characteristics which would be relevant, or standard paragraphs?)</li> <li>Were Home Office statements about the child's future evidence-based? (individualised or standard paragraphs?)</li> <li>Was the impact of delay in immigration decision making on the child considered by the Home Office?</li> <li>Did the social work report consider the child's future outcomes? If so in what aspects e.g. education, employment, future relationships, likelihood of offending behaviour, etc?</li> <li>Were the social worker statements about the child's future evidence-based? Did the report include sources of evidence eg research?</li> <li>Was the impact of delay in immigration decision making considered by the social worker?</li> </ul>	
<b>Children's needs (a holistic view)   UNCRC Article 3: In children's best interests</b>	
<ul style="list-style-type: none"> <li>Did the Home Office carry-out its own enquiries and assessment of the child's rights and needs?</li> <li>Did the Home Office make statements about the child that were unique to that child, or did they deploy generic statements?</li> <li>To what extent were housing needs assessed and considered?</li> <li>Was family income and employment prospects considered?</li> <li>To what extent did NRPF condition impact the child?</li> <li>Physical health needs? How were they evidenced?</li> <li>Mental health needs? How were they evidenced?</li> <li>Education needs? How were they evidenced?</li> <li>Development needs? How were they evidenced?</li> <li>What is missing?</li> </ul>	

## Non-discrimination | UNCRC Article 2: Non-discrimination

- How was the law from other legal arenas applicable to the case files? (e.g. any overlap with family law or criminal law (including probation requirements)
- How were equal opportunities/protected characteristics considered by the Home Office?
- How were equal opportunities/protected characteristics considered in the applicant's bundle / evidenced?
- Did the solicitor put forward argument based on equal opportunities / protected characteristics?
- How were equal opportunities/protected characteristics considered in legal proceedings by the judge?

## Children's right to private & family life | ECHR Article 8: The right to a family and private life

- Parental relationship: Parents together or apart? What strain does the deportation order put on parental relationship?
- Factors specific to deportation of mothers/fathers?
- Factors specific to single parents?
- Impact on sibling relationships?
- The role of wider family networks?
- In the event of deportation how does the Home Office consider the child's ongoing contact with their deported parent? Does the Home Office offer support to maintain contact? (In-person, internet, phone)
- Does HO consider post-deportation family reunification needs? (e.g. after revocation of deportation order)
- Does HO suggest whole family relocates overseas? Is impact on child considered?
- If HO assumes child will remain in UK and be separated from the deported parent, how is the child's quality of care in UK considered?
- If it is assumed the child will remain in the UK and be separated from the deported parent, how is the child's experience of loss considered?

## Harm to children / Safeguarding

- Is there evidence of existing safeguarding concerns? If so, how are these raised / evidenced?
- Is there evidence that if deportation goes ahead, safeguarding concerns will emerge (e.g. remaining parent unable to cope / child's mental health will break down etc)
- How does the Home Office handle safeguarding concerns?
- Were there child protection concerns (physical, emotional, sexual abuse, neglect, CCE/CSE, trafficking/modern slavery)?
- Involvement of Children's Services?
- Involvement of Family Courts?
- What arguments are made by the parent's solicitor about unduly harsh test?
- What factors appear to be the 'extra' factors that tip the balance and make the 'unduly harsh' argument?
- How does the Home Office decide the 'unduly harsh' test? What factors does the Home Office take into account? What does it decide?
- If the case is appealed, what factors does the Judge take into account and what is the decision on 'unduly harsh'? If the appeal is allowed, what factors appear persuasive?



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# Endnotes

1. Section 32(5) of the UK Borders Act 2007
2. In 2022 3,064 FNOs were deported from the UK; in 2023 the figure was 4,038; in 2024 it was 5,097; the figures looks to be higher still for 2025. See Home Office [\*Returns Summary Tables\*](#)
3. le 10,300 foreign nationals in prison in England and Wales; and approximately 11,000 FNOs living in the community subject to deportation action. See further *In brief: Deportation and early removal of foreign national offenders*, House of Commons Library, 2 February 2024
4. Office for National Statistics: Families and Households in the UK 2024, <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2024>
5. See in particular Bail for Immigration Detainees, 2021; Griffiths and Morgan-Glending, 2021, University of Birmingham; and Families for Justice, 2022.
6. The Nationality and Borders Act (NABA) 2022 has significantly amended the Immigration Act 1971, increasing the maximum penalty for many immigration offences, including Facilitation offences (section 25 and 25A) raising it from 14 years to life imprisonment, amending the offences of breach of a deportation order (section 24(A1)) and knowingly enters the UK without leave (section 24(B1)), increasing the statutory maximum sentences from 6 months to 5 years and 4 years respectively. In the first year since NABA came into force, 240 people were charged with 'illegal arrival' (Taylor, 2024). NABA also created the new immigration offence of knowingly arriving in the UK without valid entry clearance (section 24(D1)) which was given a maximum sentence of 4 years.
7. White Paper: *Restoring Control over the Immigration System*, May 2025
8. Children and Family Court Advisory and Support Service (Cafcass) is an independent body that represents the interests of young people in family court cases in England. It supports over 140,000 children every year
9. s.32(5) UK Borders Act 2007
10. A One-Stop Notice or statement of additional grounds is issued under s.120 of the Nationality, Immigration and Asylum Act 2002 to those who are subject to a decision to deport or remove from the UK. This requires the Applicant to provide a statement setting out additional grounds for entering or remaining in the UK, outside the scope of their initial application.
11. A 2023 Independent Inspectorate report indicates that approximately one third of deportation cases are dropped after the individual responds to a One Stop Notice. It is unclear why this is the case but, having consulted with legal experts, it is believed that such cases are dropped on grounds *other* than the Home Office accepting the family-related evidence (e.g. where removal would be a breach of the Refugee Convention or Article 3 ECHR).
12. [\*General Guideline: Overarching Principles\*](#) (Sentencing Council, 2019)
13. Although there is no maximum length of time a person can be held in immigration detention in the UK, their detention must be 'reasonable' in length. Known as the Hardial Singh principles, this and other legal limits to the Home Office's use of detention powers originally arose from the case of *R (Hardial Singh) v Governor of Durham Prison* [1983] EWHC 1 (QB), and have since been repeatedly approved by the House of Lords and Supreme Court.
14. Immigration Rules paragraph A362
15. The immigration Rules now indicate that anyone who has been convicted of an offence leading to 12 months or more imprisonment 'must' be refused re-entry to the UK. Whilst that suggests a permanent ban on re-entry, it is still open for an individual to request that the Deportation Order be revoked and that they be allowed re-entry.
16. Immigration Act 1971, Section 3(5)(b)
17. [\*See 9.4.1 of the Immigration Rules\*](#)
18. The 'go' scenario
19. Immigration Rules paragraph 399(a); and section 117C(5) of the Nationality Immigration and Asylum Act 2002 (the 'stay' scenario)

20. Borders, Citizenship and Immigration Act 2009, section 55(1) *ZH Tanzania* ([2011] UKSC 4); *JO and Others* (section 55 duty) Nigeria [2014] UKUT 00517 (IAC). <https://www.legislation.gov.uk/ukpga/2009/11/section/55>
21. On 18 November 2008 the UK withdrew one of its two reservations to the UN Convention on the Rights of the Child, including the following: "The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time." This led to section 55 of the BCIA 2009 being enacted.
22. *UN Committee on the Rights of the Child, General Comment 14* (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), paragraph 71
23. See in particular General Comment No. 14 of the UN Committee on the Rights of the Child (2013), paragraphs 74 and 84.
24. *Home Office Guidance on Criminality, 2024; Every Child Matters – Change for Children, 2009*.
25. see *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22 (20 July 2022), para 44, Lord Hamblen)
26. See eg. *PRCBC and others v SSHD* [2019] EWHC 3536 (admin) [paras 82-83].
27. The UK ratified and has been legally bound by the UNCRC since 1991. All domestic law and procedure relating to the rights of children should be interpreted and applied in conformity with the obligations set out in this instrument.
28. *SC v Sec of State for Work and Pensions* [2021] UKSC 26
29. For example, *R (on the application of AM) v SSHD* [2017] UKUT 262; *Mathieson v SSWP* [2015] UKSC 47 at [39]; and *R (SG and Others) v SSWP* [2015] UKSC 16, [105] and [152].
30. GC14, para 6(c). Cited also by the Supreme Court in *SG* [106] and *Mathieson* [39], above note.
31. For further detail of procedural requirements/factors to take into consideration see also paras 48-84 GC14.
32. In a family justice context, for instance, the courts have acknowledged that 'Society must be willing to tolerate very diverse standards of parenting...One never ceases to be surprised at the extent of complication and difficulty that human beings manage to introduce into family life.' *Re L (Care: Threshold Criteria)* (Family Division 26 October 2006), Mr Justice Hedley. As such, the state can only separate a child from the parents if the child is beyond their control, if the parents have caused the child significant harm, or if there is a serious risk they will cause the child significant harm in the future. See further Children Act 1989 s.31(2). Lady Hale echoed this in *Re B (Children)* [2008] UKHL 35: noting 'Taking a child away from her family is a momentous step, not only for her, but for her whole family... Families in all their subversive variety are the breeding ground of diversity and individuality. In a free and democratic society we value diversity and individuality. Hence the family is given special protection in all the modern human rights instruments including the European Convention on Human Rights (art 8), the International Covenant on Civil and Political Rights (art 23) and throughout the United Nations Convention on the Rights of the Child. As Justice McReynolds famously said in *Pierce v Society of Sisters* 268 US 510 (1925), at 535, "The child is not the mere creature of the State"'
33. There is a well-established body of research of the impact of deportation on families and a less developed, albeit compelling body of empirical research in the UK, including: Griffiths and Morgan-Glending 2024; Families for Justice, 2022; Bail for Immigration Detainees, 2021; Bail for Immigration Detainees, 2020; Griffiths and Morgan-Glending, 2021.
34. s.10, LASPO 2012
35. Ref Gudanaviciene
36. Baroness Hale in *Makhoul v SSHD* [2016] UKSC [at paras 41-42]
37. *HA (Iraq) (Respondent) v. SSHD* [2022] UKSC 22, paras. 37–38
38. GC12, paras 16; 51; 124
39. e.g. The Children Act 1989 (ss.1(3)(a), 17, 20 and 47); the Children and Social Work Act 2017 (s.1(c)).
40. e.g. *Every Child Matters 2009*;
41. e.g. *ZH Tanzania* ([2011] UKSC 4), paragraphs 34–37

42. s.7 and s.37, Children Act 1989
43. The social workers in our sample were all registered with Social Work England. However, the devolved nations have their own professional registration body.
44. E.g. the Children's Act 1989 (s.1(3)); Common Assessment Framework 2000; see also more recently, *Working Together to Safeguard Children 2023, December 2023*, although this postdates our sample of cases.
45. The Children Act 1989, section 1(3).
46. However we heard anecdotal evidence that exceptionally the Home Office will request an independent social work report for a parent abroad to try and prevent their return to the UK.
47. Courts and Tribunals Judiciary 2018). See also TC (*PS compliance, "issues-based" reasoning*) [2023] UKUT 00164 and *Lata (FtT: principal controversial issues)* [2023] UKUT 00163.
48. The most that a parent appealing deportation can do is to ask the tribunal judge to review the decision of legal officers to exclude evidence relevant to a child's welfare assessment and to issue directions to the Home Office for disclosure of specific documents that might inform deliberations as to whether the unduly harsh threshold has been reached. The Home Office has a legal duty to respond to such directions with candour and to present the requested evidence if available. See further, *Miah (interviewer's comments: disclosure: fairness* [2014] UKUT 515 and *the respondent has a duty to serve relevant material on the Tribunal: AA (Afghanistan) v. SSHD* [2007] EWCA Civ 12 and *UB (Sri Lanka)* [2017] EWCA Civ 85).
49. UN Convention on the Rights of the Child, General Comment 14, paragraph 71
50. *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176, later upheld by the Supreme Court [2022] UKSC 22 (20 July 2022). per Peter Jackson LJ, para 154
51. *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53, per Lord Carnwath, paras 22 and 23. Note that the parent's offence is considered relevant in cases involving the higher threshold of 'Very Compelling Circumstances' relevant to those who are being deported following a conviction of a more serious offence for which they have been sentenced to 4 years or more.
52. Protocol on communications, 2013; *RS (India)* UKUT 218 IAC; and, more recently, *CJ (family proceedings and deportation) South Africa* [2022] UKUT 00336).
53. *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176, paras 151-163.
54. Criminality: Article 8 ECHR cases (pp.24-25) (Lasted updated 9 May 2024, version 9.0)
55. Griffiths and Morgan-Glending, 2024; Griffiths et al, 2024; Iyer et al. 2020; Families for Justice, 2022.
56. It is important to note that the reintroduction of the 'deport first, appeal later' regime will require that the impact of 'interim deportation' on a child be quantified, assuming that if the out of country appeal is successful the parent will be returned. See further *OO(Nigeria) v SSHD* [2017] EWCA Civ.
57. Children and Family Court Advisory and Support Service (Cafcass) is an independent body that represents the interests of young people in family court cases in England. It supports over 140,000 children every year.
58. Under the Human Rights Act 1998 as a public authority and under section 55 BCIA 2009

Thousands of children are affected every year by the deportation of their parents, and yet little is known about the extent to which their welfare is considered and safeguarded the process. Drawing on real-life deportation cases, this report presents the findings of the first in-depth study to address this gap. It shines a light on the routine and widespread failure to bring children's welfare to bear on deportation decisions, and the profoundly damaging impacts of this for children's wellbeing and outcomes.

