



# UKBA CODE OF PRACTICE FOR KEEPING CHILDREN SAFE FROM HARM CONSULTATION RESPONSES

DECEMBER 2008



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## Introduction and contact details

This document is the post-consultation report for the consultation paper, the Border and Immigration Agency Code of Practice for Keeping Children Safe from Harm, published on 31 January 2008.

### It covers

- The background to the report
- An executive summary of the responses to the report
- A detailed response to the specific questions raised in the report

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# Executive Summary

1. The consultation on 'Code of Practice for Keeping Children Safe from Harm' sought a range of views on improving the way that children are handled within and by the immigration system. It asked respondents to feedback on the draft Code of Practice which covers future practice and procedure for the UKBA.

2. In total, 381<sup>1</sup> consultation responses were received during the consultation period (31<sup>st</sup> of January 2008 to the 25<sup>th</sup> of April 2008). Of these, 343 were able to be identified as either an individual or person responding in a professional capacity or an organisation. One hundred and seventy seven responses came from individual members of the public, 144 from organisations and 22 from persons responding in a professional capacity.

3. 81 of the respondents identified themselves as working within UKBA. Of the 81 respondents, 57 indicated that they were replying on behalf of an organisation; 6 were responding in a professional capacity; 3 as members of the general public; and 15 did not provide this information.

## Key Findings

### Section 3.1 to 3.3 of the draft Code

4. A majority of 182 respondents agreed that UKBA staff should record and explain reasons in writing if they depart from the Code or any instruction issued in support of the Code. A small minority of 6 disagreed with 3 "don't knows". 131 respondents commented on their answer. 48 suggested that recording should follow an approved format, for example using a case diary or a specific pro-forma. 49 thought that departures should be seen and approved by a senior manager and 29 felt that the recording of departures could lead to future amendments to the Code.

5. 132 respondents gave a view on who should review recorded departures from the Code. An external body with expertise in children's issues was supported by 50 respondents and the Assistant Director responsible for children's issues by 42. 142 respondents commented on this issue. 48 stressed that reviews should be external and independent and 30 thought that reviewers should have experience in both children's issues and immigration.

6. A majority of 173 respondents agreed that a child's parents should have primary responsibility for communicating with a child about the immigration process. 19 Respondents disagreed and 7 did not know.

7. Half of 175 respondents (87) said that it would be appropriate in 'some circumstances' for UKBA staff to give an explanation of the immigration process to a child. 34 thought it would be appropriate in most circumstances and 25 could envisage only a 'few circumstances' when this would be appropriate. 236 separate comments were made by the 156 respondents who

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1. The total number of responses received was 381. It must be noted that not every respondent answered or made comment upon every question. Therefore, when this analysis refers to the view of "a majority" with regard to any particular question, this will be the majority of responses to this particular question which may have been considerably less than to overall total of 381.

commented on this issue. 42 felt that appropriateness would depend on the child's age, level of maturity or level of education. 29 could only envisage this happening when a child's parents were also involved in the process and 27 thought it may be appropriate when parents are uncooperative or disruptive.

8. 164 respondents commented on how UKBA should deal with a situation where the explanation offered by staff may differ from that provided by parents. 28 wanted parents consulted first, so as not to undermine their role. 25 suggested an external mediator or agency to provide advice in this situation. 19 thought that both parents and children should be involved throughout the process to minimise the risk of this situation occurring.

9. 98 out of 174 respondents supported creating a dedicated complaints system for children. 59 did not support this proposal and 17 did not know if a system should be created. 130 respondents commented on the creating of a dedicated complaints system. 47 respondents stressed the importance of a child being able to access independent advocacy and support, the need for trained advisors and the option to complain through an adult. 45 respondents felt that existing routes could be used or adapted for complaints from children. 33 respondents sought a system that was 'child friendly' and appropriate to a child's age, resources and cultural attitudes.

10. The vast majority of respondents (varying between 177 and 181) agreed that operating instructions should be drawn up for situations involving interviewing children; children during enforcement activities, detention activities and escorting activities; children and contractor-led or other commissioned services and special groups such as missing or trafficked children. 70 respondents commented on their answer. 14 respondents wanted operating instructions drawn up for all suggested groups and 13 respondents suggested operating instructions were needed if a child is separated from their family or unaccompanied.

11. 53 respondents commented further on Section 3.1 to 3.3 of the Code. 18 were concerned that a child's welfare is maintained and no further stress is caused to them during the process. 9 respondents stressed that all staff dealing with children should have CRB checks. 14 respondents raised issues on the detailed terminology and principles in the code and 15 suggested there was a need for training and professional guidance for all those taking part in the process.

### **Section 3.4 to 3.6 of the draft Code**

12. 151 respondents gave a view on the number of options available at the time of refusal of residence. 54 thought there were too many options but 46 thought there were the appropriate number of alternatives and 22 that there were too few alternatives. 105 respondents commented on their answer. 35 respondents stressed the need for family considerations to be taken into account and the need for adequate pastoral care throughout the process. 9 respondents stated their opposition to any detention of children.

13. A majority of 163 respondents (138) agreed that families facing removal could benefit from information and counselling on conditions and prospects in their own country. 18 disagreed and 7 did not know .

14. 117 out of 166 respondents agreed that detaining families as an alternative to separating children and parents should remain the preferred approach. 37 disagreed with the retention of this approach and 12 did not know.

15. 141 respondents commented on circumstances in which it might be appropriate to split up families so that not all members are detained. 49 thought that this should only be done in

extreme circumstances when there was no other viable option. 46 thought it would be appropriate if there were signs of abuse or staying with family put a child at risk. 26 respondents stated their opposition to the detention of children.

16. 105 out of 167 respondents said that there should be a written statement relating to the consideration of the effect of the removal of a child when a child is removed from the UK as part of a family. 54 did not think this was required and 8 did not know. 82 respondents who supported this proposal made comments with 30 raising concerns about who would do the assessment and write the statement. It was felt this needed to be somebody with relevant experience, training and expertise in child care and protection. 19 respondents suggested factors to be considered in producing the statements. 33 respondents who did not support the proposal commented. 19 felt that what was proposed is already covered within existing procedures and seven respondents were concerned that UKBA staff were not qualified to undertake this task.

17. Opinions were divided among the 154 respondents who gave a view on whether UKBA should simplify its approach to one of granting residence to the child (if a care order is made) with 69 agreeing but 53 disagreeing and a notable proportion, (32) saying they did not know. 94 respondents commented on their response. 22 of those who agreed felt the interests of the child were paramount and that they should not be discriminated against due to their parent's immigration status. 17 respondents agreed with the proposal but wanted to see a more 'joined up' approach between immigration services and the Family Court. 18 respondents who disagreed with the proposal feared that it would lead to abuse of the system with families using children to gain immigration status.

18. 46 respondents provided further comments on section 3.4 to 3.6 of the Code. 13 raised concerns about working with local authorities to monitor private fostering arrangements and 11 raised general concerns about the detention of children.

### **Section 3.7 to 3.9 of the draft Code**

19. A majority of the 176 to 179 respondents who gave a view on areas the Chief Inspector of UKBA should inspect, supported all of the inspections suggested. There was greatest support, (176 responses), for the health and well being of a child throughout detention, 173 about transport of children from one immigration centre to another and 165 for reasons given for detaining families with children. There was a little less support, (155 responses), for the inspection of the nature and quality of recorded information about detention that is publicly available and the way that reasons given for detaining families with children contributes to the outcome of the immigration process had 153. 48 respondents suggested further areas for inspection. 10 wanted to add transportation and arrival at ports, 7 the length of detention and 6 the relationships between all those dealing with children should be inspected.

20. 50 respondents made further comments on section 3.7 to 3.9 of the draft Code. 24 respondents highlighted the need for staff involved in this process to have relevant and on-going training. 10 respondents wanted attention paid to the recruitment of employees and their suitability, including CRB checks and seven respondents suggested multi-agency training to increase understanding.

21. 54 respondents provided further comments on the Code overall. 17 sought greater clarity and information on responsibilities and the implementation of the Code. 16 respondents commented on a child's care and treatment whilst in the immigration process and 9 commended UKBA on the production of the Code.

22. A majority of 257 out of the 355 respondents who answered, supported the UK withdrawing its immigration reservation to the UN Convention on the Rights of the Child. Supporters included 178 respondents who only answered this question. 70 said the reservation should stay and 20 did not know. 257 commented on their support for the removal of the reservation with 218 saying the reservation was incompatible with the Convention. 183 felt the reservation was discriminatory to children and 179 believed that the reservation was not required for effective immigration control. 42 respondents commented on their wish to retain the reservation with 20 saying the current system meets the needs of children and provides sufficient appeal grounds. 15 felt that withdrawal of the reservation would lead to increased appeals and judicial reviews and delays in removing asylum seekers.

23. For nearly all of the questions the responses reflected a difference between respondents who were 'internal' (UKBA staff, coded as Central Government in the analysis) and respondents who were 'external' or 'unknown'. These differences were too great to be due to chance variation.

# 1. Introduction and Methodology

24. The consultation on the UK Border Agency's (UKBA<sup>2</sup>) 'Code of Practice for Keeping Children Safe from Harm' sought a range of views on improving the way that children are treated within and by the immigration system. It asked respondents to feedback on the draft Code of Practice which sets out the procedures UKBA staff are expected to following when dealing with children.

25. The consultation period ran from the 31<sup>st</sup> of January 2008 to the 25<sup>th</sup> of April 2008. A total of 381 consultation responses were received during this time.

26. This consultation was undertaken in accordance with the Better Regulation Executive (BRE, 2004) Code of Practice on Consultation<sup>3</sup>.

27. The consultation document and questionnaire were made available on both the UK Border Agency and Home Office websites. Respondents could return either hardcopy or electronic responses.

28. The analysis in this report is based on 381 responses to the consultation on 'Code of Practice for Keeping Children Safe from Harm'. One hundred and sixty two were received as completed questionnaires and 219 as free form emails or letters. Twenty five responses were received electronically and the remainder in hard copy format. Consultation events were held around the country and 99 responses came from those who attended one of these events. This includes an event organised by Refugee Voice Wales from which eight responses were received.

29. The responses submitted as free-form emails were, wherever possible, integrated and analysed with the relevant questionnaire responses. Where appropriate, these responses were also allocated a response to the closed questions according to whether the comments appeared to be agreeing or disagreeing with the proposal. If the free text did not provide a clear 'yes' or 'no' answer to the closed question then, depending on the question type, the response was attributed to 'Don't know' or not included in the analysis of the closed question.

30. Quality assurance processes were incorporated into each stage of the analysis. Independent checks were carried out to ensure free-form responses were correctly allocated to the relevant questions. To analyse the qualitative responses, lists of emerging themes were produced on a sample of responses. These were then discussed and refined by the analytical team before being consolidated into the final themes.

31. The number of responses varied between consultation questions, with a minimum of 132 respondents. In terms of the open questions, respondents may have made comments pertinent under more than one theme from a particular question. One hundred and seventy eight respondents only answered question 16. Of these 178, 167 gave the same comment as a reason for their response<sup>4</sup>. A further five respondents who also only answered question 16 gave an identical comment<sup>5</sup>.

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<sup>2</sup> The Border and Immigration Agency (BIA) became the UK Border Agency (UKBA) in April 2008. In this report all references to BIA have been changed to UKBA, including in quotes.

<sup>3</sup> BRE (2005) Code of Practice on Consultation. Cabinet Office. Available at: <http://www.berr.gov.uk/files/file44364.pdf>

<sup>4</sup> Of the 167 responses, 71 were received from ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes) supporters and 96 were from members of the general public who had found out about the consultation through an NGO.

<sup>5</sup> The further five responses did not specify a connection to any specific organisation.

32. Respondents to the consultation were classified as either 'internal' (UKBA staff), 'external' (not employed by the UKBA) or 'unclassified' (insufficient information provided). Overall, 21 per cent (81 respondents) were 'internal'; 48 per cent (182 respondents) were 'external'; and 31 per cent (118 respondents) did not provide this information. Closed questions throughout the report have been analysed and reported on showing this breakdown.

33. Respondents were also asked to identify whether they were replying on behalf of an organisation (and if so what type of organisation), in a professional capacity or as individuals<sup>6</sup>. Where there are variations in responses between individuals and organisations, these are identified in the report.

34. Please note that the findings are based on the responses of a self-selected group and not a random sample. Therefore the findings cannot be considered representative of the general population. As would be expected for a public consultation of this sort, it serves to show the range of perspectives that exist to inform policy.

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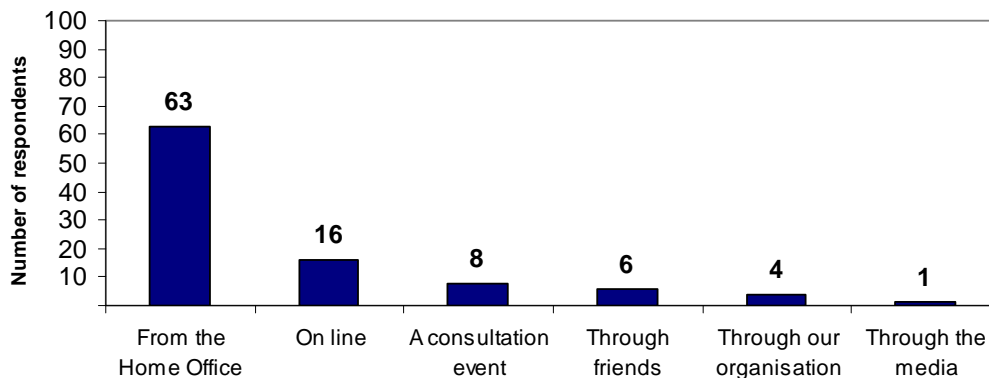
<sup>6</sup> Where this question was not answered, the information could often be deduced from other information provided. If not, these cases were entered as 'unclassified'.

## 2. Respondent Profile

35. Three hundred and eighty one responses were received to the consultation.

36. Ninety eight respondents stated how they had found out about the consultation (Figure 1). Sixty three respondents found out through the Home Office and 16 found out on-line. Eight respondents said they found out through a consultation event, six via friends and four from their own organisation. One respondent found out from the media.

**Figure 1.** How respondents heard about consultation

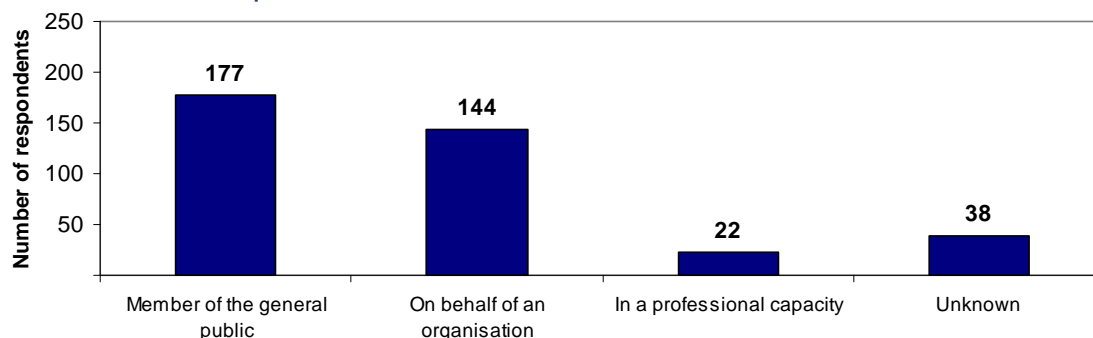


Response base: 98

37. Ninety nine responses came from people who attended consultation events. These were held in Northern Ireland (22 responses), the North West (22), Scotland (19), Leeds (11), London (8), the South West (3) and Birmingham (3). Eight responses came from an event organised by Refugee Voice Wales and three came from events held in Glasgow, Port Talbot and Tyne and Wear.

38. One hundred and seventy seven responses came from members of the public, 144 from organisations and 22 from those responding in a professional capacity. It was not possible to identify the status of 38 respondents. This breakdown is shown in Figure 3.

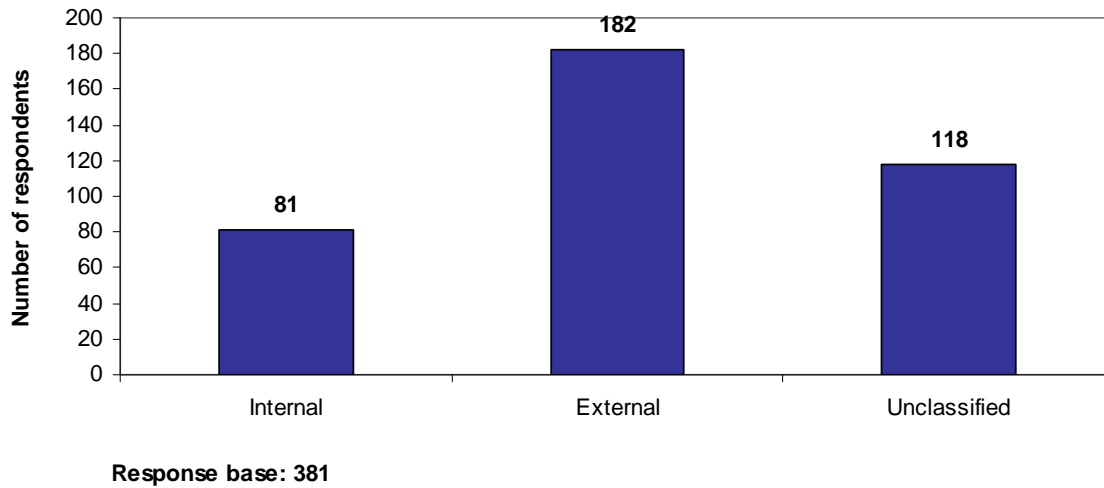
**Figure 2.** Status of respondent



Response base: 381

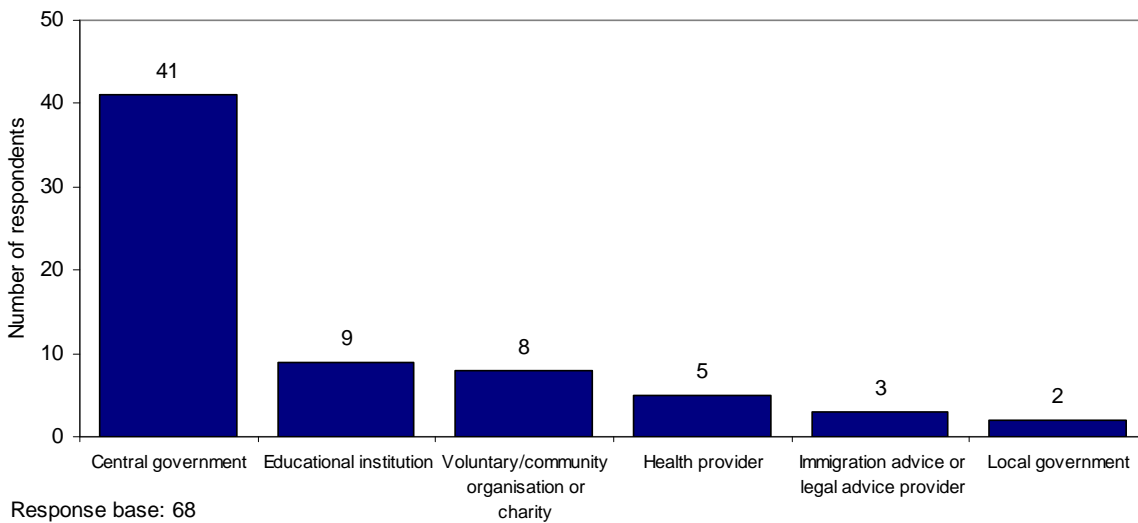
39. Over one fifth (21 per cent, 81 respondents) of respondents were employees of UKBA (classified as 'internal'). Forty eight per cent (182 respondents) indicated that they did not work for UKBA ('external') and 118 respondents (31 per cent) did not provide information on organisation type ('unclassified').

**Figure 3.** Internal and external respondent breakdown



40. Sixty eight organisations provided details of their organisation type. Forty one respondents were from central government, nine from educational institutions and eight from voluntary/community organisations or charities. Figure 4 shows the responses by organisation type.

**Figure 4.** Organisation type<sup>7</sup>



<sup>7</sup> These classifications were used throughout the report to indicate the type of respondent a quote was from. Quotes from those who did not respond to this are classified as 'Anon.' Those who stated they were an organisation, but did not specify the type, are classed as 'organisation'.

# 3 Questionnaire Results

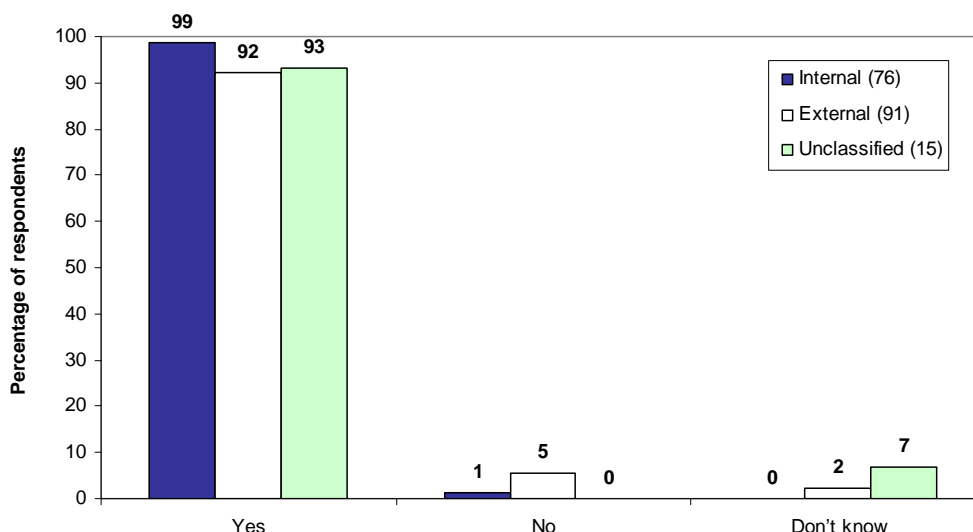
Section 3.1 to 3.3 of draft Code

**Question 1.1** It is proposed that there should be a requirement for UKBA staff members to record and explain their reasons in writing if they have departed from the Code or from any instruction issued in support of the Code (section 3.1.4). Do you think this proposed requirement should be introduced?

41. Of the 182 respondents who answered this question 95 per cent (173 respondents) agreed that the proposed requirement to record and explain departures from the Code should be introduced, three per cent of respondents (6) disagreed, and two per cent (3) did not know if this requirement should be introduced.

42. There was no statistically significant difference between the responses from internal and external respondents with strong support for the requirement from all groups of respondents. Views on this proposal are shown in Figure 6.

**Figure 6.** Should the requirement be introduced?



**Question 1.2** What other suggestions do you have for the process that UKBA staff should follow if they depart from the Code?

43. One hundred and thirty one respondents commented on the process that UKBA staff should follow if they depart from the Code, concentrating mainly on how they thought this should be processed, who should be involved, the need for clear guidance to staff and the monitoring of these records.

44. Forty-nine respondents reiterated their support for this suggestion in the Code. Forty-eight emphasised that UKBA staff should **record and explain their actions and reasons in writing** following an approved format, whether this be to note it in the case diary or through a separate, specific pro-forma. Eleven of these make specific reference to the information being recorded on CID or in the case file.

*"We welcome the commitment that UKBA staff will be expected to follow the Code (3.1.4)"*  
*(voluntary/community organisation or charity)*

*“This would be best practice in any situation where you had to operate outside of the guidelines/code of practice you should justify/explain your thinking.” (Individual respondent)*

45. Forty-nine respondents specified the need for any departures from the code to be **seen and approved by a senior manager**. Sixteen specified that this should be prior to any action rather than after the event.

*“Counter signature by line manager to ensure that decisions are ratified.” (Local Government)*

*“Process in place for a second pair of eyes to look at the proposed breach by such as AD. It would concern me if the AD is only reviewing breaches as it is too late for that particular child by then.” (Professional capacity)*

46. A further seven respondents recommended that there be **external review** of any departures from the Code to show these decisions are open for independent monitoring and scrutiny.

47. Twenty-nine respondents felt that departures from the Code should be **monitored** to ensure accountability and to allow trends to be identified which may lead to necessary **amendments to the Code**.

*“Clear criteria for unavoidable departure should be published and scrutinised by interested bodies. We assume these criteria will be clearly defined within operational guidance. Clear lines of accountability need to be made explicit should departure.” (Children’s Services organisation)*

48. Twenty-seven respondents felt that departures from the code should only occur in **exceptional circumstances** and called for **clear procedures and guidelines** for staff. Seven specified that guidelines should be developed to specify what actions were **anticipated to fall outside of the code**.

*“UKBA should provide clarity as to whether a request to depart from the code should be made, and whether it is practical or desirable that permission should be sought from a senior officer or the AD with children’s lead responsibility before it is made. We assume such matters would be clearly defined within operational guidance issued to staff and would welcome clarity and comment on the operational guidance that is developed.” (Regional Strategic Migration Partnership)*

49. Sixteen respondents commented on the need for **communication with the child themselves and their parent/guardian/legal representative** where there is a departure from the Code. This information would need to be understandable and, if necessary in the child’s own language.

50. Thirteen of the respondents identified **other agencies** that should be involved to ensure that departures from the Code remain consistent with promoting the welfare of the child. These included the Children’s Champions Office, Children’s co-ordinator and Social Services.

51. Eight respondents felt that the Code needed **stronger wording** to ensure any departures from the Code only occur in exceptional circumstances. The main point expressed was that the word ‘must’ should be used more.

52. Three respondents felt the process identified in section 3.1.4 was irrelevant as **any departure from the code was unacceptable**.

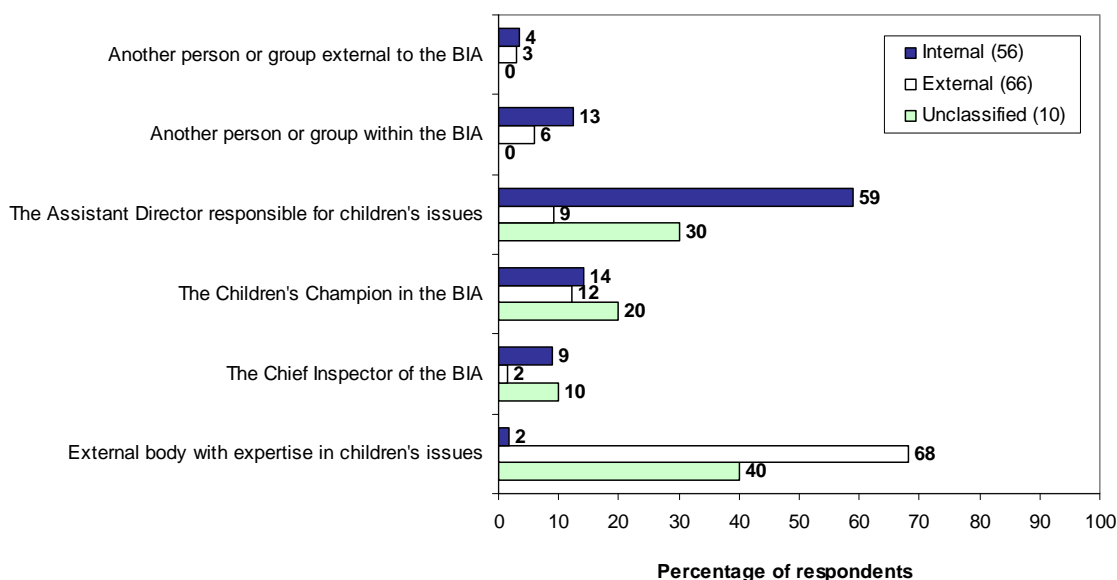
53. Five respondents gave **other comments** encompassing the following themes (number of respondents given in brackets): that there was potential for abuse of the system (2); that the

process should be audited but remain flexible enough to enable officers to do their jobs and ensure the welfare of the children (2); and, that lack of facilities could necessitate departure from code (1).

**Question 2.1** If the proposed requirement is introduced who do you think should review these recorded departures from the Code?

54. This question revealed a significant difference in views between internal and external respondents. Internal respondents favoured having the Assistant Director review recorded departures from the Code (59 per cent of internal compared to 30 per cent of external), while external respondents felt that an external body with expertise in children’s issues would be more appropriate (68 per cent of external compared to only 2 per cent of internal respondents). The results from this question are shown in Figure 7.

**Figure 7.** Who should review reported departures from the Code?



**Question 2.2** If desired please comment on your answer.

55. One hundred and forty two respondents commented further on who they felt was the most appropriate person or body to review recorded departures from the Code. The main issues raised were around whether reviewers should be internal or external to UKBA, the level of seniority at which these issues should be reviewed, and views on the skills and experience the reviewer would need.

56. In terms of comments around who should be the reviewer:

57. Forty-eight respondents emphasised that the reviews of recorded deviations from the Code should be primarily **external and independent** to ensure transparency.

*“The most appropriate person or body who should review recorded departures should be an independent / external body with expertise in children’s issues to avoid internal UKBAs / conflict of interest.”*  
 (Local Government Organisation)

58. Specific suggestions included; an ombudsman (5), a panel of advisors (5), Local Safeguarding Children Boards (LSCBs) (6), the Children's Commissioner, Ofsted, the Refugee Council, NSPCC, Save the Children, social services and the Children's Rights Director for England.

59. Nineteen respondents suggested that the review process should be '**two tiered**', involving both internal and external bodies. This would allow for escalation of the issue to more senior or external bodies if necessary.

*"Two agencies should review – a senior in Immigration Agency and an independent agency with children's expertise. This reviews procedural issues as well as welfare issues." (Organisation Unknown)*

60. Fifteen respondents thought that departures from the Code should be **reviewed internally**. Six said that the review should be done by someone one grade above the person departing from the Code, to avoid unnecessary bureaucracy. One respondent stated that staff should receive feedback following the review.

*"Dependent on issue/level of deviation i.e. local issues dealt with locally but more significant issues would need escalation. Reviewing within line management chain initially with feed to Children's Champion's office." (Central Government)*

*"The lowest possible level to avoid bureaucracy – possibly line manager of person deviating from code." (Central Government)*

61. In contrast, ten respondents specified that departures from the Code should be reviewed at a **high level** within the agency, by perhaps HMI Inspectors/Chief Inspector. A further 28 respondents felt the **Assistant Director (AD)** would be the most appropriate person to involve, due to their close working relationship with staff and individual cases.

62. Fifteen respondents felt a **dedicated person, unit or team should be assigned** to deal with departures from the code, either before or after it occurs. This was to avoid responsibility being passed around and to secure a point of contact for all matters relating to the Code.

63. Six respondents stated the importance of **consulting legal advisors** with regarding to departures from the Code.

64. Other comments concerned the skills and experience necessary for the reviewer role, and the use of information.

65. Thirty respondents commented that those involved in reviewing departures from the Code should have **experience with children and with immigration issues**. Twenty-two of these respondents mention the need to involve the Children's Champion in the process.

*"Children's Champion office includes external and internal stakeholders. They can give views from the child's perspective and from an immigration viewpoint." (Central Government)*

*"The proposed body has to be independent from the Home Office and must be an expert in children's issues. Perhaps the best existing bodies to accomplish this are the respective Children's Commissioners for England, Northern Ireland, Scotland, and Wales." (Voluntary organisation or charity)*

66. Twenty-two respondents noted that departures from the Code should be **reported on regularly**, and seven thought the information should be **made public**. Two respondents

suggested spot-checks may be necessary, and another two mentioned the benefits this procedure in ensuring good practice among staff.

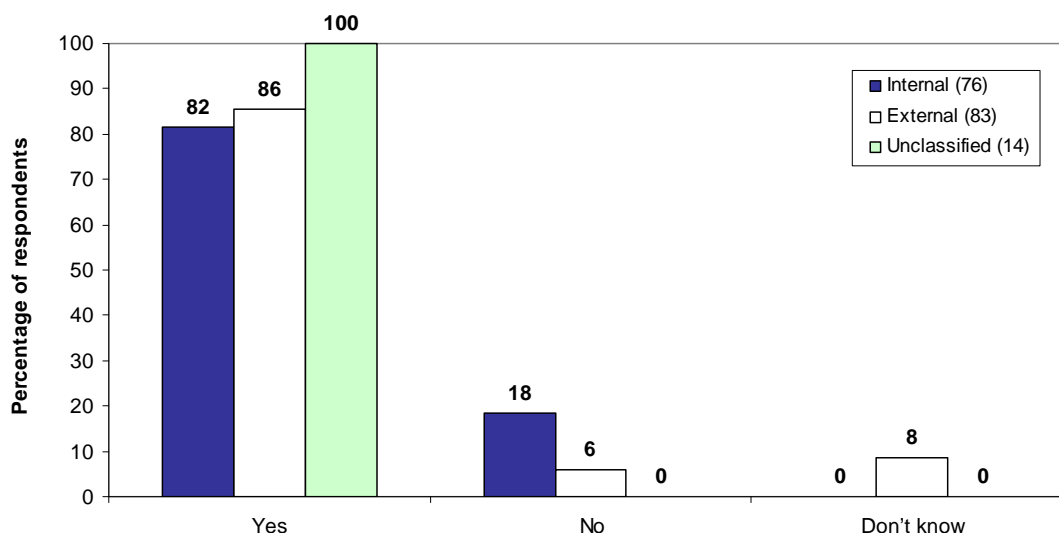
67. Seven **additional comments** were made, raising the following themes; potential 'bad press' resulting from departures from the Code; the need to involve local social care and health teams; the need for impartiality; the reporting requirements of the Code on private or voluntary agencies that provide services; the impact of the age and level of understanding of the child concerned; and that any departure from Every Child Matters was unacceptable.

**Question 3.1** The Code reflects the view that the best people to care for a child and communicate decisions about his/her future, including the immigration process, are his/her parents (section 3.1.6). Do you think the child's parents should have primary responsibility for communicating with the child about the immigration process?

68. Overall, 85 per cent (147) of the 173 respondents who answered this question felt that a child's parents should have primary responsibility for communicating with the child about the immigration process. Eleven per cent disagreed (19) and four per cent (7) said that they did not know.

69. The difference between internal and external responses was a statistically significant with internal respondents being more likely than external respondents to feel that parents should not have primary responsibility for communicating the immigration process to the child/children. However, overall the support for parents having the primary responsibility for this was strong in both groups (82 per cent of internal respondents and 86 per cent of externals). Figure 7 shows these views.

**Figure 8.** Parents should have primary responsibility for communicating with the child

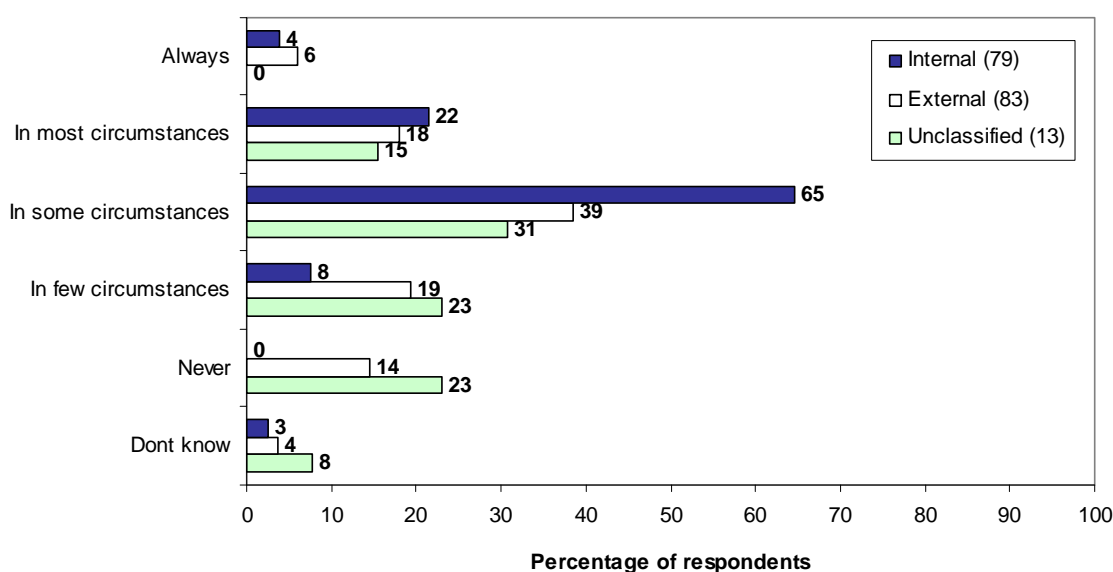


**Question 3.2** Do you think that an explanation of the immigration process should ever be given to the child by Border and Immigration staff members?

70. Overall, half of the 175 respondents to this question thought that UKBA staff should give an explanation of the immigration process to a child in ‘some circumstances’ (87 respondents). Nineteen per cent (34) thought an explanation should be given to a child in ‘most circumstances’ and 14 per cent (25) that an explanation should be given in a ‘few circumstances’. Five per cent (8) said an explanation should always be given and nine per cent (15) that it should ‘never’ be given. Three per cent (6) said they did not know if an explanation should be given.

71. Again, there were statistically significant differences between internal and external responses. Internal respondents were more likely to think that immigration staff should give explanations about the immigration process to children than external respondents. Almost two thirds of internal respondents (65 per cent, 51 respondents) felt that immigration staff should explain the immigration process to children ‘in some circumstances’; compared to 39 per cent of external respondents (32 respondents). External respondents were more likely than internals to feel that immigration staff should undertake this task in either ‘few circumstances’ or ‘never’ (33 per cent compared with 8 per cent). These views are shown in Figure 8.

**Figure 9.** Immigration staff should explain the immigration process to children



**Question 3.3** In what circumstances would it be appropriate for UKBA staff members to explain the immigration process to the child?

72. Two hundred and thirty six respondents commented on when it would be appropriate to explain the immigration process to the child. Their comments fell into three broad categories; descriptions of situations when it was appropriate; factors that need to be considered in individual circumstances; and, comments on the process itself.

73. The situations in which respondents thought it would be appropriate for UKBA staff to explain the immigration process to a child were;

74. When the parents or guardians are **acting uncooperatively or being disruptive** (27 respondents), which may give doubt to the accuracy of information that they are conveying to

children. It was suggested that parents may attempt to frustrate the agencies actions through their children.

*"Where the parent/guardian is either not communicating any information, or the information they do communicate to the child is a lie. The lie being such as to cause distress, e.g. "They say we can stay" when they are about to be removed."* (Central Government)

75. In the case of **unaccompanied minors, children who make their own immigration claim or are accompanied by non-family members** (22 comments).

76. When the parents are **unable, due to mental incapacity, poor language skills, emotional distress** or are otherwise indisposed (19 respondents).

*"If the parent was unable to explain due to emotional breakdown (i.e. was visibly upset by your news). If the parent has health problems (i.e. mental health issues) where they may be unable to communicate the information/if the relationship between parent and child was such that the child took on responsibility for the care of the adult."* (Central Government)

77. If there is any suggestion of **abuse, trafficking or anxiety** in relation to the carers (18 respondents), or where there is doubt if the adults with the child are actually his/her parents.

*"In any circumstances where there is reasonable cause to suspect that a child may be the victim of trafficking."* (Voluntary organisation or charity)

78. Where the parents/guardians themselves **may not be have a full understanding** of the process and an explanation from UKBA staff could provide a better understanding for a child (13 respondents).

*"Often the adults in asylum seeking families do not understand the procedures themselves and therefore cannot explain them to their children. Some parents do not want to cause more suffering to children but children are very concerned and have many questions."* (Professional in social care organisation)

79. Respondents also gave their views on what individual factors should be considered when deciding whether it is appropriate for UKBA staff to give information on the immigration process to children. Factors mentioned included;

80. The **age, level of education and maturity** of the child (42 respondents).

*"UKBA should take account of the age and circumstances of the child in considering whether to take a decision to explain the immigration process to a child. The child or young person's psychological state may impede the fullest understanding of an explanation of the immigration process."* (Children's Services)

81. Whether the **individual circumstances** in the case require an explanation from UKBA (15 respondents).

*"These questions are difficult to answer because the answer will depend on the particular circumstances of the individual child, their age and stage of development, their relationship with their parents, cultural issues etc. There is no "one size fits all" answer."* (Local Government)

**82. If requested** by either the parents, carer or child, either formally or informally, as it was recognised that children frequently ask questions (14 respondents).

*“UKBA staff should be prepared to talk to a child/young person who asks for information about their own claim...Any child should have the right to approach UKBA independently to ask about their own claim. ”*  
(Unknown respondent)

**83. If it is deemed to be in the child’s best interests** (5 respondents).

*“If Border agency staff are of a view that the parents and children’s views/welfare are in contradiction to each other then they should inform children and young people irrespective of the parents /carers’ views.”*  
(Voluntary organisation or charity)

84. The last set of comments concentrated on the process of informing children about the immigration process. These respondents thought that;

**85. The child’s parent/s or guardian/s should be involved in the explanation process** (29 respondents). Sixteen of these noted that parents are usually best placed to provide this explanation but where this is not possible; parents should either be present or be informed on what a child has been told.

**86. Any communication with children should be age-appropriate and in the most suitable language** (15 respondents).

*“The language and communication methods need to be appropriate for age and development and children should be informed at a level they understand. This should include the use of specialist/approved interpreters and child advocates.”* (Health care professional)

**87. Staff dealing with children and their families should be appropriately trained** to deal with the circumstances (12 respondents).

*“Where decisions or indeed any aspect of the asylum process needs to be communicated to children directly by the UKBA, whether orally or in writing this should only be done by officers who have been specially trained to work with children and only when there is no alternative.”* (Voluntary organisation or charity)

**88. Children should be able to have a say** in the decisions which affect them, and this can only be achieved through effective communication (5 respondents).

*“All children whether separated or with their family/carers have a right to participate effectively in decisions affecting them on their own account.”* (Voluntary organisation or charity)

**Question 3.4** In some instances an explanation offered by Border and Immigration staff members may be different to that offered by the parents. Do you have any suggestions about how such instances should be dealt with?

89. One hundred and sixty four respondents suggested how UKBA staff should deal with instances where their explanation differed to that offered by parents. The comments concentrated on the roles of the different people involved, and the manner in which explanations should be given to children.

90. On the roles of individuals and organisations involved, respondents thought that;

91. The **parents should be consulted first** to ensure their role as a parent is not undermined and to protect their right to make decisions regarding their children (28 respondents). Six respondents felt this approach may clear up any misunderstanding or misinterpretation on the part of the parents.

*"Having experienced this being honest and open with empathy is the only way of dealing with this without undermining the credibility of the parent."* (Immigration Legal Advisor)

*"Speak to the parents first to check they are not confused and clarify matters. There may be instances where it is felt important to explain and clarify issues directly with the child."* (Central Government)

92. An impartial person should be involved to act as a **mediator**, or that external agencies should give advice. This could be a legal advisor, charity/NGO worker or social worker (25 respondents). One respondent suggested the Children's Champion. One respondent felt this option would only be needed if requested by the parent or the child or if there were serious communication difficulties or emotional issues.

*"In such instances an independent third party, perhaps a trained social worker, legal advisor, advocate or mediator, could be most helpful in order to jointly discuss matters with parents and UKBA staff and the children. Cultural awareness, legal knowledge, expertise in child development and family dynamics would help to minimise potential misunderstandings and misinterpretations. Furthermore, special consideration should be given to language."* (Voluntary organisation or charity)

93. **Both parent/s and child/ren should be involved** throughout the discussions, to ensure both parties have the same knowledge and reduce the chance of misinterpretation (19 respondents). One respondent suggested the Scottish Case Conference could be used as a model.

*"Explanation given in the presence of parents if possible. Otherwise ensuring that both children and parents are given the same explanation and telling the parents what is going to be told to the child."* (Central Government)

94. The explanation should be given by **specially trained UKBA staff**, or other trained professionals, who understand the needs and views of children and can therefore be sensitive to them (15 respondents).

95. It is the **responsibility of UKBA** to ensure an accurate explanation of the immigration procedures is given (14 respondents). These respondents felt the explanation needed to be done by a professional, and two referred to the Scottish 'lead professional' system.

*"UKBA staff have a responsibility to explain fully, accurately and in an accessible fashion the processes involved and the rights of the individuals and families to representation and to legal redress within those processes"* (Voluntary organisation or charity)

96. In contrast, eight respondents were clear that the **UKBA should not get involved** and that it is the **parent's responsibility** to explain the immigration system to their children, except in cases of abuse, trafficking or mental illness.

*"The responsibly to explain the process should remain the responsibility of the parents. The agencies responsibilities would be discharged by fully informing the parents of a child."* (Local Government)

97. On the manner of communication with children, respondents stated that:

98. The use of **written literature** appropriate for the child's age and understanding would be an appropriate way to ensure the facts are clear (15 respondents). This may be in the form of leaflets, posters or pictograms. Similar information sources could be available to parents.

99. It was very important to use **clear, simple language** and to use an **interpreter** (10 respondents).

100. The explanation should depend on the **age and circumstances of the child**, as some will be have a greater understanding than others (10 respondents).

*"We need clearly agreed protocols to guide decisions about the type of information that is suitable for children to hear/or be given dependent on their age, circumstances, understanding and maturity."*

(Unknown respondent)

101. Staff should **act calmly and avoid being confrontational** (5 respondents).

*"Borders staff deal in a calm manner. Do not get into argument with parents in front of children. Give an explanation and just leave it there."* (Central Government)

102. That a **written record** of communications between staff, parents and children should be kept to avoid discrepancies and to ensure information sharing is equal and accurate (5 respondents).

103. Policy should be **clear and consistent** in this area (7 respondents).

*"It is important to establish clear and transparent policies and protocols with respect to how the UKBA will work with children and young people and their parents"* (Local Government)

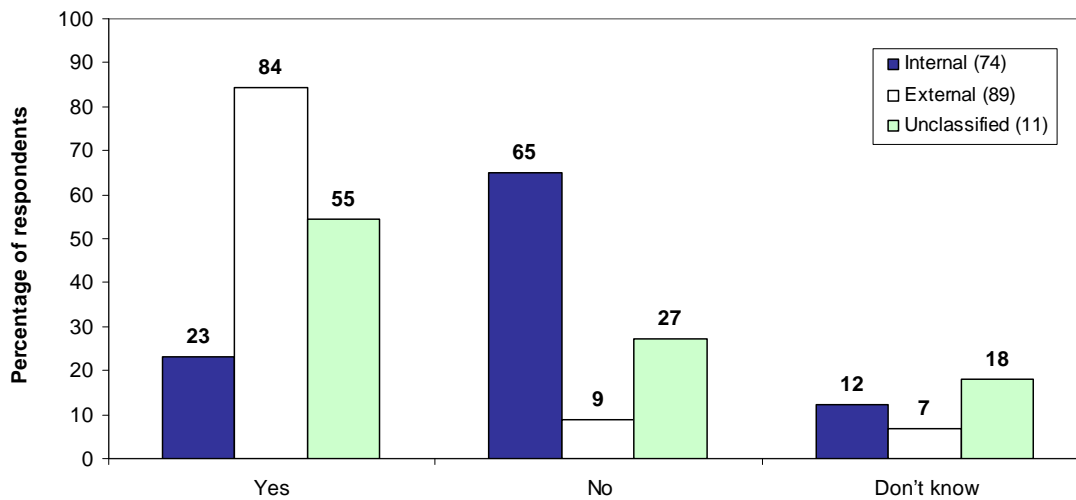
104. Other views included that UKBA staff should only intervene if child may be at risk (2 respondents) and that a risk assessment should take place in these circumstances (1 respondent). Also, those children may have trouble dealing with conflicting advice (2 respondents).

**Question 4**            The draft Code indicates that the UKBA complaints system will be the appropriate route for complaints relating to the Code (section 3.8.1). Should there be a dedicated complaints system for children to access?

105. Of the 174 respondents to this question, 56 per cent (98) agreed that there should be a dedicated complaints system for children to access. Thirty four per cent (59) disagreed with this proposal and ten per cent (17) did not know.

106. There was a statistically significant difference between the external respondents, the majority of whom agreed that there should be a dedicated complaints system (84 per cent, 75 respondents), and internal respondents, of whom only 23 per cent (17 respondents) held this view. Figure 9 shows view on a dedicated complaints system for children.

**Figure 10.** Should there be a dedicated complaints system for children?



**Question 4** If yes, what form should this complaints system take?

107. One hundred and thirty respondents commented on the form of a complaints system for children. The comments concentrate on how to make such a system easily accessible to children and how it could be implemented, while others comment further on why a separate system is not required and existing infrastructure that could be used.

108. Forty-seven respondents highlighted the importance of **a child's access to independent advocacy**, the need for **trained** investigators/advisors and for children to be able to complain through adults and be supported by them. Twenty-three of these respondents thought the advocacy and support should be provided by an external, independent body.

*"There should be an independent advocacy service put in place for young people to use so they can feel supported when making a complaint... They should be given the opportunity to meet with their advocate to discuss their complaint prior to taking the complaint to the UKBA."* (Regional Migration Partnership)

109. Fourteen of these respondents highlighted that those dealing with complaints, either internally or externally, should be **trained in child welfare issues** and in working with children.

*"A specialist unit with child protection professionals and/or staff with child protection experience should lead on investigations involving a child."* (Local Government)

110. Ten of the 47 stated that the child should be **supported throughout the process** by an adult, and that adults should be able to make complaints on the child's behalf.

*"Any complaints should be made through an adult. Many children detained prior to removal will be too young to raise issues or to understand what the guidelines are."* (Central Government)

*"Complaint should be through the responsible adult as the child is with them at all times. Opening up a complaints procedure viable to the child could set off a trend for adolescents to have their own complaint line and the procedure could be open to lots of abuse"* (Voluntary organisation or charity)

111. Forty-five respondents referred to **existing routes which could be used or adapted** for the purpose of child complaints. Fifteen of these felt the existing complaints system could be adapted to be more child friendly, perhaps through dedicated childcare workers.

*"The UKBA complaints code should have a sub-section for children as opposed to a separate process."* (Central Government)

112. Among these 45 respondents, 24 thought there was **no value in adding a new system** or pointed to existing routes which children could use, such as school teachers, social services or dedicated services like Childline.

*“Unaccompanied minors already have LA involvement. Dependent children are normally in mainstream schools and would have support there. Health care agencies visit asylum support unit on occasions.”* (Central Government)

113. Six of these respondents noted that an additional system would invite further **unnecessary bureaucracy** and ultimately duplicate the current complaints system.

*“Bureaucracy should be kept to minimum – these should be adequate opportunities for complaints to be adequately dealt with under existing processes.”* (Central Government)

114. Thirty-three respondents stressed that the complaints system should be **child friendly and readily accessible**; taking into account a child’s age, access to resources and cultural attitude to complaining. These respondents pointed out that some children may not be aware they have the right to complain or how or when to access the system. Seven of these 33 respondents highlighted that **children may be unlikely to complain** due to fears or cultural differences. Three respondents stated that children have a right to express their opinion.

*“I would strongly recommend that when considering this issue you make a rigorous assessment of how easy it would be for a child to pursue a complaint through your current system. When doing so you may wish to consider some of the following questions: How would children know that they could complain? How would they know what to do? Would they be worried about complaining and how could the current system overcome that? Would they be able to complain in their own language? Would they have to complain in writing? Would their complaint be confidential (i.e. from their parents)? How quickly would they receive a response and how would that response be explained to them?”* (Professional contributing in a personal capacity)

115. Twenty one respondents commented on the **type of system** which would be most appropriate. Nine respondents felt a telephone system would be best, and four thought a simple form would be most effective. The other six thought a range of mediums should be investigated, including the internet and text messaging as well as post, telephone and face-to-face contact. Three thought that complaints may also be informal, verbal or through feedback, and that a child may want to raise a concern rather than a complaint.

*“A dedicated, confidential and easily accessible child friendly system similar to the Childline system. The system could also be used by social workers, teachers etc whom have been contacted by a child.”* (Central Government)

116. Eighteen respondents had **concerns** over some aspects of the complaints system. Seven were worried complaints may get ‘lost’ in the system and not be dealt with promptly. Six noted that children/parents are likely to be concerned that a complaint would affect their progress through the immigration system and that they should be reassured about this.

*“In order to reassure children and their families, the Code should make clear that children making any complaints will not experience a negative impact on the speed of the decision making process.”* (Voluntary organisation or charity)

117. Three of these respondents were concerned that a complaints **system may be abused**, with parents coercing their children to use it to influence the immigration process. Two respondents thought children should be given the option to remain anonymous.

118. Eight respondents mentioned that a key part to developing an effective system for children was **consultation**, both with the children who would potentially use the system, and with relevant agencies.

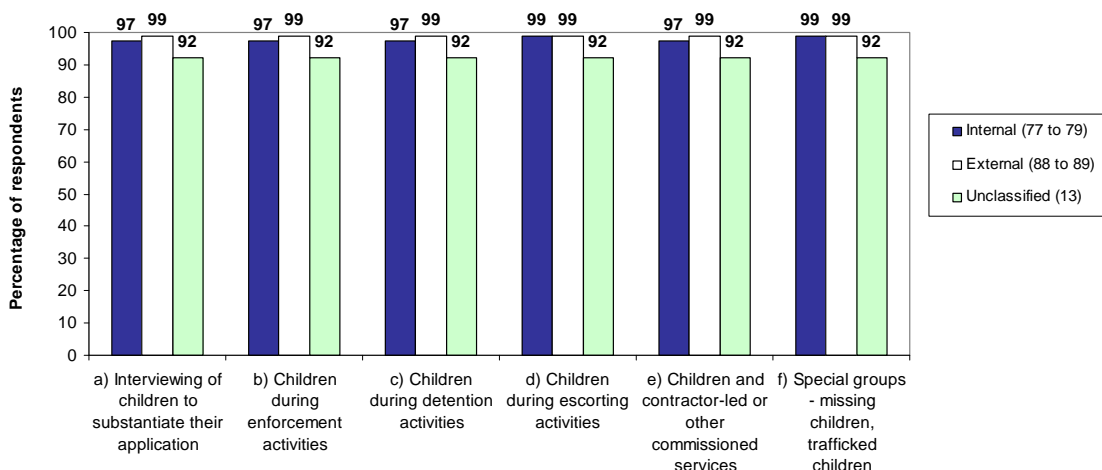
119. Six respondents made **other comments** about the form of a complaints system for children around: allowing direct communication with the Children’s Champion, clarity of the system for adults and children, stating that a separate paragraph in the Code was needed to deal with this issue and that access to social services should be widely available.

**Question 5** Section 3.3 indicates that the Code will be supported by operating instructions that cover all the main occasions when the UKBA has substantive contact with children. Do you think it is appropriate to draw up operating instructions for each of these occasions/groups?

- a) Interviewing of children to substantiate their application
- b) Children during enforcement activities
- c) Children during detention activities
- d) Children during escorting activities
- e) Children and contractor-led or other commissioned services
- f) Special groups – missing children; trafficked children.

120. There was very strong agreement overall (98 per cent of respondents for every option) that all of the occasions listed in the question should have operating instructions. The number of respondents for each category varied between 177 (option e) and 181 (option f). There was little difference in response between internal and external respondents with regards to agreement for operating instructions (see Figure 11).

**Figure 11.** Percentage of respondents agreeing with each occasion for operating instructions



**Question 5** Please list any other occasions or groups for which operating instructions should be drawn up.

121. Seventy respondents commented on this question.

122. Twenty-eight respondents did not suggest occasions or groups for which operating instructions should be drawn up but used this opportunity to state that clear operating

instructions were extremely important. Fourteen comments emphasised that the core principles must be upheld throughout all occasions and for all children.

*"Perhaps a case for core principals and specific instructions for various groups/situations."* (Unknown respondent)

*"Every occasion and circumstance where UKBA is dealing with children should have operating rules drawn up."* (Educational professional - Local Government)

123. Six respondents said they did not feel it was appropriate to produce generic instructions as they felt each case should be judged individually to ensure the *"identification of any relevant issues pertinent to the child."* (Unknown respondent)

124. Other respondents did list specific situations which they felt needed operating instructions. These included circumstances:

125. where children and young people who are separated from their family or unaccompanied (13 respondents);

126. when appeals or judicial reviews were being carried out (9 respondents);

127. when children and young people are in the process of leaving care or who have foster parents/guardians who are not biological relations (9 respondents);

*"Children accompanied by adults who do not have a legal responsibility in place of a parent."* (Central Government)

128. when working with children with disabilities and children mental health difficulties (8 respondents);

129. when settling age disputes (8 respondents); and

130. for private housing suppliers or contractors working with children (4 respondents) and for contract compliance (4 respondents).

**Question 6** Please include any further comments you have regarding 3.1-3.3 of the draft code.

131. Fifty three respondents provided a variety of further comments on section 3.1 to 3.3 of the draft code.

132. Eighteen respondents were concerned that **children's welfare** is maintained and no further stress is caused to them during the process. Half of these respondents noted the importance CRB checks for all staff. Five of these respondents also noted that child care should be provided.

*"Children should always be safeguarded and provided with facts."* (Unknown respondent)

133. Fourteen respondents focused on amendments to aspects of the **terminology** or principles set out in the current code.

*"The language used in the Code is not presently clear enough to give staff direction about their responsibilities – for example "should" is used instead of "must".* (Voluntary organisation or charity)

134. Fifteen respondents indicated that there was a need for **training and professional guidance** for all those taking part in the process. Two stated the need for effective decision makers and staff able to deal with queries.

*“All staff whether UKBA or agencies contracted by them should undergo mandatory training in child protection and to be of varying degrees pending on their contract and role with children.” (Local Government)*

135. Six respondents felt there was a need for **better links with other agencies** and that these organisations should ensure they also comply with the code.

*“Think one of the key issues is around good linkage i.e. UKBA with children's services, police, voluntary sector and other related bodies.” (Central Government)*

136. The documentation of the Code was commented on by five respondents. One stated the documentation should be standardised and up to date and one noted that guidelines need to be clearer. One stated current documentation is satisfactory. Two thought the legal regulations need to be checked.

#### Section 3.4 to 3.6 of the Code

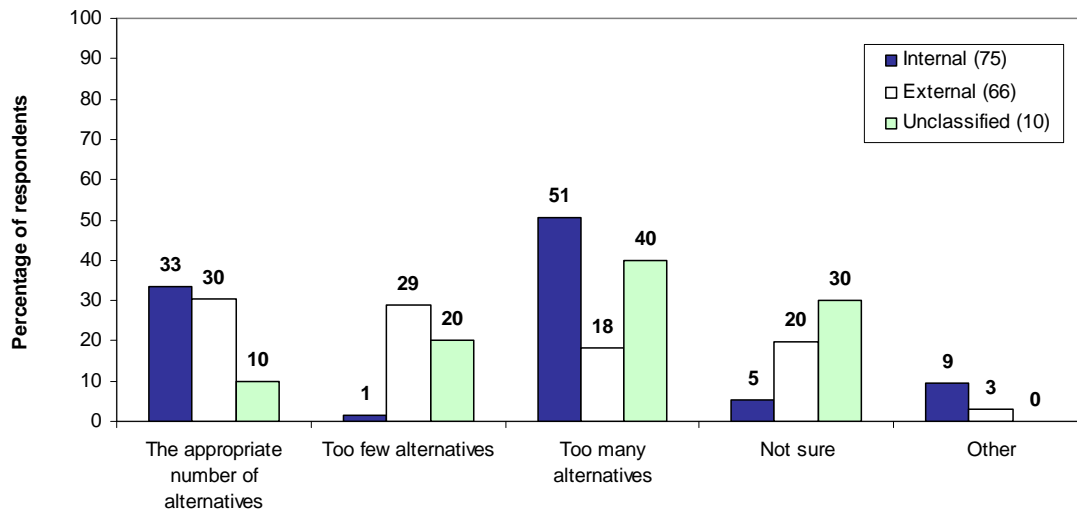
**Question 7** A number of options are available at the time of being refused further residence in the United Kingdom (for instance, appeal against removal, judicial review, making representations through others, voluntary departure, assisted voluntary departure etc). Please complete the statement below by indicating the option which you think is most accurate.

- the appropriate number of alternatives to being detained and removed
- too few alternatives to being detained and removed
- too many (and possibly confusing) alternatives to being detained and removed
- not sure
- other (please state)

137. Of the 151 respondents who answered this question, 36 per cent (54 respondents) thought that there were too many alternatives to being detained and removed. Thirty per cent (46 respondents) thought that there were an appropriate number of alternatives and 15 per cent (22) thought there were too few alternatives. Thirteen per cent (20) were unsure about which option was most accurate. Six per cent of respondents (9) selected 'other' but none gave specific alternatives in their comments.

138. There was a statistically significant difference between internal and external respondents as over half of internal respondents (51 per cent, 38 respondents) felt that there were too many alternatives at this stage; whilst only 18 per cent (12 respondents) of external respondents held this view. External respondents were most likely to think that the current alternatives are appropriate (30 per cent, 20 respondents) or that there are too few alternatives (29 per cent, 19 respondents). Only one internal respondent felt the number of alternatives was insufficient. Figure 12 shows these views.

**Figure 12.** Opinions on the number of options available at the time of being refused



139. One hundred and five respondents commented on their answer, often raising multiple issues. The main concerns raised were around ensuring that people going through the system are fully informed; safeguarding the wellbeing of children and families throughout the process; and concern that too many options causes confusion and delays to the system.

140. Thirty nine respondents highlighted that people going through the system needed greater **clarification and information** on the various stages and options at the time of being refused further residence in the UK, such as VARRP<sup>8</sup>. Those seeking UK residency needed to be made aware that their application may not be successful. Respondents indicated that this would encourage people to take ownership of their case and subsequently make more informed decisions.

*“Continuing contact and update through their claim giving them alternatives to VARRP etc this would help them to come to terms with the fact that at the end of their case they could be removed.” (Public Sector Organisation)*

*“Applicants should be told from the outset what will happen to them, what the options are and what may happen if they do not comply.” (Central Government)*

141. A frequently discussed theme, raised by 35 respondents, related to **family considerations** and the importance of adequate **pastoral care** throughout the refusal process. This included the need for better provisions for children, including for education and health, and reducing stress to family members. One respondent noted that children should be given the same rights as adults involved in the process.

*“We need to look more constructively at the way we look after families; we need to reduce the concerns and fears. How can we better help families who are refused but their countries are considered too dangerous at the current time, keeping them in some form of limbo is not good enough.” (Voluntary organisation for refugees and asylum seekers)*

142. On a similar theme, nine respondents explicitly stated their **opposition to any detention of children** and thought the UK should seek to end this practice.

*“We believe the detention of children for administrative purposes is inconsistent with keeping them safe.” (Voluntary community organisation)*

143. Twenty two respondents expanded on their view that there are currently **too many options** available for those who are refused residence in the UK, and that this often confused and complicated the process even further.

*“There are possibly too many alternatives to being detained and removed. Simplifying the process may assist in focussing the minds of those against whom an immigration decision has been made.”* (Central Government)

144. Eight respondents felt there should be **full appeal rights** and an opportunity to explore all avenues before removal. Four of these respondents said the period of detention was not long enough to allow for all possibilities to be investigated.

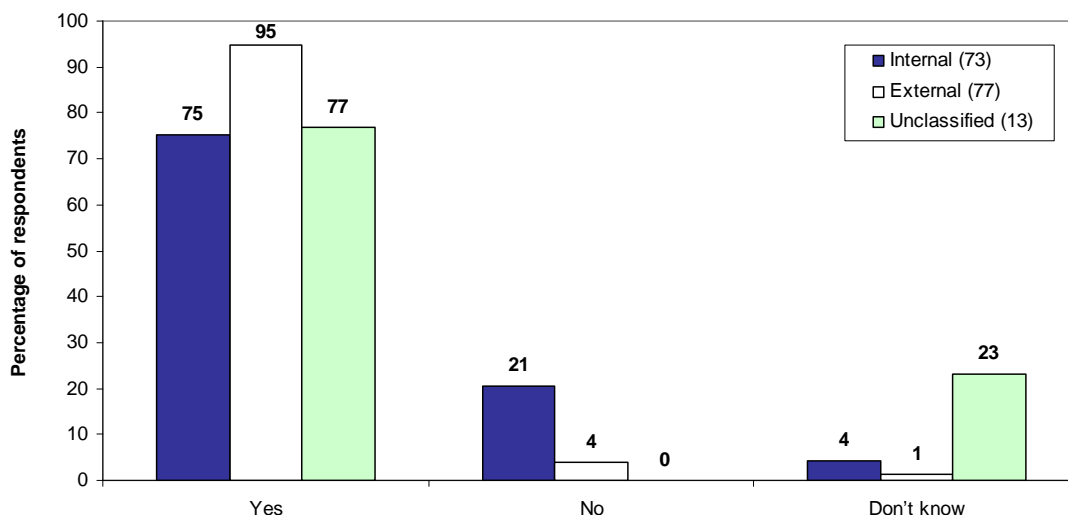
*“Detention period is very short to access all options. Give autonomy and opportunity to people to investigate their options.”* (Unknown respondent)

**145. Other comments** referred to there being insufficient legal advice for those being refused residence (6 respondents); that further clarification or changes to the system would not make any difference (5); that the system is too lengthy and time consuming (4); and that the present system is satisfactory (3).

**Question 8** Do you think that families that face removal could benefit from the provision of information and counselling on the conditions and prospects available to them in their own country?

146. A majority of the 163 respondents to this question (85 per cent) agreed that families facing removal could benefit from information and counselling on the conditions and prospects available to them in their own country. Eleven per cent disagreed (18 respondents) and four per cent (7 respondents) said they did not know. While there was support from both internal and external respondents for the provision of information and counselling, this trend was significantly stronger for external respondents (75 per cent of internal respondents, compared to 95 per cent of externals).

**Figure 13.** Could families facing removal benefit from information and counselling on conditions and prospects available in their own country?

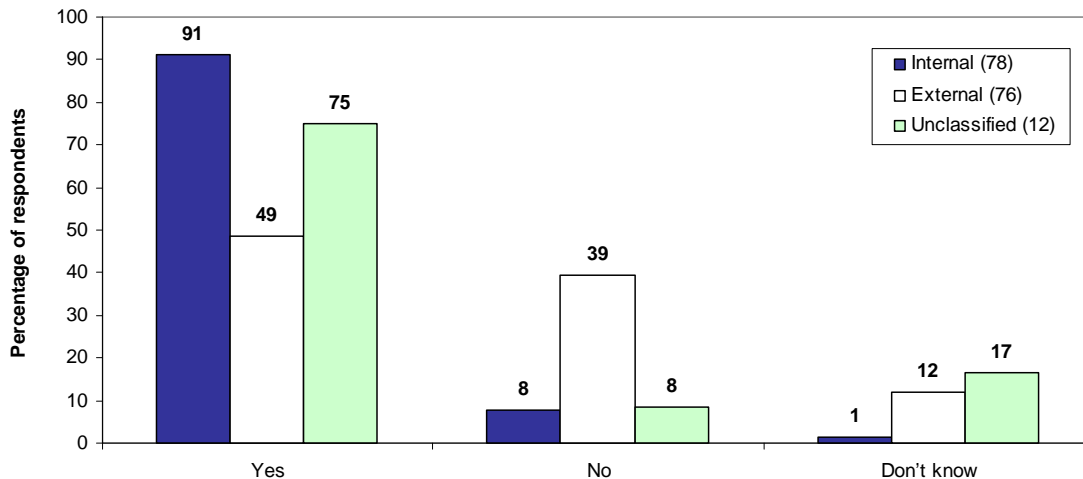


**Question 9.1** Families are detained as an alternative to separating children and parents in the time leading up to departure. Do you think that this should remain the preferred approach?

147. A majority of the 166 respondents to this question (71 per cent, 117 respondents) agreed that detaining families as an alternative to separating children and parents in the time leading up to departure should remain the preferred approach. Twenty two per cent disagreed with this approach (37 respondents) and seven per cent (12) said they did not know if this approach should remain.

148. There was a statistically significant difference between the view of internal and external respondents. There was much stronger support for the current approach to be maintained from internal respondents (91 per cent, 71 respondents), compared with only 49 per cent (37 respondents) of external respondents. See Figure 14 for a full breakdown.

**Figure 14.** Should detaining families as an alternative to separating children and parents in the time leading up to departure remain the preferred approach?



**Question 9.2** In what circumstances should we consider splitting the family so that not all members are detained?

149. One hundred and forty one respondents commented on this question. This question was used to emphasise that families should not be separated unless in extreme circumstances and that children should not be detained, as well as to propose potential situations when separation might be necessary and acceptable.

150. The largest number of comments (49) reflected the view that separation should only be used in **extreme circumstances** when there is **no other viable option**. Thirteen of these respondents were clear that **families should never be separated**.

*“Families should not be split up, except in the very rare circumstances where this is in the best interests of the child” (Voluntary organisation or charity)*

*“A child has a right to a family life and splitting a family for the purposes of immigration control is not acceptable.” (Educational institution)*

151. Forty-six respondents felt that separation should take place if there are **signs or evidence of abuse, or a potential risk for that child** staying with its carer/s. Respondents felt that the welfare of the child should take priority.

*“Not sure – in general no families should be split unless there is clear evidence of aggression by, for example, by dominant males in family or where there are child protection concerns in the relationship between the children and adults in the family.” (Central Government)*

152. Twenty six respondents were **against the detention of children**. Respondents felt detention is against the best interests of a child and that the environment of a detention centres is inappropriate for children.

*“If families are to be deported there must be a way to move them directly from home instead of keeping children in what is essentially a prison type environment or separating them from their parents at a time when they are most vulnerable. The Government states that 'Every Child Matters', this has to apply to EVERY child.” (Local Government)*

153. Sixteen respondents thought that **it may be acceptable to split up a disruptive or uncooperative family**, where there is a risk of absconding, of family members going into hiding or refusing to be removed. Two of these respondents suggested that the family members who were not detained should be required to **report regularly** to avoid further non-compliance. One respondent thought it would be acceptable if it speeded up removal.

*“Non-cooperative/disruptive behaviour may require consideration of splitting the family head of household being detained whilst other parent and children are required to report for removal perhaps.” (Central Government)*

154. Eleven respondents suggested that families could be separated for **medical reasons**. For example, if an individual is undergoing treatment, has a condition that cannot be managed within a detention centre or needs specialist care. Respondents also referred to mental health problems, pregnancy and education (1 respondent) as reasons for not detaining a family member.

*“Where detention resources are limited i.e. where the individual needs (i.e. medical/mental health) of any of the family cannot be met within detention facilities.” (Central Government)*

155. Ten respondents suggested that it would be acceptable to **detain one member of the family**, the ‘head’ of the family, in order to **encourage compliance with removal**. These respondents felt that families should be reunited at the point of removal. Four other respondents thought that it would also be acceptable if the other members of family did not represent an absconding risk.

*“It would be preferable some of the time to detain one parent if possible leaving children with the other and reuniting at the airport – this means children do not go into detention but does reunite a two parent family.” (Central Government)*

156. Ten respondents felt that all cases should be considered on an **individual basis**, with a range of options available depending on the circumstances.

*“It should be considered as one option of several available – entirely driven on a case by case basis.” (Unknown respondent)*

157. Eight respondents noted that in some circumstances, when older children and teenagers are involved, they should **have some influence over their circumstances**, although one respondent notes *“Based on my experience very few children will choose to be separated from their parents.” (Voluntary organisation or charity)*

*“In circumstances where there are older children and young people it might be appropriate for the UKBA staff to ascertain the wishes and feelings of the young person concerned and in line with these wishes and feelings explore other options.” (Voluntary organisation or charity)*

158. Seven respondents thought that families should only be split up if **spaces in detention facilities are limited**. One respondent noted the high costs and resources needed to accommodate large families.

159. Four respondents felt it may be suitable to split up family members if the detention time was short, and one other thought that a husband and wife or civil partners could be split.

**Question 9.3** If splitting the family so that not all members are detained leads to family members being required to leave at different times, in what circumstances should we consider splitting the family?

160. One hundred and fifteen respondents commented on this question, many raising similar issues to the previous question around concerns about child welfare and safety, and emphasising that families should not be separated except in exceptional circumstances, particularly at the point of departure. Other respondents suggested situations where it might be acceptable to split a family at departure, including where there was a high risk of absconding, and situations where it would be in the child’s best interests.

161. Repeating a theme from previous questions, 37 respondents said that **the child’s welfare and safety** was the most important consideration – if there was any risk of this being compromised then separation should not take place. One respondent specifically said the family could be split if the care available would be better than in detention.

*“To safeguard the wellbeing of the children if parents are a risk to them. If children are left isolated or unaccompanied, children should be cared for in an approved family placement and their welfare and wellbeing reviewed within existing statutory regulations.” (CAFCASS)*

162. Many respondents (31) reiterated that families should not be separated, except in exceptional circumstances. They felt that **families should leave together**, even if this just means being reunited at the port of exit.

*“This would have to be an absolute essential exception to the rule. I would not recommend this as these cases would only lead to issues over reuniting at the other end and would only cause unnecessary distress to all parties.” (Central Government)*

163. Twenty-two respondents felt it would be appropriate to split up families where there is a **risk of absconding or a likelihood of poor cooperation**, and therefore a risk of failed removal.

*“This should only be considered in absolute extreme circumstances such as where parents have failed to cooperate previously or deliberately failed to comply with reporting or removal requirements.” (Central Government)*

164. However, one respondent thought that separating families would make them more likely to abscond.

165. As for the previous question, circumstances such as **educational exams, medical treatment or a prison sentence** were suggested by respondents to be potential reasons for splitting up a family for removal (12 respondents).

*“I would hope this would be very rare (only in extreme situations) but one might be where a child is at a crucial stage of hospital treatment or educational development. But then only if it meant one adult member of the family remained and clear timescales were set for eventual removal.” (Central Government)*

166. Six respondents emphasised the need to **consider each case individually** and have discussions with the family where appropriate to find out their needs and wishes.

*“We are not sure that it could generally be regarded as acting in the child's best interests. It might be useful for further discussion to be undertaken with the family and make agreements with them about detention arrangements.” (Regional Strategic Migration Partnership)*

167. Four respondents suggested it may be appropriate for families to leave at different times where **a parent or guardian was going ahead to the home country to make arrangements** for the home and schooling.

168. Three respondents noted that the conditions in the home country should be considered, and that **family members should only depart separately when it was safe to do so**.

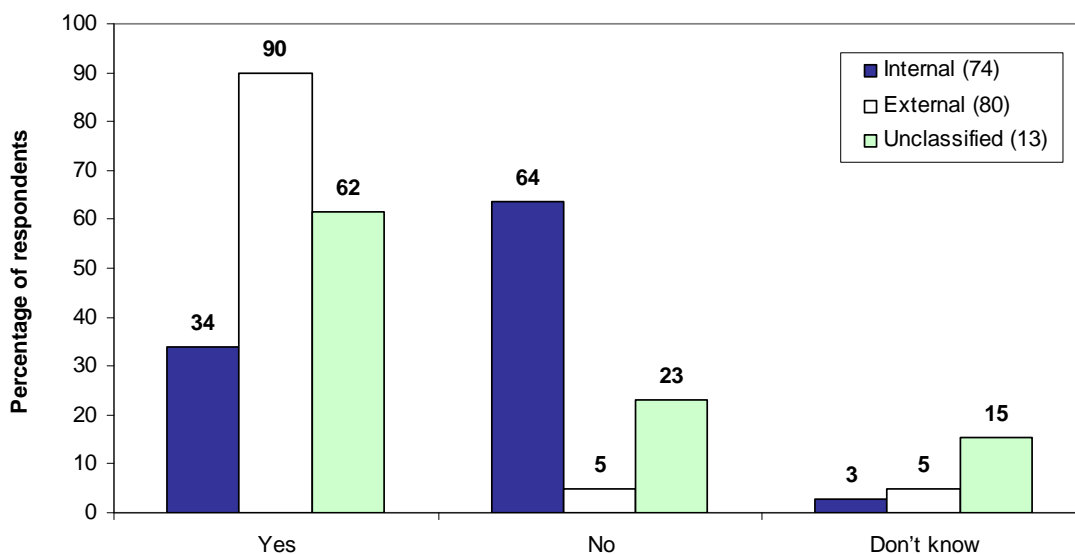
*“Only when they are returned to countries in which it would not pose a significant risk to send mother and children back home without the father.” (Unknown respondent)*

169. A further eight respondents commented on the process for separating families, in particular that consideration was needed as to; the age of the children involved (3), measuring the impact on families (1), whether decisions should be led by the local authority (1), the financial cost of accommodation and support (1), and ensuring that families who are split up are removed effectively (2).

**Question 10** The Code sets out the requirement for the UKBA to be responsive to the needs of children while they are being dealt with in the immigration system. This includes when a child is being removed from the United Kingdom as part of a family. Do you think that there should be a requirement for a written statement relating to the consideration of the effect of removal on the child?

170. Sixty three per cent (105 respondents) of the 167 respondents to this question agreed that there should be a requirement for a written statement relating to the consideration of the effect of removal on the child. Almost a third of respondents (54 respondents) disagreed that this should be a requirement and five per cent of respondents (8) were unsure. However, there was significantly higher support for a written statement from external respondents (90 per cent, 72 respondents) than internal respondents (34 per cent, 25 respondents).

**Figure 15** Should there be a requirement for a written statement relating to the consideration of the effect of removal on the child?



171. One hundred and thirty respondents gave further comments on the suggested requirement for a written statement considering the effect of removal of a child. Comments are reported according to whether the respondent agreed, disagreed or did not know. However, there are common themes throughout, such as the need for the assessment and written statement to be undertaken by an individual with the relevant expertise in child protection, and the view that this is already covered in other processes.

172. Of the 105 respondents who agreed with the proposal for a written statement, 82 provided further comments, often making more than one point. The following main themes emerged:

173. Thirty respondents highlighted concerns about **who would do the assessment** and written statement, with 21 emphasising the need for it to be undertaken by a person with the relevant experience, training and expertise in child care and protection. Of these 21, 12 respondents indicated that they should be from an independent body. Six felt that it should be a multi-agency assessment and three that communication was needed with GPs and schools.

*“An assessment should be undertaken by a professional with the appropriate skills to demonstrate and evidence the potential impact on the child and this person should be independent of the UKBA.” (Health care professional)*

174. Nineteen respondents commented on the **content of the statements**, listing various factors to be considered in them. These included: the child’s needs; information about country of origin; location of detention; detailed process of removal; safety on return; an assessment of long and short term impact on the child with regards to education, health, emotional well-being and legal situation; the social and emotional impact on the child of detention; an account of the child's stay in the UK; circumstances and decisions that led to deportation; the views of the child; and the practical ways that the return could be managed to minimise the negative impact on children.

*“Such a statement should answer the following questions: 1. how the removal is conducted to ensure that the child’s needs are fully met throughout the process; 2. how are the child’s best interests are warranted throughout the removal; 3. how the removal impacts on the child in the short and the long term in regard to education, health, psycho-emotional well-being, relationships to parents and significant adults, etc..” (Voluntary organisation or charity)*

175. Other respondents commented on the **process for developing the statement**, in particular the need to take into account laws and practices relating to children’s rights and protection (7 respondents); whether a statement is necessary in every case (3), the statement to be purposeful to ensure actions taken (1); and emphasising that statements must be accessible and fully explained to the children (4).

176. Respondents also raised issues around the **purpose of the statements**. Eighteen respondents felt that there is a need for a written statement to ensure that all factors have been considered with regards to the removal of a child and that the child’s best interests have been taken into consideration.

*“Think this would help concentrate the minds of those in the process to think through the issues.” (Central Government)*

*“We agree that a written statement regarding removals would be a helpful mechanism to prompt staff to hold the child in mind when making a decision about them.” (Voluntary organisation or charity)*

177. Seventeen respondents felt it was necessary and good practice to have **evidence that this process has been undertaken** that all issues have been considered and that the process is transparent. Two also suggested the written statement would allow staff to focus their work more easily.

*“There should be a written statement so that there is no doubt that effects of removal on child have been considered.” (Central Government)*

178. Fifteen respondents felt that the consideration of the effect of removal on a child is already **covered in existing procedures**, such as, through the Human Rights Article 8 consideration; refusal decision/correspondence; referral to Children's Champion and Regional Director; lead professional; rule 395c; removals care checklist; and part of Social Services referral regarding reasons for concerns. Five other respondents asked for further guidance on how the statements would fit with existing assessments.

*“This should already be done [...] It may be simply that the process of recording this needs to be set down so we have sufficient evidence to demonstrate considerations.” (Central Government)*

179. Five respondents felt a risk assessment would be necessary prior to removal, including the child's medical, mental and emotional state. One respondent highlighted the need to consider each person as an individual.

*“an assessment and analysis should be made and recorded. The assessment and analysis should always cover the key areas of assessment and analysis within the “Framework for the Assessment of Children in Need and their Families” (2000).” (CAFCASS)*

180. Three respondents made points regarding the details of the written statement. Two respondents felt some of the definitions lacked clarity, and one respondent noted that the written statement is not referred to within the draft Code.

*“The question lacks clarity in terms of what is meant by a ‘statement’ and who would be tasked to produce this.” (Local Government)*

181. The remaining two respondents stated that an additional requirement should be for someone to meet the child at the country of origin.

182. Thirty three respondents who disagreed with a requirement for a statement commented on their response.

183. The most common reason why respondents disagreed with the proposal was that they felt that this is sufficiently **covered in existing procedures** (19 respondents).

*“There is no need for a separate statement. HR legislation acknowledges UK legislation anyway so any further statement is superfluous” (Central Government)*

184. Seven respondents felt that UKBA staff were **not qualified** to undertake this task. These respondents felt that this task is better suited to social workers/ psychologists/ counsellors who have the right level of experience, knowledge and training to assess the effect of removal on a child.

*“We do not have the knowledge/experience/training to do reports; we are not counsellors or social workers. Not qualified to do this.” (Central Government)*

**185. Other reasons** given by respondents who disagreed with the need for a written statement include: that the child and the effect of removal should be considered as part of the family unit (4 respondents); that this additional written statement would provide people with further right to appeal (4); that the requirement of a written statement would lead to more unnecessary paperwork (3); and, that it should be the **responsibility of the parents** to manage and assess the effect on their children (3).

*“I think that this is unworkable, as it will lead to too much work for immigration officers that will lead to slipshod statements being written.” (Unknown respondent)*

*“We believe that it is primarily the responsibility of parents to manage their family relationships and to communicate with their children and ultimately to manage the impact of the removal process on the family.” (Private Sector Body)*

186. Five respondents who said they did not know whether there should be a requirement for a written statement, and six who did not provide a clear indication of their opinion, had further comments. They felt that:

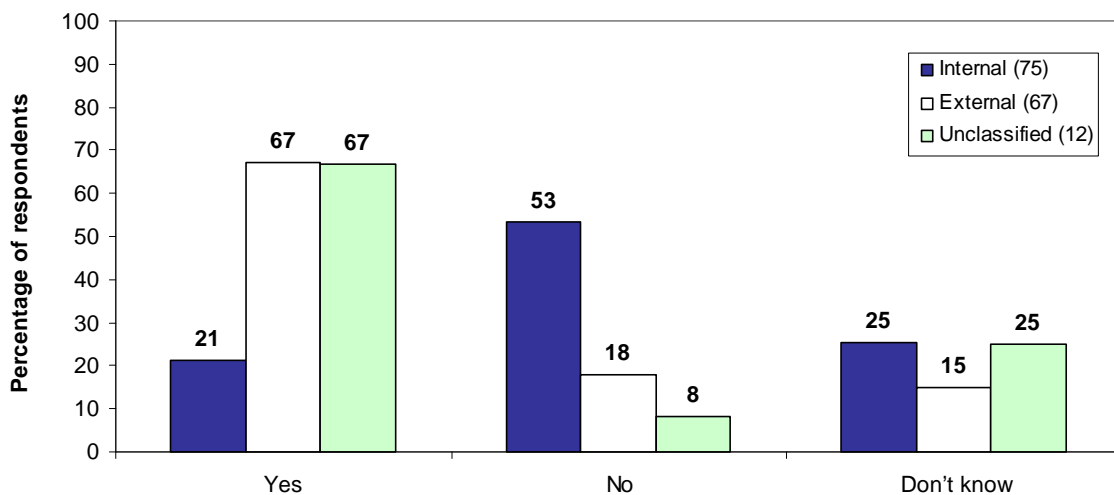
- the benefit or purpose of the written statement is unclear (8 respondents);
- the influence of the statement in decision making needs further guidance (3 respondents);
- statements should only be written by a childcare professional (1 respondent);
- the value of the process was dependent on the individual circumstances of the child (2-respondents);
- they required more information on the method (1 respondent); and
- the statement would need to be available to the family involved and their legal representative (1 respondent).

**Question 11** When children are involved in Family court considerations should the UKBA simplify its approach to one of granting residence to the child (if a care order is made) providing that this does not amount to condoning an abuse of the immigration system or lead to new entitlements to reside here by the child’s relatives. Do you think that the UKBA should amend its approach as described above?

187. Sixty nine respondents (45 five per cent) of the 154 who replied to this question agreed that the UKBA should amend its approach to grant residence to a child if a care order is made. A little over a third of respondents (34 per cent, 53 respondents) disagreed with this proposal and 21 per cent (32) were unsure.

188. Again, there were significant differences between internal and external respondents. External respondents were more strongly in favour of the suggestion with over two thirds (67 per cent, 45 respondents) agreeing that the UKBA should amend its approach. In comparison, only a fifth (21 per cent, 16 respondents) of internal respondents did so. Indeed, over half (53 per cent, 40 respondents) of internal respondents disagreed (see Figure 16).

**Figure 16.** Do you think that the UKBA should amend its approach to one of granting residence to the child where a care order is made?



189. Ninety four respondents commented on their answer to this question. Those who agreed with the proposal mainly commented on maintaining child welfare and well-being, avoiding discrimination and clarity of policy and communication between agencies. Those who disagreed mainly commented on their fears of abuse of the system and their view that this issue could not be generalised over as each case was different.

190. Respondents who agreed with the proposal made the following comments.

191. Twenty-two respondents felt that **the child's best interests and well-being were paramount** and they **should not be discriminated against** on account of their parents' immigration status.

*"The commitment of the Government to keeping children safe from harm should give the child the same protection as a UK child citizen in order to avoid the harm of discrimination. A child should not suffer due to the immigration status of their parents or guardians"* (Immigration and legal advice provider)

192. Seventeen respondents felt that **better information sharing** between agencies and more **clarity and consistency on policy** is a key area for improvement in the cases of Family court considerations.

*"We would welcome this measure as it would significantly enhance the child's welfare and assist in 'joining up' care proceedings which can become disjointed as the result of involvement of the immigration system."* (Voluntary organisation or charity)

193. Six respondents agreed with the proposals and reiterated that **children should be allowed to remain** when given a Care Order. Two of these respondents thought that children should be given Indefinite Leave to Remain (ILR) in these circumstances, three talked of the order lasting throughout their childhood and another that the right to remain should extend beyond 18 years.

*"It is our view that children who are made subject to a Care Order should be granted status that allows them to remain in the UK for the duration of the Care Order. Further, where a child remains in care for the duration of their childhood they should be permitted to remain after 18 without further need to apply for leave."* (Family rights group)

194. Six respondents, whilst supporting the proposal, felt that it would depend on circumstances and that a **case by case approach** involving social services, the Courts and the Home Office was required. Three respondents highlighted the need for decisions to be made in conjunction with the Family court. A further respondent said the proposal should only apply to full not interim care orders.

195. Three respondents felt the proposals require **further scrutiny and debate**, and more information is needed on how this approach would work.

*"In principle, but how would this be controlled? I would worry that it will lead to an abuse of immigration law."* (Central Government)

196. Two respondents felt that keeping families together should be the prime consideration.

197. One respondent pointed out that the question is framed in terms of English law and that amendments are needed to incorporate the differences in the Scottish and Welsh system. This point was also made by six respondents who replied "don't know" to the closed question.

*“Q11 is framed in terms of English and Welsh law. Specific reference should be made to Scottish law, including the children’s hearing system and the need to allow the Children’s Reporter time to complete an investigation when a child has been referred.” (Scotland’s Children’s Commissioner)*

198. Respondents who disagreed with the proposal made the following comments.

199. Eighteen respondents had fears over potential **abuse of the system**, for example, families using their children to gain immigration status. It was also noted that it may be difficult or controversial to identify genuine cases. Concerns were also raised over child abuse, trafficking and abandonment. Seven respondents felt that the change would be out of line with the current general policy direction, and would complicate the ‘message’ about the system.

*“If we introduce a policy of granting residence to a child subject to a care order, I would anticipate a huge increase in “manufactured” cases because other family members will believe if they could piggy back on the child’s residence to gain a stay. I appreciate that isn’t the intention but that is what people will believe.” (Central Government)*

200. Five respondents who disagreed with the proposal felt cases should be considered on an **individual basis**, and that there is no ‘clear cut’ answer.

*“There are no ‘simple cases’ in this category and all cases need to be considered individually.” (Public sector organisation - Scotland and Northern Ireland)*

201. Three respondents highlighted the potential for **conflict between immigration law and family law**, and noted that a balance is needed between the two policy areas.

202. Three respondents wanted **families to be kept together**.

203. Respondents who were unsure about their answer or did not answer the closed question made the following comments.

204. Eight respondents wanted **further debate and consultation** on the proposal.

*“We would welcome UKBA consulting on this issue in more detail. Consultees would need to understand the present inter-relationship of the Family courts and immigration process.” (Children’s Commissioner)*

205. Seven respondents were concerned that the proposal may lead to **inappropriate influence** or complications in immigration and Family court decisions. Three others could see advantages to amend the current approach but highlighted the **conflict between services** responsible for children’s rights and the immigration system.

206. Four respondents felt that this was a policy proposal and had **no place in the Code**.

*“This is a ‘policy proposal’ which, while quite possibly broadly welcome, does not appear to relate to how those subject to a Code of Practice should act in relation to children. It therefore does not seem to sit easily with consultation about the Code. As a policy proposal, it needs clarification.” (Children’s Commissioner)*

207. Two respondents felt the need of the **family to stay together** should override immigration laws

208. A further three respondents gave **other comments** relating to the granting of residence to children involved in Family court considerations, mentioning that the approach should only be amended in age query cases, and that the implications of this proposal were unclear.

**Question 12** Please include any further comments you have regarding sections 3.4-3.6 of the draft code.

209. Forty-six respondents made further comments on sections 3.4-3.6 of the draft code, focussing on private fostering arrangements, the detention of children, the wording of the Code and the need for clear operational guidance.

**210. Private Fostering** was the most commented upon theme (13 respondents). Many of these (11) concerned the importance of working with other agencies to maintain the register of children in private fostering arrangements and to formalise information sharing to facilitate investigations when concerns are raised.

*“Special consideration should be given to children within private fostering arrangements. Attention should be given to encourage and formalise relationships with other agencies e.g. in the appropriate exchange of information.” (Central Government)*

211. Two respondents referred to the difficulties involved in detecting private fostering situations. One suggested that *“robust mechanisms are put in place to increase the likelihood of detecting potential harmful care arrangements and situations after arrival in the UK” (Voluntary organisation or charity)*, while the other respondent *“recommended that “private fostering arrangement” should be explained according to legislation” (Central Government)* which would help agencies clarify what to look out for.

212. Eleven respondents referred to the policy of **detaining children**. Eight of these respondents were opposed to children being detained as they felt this does not protect them from harm. They felt that children should only be detained in extreme circumstances and, in these instances; family orientated accommodation should be provided to ensure children are not separated from their families and their family routines can be maintained as much as possible.

*“The continuing policy of detaining children for immigration reasons is incompatible with promoting their welfare and protecting them from harm.” (Voluntary organisation or charity)*

213. Two of these respondents focused on the need for **clearer operational guidance** on detention.

*“The Code does not give enough practical guidance for staff. For example the section on detention, although welcome, does not tell staff what they should do when deciding to detain, a commitment which was given explicitly by Lord Bassam to the House of Lords...” (Voluntary organisation or charity)*

214. Eleven respondents made suggestions regarding **specific changes to the wording** and emphasis within the draft code. The changes were focused around the need for clearer and stronger definitions of terms and guidance on how to follow the policies. Examples of a few of the changes suggested by each respondent are shown in the quotes below.

*“‘Last resort’ needs to be more explicit” (Local Government)*

*“KR4 5.3. - It is vital that social workers are included in the working group regarding how best to determine age.” (Local asylum support group)*

*“3.4.2 – Section is vague. Need to be clearer about under exactly what conditions UASCs can be detained. If this is in another document than this should be referred to.” (Central Government)*

215. A further nine respondents were less specific about the changes they would make but also felt that the code should be **one clear policy with operational guidance** on how best to implement the different practices.

*“There is insufficient guidance to back up the statements of circumstances in which referrals will be made, nor is there any guidance on which would be the ‘relevant agency’ in a particular circumstance.” (Family Rights Group)*

216. Nine respondents focused on the fact that the **child’s welfare is paramount** and that this should be reflected in the code.

*“It’s good to see the child’s welfare being considered as paramount. This should be the guiding principle in execution of any action.” (Unknown respondent)*

217. Five of these respondents expressed particular concerns regarding children’s welfare during detention; the harm of being separated from family, children being detained in adult facilities while their age is verified and the need for a policy regarding pregnant women in the interests of their unborn child.

218. Eight respondents commented on **Local Safeguarding Children’s Boards (LSCB)**. Six of these encouraged consistent participation to *“lead to a greater understanding across all stakeholders”* (Central Government)

*“Additional consideration should be given in dealing with the effective presence of UKBA staff on Local Safeguarding Children’s Boards.” (Central Government)*

219. However, one of these respondents questioned how necessary it is for UKBA staff to participate in LSCBs.

*“We are not clear why UKBA staff would participate in Area Child Protection Committees or Local Safeguarding Children Boards, and what the benefit would be for children in this.” (Local Government)*

220. Six respondents commented on the importance of **information sharing** and the need for clearer guidance on the information that should be shared and how it should be done.

*“Section 6.8 does not give detailed enough guidance about what kind of information should be passed to the local authority, nor does it cross-refer to any other operational instructions.” (Family Rights Group)*

221. Three respondents said the **process of appeals** was not currently in line with some other policies.

222. Two respondents highlighted the value of a qualified, **independent contact person** offering counselling and /or advice.

**223. Other comments** made included: concern that the Code focuses too much on the removal and should cover the whole process; highlighting the potential harm to families with no recourse to public funds; the need to consider differences in policies and law in Scotland; the suggestion of offering financial aid for families to go to another country in order to keep families together; and, general agreement with this section.

## Section 3.7 to 3.9 of the Code

**Question 13** The Code indicates that the appointed Chief Inspector of the UKBA will look at the UKBA’s performance in relation to children and propose particular areas that might be inspected. Please indicate whether you think each of the following areas should be included in the list that might be inspected.

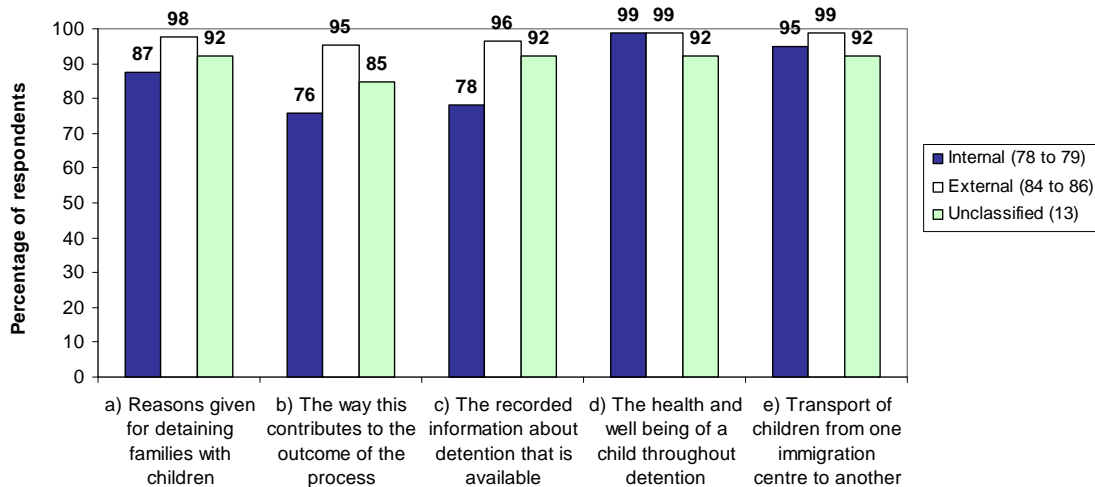
a) The reasons given for detaining families with children

- b) The way that this (reasons given for detaining families with children) contributes to the outcome of the immigration process.
- c) The nature and quality of recorded information about detention that is publicly available.
- d) The health and well-being of a child throughout the detention process.
- e) The transport of a child from one immigration centre to another.
- f) Are there any others that you would like to add? (please specify)

224. Overall, there was strong support for inspecting all of the areas suggested in the consultation. The highest level of agreement was on inspecting ‘the health and wellbeing of the child throughout detention’ (98 per cent), and the lowest was for the inspecting ‘The way this contributes to the outcome of the process’ (86 per cent). Ten per cent of respondents (17) disagreed that option (b) should be inspected, and four per cent did not know. Seven per cent of respondents disagreed with option (c), and five per cent did not know.

225. The majority of both internal and external respondents supported all the different areas for inspection, however, apart from option d, the internal group were less in favour of each option being inspected than external respondents are. This difference is particularly significant for options a, b and c. See Figure 17 for results.

**Figure 17.** Percentage of respondents agreeing with each area for inspection



226. One hundred and twenty seven respondents commented further on areas for inspection. Respondents made 63 specific suggestions on areas they would like inspected, while 64 respondents made general comments.

### General comments

227. Ten respondents said that **all areas mentioned in the proposals** were appropriate and suitable aspects for inspection.

*“We agree that all the indicators set out in the question should be included in the Chief Inspector of the UKBA’s performance standards in relation to inspecting detention” (Children’s Commissioner)*

228. Ten respondents felt the **areas for inspection should not be limited** by a set list, and that processes should be fully transparent. These respondents said that those conducting inspections should have the right to inspect any aspect they felt necessary.

*"We believe that a list of areas that the Chief Inspector of the UKBA should inspect will relate to all areas of the Agency's work and not be limited to the detention of children"* (Voluntary organisation or charity)

229. Ten respondents highlighted the need for staff dealing with inspection to have **adequate training and experience working with children** in this capacity. Seven further respondents highlighted that the people involved should be **external and independent**.

*"Inspection done by external independent body also specialised in children's issues"* (Unknown respondent)

230. Eight respondents sought confirmation that the **needs and welfare of the children involved would be considered**, ensuring they have access to all the services they need, including opportunities for play and family time.

*"Outside play areas with activities and play equipment should be provided and inspected for all age groups, with facilities for parents/carers to have time alone while children are being properly supervised and cared for by trained staff."* (Local Government)

231. A further seven respondents emphasised that **reasons should be given for any decisions made** throughout the process, particularly with relation to removals and appeals. This expands upon a suggestion given in the consultation document.

*"Vast majority of failed removals are down to the actions of the family hence the prolonged detention of families. Therefore perhaps the reasons for failed removals could be included."* (Central Government)

232. Five respondents were **against separating children from their families**, and were concerned that there was little emphasis on measures which could be taken to avoid this step. Three of these respondents felt there should be requirement to demonstrate all other avenues has been investigated.

*"In cases of detention of children and separation of families it should be thoroughly investigated whether all other possible options were explored beforehand."* (Voluntary organisation or charity)

233. Three respondents thought that the inspections should be '**spot checks**' rather than full, routine checks.

*"There should be an inspection of a cross section of decisions made by case owners where a refusal of leave to remain has been made for a family or unaccompanied child."* (CAFCASS)

234. A further three respondents were concerned that the proposals are **too focused on detention and removal**, and did not place enough importance on the processes leading up to this stage.

*"The Chief Inspector should cover all parts of the process, not just those highlighted here which focus on the end of the process. He should, for example, also look at the dispersal arrangements, age assessment and the impact on children when families are on Section 4 support on a long-term basis."* (Central Government)

## Specific suggestions

235. Forty-eight respondents gave 63 further suggestions on inspection, or expanded on the areas in the list given in the consultation document.

236. Ten respondents thought that **transportation and arrivals at ports should be inspected**. These respondents referred to practicalities, such as making the transition appropriate for children and employing reputable contractors, as well as to the emotional issues involved. Two respondents noted that families can be split up during transportation which is stressful.

*“Transport of children from detention centre to airport must not involve splitting up any members of the family - even with regards to one parent being moved in a different bus in the same convoy, (as has been reported to me in the past). This puts immense unnecessary stress on parents and children” (Educational institution)*

237. Eleven respondents thought the child’s **access to healthcare and education** should be considered by the inspector. Three of these respondents wanted consideration of the need for ‘playtime’ as well as the more basic needs. One respondent mentioned the need for clear health and safety guidelines, and a system in place for allegations of violence from staff or carers.

*“Education: addressing the issue that where families are moved at stages during the asylum process their education suffers. For example, families should be moved so that children do not have to change schools.” (Voluntary organisation or charity)*

238. Ten respondents thought that the **length of detention** should be examined and justified. Two of these respondents mention the impact prolonged detention may have on children and families. Three respondents referred to this in terms of accommodation and its suitability for both children and families.

*“The number of children with or without families that are held in detention and for what length of time.” (Voluntary organisation or charity)*

239. A further six respondents thought that **communication** needed to be inspected, both between individuals working with children, and between agencies. They also wanted the training and experience of individuals around communicating with children to be inspected.

*“Minimum standards should be set by an inspectorate body with the appropriate expertise in working with children and young people for the Agency’s work with children and young people. The agency should then be inspected against these standards” (Local Government)*

240. Five felt that **removals** required inspection; both in terms of necessity and the practical considerations.

*“The removal process - the taking of children from their homes for removal - the practical process of putting children and their families on an aeroplane - the arrangements made to ensure that the children are safe upon return, for example for a period of three months after being returned, where possible.” (CAFCASS)*

241. Five respondents had concerns over **data protection and accuracy of records** and felt these should be inspected. One of these respondents also referred to the publication of this information.

*“Important to look at what and how information is stored but only where information can help with the cases and therefore the wellbeing of the child e.g. missing children data.” (Central Government)*

**242. Literature and communication** was mentioned by five respondents as an area for inspection in terms of its quality and availability. Further to this, two respondents mentioned the quality and availability of legal representation/advice should be looked at.

243. Five respondents suggested inspection of the **complaint and appeal system** and the **reasons for removal**.

244. Four respondents gave **other suggestions**. Two mentioned the need to consider the treatment of special groups e.g. trafficked children, vulnerable children, unaccompanied children. Two mentioned the interview process, noting the environment should be suitable for children.

**Question 14** Please include any further comments you have regarding sections 3.7 to 3.9 of the draft code.

245. Fifty respondents made further comments on sections 3.7-3.9 of the draft code encompassing a wide range of issues from staff training and recruitment to the need for clear operational guidance.

246. Thirty six of these respondents commented on staff recruitment, training or accountability.

247. Twenty four respondents highlighted the need for staff implementing the Code to have **relevant and ongoing training**.

*“Staff training is a crucial element of the successful implementation of the code and for safeguarding children who come into contact with the UKBA.” (Local Safeguarding Children’s Board)*

*“All training for staff must be completed on a strict deadline basis and refresher training must also be offered.” (Central Government)*

248. Six of these respondents expressed concern that **e-learning** on its own is insufficient for training staff. It was felt that face-to-face learning with the opportunity for discussion and to ask questions was invaluable, especially as there are so many complex issues involved in working with children.

*“[Our organisation] is opposed to the use of e-learning to deliver the entirety of child protection training for some staff. Child protection is a difficult skill and it can throw up a number of dilemmas. Training must be based around discussion and shared experiences in order for staff to properly think through the implications of their actions and gain the confidence to act on their concerns. It is unfair to require staff to comply with this statutory duty without the necessary training and skills.” (Unknown respondent)*

249. Ten respondents mentioned the importance of staff recruitment and clear direction on how to determine a candidate’s suitability for employment. Another respondent felt that the recruitment process should be extended to include subcontracted staff members that work for the agency and who come into contact with the children.

*“Para 3.9.2 “must not employ anyone found to have a serious conviction...” - direction should be given as to what constitutes a serious conviction as confusion may arise.” (Police organisation)*

250. Seven of these respondents emphasised their support for the use of **CRB checks**.

*“The requirement for staff to be CRB checked is very much welcomed.” (Central Government)*

251. Four among this group of respondents specified that **advanced level CRB checks** should be a requirement for staff who work with children without supervision.

*“We are not convinced that the section on Criminal Records Bureau checks is strong enough. Any staff who come into unsupervised contact with a child must have been CRB checked to an enhanced level.” (Voluntary organisation or charity)*

252. However one of these respondents was concerned that too much emphasis was being put on the CRB checks alone.

*“Too heavily focussed on CRB checks as the only means of identifying unsuitable staff. Needs a stronger position on using all recruitment processes – interviewing, references, identity checks, etc.” (Local Government)*

253. Seven respondents specifically mentioned the need for **multi-agency training** in order to develop “awareness and understanding of the role of others.” (Local Government)

*“The significance of multi-agency training packages and events should be recognised as best practice for providing a joined up approach to such matters. (Health care professional)*

254. Ten respondents commented on the **discipline and accountability** of staff. Five respondents felt this was linked with training and/or the provision of more detail in the code of practice and how to comply with it.

*“The introduction of disciplinary procedures is not fully covered and the lack of detail other than a vague threat of undisclosed action being taken is a cause for concern. What constitutes a failure to follow the code is subjective and given to interpretation.” (Central Government)*

255. Eleven respondents felt it was important to have **just one clear policy with operational guidance** and that this should be the same for external agencies.

*“Think this needs to be ‘mainstreamed’ so that it very clearly sits within line management – need to ensure that there is not a twin track approach which would give authority outside chain of command.” (Central Government)*

256. The importance of **information sharing** was referred to by nine respondents.

*“I think [information sharing] is an important area that needs more work and which is being explored already. I think what has been included already is sufficient for the code.” (Central Government)*

257. Four of these respondents were concerned that *“the boundaries around information sharing are also not clear”* (Voluntary organisation or charity). Three others questioned where responsibility lay for sharing the relevant information.

258. Four respondents that felt any **detention of children contradicts the idea of keeping them safe** from harm and alternatives should be sought.

*“We fail to comprehend how the UKBA can talk about keeping safe from harm at the same time as talking about detaining them! We simply do not believe that the needs of children can be met in detention in any way.” (Voluntary organisation or charity)*

259. Three respondents indicated the need for any training provided to take into account the **differences in policy and practices across the UK**.

*“Every Child Matters only applies to England. As the Code applies to England, Wales, Northern Ireland and Scotland it is imperative that the differences in policy and practice are reflected.” (Voluntary Organisation)*

260. Three respondents made suggestions of amendments on the **specific wording and order of the draft code**. The changes were focused around the need for clearer guidance but also suggested moving the order of key phrases to change the emphasis. Examples of the changes suggested by each respondent are;

*“3.6.2 – Putting local safeguarding children board contact details in this section reads as if the LSCB could be an organisation to refer to. Better to omit here and put into section 3.6.13.” (Local Government)*

*“3.8.1 - this statement [Responsibility for ensuring that staff members follow the Code lies with the Agency’s line management] is fundamental to the Code and to changing the way that UKBA staff carry out their work. As such it should be right at the front of the Code and underpin the rest of the document.” (Central Government)*

261. One respondent said provision of information and counseling on the conditions and prospects available to them in their own country *“should be the responsibility of the NGO’s or league representative.”* (Police organisation)

262. One respondent was concerned that the Code is a series of statements rather than a practical guide and found it difficult to understand the totality without also seeing the operational instructions that are to be issued to staff.

**Question 15** If you have any further comments regarding the draft Code or your answers, please include them below.

263. Fifty four respondents took the opportunity to provide further comments on the draft Code. Responses to this very open question were detailed, specific and varied in nature.

264. Nine respondents acknowledged and **commended the UKBA** on the introduction of the draft Code.

*“Code of practice is very welcome as a basis for keeping children safe from harm.” (Local Government)*

265. Seventeen comments related to the need for **further clarification and information on responsibilities and implementation** of the Code. This included the need for a more practical guide to the Code; more detailed information on different processes, such as referral; and further clarification of sanctions due to non-compliance of staff.

*“The code does not go far enough in laying down the 'how' something should be done, the 'when' or the 'why'...”* (Central Government)

*“It should also be made clear what sanctions are likely should staff fail/continue to fail to comply with the code.”* (Central Government)

266. Seventeen comments related to the **manner in which children are dealt with** through the immigration process and the available facilities including;

- the provision of childcare facilities when parents are interviewed as the nature of the conversation is sensitive and potentially could be harmful to the child (mentioned by 4 respondents).
- that children needed to be offered an interview on their own and to be offered more than one opportunity to discuss the situation (4 respondents).
- that child-friendly facilities are needed to ensure children feel at ease through the immigration process (3 respondents). Similarly, that uniforms may make children feel anxious (1).
- that interviews and communication with children needed to be at a level suitable to the age of the child (2 respondents).
- that children should not be removed whilst at school nor should schools be asked for information on children (2 respondents).
- that transport should be by air where possible; persecuted and trafficked children have specific needs; all children should be treated properly and given basic provisions; and all cases involving a child should have an assigned special caseworker (not only in circumstances of an UASC) (mentioned by 1 respondent in each case).

267. Thirteen respondents suggested that some **considerations were missing from the Code** or could benefit from support from other parts of legislation or guidance. These included differences in immigration and childcare law; wider welfare considerations; justification of removal of under 18's; feedback from service user consultation; those with refugee status; exclusions; and pregnant women.

268. Eight respondents felt that the draft Code did not address **issues surrounding age assessment**. It was felt that further guidance and policies needed to be discussed and implemented to support these assessments.

*“There is no mention of the difficulties regarding identity of children and their ages. It is highly recommended that guidance be developed in conjunction with Child Protection Agencies to provide more clarity and direction with the issues of identity and age assessments.”* (Central Government)

269. Seven responses related to the **training** of staff that come into contact with children during the immigration process. Respondents reiterated earlier comments about e-learning not being suitable for training people in child protection. Two responses emphasised the need for trained interpreters in the immigration process and one respondent said training should also be given to staff who are outsourced.

270. Seven responses made reference to other **policies regarding child protection** and the need to reference these within the Code. These include: the best interests principle (2 respondents); United Nations Convention of the Rights of the Child (2); relevant legislation in Scotland (1); Wales Child Protection Procedures (1), an overview of statutory framework

relating to children (1); and, the Children's Act 1989/2004 (2). In addition to these seven responses, one respondent felt the UKBA should not be the lead on safeguarding children and policy. Another respondent wanted to know how the Code would inform and revise existing policy that may impact on children within the immigration process.

271. Five respondents commented on the **pressure on local budgets** as a result of providing these services and the additional resources and training required.

*"I'm concerned about the resource impact on a small number of local authorities where immigration interviews take place requiring outside professional/expertise and relocating to private fostering."* **Regional Migration Partnership)**

*"Implementing this in some circumstances is going to impact significantly on local budgets. Where will the extra money needed come from or will other areas of work be cut to make up any financial shortfall?"* **(Central Government)**

272. Five respondents emphasised the need for strong **partnership working** for the Code to be effective.

*"The conclusion should be for much closer relationships with other agencies via LSCBs and establishing section 11 duties."* **(Local Government)**

273. Five respondents commented on the **role of immigration officers** and the advice and support available to children. One stated that immigration officers should not make unfounded threats. Another felt enforcement officers should be given the authority to make decisions on the ground. Two respondents felt UASC should have a guardian and a legal representative, and one felt there should be specialist immigration legal advice prior to the interviewing of children by the BIA.

274. Four respondents felt it was important that there should be **monitoring and evaluation** of the effectiveness of the Code in practice.

*"UKBA needs to provide evidence that the Code will and does make a difference. There must be a system of inspection and monitoring that is transparent and has an element of independence. UKBA must have a system to show that they are learning from these reviews."* **(Children's Services)**

275. Four respondents felt the Code should be **child-centred** throughout.

276. Four respondents felt there was insufficient reference to **unaccompanied asylum seeker children (UASC)** in the draft Code.

*"A main concern is that the Code of Practice makes little reference to Unaccompanied Asylum Seeking Children (UASC). These children are children first and their safety should have priority over their immigration status, in a similar way as accompanied children."* **(Local Government)**

277. Four respondents felt improvement could be made to **wording and definitions**. For example, one respondent felt the terms 'child' and 'private fostering' needed clarification, and one felt more though needed to be put into the use of 'residence' as opposed to 'leave to remain'.

*"We believe the Code should...define all terms used, particularly in relation to terminology that may be familiar to childcare specialists but not others, such as private fostering. The definition of harm is one that we support, but it needs context."* **(Voluntary organisation or charity)**

278 Three respondents commented that 'responsible adults' (RA) should be **CRB-checked** and a new system implemented to manage their role centrally.

*"I would like to emphasize again that operational resources must be made available. Primarily that the issue of responsible adults be resolved centrally and clear guidance given to operation staffing"* (Central Government)

279. Another three felt there should be greater acknowledgement of the **conflicting roles** of the BIA in child protection and the immigration process

280. A further three respondents considered **reporting** to be a serious issue; and recommended weekly reporting with reporting on children done separately from adults.

*"information in relation to children should be clearly visible... reported on separately."* (Health care provider)

**281. Other comments**, each made by one respondent covered; concern over the scope for trafficking using paper-based applications; the time given for implementation; the view that home detentions are preferred and cause less anxiety for those involved; the need to reduce the length of detention; and the requirement for detailed information on UKBA contact with children

**Question 16** Should the UK withdraw its immigration reservation to the UN Convention on the Rights of the Child? This reservation allows the UK to apply its immigration laws without having them interpreted in light of the UN Convention on the Rights of the Child.

282. This question attracted the highest level of response in the consultation. Although the question itself has more unknowns for what it might mean in practice than the other questions, many respondents chose to reply only to this question. This may be due to the significance placed upon the Convention itself. The question itself relates to the Convention, rather than to UKBA activities, and is therefore different to the rest of the consultation. One hundred and seventy eight respondents only provided an answer for question 16. Of these 178 respondents, 167 gave exactly the same comment as a reason for their response. A further five respondents who also only answered this question gave an identical comment. Respondents who only answered question 16 did not provide a reason as to why they had not answered any other consultation questions. However, 71 were received from ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes) supporters and a further 96 respondents indicated that they had heard about the consultation through an NGO whose position they support.

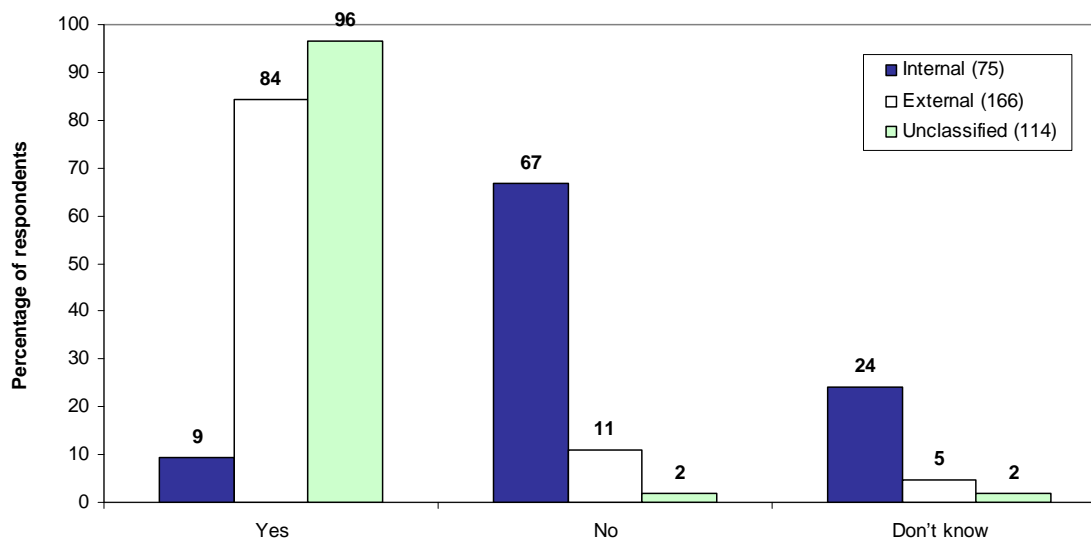
283. The number of 'unclassified' respondents who provided an answer to question 16 is much higher than in other questions, as the majority of the respondents who only provided an answer to question 16 did not provide organisation details.

284. Seventy two per cent (257) of the 355 respondents who answered this question agreed that the UK should withdraw its immigration reservation. A fifth of respondents disagreed (70) and eight per cent (28) did not know if the immigration reservation should be withdrawn.

285. However, as shown in Figure 18, these overall figures hide a significant difference in opinion between internal, external and unclassified respondents. While 84 per cent of external respondents (140 respondents), and 96 per cent of unclassified respondents felt that the UK should withdraw its immigration reservation, only nine per cent (7 respondents) of internal felt similarly. Conversely, 67 per cent of internal respondents did not think the reservation should

be withdrawn, compared to only 11 per cent of external respondents, and two per cent of unclassified respondents.

**Figure 18** Q16 Should the UK withdraw its immigration reservation to the UN Convention on the Rights of the Child?



286. Three hundred and three respondents commented on their answer to this question. Comments are grouped below according to the respondent's view answer on the closed question<sup>9</sup>.

287. Forty two respondents who wished to retain the UK immigration reservation commented on their view.

288. Twenty respondents thought the UK should keep its current system. They felt that the **current system meets the needs of children** and provides sufficient appeal grounds. The retention of the reservation was thought **necessary to keep domestic control of immigration**.

*"I believe that in order to maintain effective immigration control. Britain should maintain the reservation. All decisions made by UKBA are in line with ECHR, so there should be no detriment to the human rights of the child."* (Unknown)

*"By withdrawing our reservation we would be unable to interpret and use our own immigration rules."* (Unknown)

289. Fifteen respondents said withdrawing the reservation would lead to an increase in appeals and judicial reviews and **further delay the removal of asylum seekers**. These respondents saw this as undesirable.

*"The families that attempt to remain in the United Kingdom in contravention of immigration law and rules use every legal avenue before they consider absconding, please let's not give them another avenue."* (Central Government)

*"I don't know too much about UN Convention but am assuming that if UK 'opts in', it would have to consider things like access to schooling, healthcare and offer infrastructure problems in home country. This would make it more difficult to remove economic migrants."* (Central Government)

<sup>9</sup> Four respondents who answered 'No' appeared to have misunderstood the nature of the UK's reservation and thought that removing the reservation would be a step detrimental to child welfare. Their free comments are not included in this section.

290. Five respondents felt that the UK already shows an appreciation of children's rights and withdrawing the UK's reservation to the convention **would not further protect their rights**.

*"The UK has consulted various stakeholders including children's charities/social services. I am therefore confident that the rights for the child are paramount within the UK Border Agency's code of practice and it is not necessary to have them interpreted in the light of the UN Convention on the Rights of the Child."*  
(Central Government)

291. Two respondents wanted to see **each case considered individually**.

292. Two hundred and fifty seven respondents commented on their view that the UK should withdraw the immigration reservation. Identical responses were received from 167 respondents and also from a group of five respondents. The themes raised in these responses are included in the summary below.

293. Two hundred and eighteen respondents (including the 167 who gave the same response) said the reservation was **incompatible with the UN Convention on the Rights of the Child**. Respondents pointed out that young people are children first. Respondents referred to the concluding observations of the UN Committee on the Rights of the Child and two legal opinions on the reservation<sup>10</sup>. These respondents also suggested that the UK reservation **impeded work to stop the trafficking of children**.

*"Children should be treated as such no matter under what circumstances they have entered into the UK. By allowing the withdrawal of the immigration reservation of the UNCRC it would allow children to be protected further during the Asylum Process in particular under articles 22 'ensure a child who is seeking refugee status or who is considered a refugee ... receive appropriate protection and humanitarian assistance'."* (Local asylum support group)

*"[Our organisation] believes that the safety and welfare of asylum-seeking children is as important as that of citizen children [...] However, the continued existence of this reservation in practice places asylum-seeking children, whether unaccompanied or with their families, in a weak position."*  
(Voluntary organisation or charity)

*"We believe that asylum seekers must be treated fairly and humanely, particularly when children are involved and that the welfare and rights of children are paramount and they must be treated as such. It follows therefore that we support the removal of the current reservation."* (Central Government)

294. One hundred and eighty three respondents (including the 167 who gave the same response) said failure to withdraw the UK's reservation to the convention was **discriminatory** to children. These respondents wanted all children to be treated the same, as set out in the convention.

*"The Reservation discriminates against children who are not UK Citizens and it negatively affects trafficked children. Placing unaccompanied children under Section 17 instead of Section 20 of the Children Act (1989) is one example of this. Another example of discriminatory treatment is the Home Office's practice of allocating different amounts of money to local authorities for looking after unaccompanied children under and over the age of 16."* (Individual respondents)

295. One respondent thought withdrawing the reservation would signal to all those involved the need for equal treatment of all children.

*"Removing the reservation[...]would assist in the development of UKBA as an agency that considers the needs of children in all it does and make it clear that the UK government does not condone differential treatment of children while they are under its jurisdiction."* (Voluntary organisation or charity)

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<sup>10</sup> Save the Children (2001) and Save the Children and UNICEF (2008) 'In the Matter of the United Kingdom Reservation to the UN Convention on the Rights of the Child'

296. Contradicting comments from some respondents who wanted to keep the reservation, 179 respondents (including the 167 and the five who gave the same response) said that the reservation was **not needed for effective immigration control**. A typical comment was :

*“... the Government’s concern that effective immigration control could be compromised were it to withdraw the reservation is ill-founded.” (Unknown respondent)*

*“The reservation is not needed to maintain effective immigration control. [...] I am not familiar with any existing arguments elaborating in any detail how the removal of the reservation may compromise the government’s strict immigration policies” (Individual respondents)*

297. A further 22 respondents outlined their **general support for withdrawal of the UK immigration reservation**. Others expressed strong opinions on the need for withdrawal. Two of these respondents understood that the UK may have concerns but felt that as other countries were signed up to the convention the UK should follow.

*“... I understand the conflicted situation in which BA finds itself regarding children. On the other hand if all the countries have signed up ... why is it a problem for the UK?” (Central Government)*

*“It’s a disgrace that the UK has any reservations about the UN Convention.” (Voluntary organisation or charity)*

298. Fourteen respondents who were unsure whether the UK immigration reserve should be withdrawn commented on their answer.

299. Nine respondents felt that they **lacked knowledge** on this matter and did not have sufficient information to say whether the reservation should be withdrawn. This group of respondents raised questions on the impact of removal and sought more details.

300. Five respondents said that the **implications of this action were unclear**.

301. One respondent thought the Code had the potential to resolve the issues that arose through the UK immigration reservation.

## List of respondents

1. Asylum Aid
2. Barnardo's
3. British Red Cross
4. The Children's Society
5. ECPAT
6. Refugee Council
7. ILPA
8. NSPCC
9. Save the Children
10. UNICEF
11. Refugee Children's Consortium
12. Refugee Action
13. Liberty
14. Children in Wales
15. Children's Rights Alliance for England
16. World Vision UK
17. Refugee Voice Wales
18. Welsh Refugee Council
19. Voice, (Advocacy for Children in Care)
20. The Children's Law Centre, Northern Ireland
21. AVID (Association of Visitors to Immigration Detainees)
22. Bail for Immigration Detainees (BID)
23. Baptist Union of Scotland
24. Bindman and Partners
25. British Association of Social Workers
26. Bryson One Stop Service
27. Chernobyl Children's Project
28. Displaced People in Action
29. Drumchapel High School
30. The Family Rights Group
31. GARAS (Gloucestershire Action for Refugees and Asylum Seekers)
32. Medical Foundation for the Care of Victims of Torture
33. Northern Ireland Community of Refugees and Asylum Seekers
34. Connexions (Kensington and Chelsea)
35. The Fostering Network

36. Glasgow Anti Racist Alliance
37. Wales Strategic Migration Partnership
38. Yorkshire and Humberside Regional Migration Partnership
39. Plymouth Teaching Primary Care Trust
40. Royal College of Paediatrics and Child Health
41. The Law Centre, Belfast
42. International Social Service of the United Kingdom
43. Humanities Education Centre
44. UN High Commissioner for Refugees
  
45. The Children's Commissioner for England
46. The Children's Commissioner for Wales
47. Scotland's Commissioner for Children and Young People
48. The Northern Ireland Commissioner for Children and Young People
  
49. The ADCS - The Association of Directors of Children's Services
50. All Dorset Health Trusts
51. Northumberland, Tyne and Wear NHS Trust
52. Children and Family Services Team, Colwyn Bay, Wales
53. Devon Children's Services
54. Manchester Children's Services, Peacock Centre, Manchester
55. Children's Services Department, Borough of Poole
56. Cardiff County Council
57. City of Edinburgh Council
58. City of London Corporation
59. Gateshead Council
60. Glasgow City Council
61. Greater London Authority
62. Children's Services Department, Hackney
63. Harrow Council
64. Kent County Council
65. Leicester City Council
66. Leicestershire County Council
67. Luton Borough Council
68. North Tyneside Council
69. Neath Port Talbot, County Borough Council
70. Shropshire County Council

71. Oxfordshire County Council
72. South Tyneside Council
73. Surrey County Council
74. Wandsworth Borough Council
75. *Ty Henblas*, Wrexham County Borough Council
76. Primary Care Trust, Northern Ireland
77. Barnsley Primary Care Trust
78. Police Service HQ, Glasgow
79. Police Service of Northern Ireland, Templepatrick Station
80. The Good Relations and Reconciliation Division, Office of First Minister and Deputy First Minister, Northern Ireland Government
  
81. Northumbria Police Service
82. Northwood Police Station
83. Wolverhampton Equalities & Diversity Service
84. Lancashire Safeguarding Children Board
85. Sheffield Safeguarding Children Board
86. The Scottish Government, Children's Rights Team
87. The Family Justice Council
88. The Department of Health, Social Services, and Public Safety, Northern Ireland
  
89. Serco
90. G4S Justice Services Ltd
91. Clear Springs Management Ltd
92. Individual members of the public (177 responses)
93. Members of the United Kingdom Border Agency, responding individually or on behalf of their location or team (81 responses)