

# Bhatt Murphy Solicitors

## PRESS RELEASE

Royal Courts of Justice

Court 1, 10.30am  
26 January 2007

### **Home Office admits it has operated an unlawful policy resulting in the detention of unaccompanied asylum-seeking children.**

Following litigation on behalf of a group 34 Claimants, all of whom were children when detained, the Home Office admitted today that the age dispute policy which permitted immigration officers to treat child asylum-seekers as adults and so subject them to detention was unlawful.

#### **Bhatt Murphy Solicitors, acting for the Claimants said:**

“These Claimants arrived in the UK as children, without the support of their families. They have committed no crime, yet have been detained by the Immigration Service in conditions, which the Home Office itself admits are unsuitable for them. It is of grave concern that the Home Office has been well aware that they were detaining children in breach of their public commitments to the contrary, but took no action until this litigation forced a change in the policy.”

#### **The Home Office has admitted within the litigation:**

“The Secretary of State has concluded that his approach to detention in disputed age cases (prior to a change in policy in November 2005) did not strike the right balance between, on the one hand, the interests of firm and fair immigration control and, on the other hand, the importance of avoiding the detention of unaccompanied children”

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#### **Note to editors:**

- It is the Home Office’s overriding policy that children who arrive in the UK separated from their families, should not be detained by the Immigration Service,

save in exceptional circumstances and then only overnight whilst arrangements are made for the child's care.

- The Home Office also accepts that the current conditions within Immigration Detention Centres are unsuitable for unaccompanied children. Concern has been expressed by HM Chief Inspector of Prisons about the absence of child protection procedures putting children at risk when detained in immigration detention.
- The age dispute policy allowed Immigration Officers to refuse to accept an individual's age if they claimed to be a child and instead treat them as an adult if their 'appearance and/or demeanour strongly suggested they were 18 years or older'.
- This test permitted immigration officers, with no training in working with children, to assess an individual's age simply on the basis of their appearance. The individual would continue to be treated as an adult for all immigration purposes until they could obtain evidence that they were a child.
- Age assessment when this is relevant to the level of support offered by a local authority is undertaken by trained social work professionals. In this context the courts developed a set of basic procedural safeguards to ensure that the age assessment process was fair. [R(B) v London Borough of Merton [2003] EWHC 1689 Admin.]
- The basis of the current litigation was that the Home Office's policy denied these safeguards to children in circumstances when the consequence of the wrong decision was not simply the type of accommodation they might receive, but whether a child would be detained with adults with no proper child protection procedures in place.
- Whilst the policy continued to operate, a number of NGOs such as Save the Children and Amnesty International voiced serious concerns about the plight of unaccompanied children subject to age dispute procedures and in detention.
- The Refugee Council based at Oakington Detention Centre also provided detailed statistical information to the Home Office at inter-agency meetings over a period between 2003 – 2005 that indicated that a high percentage of persons that had been treated as adults were later assessed to be children. At some Immigration Service offices, the rate of error was 78% of those assessed as adults who were later accepted to be children by the Home Office.
- On 30 November 2005, the Home Office changed their policy concerning age dispute and detention. The new policy provides for more evidence of age to be available before an individual can have their age disputed and so subject to detention. It has since been confirmed that the policy change arose in response to the litigation and not as a consequence of the information provided to the Home Office that their policy was operating to defeat the overriding policy of not detaining children at all in facilities with adults.

- The Home Office, however maintained that the old policy was never the less lawful and resisted the Claimants applications for over a year until finally conceding that the policy was unlawful.
- The judge has already criticised the Home Office for the conduct of this litigation, the delay and their failure to comply with directions. He has emphasised the public importance of the issues at stake concerning as it does the rights and welfare of very vulnerable children.
- Pursuant to the Order of Mr Justice Munby dated 16 November 2006 and 26 January 2007, there are reporting restrictions on identifying the Claimants in this litigation.

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**For further information contact Mark Scott or Hannah Chambers at Bhatt Murphy Solicitors on 020 7729 1115**

**Please also contact the Refugee Council's Press Office on 020 7346 1213**