



**Office of the Children's
Champion**

12 Floor, Lunar House
Wellesley Road
Croydon
CR9 2BY

For the Attention of
All Chief Executive's of
Local Authorities

Tel +44 (0)208 196 4473
Fax +44 (0)[000 0000 0000]
Email Children'sChampion
@homeoffice.gsi.gov.uk
Web www.UK Border
Agency.homeoffice.gov.uk

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Dear Sir/Madam

RE: Data sharing between UK Border Agency and local authorities

I am writing to tell you about recent changes to the UK Border Agency family returns process and how those changes are likely to lead to requests for greater data sharing between our agencies. These requests will be in order to safeguard and promote the welfare of children, a statutory duty which the UK Border Agency shares with a number of other bodies. I very much hope you will be able to co-operate with any requests that we make.

UK Border Agency Responsibility

The UK Border Agency is required by Section 55 of the Borders, Citizenship and Immigration Act 2009 to carry out its functions having regard to the need to safeguard and promote the welfare of children. Making optimum use of information that relates to safeguarding and promoting the welfare of children which is held by other bodies, including local authorities, can play an important part in this.

In our experience, such information can be particularly helpful when considering the safe and effective return of children and families who have been determined by both the UK Border Agency and the Judiciary as not having a right to remain in the United Kingdom. Most of these information requests will arise when families have reached a particular stage in the immigration process called the ensured return stage, and a formal, comprehensive plan for family return is being prepared. This is explained below.

The returns process

In response to the Governments commitment to end the detention of children for immigration purposes, the UK Border Agency introduced in March 2011, a radically

different approach to the way it manages all families with children, who have no lawful right to remain in the UK and against whom we are taking action.

Once a decision has been taken that a family must leave the UK, and any in-country appeal rights have been exhausted, the family will proceed through the new three-stage family returns process. This consists of:

1. Assisted return stage – contact with the Local Immigration Team to support a voluntary return. This includes family conferences to discuss the family's return home, welfare and medical concerns and the availability of tailored assisted voluntary return packages to help families resettle upon their return;
2. Required return stage - for families who fail to take up assistance packages, allowing them to remain in the community, but giving two weeks notice to board their flight home and allowing self check-in without the need for enforcement action; and
3. Ensured return stage - as a last resort for families who refuse to depart the UK. Local Immigration Teams will develop a **return plan** to achieve a safe and effective return which safeguards and promotes the welfare of any children involved.

The Independent Family Returns Panel

As part of the ensured return phase, a new Independent Family Returns Panel (IFRP) has been established for the purpose of providing expert advice to the UK Border Agency on the method of removal from the UK.

The advice provided by the Panel will inform the UK Border Agency's decision regarding how to return the family and ensure that individual return plans take full account of the welfare of the children involved. The Panel will also want to be sure that the UK Border Agency is taking into account up to date information that is available and relevant to the safeguarding and welfare needs of the children.

Working Together

Section 11 of the Children Act 2004 places a duty on specified public bodies and key individuals to carry out their functions having regard to the need to safeguard and promote the welfare of children. Section 55 of the Borders, Citizenship and Immigration Act 2009 places a similar duty on the UK Border Agency. This is a natural progression for the Agency, which has been steadily improving how it works with children.

As part of the new returns procedure, UK Border Agency staff with responsibility for assisting families to return will, in a number of cases, be contacting local Children Services to check if the family are known and if there are any safeguarding or child protection concerns or any additional needs any family member may have.

The information will assist in meeting our obligation under Section 55. The primary purpose of this information will be to inform the return plan. At this stage of the process, we will already have taken all other decisions relating to the family's immigration status.

If Children's Services have no knowledge of the family, then usually, no further contact or information will be necessary.

Why does the Agency require this information?

Shared information will help both the UK Border Agency and subsequently the independent family returns panel in ensuring that the return plan for a particular family has taken into account any information held by other agencies that relates to safeguarding, welfare or child protection. It will assist in the formulation of an appropriate plan and help to provide assurance to ourselves and the IFRP and all involved partner agencies that any needs, be they welfare, safeguarding or child protection related are identified and as part of a multi-agency approach addressed prior to, and during a family's return home.

Further inter-agency working requests

As part of their consideration of the return plan, IFRP may also request that Children Service's prior to or after the Panel's own case meeting provide additional information. We anticipate that this will be in the form of a request that the child's allocated social worker or their manager participates in the IFRP meeting (normally by conference call). This request by the IFRP will not be in every case, but in complex and changing situations as it will serve as an opportunity for Children's Services and UKBA case owner, in a multi-agency forum, to share new information relevant to ensuring the safety and well-being of the child and family during the return process.

Legal basis

As part of the returns process, Local Immigration Teams will make every attempt to secure consent from individuals and families for the sharing of data between agencies. However, under the Data Protection Act 1998 the refusal of consent does not prevent the sharing of data, provided other pre-conditions for data sharing are met. These conditions are that:

- a) The sharing of the data is fair and lawful;
- b) one of the conditions in Schedule 2 to the Act is satisfied (this list grounds on which data can be shared; and
- c) in the case of sensitive personal data (e.g. medical records) one of the conditions in Schedule 3 is satisfied.

Given our statutory duty to have regard to and safeguard the welfare of children, and the fact that this data is being obtained principally for the child's benefit, we believe that the sharing of data for the purposes of protecting children's welfare during the returns process will be lawful.

As we are a government Agency requesting this information under our statutory obligation to protect children, condition 5(c) of Schedule 2 will be met, as the processing is necessary for the exercise of a government function. In the case of sensitive personal information, condition 7(1) (c) of Schedule 3 will also be met, as the processing is necessary for the exercise of the functions of a government function.

In light of the above we are satisfied that there is a sound legal basis for data sharing in cases where the data subject does not give their consent.

Handling, retention and sharing of information provided to the UK Border Agency

UK Border Agency will handle all information received from other authorities, in line with data protection principles.

Information provided to UK Border Agency in respect of families will be retained on the relevant HO file and be subject to the standard Home Office retention and storage policy, approved by the Office of the Information Commissioner.

Information will be shared with the Independent Family Returns Panel as part of their considerations. You should be aware such information may also potentially be disclosable as part of any valid Freedom of Information request made under the Freedom of Information Act 2000 or Subject Access request under the Data Protection Act 1998. However, this legislation does provide numerous exemptions to protect sensitive or confidential information, and we would seek to apply those where appropriate. If necessary we will liaise with you as to how we handle Freedom of Information requests or Subject Access request relating to information you have provided.

Finally

In order to facilitate the exchange of information, I would request that you cascade this letter widely within your departments; particularly to front line staff who might be required to respond to these information requests. I hope that by providing greater clarity on the family returns process, we will be able to work together to safeguard and promote the welfare of children.

If you feel it would be helpful to meet to discuss this further, please contact me at the number or e-mail address shown on this letter.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

Lisa Killham

UK Border Agency Children's Champion
Cc [Name]