

Europe Solidaire Sans Frontières > English > Europe, Great Britain > Great Britain & Northern Ireland (Europe) > Migrants - refugees, racism (UK) > **Britain: Home Office misled court about treatment of child refugees from (...)**

Britain: Home Office misled court about treatment of child refugees from Calais, judges find

Monday 13 August 2018, by [TOPPING Alexandra](#) (Date first published: 31 July 2018).

Appeal court rules not giving reasons for refusal to join families in UK was unlawful.

The government “materially misled” the high court about its treatment of child refugees who applied for safe passage to the UK from Calais, giving incomplete evidence that was “a serious breach of the duty of candour and cooperation”, the court of appeal ruled on Tuesday.

Judges said the process used to assess about 2,000 children before and after the clearance of the makeshift refugee camp in 2016 was “unfair and unlawful”.

They ruled that about 500 children who had applications to join family members in the UK refused had not been given adequate reasons for the refusal.

In September 2017 the high court found that the Home Office, led at that time by Amber Rudd, had acted lawfully when it did not provide full reasons for rejecting the children’s applications.

However, the court of appeal has overturned that decision, arguing that the earlier judge was given an “incomplete picture” by the government and “a great deal of important evidence” had not been brought to the attention of the court.

The appeal, brought by campaigning organisation Citizens UK, revealed Home Office emails, which emerged as evidence disclosed to Citizens UK’s legal team in another case. The emails show that officials had been advised by Home Office lawyers not to provide reasons for refusing the children’s applications to join their families to avoid the risk of legal challenges.

An email between Home Office officials sent on 14 December said: “[XX] makes the point that they had asked for the full list last week and thought we had agreed on one. In my reply I have said that our legal department had advised against full disclosure because of the risk of challenge.”

The earlier high court ruling stated that the Home Office had said “non-communication [of the reasons for refusal] was a requirement of the French authorities”, but Home Office emails reveal that in fact French authorities wanted the UK to give the children adequate explanations.

An email sent by French officials to the Home Office on 13 December 2016 stated that “we have a collective interest in reporting them to the young people without delay” to prevent “futile requests for re-examination”.

It added: “Otherwise, the young people especially will not understand, we will not be able to explain it to them and the situation will quickly become unmanageable for you as well as for us.”

Overtaking the earlier ruling, Lord Justice Singh, who sat with Lady Justice Asplin and Lord Justice Hickinbottom, said: "In my judgment, the process which was adopted by the secretary of state in the present context failed to comply with the requirements of procedural fairness as a matter of common law."

While the failure to mention the concerns about legal challenge was not deliberate, Singh said it was "a serious breach of the duty of candour and cooperation" and had resulted in key evidence not being put before the judge.

Sonal Ghelani of the Migrants' Law Project at Islington Law Centre, which worked on the appeal against the government, said: "It is extremely disturbing that these emails show the home secretary was advised by lawyers to act unfairly and unlawfully, in order to avoid legal challenges by the children concerned."

She called on Sajid Javid to launch an investigation, "given that an unknown number of children have been denied the opportunity to know why their cases were rejected and whether these rejections could be challenged".

Yvette Cooper, chair of the home affairs select committee, said the department had carried out "a shocking denial of children's rights".

"Even though ministers agreed to help many child refugees from Calais, it appears the default setting of the Home Office was still so hostile that it deliberately made it harder for others to appeal or to rejoin relatives.

"I urge the Home Office now to work with campaigners and legal teams to revisit cases wherever possible and to do more to support child refugees seeking family reunion, or who have arrived in the UK and deserve certainty regarding their status."

Beth Gardiner-Smith, of Safe Passage, a Citizens UK project which works to reunite child refugees and their families in the UK, said many of the children whose rights had been denied were now missing. The court of appeal ruling did not force the Home Office to attempt to find them, she added.

"Today's judgment reveals not only the failure of the Home Office to comply with law but also its abysmal disregard for the safety and welfare of incredibly vulnerable children," she said.

"By refusing these applications without providing reasons, the Home Office left potentially hundreds of unaccompanied children in Calais with no viable legal avenues to join their families."

A French Senate report from July last year found that 709 children removed during the clearances of the camps in Calais had subsequently gone missing from French care shelters.

A Home Office spokesperson said: "The UK worked with France to expedite the transfer of 769 vulnerable unaccompanied children from Calais in October 2016. This was in response to an urgent humanitarian situation where our priority was to provide safe passage for children.

"The court agreed that the process operated by the government was outside of its existing obligations under EU law. However, we note the criticisms contained within the wider ruling and are currently reviewing these with our legal team."

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P.S.

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